

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 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION PERSONNEL ADMINISTRATION

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|------------------------------------|---------------------------------|
| R2-5-501 | Amend |
| R2-5-502 | Amend |
| R2-5-503 | Amend |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. §§ 41-763(6) and 41-770
Implementing statute: A.R.S. §§ 41-783(3), 41-783(17), 41-783(22)
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
None
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Margaret Okolotowicz, Communications/Employee Relations Specialist
Address: 1831 W. Jefferson, Room 106
Phoenix, AZ 85007
Telephone: (602) 542-4459
Fax: (602) 542-2796
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**
Standards of Conduct, Hours of Work, Performance Appraisal System. The proposed rules establish the Standards of Conduct expected by a state service employee, establish and clarify the Hours of Work required of a state service employee, and define and clarify the Performance Appraisal System used to rate the work performance of an employee for an annual merit increase.
- 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:**
There will be no economic, small business or consumer impact.

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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: Claudia Smith, Communications Unit Manager
Address: 1831 W. Jefferson, Room 128
Phoenix, AZ 85007
Telephone: (602) 542-4894
Fax: (602) 542-2796

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:

A public proceeding for oral comments on the rules has been scheduled for Tuesday, July 31, 2001 in the basement conference rooms A and B of the Capitol Center, 15 S. 15th Ave., Phoenix, AZ 85007 at 3:30 p.m. and 5:30 p.m. Anyone wishing to submit written comments prior to the meeting may submit written comments between 8:00 a.m. and 5:00 p.m., Monday through Friday until 5:00 p.m. on Friday, August 3, 2001 to the following person:

Name: Margaret Okolotowicz, Communications/Employee Relations Specialist
Address: 1831 W. Jefferson, Rm 106
Phoenix, AZ 85007
Telephone: (602) 542-4459
Fax: (602) 542-2796

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:

§ 41-770 Causes for Dismissal or Discipline. R2-5-501(A)

13. The full text of the rules follows:

TITLE 2. ADMINISTRATION

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

ARTICLE 5. CONDITIONS OF EMPLOYMENT

Section

R2-5-501. Standards of Conduct
R2-5-502. Hours of Work
R2-5-503. Performance Appraisal System

ARTICLE 5. CONDITIONS OF EMPLOYMENT

R2-5-501. Standards of Conduct

- A.** General. In addition to statutorily prohibited conduct, including but not limited to § 41-770, a violation of the standards of conduct listed in subsections (B), (C), and (D) below is cause for discipline or dismissal of a state service employee.
- B.** Required conduct. A State state Service service employees employee shall at all times:
1. Maintain high standards of honesty, integrity, and impartiality, free from ~~any~~ personal considerations, favoritism, or partisan demands.
 2. Be courteous, considerate, and prompt in dealing with and serving the public and other employees.
 3. Conduct themselves in a manner that will not bring discredit or embarrassment to the state.
 4. Comply with federal and state laws, and rules, and agency policies and directives.
- C.** Prohibited conduct. A State state Service service employees employee shall not:
1. Use their official position for personal gain, or attempt to use, or use, confidential information for personal advantage.
 2. Permit themselves to be placed under any kind of personal obligation ~~which that~~ could lead ~~any~~ a person to expect official favors.
 3. Perform ~~any~~ an act in a private capacity ~~which that~~ may be construed to be an official act.

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4. Accept or solicit, directly or indirectly, anything of economic value as a gift, gratuity, favor, entertainment, or loan ~~which that~~ is, or may appear to be, designed to influence the employee's official conduct. This provision ~~does shall~~ not prohibit acceptance by an employee of food, refreshments, or unsolicited advertising or promotional material of nominal value.
 5. Directly or indirectly use or allow the use of state equipment or property of any kind, including equipment and property leased to the state, for other than official activities unless authorized by agency policy or as otherwise allowed by these rules.
 6. Engage in outside employment or other activity ~~which that~~ is not compatible with the full and proper discharge of the duties and responsibilities of state employment, or ~~which that~~ tends to impair the employee's capacity to perform the duties and responsibilities in an acceptable manner.
 7. Inhibit a state employee from joining or refraining from joining an employee organization.
- D.** Employee rights. An employee shall not take ~~any~~ disciplinary or punitive action against another employee ~~which that~~ impedes or interferes with that employee's exercise of any right granted under the law or these rules. ~~Any~~ An employee or agency representative who is found to have acted in reprisal toward an employee as a result of the exercise of the employee's rights is subject to discipline, as defined in ~~R2-5-804~~ Article 8. Such discipline ~~is to~~ shall be administered in accordance with state and federal laws affecting employee rights and benefits.

R2-5-502. Hours of Work

- A.** State service work week. The state service work week is the period of ~~seven~~ 7 consecutive days starting Saturday at 12:00 a.m. and ending Friday at 11:59 p.m. An agency head may apply to the Director to grant an exception for all or part of an agency workforce. ~~Exceptions may be granted by the~~ The Director may grant an exception to promote efficiency in the state service.
 - B.** Hours of employment. Each agency head shall determine the hours of employment in the work week for each agency employee. An agency head may provide for breaks during the work period consistent with carrying out the duties of the agency. An agency head may require an employee to work overtime.
 - C.** Flexible work ~~schedules options.~~ An agency head may offer a flexible 40-hour work week option to an employee if the agency head determines the agency's existing services can be maintained. If, in an agency head's discretion, it is determined that the agency's existing services can be maintained by employees working a 40-hour work week in a flexible work schedule, the agency head shall offer this option to the affected employees.
- D.** Attendance standards.
1. An agency head may establish a standard of attendance.
 2. Job abandonment. After 3 days of absence without approval, an agency head may dismiss an employee without prejudice. The agency head shall provide written notice to the employee's last known address.

R2-5-503. Performance ~~Planning and Evaluation~~ Appraisal System

- A.** General. The Director shall establish a performance appraisal system to evaluate the job performance of ~~all~~ state service employees. An agency head may adopt an alternate employee performance appraisal system, subject to the approval of the Director.
 - B.** Frequency.
 1. A supervisor shall evaluate a permanent status employee at least annually.
 2. Prior to achieving permanent status, a supervisor shall evaluate a probationary status employee at least twice during the probationary period. An agency head may terminate a probationary employee at any time with or without a performance evaluation pursuant to R2-5-213.
 - a. ~~At the midpoint of the probationary period, and~~
 - b. ~~Thirty days prior to the end of the probationary period.~~
 - C.** Performance rating.
 1. The performance appraisal system established by the Director shall contain performance rating levels that distinguish among standard, above standard, and below standard performance. The system shall contain numerical points to apply to each performance rating level established.
 2. An agency that adopts an alternate employee performance appraisal system shall provide performance rating levels and points appropriate to that system.
 3. The Director shall establish a procedure for converting the performance rating levels of an approved alternate employee performance appraisal system to the Arizona Department of Administration rating levels to achieve consistency in human resources actions for which performance levels are a factor.
- D.** Performance expectations.
1. An employee is expected to meet or exceed performance standards.
 2. A supervisor shall comply with performance appraisal requirements.
 3. An agency head shall ensure that all performance appraisals are completed as required by this Section.

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~~D.E.~~ Review. An employee may file a written request for a review concerning an overall performance rating or a specific performance rating. Each agency head shall adopt a performance evaluation review procedure subject to the approval of the Director. An employee may file a written request for a review concerning an overall performance rating or a specific performance rating.

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TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 9. REGISTRAR OF CONTRACTORS

PREAMBLE

- 1. Sections Affected**

R4-9-108	Amend
R4-9-121	Repeal

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

Authorizing statute: A.R.S. § 32-1104(5) and (6) and § 32-1126

Implementing statute: A.R.S. §§ 32-1104(5) and (6), 32-1154(A)(3), and 32-1126

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

Notice of Rulemaking Docket Opening: 6 A.A.R. 2186, June 16, 2000

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

Name:	Alan Felber, Chief of Licensing
Address:	Registrar of Contractors 800 West Washington, 6th Floor Phoenix, AZ 85007
Telephone:	(602) 542-1525
Fax:	(602) 542-7852

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

R4-9-108 incorporates by reference the current editions of the building codes with which licensed contractors must comply.

R4-9-121 is an expired contractors license fee schedule, which no longer applies because it was replaced by R4-9-130.

- 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:**

The economic impact on all affected parties is favorable because the amendments to R4-9-108 will incorporate by reference current code book editions. The new code editions will reflect those currently administered by local jurisdictions. The change to R4-9-121 will have no economic effect because this rule is no longer used.

- 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:	Alan Felber, Chief of Licensing
Address:	Registrar of Contractors 800 West Washington, 6th Floor

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Phoenix, Arizona 85007

Telephone: (602) 542-1525

Fax: (602) 542-7852

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:

The agency will accept written comments submitted not later than 5:00 p.m. August 14th, 2001 to the person listed in items #4 and #9.

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: August 14, 2001

Time: 9:00 a.m.

Location: Industrial Commission of Arizona
First Floor Auditorium
800 West Washington
Phoenix, AZ 85007

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:

Minimum Property Standards for Housing, Directive No. 4910.1, U.S. Department of Housing and Urban Development, 1994 (M.P.S.):

R4-9-108(C)(1) Workmanship Standards, page 5

2000 International Building Code, March 2000:

R4-9-108(C)(2) and (C)(4)(c) Workmanship Standards, pages 5 and 6

2000 International Residential Code, for One- and Two- Family Dwellings, January 2000:

R4-9-108(C)(2) Workmanship Standards, page 5

Construction of Hot Mix Asphalt Pavements, Manual Series No. 22 (MS-22), Second Edition, 1989:

R4-9-108 (C)(3) and (C)(4)(c) Workmanship Standards, pages 5 and 6

Asphalt in Pavement Maintenance, Manual Series No. 16 (MS-16), Third Edition 1996:

R4-9-108(C)(3) Workmanship Standards, page 5

National Electrical Code, National Fire Protection Association (NFPA) 70, 1999 Edition:

R4-9-108(C)(4)(b) Workmanship Standards, page 6

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 9. REGISTRAR OF CONTRACTORS

ARTICLE 1. GENERAL PROVISIONS

Section

R4-9-108. Workmanship Standards

R4-9-121. ~~Schedule of Fees Through December 31, 1993~~ Repealed

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 9. REGISTRAR OF CONTRACTORS

ARTICLE 1. GENERAL PROVISIONS

R4-9-108. Workmanship Standards

- A. All work shall be performed in a professional and workmanlike manner.
- B. All work shall be performed in accordance with any applicable building codes and professional industry standards.
- C. All work performed in any county, city, or town which has not adopted building codes or where any adopted building codes do not contain specific provisions applicable to that aspect of construction work shall be performed in accordance with professional industry standards and shall comply with the minimum standards ~~set forth~~ in subsections (C)(1) through (C)(4).
 - 1. ~~In all new construction or remodeling,~~ the minimum standards for all new construction or remodeling shall be in accordance with the *Minimum Property Standards for Housing, Directive No. 4910.01*, U.S. Department of Housing and Urban Development, 1994 (M.P.S.), published by U.S. Department of Housing and Urban Development, Office of Assistant Secretary for Housing-Federal Housing Commissioner, Washington DC, as they pertain to construction and construction design but not to matters of site design and ~~site development of such residential construction.~~
 - 2. ~~In all new construction or remodeling,~~ the minimum standards for all new construction or remodeling shall be in accordance with the minimum building requirements ~~as set forth in the 2000 International Building Code and the 2000 International Residential Code for One- and Two- Family Dwellings, both published in 2000 by the International Code Council, 5360 Workman Mill Rd., Whittier, CA 90601-2298 volumes 1, 2, and 3 of the 1997 Uniform Building Code, International Conference of Building Officials, 1997 (U.B.C.).~~
 - 3. ~~In all general engineering work,~~ the minimum standards for all engineering work shall be in accordance with the minimum building requirements ~~as set forth in the I.B.C.; U.B.C. and to the Principles of Construction of Hot Mix Asphalt Pavements, Manual Series No. 22, (MS-22), Asphalt Institute, January 1983 Second Edition 1989; and to Asphalt in Pavement Maintenance, Manual Series No. 16, (MS-16), the Asphalt Institute, March 1983 Third Edition 1996, both published by the Asphalt Institute, Research Park Drive, PO Box 14052, Lexington KY 40512-4052, as they pertain to construction and to matters of site design and site development.~~
 - 4. Plumbing, electrical, and mechanical refrigeration work shall be governed as follows:
 - a. Plumbing: The minimum standards for all in the plumbing work field shall be in accordance with ~~the Uniform Plumbing Code, International Association of Plumbing and Mechanical Officials, 1997 (U.P.C.) 4 A.A.C.48, Article 1.~~
 - b. Electrical: The minimum standards for all in the electrical work field shall be in accordance with the ~~1996 National Electrical Code, National Fire Protection Association (NFPA) 70-1996, 1995 (N.E.C.), 1999 Edition, published by the National Fire Protection Association, 1 Batterymarch Park, PO Box 9101, Quincy, MA 02269-9101.~~
 - c. Mechanical Refrigeration: The minimum standards for all in the mechanical refrigeration work field shall be in accordance with ~~the 2000 International Building Code and the 2000 International Residential Code for One- and Two- Family Dwellings, both published in 2000 by the International Conference of Building Officials, 5360 Workman Mill Rd, Whittier CA, 90601-2298 1997 Uniform Mechanical Code, International Conference of Building Officials, 1997 (U.M.C.).~~
 - 5. The codes and industry manuals, referred to in subsections (C)(1) through (C)(4), are incorporated by reference and on file with the Office of the Secretary of State and the Registrar of Contractors. ~~These incorporations This incorporation~~ by reference contain ~~contains~~ no future editions or amendments.

R4-9-121. Schedule of Fees Through December 31, 1993 Repealed

Until December 31, 1993, the following annual license application fees, annual license renewal fees and fees for other services shall be applicable in accordance with the provisions of A.R.S. §§ 32-1123.01 and 32-1126:

- 1. ~~RESIDENTIAL CONTRACTORS:~~
 - a. General Residential Contractor:
Fee for license application \$300.00
 - b. General Residential Contractor:
Fee for license renewal \$160.00
 - c. Specialty Residential Contractor:
Fee for license application \$200.00
 - d. Specialty Residential Contractor:
Fee for license renewal \$135.00
- 2. ~~COMMERCIAL CONTRACTORS:~~

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- a. ~~General Commercial Contractor (includes General Engineering Contractor):~~
Fee for license application \$600.00
 - b. ~~General Commercial Contractor (includes General Engineering Contractor):~~
Fee for license renewal \$320.00
 - e. ~~Specialty Commercial Contractor:~~
Fee for license application \$400.00
 - d. ~~Specialty Commercial Contractor:~~
Fee for license renewal \$270.00
3. **FEES FOR OTHER SERVICES:**
- a. Application to change qualifying party \$100.00
 - b. Application to change name of licensee \$30.00
 - e. Initial examination fee \$60.50
 - d. Retake examination fee \$27.50

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 14. DEPARTMENT OF HEALTH SERVICES - LABORATORIES

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| Article 5 | Amend |
| R9-14-501 | Amend |
| R9-14-502 | Amend |
| R9-14-503 | Amend |
| R9-14-504 | Amend |
| R9-14-505 | 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) and 36-694
Implementing statutes: A.R.S. §§ 36-470 and 36-694
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 7 A.A.R. 1322, March 23, 2001
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|------------|--|
| Name: | Ruthann Smejkal, Ph.D. |
| Address: | Arizona Department of Health Services
2927 N. 35th Avenue
Phoenix, AZ 85017 |
| Telephone: | (602) 364-1409 |
| Fax: | (602) 364-1495 |
| E-mail: | rsmejka@hs.state.az.us |
| or | |
| Name: | Kathleen Phillips
Rules Administrator |
| Address: | Arizona Department of Health Services
1740 W. Adams Street, Room 102
Phoenix, AZ 85007 |

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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 reason for initiating the rule:

The proposed rulemaking will amend the heading of Article 5 to add endocrine disorders. R9-14-501 will be amended to clarify the definitions, add new definitions, and delete unnecessary definitions. R9-14-502 will be amended to add congenital adrenal hyperplasia to the list of disorders screened for in the newborn screening test, to make a second screening mandatory, and to make the rule clear, concise, and understandable. R9-14-503 will be amended to make a second screening mandatory and to make the rule clear, concise, and understandable. R9-14-504 will be amended to make it clear, concise, and understandable. R9-14-505 will be amended to increase the fee for second screening from \$15.00 to \$20.00.

6. A reference to any study that the agency proposes to rely on 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 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:

Costs

The Department will bear substantial costs for promulgating and enforcing the rules. Costs for promulgating the rules include staff time to write, review, and direct the rules through the rulemaking process. Ongoing increased costs include approximately \$450,000 for additional tests performed because of increased numbers of specimens and increased numbers of disorders, and \$375,000 in program education, enforcement, and other program costs including the costs for second screening reminders, follow-up for abnormal results, data base modification, and providing verification of newborn screening tests to physicians.

The Governor's Regulatory Review Council will incur minimal costs for staff time to review, edit, analyze, and advise on rules prior to submission to G.R.R.C. and Council member time to review and consider rules for approval.

The Office of the Secretary of State will bear minimal costs for staff time to edit and publish rules through all stages of the rulemaking process.

AHCCCS will incur additional costs of approximately \$450,000 per year for additional second tests that have not previously been performed and for the increased cost of the second test.

On average, each military health care facility will incur additional costs of approximately \$3,500 to \$4,000 per year for additional second tests that have not previously been performed, the increased cost of the second test, and staff time to draw, check, and submit the specimen for a second test. The cost for each individual facility may vary.

On average, each Indian Health Services facility and tribal health facility will incur additional costs of approximately \$800 to \$900 per year for additional second tests that have not previously been performed, the increased cost of the second test, and staff time to draw, check, and submit the specimen for a second test. Some of the costs may be reimbursed through the Arizona Health Care Cost Containment System (AHCCCS). The cost for each individual facility may vary.

Hospitals perform relatively few second screens, as most newborns are discharged prior to the time second screens are to be performed. Each hospital, on average, will incur minimal to moderate costs per year for staff time to draw, check, and submit the specimen for a second test. Most of the costs incurred by the hospitals is reimbursed through AHCCCS, other third party payors, or patients. The cost for each individual hospital may vary.

Third party payors (primarily insurance companies, including HMOs and PPOs), as a whole, will incur additional costs of approximately \$450,000 per year for additional second tests that have not previously been performed and for the increased cost of the second test. The costs are offset by the premium charged to the insured. The cost for each individual payor may vary.

As a whole, intermediary laboratories contracted by AHCCCS and other third party payors which may collect and submit newborn screening specimens for testing will incur additional costs of approximately \$575,000 per year, most

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or all of which is reimbursed through AHCCCS or other third party payors. The cost for each individual laboratory may vary.

On average, each clinical outpatient facility, including a community health center, will incur additional costs of approximately \$1,000 to \$1,500 per year for staff time to draw and submit the specimen, and verify second screens of patients. Most of the costs is reimbursed through AHCCCS, other third party payors, or patients. The cost for each individual facility may vary.

On average, each physician will incur additional costs of approximately \$2,000 to \$2,500 per year for staff time to draw and submit the specimen, and verify second screens of patients. Most of the cost is reimbursed through AHCCCS, other third party payors, or patients. The cost for each physician's office may vary.

The parents of newborns who are not covered by AHCCCS or insurance will incur an additional costs of \$5 to \$100 for screening fees, travel, and time off work.

Each individual who pays premiums to a third party payor may incur additional minimal costs in increased premiums.

Benefits

The Department will collect additional fees of approximately \$825,000 for the newborn screening fund.

AHCCCS, other third party payors, Military health care facilities, Indian Health Services and tribal health care facilities will benefit because of decreased costs of diagnostic testing when symptoms develop and decreased costs of hospitalization, other treatment, and long-term care over the life time of the child for undiagnosed or late diagnosed disorders. The exact amount saved by the early diagnosis of a child who has one of the disorders the newborn screening test screens for cannot be determined because there are so many variables. However, the cost of treatment and care over the life time of just one severely affected child could surpass one million dollars.

Physicians and clinical outpatient facilities will benefit because of decreased costs associated with the process of diagnosing a disorder once symptoms occur.

Parents of newborns will benefit by having healthy children and fewer catastrophic medical bills. As an example, it may cost an additional \$8,000 per year to prepare a special diet for a child with Phenylketonuria (PKU). However, a child institutionalized because of undiagnosed or late diagnosed PKU may cost \$8,000 per month.

Society in general will receive the substantial benefit of having a healthy and productive member of society because of timely identification and treatment of the disorders. For example, it is estimated that an additional seven or eight children may be identified as having congenital hypothyroidism with the mandatory second screen. These children can be treated and live normal, healthy lives. If the disorder is not caught early, the child will be significantly mentally retarded and have other physical problems. Untreated children may need to be institutionalized due to severe mental retardation and physical impairments.

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: Ruthann Smejkal, Ph.D.
Address: Arizona Department of Health Services
2927 N. 35th Avenue
Phoenix, AZ 85017

Telephone: (602) 364-1409
Fax: (602) 364-1495
E-mail: rsmejka@hs.state.az.us

or

Name: Kathleen Phillips
Rules Administrator
Address: Arizona Department of Health Services
1740 W. Adams Street, Room 102
Phoenix, AZ 85007

Telephone: (602) 542-1264
Fax: (602) 542-1090

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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 and oral proceeding on the proposed rule:

Date: August 1, 2001
Time: 1:00 p.m.
Location: Governor's State Reception Room
1700 W. Washington, 2nd floor
Phoenix, Arizona 85007
Nature: Oral proceeding

Date: July 31, 2001
Time: 10:00 a.m.
Location: 400 W. Congress, Suite 315
Tucson, Arizona 85701
Nature: Oral proceeding

Date: August 3, 2001
Time: 10:00 a.m.
Location: Coconino County Health Department
Padrosa Room
2625 W. King St.
Flagstaff, Arizona 85004
Nature: Oral proceeding

A person may submit written comments on the proposed rules no later than 5:00 p.m., August 3, 2001, to the individuals listed in items #4 and #9.

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 9. HEALTH SERVICES

CHAPTER 14. DEPARTMENT OF HEALTH SERVICES - LABORATORIES

**ARTICLE 5. TESTS FOR ENDOCRINE DISORDERS, METABOLIC DISORDERS, AND
HEMOGLOBINOPATHIES**

Section

R9-14-501. Definitions
R9-14-502. Testing of ~~newborns~~ Newborns
R9-14-503. Persons ~~and health care facilities responsible for tests~~ Responsible for Tests
R9-14-504. Parent or ~~guardian education~~ Guardian Education
R9-14-505. Screening ~~fees; collection~~ Fees

**ARTICLE 5. TESTS FOR ENDOCRINE DISORDERS, METABOLIC DISORDERS, AND
HEMOGLOBINOPATHIES**

R9-14-501. Definitions

In this Article, unless context otherwise requires specified:

1. “Administrator” means an individual in charge of the onsite management of a health care facility.
2. “Abnormal” means a result of an analysis performed as part of a newborn screening test that deviates from the range of values established by the Department.
3. “Admitted” means a written acceptance by a health care facility of a newborn.
4. “AHCCCS” means the Arizona Health Care Cost Containment System.
- ~~4.5. “Biotinidase deficiency” means a congenital metabolic disorder characterized by abnormal biotinidase production which causes mental if not treated early in life~~
5. “Biotinidase deficiency” means a congenital metabolic disorder characterized by defective biotinidase activity that causes abnormal biotin metabolism.
6. “Birth center” means a health care facility that is not a hospital, that is organized for the sole purpose of delivering newborns.
- ~~6.7. “Galactosemia” “Classic galactosemia” means a congenital metabolic disorder characterized by abnormal galactose metabolism due to defective galactose-1-phosphate uridylyltransferase activity which causes mental retardation or death if not treated early in life.~~
- ~~2.8.~~ 8. “Committee” means the newborn screening program committee specified in A.R.S. § 36-694.
9. “Congenital adrenal hyperplasia” means an endocrine disorder characterized by decreased cortisol production and increased androgen production due to defective 21-hydroxylase activity.
- ~~3.10.~~ 10. “Congenital hypothyroidism” means a metabolic an endocrine disorder characterized by a deficiency of deficient thyroid hormone (thyroxin) production which causes mental and physical retardation if not treated early in life.
- ~~4.11.~~ 11. “Department” means the Arizona Department of Health Services.
- ~~5.12.~~ 12. “Director” means the Director of the Department of Health Services.
13. “Discharge” means the termination of medical services by a health care facility.
14. “Disorder” means a disease or medical condition that may be identified by laboratory analyses.
15. “Document” means to establish and maintain information in written, photographic, electronic, or other permanent form.
16. “Electronic” means relating to technology that has electrical, digital, magnetic, wireless, optical, or electromagnetic capabilities or similar capabilities.
17. “First specimen” means the initial satisfactory specimen on which the newborn screening laboratory performs analyses to detect the presence of a disorder listed in A.A.C. R9-14-502 (A).
18. “Guardian” means an individual appointed by a court pursuant to A.R.S. Title 14, Chapter 5, Article 2.
- ~~7.19.~~ 19. “Health care facility” means any establishment, public or private, a health care institution where that provides facilities for obstetrical care and or care to a newborn care is provided.
20. “Health care institution” means the same as in A.R.S. § 36-401.
- ~~8.21.~~ 21. “Health care provider” means a the physician, physician assistant, registered nurse practitioner, or licensed midwife caring for the newborn after delivery.
22. “Health related services” means the same as in A.R.S. § 36-401.
- ~~9.23.~~ 23. “Hemoglobinopathies” mean a group of inherited diseases characterized by an “Hemoglobinopathy” means any inherited abnormality in the production, structure, and or function of the red blood cell protein, hemoglobin.
24. “Home birth” means delivery of a newborn, outside a health care facility, for which the newborn is not hospitalized within 72 hours of delivery.
- ~~10.25.~~ 25. “Homocystinuria” means a congenital metabolic disorder characterized by abnormal methionine and homocysteine metabolism due to defective cystathione-β-synthase activity which causes mental retardation if not treated early in life.
26. “Hospital” means a classification of health care institution that provides hospital services for the diagnosis and treatment of patients.
27. “Hospital services” means medical services, nursing services, and health-related services provided in a hospital.
28. “Identification code” means an account number assigned by the newborn screening laboratory.
11. “Initial screen” means laboratory procedures performed on the first acceptable specimen of blood to detect the presence of metabolic disorder and/or a hemoglobinopathy.
- ~~12.29.~~ 29. “Maple syrup urine disease” or “M.S.U.D.” means a congenital metabolic disorder of branch branched chain amino acid metabolism due to defective branched chain α-keto acid dehydrogenase activity which causes mental retardation or death if not treated early in life.
30. “Medical services” means the same as in A.R.S. § 36-401.
31. “Midwife” means an individual licensed pursuant to Title 36, Chapter 6, Article 7 or certified pursuant to Title 32, Chapter 15.
- ~~13.32.~~ 32. “Newborn” means an infant a human from birth through 30 28 days of age and under for whom a certificate of live birth is required by A.R.S. § 36-322 to be filed with the Department pursuant to A.R.S. § 36-322.

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33. "Newborn care" means medical services, nursing services, and health related services provided to a newborn.
- ~~14.34.~~ "Newborn screening laboratory" means a laboratory with which the Department contracts to conduct testing of the newborn screening specimens an entity contracted with the Department pursuant to A.R.S. § 36-694(C) to perform the newborn screening test.
15. "Newborn Screening Program" means the administrative and coordination program of the Department, the newborn screening laboratory, and the follow-up services provided by designated clinical service providers.
- ~~16.35.~~ "Newborn Screening Tests screening test" means laboratory procedures analyses performed on a sample of blood a first specimen and a second specimen to detect the presence of endocrine disorders, metabolic disorders, or hemoglobinopathies as stated listed in R9-14-502 R9-14-502(A).
36. "Nursing services" means the same as in A.R.S. § 36-401.
37. "Obstetrical care" means the medical services, nursing services, and health related services provided to a woman throughout her pregnancy, labor, delivery, and postpartum.
38. "Parent" means a natural, adoptive, or custodial mother or father of a newborn.
39. "Person" means the state, a municipality, district, or other political subdivision, a cooperative, institution, corporation, company, firm, partnership, individual, or other legal entity.
- ~~17.40.~~ "Phenylketonuria" or "P.K.U." means a congenital metabolic disorder characterized by abnormal phenylalanine metabolism due to defective phenylalanine hydroxylase activity which causes mental retardation if not treated early in life.
41. "Physician" means an individual licensed pursuant to A.R.S. Title 32, Chapter 13, 14, 17, or 29.
42. "Physician assistant" means an individual licensed pursuant to A.R.S. Title 32, Chapter 25.
43. "Registered nurse practitioner" means the same as in A.R.S. § 32-1601.
- ~~18.~~ "Repeat test" means laboratory procedures to verify only an abnormal result reported on the initial or second screen and performed on a specimen of blood.
44. "Satisfactory specimen" means blood applied to the filter paper of the specimen collection kit that is acceptable to the newborn screening laboratory.
- ~~19.45.~~ "Second screen specimen" means laboratory procedures performed on a second specimen of blood if the initial specimen was collected within 24 hours of birth a satisfactory specimen collected after a first specimen, on which the newborn screening laboratory performs analyses to detect the presence of all of the disorders listed in A.A.C. R9-14-502(A).
- ~~20.46.~~ "Sickle cell diseases disease" mean a group of hemoglobinopathies means a hemoglobinopathy characterized by the distortion of the red blood cells which may lead to septicemia or death in infancy if not adequately treated.
47. "Specimen" means capillary or venous blood, but not cord blood, applied to the filter paper of a specimen collection kit.
- ~~21.48.~~ "Specimen collection kit" means a form supplied by the Department for obtaining information specified in R9-14-502(C), with an attached strip of filter paper for collecting a specimen kit that is either licensed or approved by the Food and Drug Administration and has been approved by the newborn screening laboratory.
49. "Test" means a laboratory analysis performed on body fluids, tissues, or excretions to determine the presence or absence of a disorder.
22. "To order" means to direct appropriate personnel to obtain specimens and send them for laboratory tests.
50. "Transfer" means discharging and relocating a newborn from a health care facility to another health care facility for newborn care.
51. "Transfusion" means the introduction of blood or blood products from one individual into the body of another individual.
- ~~23.52.~~ "Unsatisfactory specimen" means any blood sample applied to the filter paper of the specimen collection kit that is rejected by the Newborn Screening Laboratory, prior to testing, that could provide unreliable, misleading, or clinically inaccurate results newborn screening laboratory for any of the reasons specified in R9-14-502(B).
53. "Verify" means to confirm information through such sources as the newborn screening program, a health care provider, health care facility, or documented record.
- ~~24.54.~~ "Working day" means 8:00 a.m. through 5:00 p.m. Monday through 5:00 p.m. Friday, excluding state holidays.

R9-14-502. Testing of newborns ~~Newborns~~

- A. The attending physician or other person required to make a report on the birth of a newborn born in Arizona shall order or cause to be ordered the following tests for metabolic disorders and hemoglobinopathies: phenylketonuria, galactosemia, congenital hypothyroidism, biotinidase deficiency, homocystinuria, maple syrup urine disease, sickle cell disease and other hemoglobinopathies. If a parent or guardian refuses the newborn screening tests, such refusal shall be documented in writing and shall be part of the newborn's medical record with a copy sent to the Newborn Screening Program. A newborn screening test shall screen for the presence of the following disorders:
1. Biotinidase deficiency, which causes preventable medical conditions, such as mental retardation or hearing loss;
 2. Classic galactosemia, which causes preventable medical conditions, such as mental retardation or death;

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3. Congenital adrenal hyperplasia, which may cause incorrect gender assignment in females or preventable death in females or males;
 4. Congenital hypothyroidism, which causes preventable medical conditions, such as mental and physical retardation;
 5. Hemoglobinopathy, which causes a range of symptoms from asymptomatic to symptomatic, as in sickle cell disease, which causes pain, infection, anemia, and organ damage;
 6. Homocystinuria, which causes preventable medical conditions, such as mental retardation;
 7. Maple syrup urine disease, which causes preventable medical conditions, such as mental retardation or death; and
 8. Phenylketonuria, which causes preventable medical conditions, such as mental retardation.
- B.** ~~If the initial screening sample was collected within 24 hours of birth, the responsible person shall inform the newborn's parents or guardian that a second screen for metabolic disorders shall be performed between 3 and 7 days of age.~~
- B.** A health care facility's designee, a health care provider, or the health care provider's designee shall:
1. Collect a satisfactory specimen;
 2. Complete the information on the specimen collection kit; and
 3. Submit the specimen collection kit to the newborn screening laboratory no later than 24 hours, or the next working day, after the specimen is collected.
- C.** ~~The specimens for testing shall be sent, no later than 24 hours or the next working day after being obtained, to the newborn screening laboratory.~~
- C.** The information on the specimen collection kit shall include:
1. The newborn's name, gender, ethnicity, medical record number, and if applicable, AHCCCS identification number;
 2. The newborn's type of food;
 3. Whether the newborn is a single or multiple birth;
 4. Whether the newborn has a medical condition that may affect the newborn screening test results;
 5. Whether the newborn received antibiotics or a blood transfusion and, if applicable, the date of the last blood transfusion;
 6. The method of blood collection;
 7. The date and time of birth and newborn's weight at birth;
 8. The date and time of specimen collection and the newborn's weight when the specimen was collected;
 9. The name and identification code of the person submitting the specimen;
 10. The name, identification code, and address of the newborn's health care provider;
 11. The mother's name, date of birth, social security number, address, and if applicable, AHCCCS identification number; and
 12. Whether the parent or guardian refused the newborn screening test.
- D.** ~~The results from all abnormal newborn tests for metabolic and/or hemoglobin disorders shall be reported to the Newborn Screening Program, which shall notify the health care provider.~~
- D.** If a parent or guardian refuses the newborn screening test, a health care facility's designee, a health care provider, or the health care provider's designee shall:
1. Document the refusal in the newborn's medical record; and
 2. Submit the specimen collection kit, with the form completed, to the newborn screening laboratory.
- E.** ~~The results from any confirmatory testing, ordered in response to an abnormal newborn screen, shall be reported to the Newborn Screening Program.~~
- E.** A health care facility's designee, a health care provider, or the health care provider's designee shall collect a first specimen according to whichever of the following occurs first:
1. A newborn is 48 to 72 hours old;
 2. Before and proximate to the newborn's discharge time; or
 3. Before a transfusion, unless specified otherwise by a physician, physician assistant, or registered nurse practitioner.
- F.** A birth center is exempt from the requirement in R9-14-502(E)(2) to collect a first specimen before and proximate to the newborn's discharge time.
- G.** After a first specimen is collected, a health care facility's designee, a health care provider, or the health care provider's designee shall collect a second specimen according to whichever of the following occurs first:
1. If a home birth attended by a health care provider, when the newborn is seven through 14 days old;
 2. If a newborn is in a health care facility, when the newborn is seven through 14 days old; or
 3. At the time of the newborn's first visit to a health care provider after discharge.
- H.** Before a newborn is discharged, a health care facility's designee, a health care provider, or the health care provider's designee shall inform the newborn's parent or guardian of the requirement for a second specimen if the second specimen has not been collected.
- I.** When a health care provider cannot verify that a first specimen has been collected on an individual who is one year old or less, the health care provider or the health care provider's designee shall collect a specimen and submit the specimen to the newborn screening laboratory.
- J.** A specimen is unsatisfactory for the newborn screening test if:

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1. There is an insufficient quantity of blood to complete the newborn screening test.
2. The blood is clotted or layered.
3. The blood has serum rings.
4. The blood is diluted or discolored.
5. The blood will not elute from the filter paper.
6. The blood has been applied to both sides of the filter paper.
7. The blood or the filter paper is contaminated.
8. The filter paper is scratched or abraded, or
9. A specimen is received by the newborn screening laboratory 14 days or more after the specimen was collected.

K. The newborn screening laboratory shall report results:

1. From all newborn screening tests in writing to the person who submitted the specimen and the health care provider identified on the specimen collection kit, and
2. From all newborn screening tests to the Department.

L. A health care facility's designee, a health care provider, or the health care provider's designee who orders a test, shall send the results in writing to the Department, when the test is:

1. Performed by a laboratory other than the newborn screening laboratory, and
2. In response to an abnormal newborn screening test.

M. Newborn screening test results are confidential subject to the disclosure provisions of A.A.C. Title 9, Chapter 1, Article 3.

R9-14-503. Persons and health care facilities responsible for tests Responsible for Tests

A. Births occurring in a health care facility:

1. The health care provider shall order the tests or shall ensure that the tests are ordered.
2. The administrator in charge of the health care facility or the administrator's designee shall ensure that specimens are collected on all newborns born or transferred to that health care facility. The newborn's medical record shall indicate that the tests were ordered or that the parent or guardian refused the test.
3. The specimens for these tests shall be obtained when the newborn is three days of age or immediately prior to the time of discharge from the health care facility, whichever is earlier.
4. The specimen shall be capillary or venous blood and shall be collected utilizing a specimen collection kit obtained from the newborn screening laboratory. Cord blood shall not be accepted.
5. The person in charge of the health care facility or the designated representative shall ensure that all information requested on the form within the specimen collection kit.
6. If the newborn is transferred to another health care facility before 3 days of age, the receiving health care facility shall be responsible for obtaining the specimen for newborn screening.
7. If the initial screening specimen for any newborn was collected within 24 hours of birth, the health care facility and the health care provider shall inform the newborn's parents that a second screen is required at 3 to 7 days of age.

B. Births occurring outside a health care facility:

1. The health care provider shall order the tests or shall ensure that the tests are ordered
2. If the initial screening sample for any newborn was collected within 24 hours of birth the health care provider shall notify the newborn's parents that a second screen is required between 3 and 7 days of age.
3. If the birth is not attended by a health care provider with the authority to order the test, the person required by A.R.S. § 36-322(E)(3) or (4) to report the birth shall notify the local or state registrar when the certificate of live birth is filed. The registrar shall notify the health officer in the county where the newborn's parents are expected to reside. The health officer shall ensure collection of a specimen within three days from the time of notification of the birth.
4. The specimen shall be capillary or venous blood and shall be collected utilizing a specimen collection kit obtained from the newborn screening laboratory. Cord blood shall not be accepted.

A. An administrator shall ensure that a first specimen is collected from each newborn born at the health care facility unless the newborn is transferred before the newborn is three days old or the newborn dies before the newborn screening test is done.

B. When a newborn is admitted or transferred to a health care facility, the administrator of the receiving facility shall verify that the first specimen has been collected. If the administrator cannot verify that the first specimen has been collected, the administrator shall ensure that a health care provider or the health care provider's designee shall collect the specimen.

C. Unless the administrator can verify that a second specimen has been collected from a newborn who is seven to 14 days old, the administrator shall ensure that a second specimen is collected from a newborn who is:

1. Not discharged,
2. Transferred to the health care facility, or
3. Admitted to the health care facility.

D. When a specimen is collected, the administrator shall ensure that all the information requested on the specimen collection kit is completed.

E. If a home birth is attended by a health care provider, the health care provider or health care provider's designee shall:

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1. Collect the first specimen from the newborn.
 2. Complete the information requested on the specimen collection kit, and
 3. Submit the specimen collection kit to the newborn screening laboratory within 24 hours after the specimen is collected.
- F.** If a home birth is not attended by a health care provider and a local or state registrar is notified pursuant to A.R.S. § 36-322(D), the local or state registrar shall inform the health officer of the county identified by the address of the newborn's parent or guardian. The county health officer shall ensure that:
1. A specimen is collected from the newborn.
 2. The information requested on the specimen collection kit is completed, and
 3. The specimen collection kit is submitted to the newborn screening laboratory within three days from the date the county health officer is notified of the birth.

R9-14-504. ~~Parent or guardian education~~ Guardian Education

- ~~**A.** The health care provider shall inform the newborn's parent or guardian of the reasons for the tests.~~
- ~~**B.** The health care facility shall be responsible for distributing written educational materials on newborn screening provided by the Department.~~
- A.** The Department shall provide written educational materials about the newborn screening test to a health care facility or health care provider upon request.
- B.** An administrator shall ensure that the educational materials provided by the Department are distributed to the newborn's parent or guardian before the newborn is discharged from the health care facility.
- C.** For a home birth, a health care provider or health care provider's designee shall distribute the educational materials provided by the Department to the newborn's parent or guardian before a specimen is collected.
- D.** A health care provider or health care provider's designee shall explain the purpose for the newborn screening test, as stated in the educational materials, to the newborn's parent or guardian before a specimen is collected.

R9-14-505. ~~Screening fees; collection~~ Fees

~~The following fees shall be charged for newborn screening:~~

- ~~1. The fee shall be 20.00 dollars for an initial screen.~~
- ~~2. The fee shall be 15.00 dollars for a second screen.~~

~~**B.** There shall be no fee charged for a repeat test or for an unsatisfactory specimen.~~

A person that submits a specimen to the newborn screening laboratory shall pay \$20.00 for each specimen analyzed for all the disorders listed in R9-14-502(A).

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY

SAFE DRINKING WATER

PREAMBLE

1. Sections Affected

R18-4-101
Article 8
R18-4-801
R18-4-802
R18-4-803
R18-4-804
R18-4-805

Rulemaking Action

Amend
New Article
New Section
New Section
New Section
New Section
New Section

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

Authorizing statutes: A.R.S. §§ 49-202, 49-203, 49-351, 49-353(A)(3), 49-355, 49-358

Implementing statute: A.R.S. §§ 49-355, 49-358

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

Notice of Rulemaking Docket Opening: 7 A.A.R. 69, January 5, 2001

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

Name: Anthony J. Bode, Manager, Program Development & Outreach, Drinking Water Section
Kathryn D. Stevens, Capacity Development Program, Drinking Water Section

Address: Arizona Department of Environmental Quality
3033 North Central Avenue (M0248A)
Phoenix, AZ 85012-2809

Telephone: Tony Bode (602) 207-4648
Kathy Stevens (602) 207-4653

(In Arizona, call (800) 234-5677 and ask for the four-digit extension.)

Fax: (602) 207-4634

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

A. Background for Proposed Rules

The primary purpose of the Safe Drinking Water Act (SDWA) is to ensure that drinking water supplied to consumers by public water systems is safe to drink and does not exceed prescribed maximum contaminant levels; that consumers are confident that their water is safe to drink; and that public water system operators are trained, certified, and knowledgeable regarding the public health reasons for drinking water standards.

This rulemaking will further these goals by establishing a program to assist water systems in complying with standards imposed by federal and state laws, rules, and regulations. Specifically, the program will provide information and technical assistance in managerial, accounting, engineering, and other technical areas to owners and operators of water systems. There are Sections on definitions, eligibility requirements, types of technical assistance, and other related topics.

Statutory Authority & History. The Safe Drinking Water Act Amendments of 1996 included the following findings:

- (1) safe drinking water is essential to the protection of public health;
- (2) **because the requirements of the Safe Drinking Water Act (42 U.S.C. §§ 300f et seq.) now exceed the financial and technical capacity of some public water systems, especially many small public water systems, the Federal Government needs to provide assistance to communities to help the communities meet Federal drinking water requirements;**
- (8) more effective protection of public health requires:
 - (A) a Federal commitment to set priorities that will allow scarce Federal, State, and local resources to be targeted toward the drinking water problems of greatest public health concern;
 - (B) maximizing the value of the different and complementary strengths and responsibilities of the Federal and State governments in those States that have primary enforcement responsibility for the Safe Drinking Water Act; and
 - (C) **prevention of drinking water contamination through well-trained system operators, water systems with adequate managerial, technical, and financial capacity,** and enhanced protection of source waters of public water systems;

PL 104-182, 42 USCA § 300f, Section 3 (1996) (emphasis added).

The Safe Drinking Water Act Amendments of 1996 added a section to the Act concerning capacity development (42 USCA § 300g-9, Section 119; PL 104-182 section 1420). This section states that a state with primacy will be penalized by reducing its entitlement to State Revolving Fund monies by 20% if the state fails to obtain "the legal authority or other means to ensure that all new community water systems and new nontransient, noncommunity water systems commencing operation after October 1, 1999, demonstrate technical, managerial, and financial capacity with respect to each national primary drinking water regulation in effect, or likely to be in effect, on the date of commencement of operations." PL 104-182, Sec.1420(a), State Authority for New Systems. The Conference Report on the law discussing this section states:

The phrase "legal authority or other means" is intended to require a State to have the actual authority to ensure that all new community water systems demonstrate the technical, managerial and financial capacity

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to comply with the Safe Drinking Water Act. These could include regulations, training, and bonding requirements.

States are also to adopt and implement a capacity development strategy. This is intended to encourage States to continue to focus resources on capacity development initiatives. States are required to consider, solicit public comment on, and include as deemed appropriate by the State, a number of elements and criteria.

Joint Explanatory Statement of the Committee on Conference, H.R. Conf. Rep. No. 741, 104th Cong., 2nd Sess. 1996, 1996 U.S.C.C.A.N. 1432, 1996 WL 443735 (Leg.Hist.)

The Joint Explanatory Statement also states that Congress expects and encourages each State to tailor its capacity development strategy to the unique needs of the State, and that EPA should give deference to a State's decisions regarding the content and implementation a State's plan, provided the State solicits and considers public comment on the elements listed in section 1420(c), and adopts a strategy that includes appropriate provisions. The elements are:

- < Methods or criteria to prioritize systems;
- < Factors that encourage or impair capacity development;
- < How the State will use the authority and resources of the SDWA;
- < How the State will establish a baseline and measure improvements; and
- < Procedures to identify interested parties.

PL 104-182, § 1420(c)(2)(A-E).

These elements were addressed partly in 18 A.A.C. 6, Capacity Development Requirements for a New Public Drinking Water System, adopted in 1999, which established a methodology by which the Department could evaluate the technical, managerial, and financial capacity of systems. However, 18 A.A.C. 6 applies only to new systems. The current rulemaking addresses the methods and criteria by which the Department will prioritize existing systems according to their need for technical, financial, and managerial capacity, and provide assistance to the systems with the greatest capacity development needs.

B. Relationship Between Technical Assistance Program, Capacity Development Program, and Water Infrastructure Finance Authority.

As the statutory history above indicates, this technical assistance rulemaking is inextricably linked to capacity development – one of the primary purposes of the technical assistance rulemaking is to ensure that water systems have adequate technical, managerial and financial capacity to comply with the Safe Drinking Water Act.

The Department has published a Capacity Development Strategy for Existing Public Water Systems, which is available from the Department (the report can also be downloaded at <http://www.adeq.state.az.us/enviro/water/dw/download/capdev.pdf>). The Department's Capacity Development Strategy will be updated via publication of an annual Capacity Development Report. The Capacity Development Strategy defines capacity as "a water system's ability to consistently provide safe drinking water for its customers." Capacity development is defined as "an effort by the state of Arizona to help its drinking water systems improve their infrastructure, management, and financial operations so they can provide safe drinking water consistently, reliably, and cost effectively."

C. Section-by-section Explanation of the Rules

R18-4-801 sets forth the components of the annual technical assistance plan.

R18-4-802 sets forth the eligibility requirements for technical assistance.

R18-4-803 sets forth the types of technical assistance and methods of delivery.

R18-4-804 sets forth the maximum amount of technical assistance.

R18-4-805 sets forth criteria concerning the annual master priority list.

Appendix A sets forth definitions for this Article.

D. Relationship to Five-year Review Report

This rulemaking is not directly related to a five-year review report.

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

None

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:

This preliminary economic, small business, and consumer impact statement (EIS) is provided pursuant to A.R.S. § 41-1022 and A.A.C. R1-1-502(B)(6). The rulemaking adds a new Article to Title 18, Chapter 4 of the Arizona Administrative Code: Article 8, Technical Assistance. The proposed rulemaking is primarily technical and administrative in nature. The purpose of the proposed rulemaking is to establish a program to assist water systems in complying with standards imposed by federal and state laws, rules, and regulations. Pursuant to the new rules, the Department will provide information and technical assistance to owners and operators of water systems.

One component of Article 8 will be the creation of a master priority list for all community and noncommunity public water systems; the list will be published in the annual capacity development report. The master priority list will rank public water systems according to criteria set forth in the annual capacity development report. The Water Infrastructure Finance Authority plans to utilize the master priority list in its funding decision process for community and noncommunity public water systems.

This rulemaking will have no discernable economic impact on the Department, other public agencies, state revenues, private persons, businesses, consumers, small businesses, or private and public employment. However, the Department anticipates that there will be an indirect impact on the public water systems and the public they serve as a result of the use of the Department's ranking of public water systems by the Water Infrastructure Finance Authority. The following subsections address the impact of changes to the monitoring assistance program.

The Arizona Department of Environmental Quality

ADEQ will not realize an economic benefit from this rulemaking.

Other Public Agencies

ADEQ may incur a slight increase in administrative costs, and the state will incur normal rule development costs incidental to rulemaking, including review by the Governor's Regulatory Review Council and the cost of publication by the Office of the Secretary of State. The Water Infrastructure Finance Authority will utilize the data in the master priority list developed pursuant to R18-4-805, and therefore may receive a small economic benefit as a result of the Department's evaluation, which likely minimizes the evaluation work of the Authority.

Private Persons and Businesses Directly Affected

A public water system that receives the benefit of technical assistance from the Department may also receive an economic benefit, as the technical assistance will improve technical, managerial, or financial components of a public water system. The addition of Article 8 should not increase the cost of doing business to comply with these rules for affected public water systems.

Consumers

This rulemaking will indirectly benefit consumers served by affected public water systems, in the form of savings which public water systems could pass on to consumers.

Private and Public Employment

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

State Revenues

This rulemaking will not have an effect on state revenues.

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: Kathryn D. Stevens, Capacity Development Program

Address: Arizona Department of Environmental Quality
3033 North Central Avenue (M0248A)

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Phoenix, AZ 85012-2809

Telephone: (602) 207-4653
(In Arizona, call (800) 234-5677 and ask for the four-digit extension.)
Fax: (602) 207-4634

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:

ADEQ has scheduled oral proceedings to receive oral comments on the rules, in accordance with A.R.S. § 41-1023. The time, place, and location of the hearings are listed below:

TUCSON
July 31, 2001
10:30 a.m. to 12:30 p.m.
State Office Complex
400 West Congress, Room 158

PHOENIX
August 1, 2001
11:00 a.m. to 1:00 p.m.
Arizona Department of Environmental Quality
3033 North Central Avenue, Room 1710
Phoenix, AZ 85012-2809

FLAGSTAFF
August 2, 2001
11:30 a.m. to 1:30 p.m.
Arizona Game and Fish Department
3500 S. Lake Mary Road

ADEQ is committed to complying with the Americans With Disabilities Act. If any individual with a disability needs any type of accommodation, please contact ADEQ at least 72 hours before the hearing.

Anyone wishing to provide written comments regarding the rulemaking may submit their comments to ADEQ between 8:00 a.m. and 5:00 p.m., Monday through Friday, until 5:00 p.m., August 8, 2001, to the person and address in item #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 18. ENVIRONMENTAL QUALITY

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

ARTICLE 1. GENERAL REQUIREMENTS

Section
R18-4-101. Definitions

ARTICLE 8. TECHNICAL ASSISTANCE

Section
R18-4-801. Technical Assistance Plan

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<u>R18-4-802.</u>	<u>Selection Criteria</u>
<u>R18-4-803.</u>	<u>Types of Technical Assistance and Methods of Delivery</u>
<u>R18-4-804.</u>	<u>Maximum Amount of Technical Assistance</u>
<u>R18-4-805.</u>	<u>Master Priority List</u>

ARTICLE 1. GENERAL REQUIREMENTS

R18-4-101. Definitions

The terms in this Chapter have the following meanings. In addition to the definitions in A.R.S. § 49-201, in this Chapter, unless otherwise specified:

No change.

“Capacity” means a public water system’s ability to provide safe drinking water.

“Capacity development” means improving public water system technical, managerial, and financial components to improve the system’s ability to provide safe drinking water.

“Capacity development report” means an annual report that describes any technical, managerial, or financial improvement that will be made to an existing public water system, based on the capacity development strategy.

“Capacity development strategy” means a plan for improving public water system technical, managerial, and financial components in order to improve the system’s ability to provide safe drinking water.

No change.

“Master priority list” means a listing of public water systems that is contained in the Department’s annual capacity development report. The list established using the criteria in R18-4-802.

No change.

“Monitoring assistance program” means the program administered by the Department to assist public water systems with mandatory monitoring for contaminants, as described at R18-4-224 through R18-4-226.

No change.

“Operational assistance” means funds used to improve the technical, managerial, or financial operations of an existing public water system.

No change.

“System evaluation assistance” means assess the status of public water system technical, managerial, and financial components, with emphasis on infrastructure status.

No change.

“Water Infrastructure Finance Authority” means the entity created pursuant to A.R.S. § 49-1201 et seq. to provide financial assistance to political subdivisions, Indian tribes and eligible drinking water facilities for constructing, acquiring or improving wastewater treatment facilities, drinking water facilities, nonpoint source projects and other related water quality facilities and projects.

No change.

ARTICLE 8. TECHNICAL ASSISTANCE

R18-4-801. Technical Assistance Plan

The Department shall include a technical assistance plan in the capacity development report it publishes annually. At a minimum, the technical assistance plan shall include: a description of the types of technical assistance the Department expects to provide, the sources and uses of technical assistance, and a master priority list.

R18-4-802. Selection Criteria

A. In order to apply for technical assistance, an owner or operator of a public water system must submit written justification to the Department indicating why technical assistance will assist the owner or operator in improving technical, managerial, or financial components of a public water system.

B. The Department shall use the presence and magnitude of the following criteria, or other measurable objective criteria related to the technical, managerial or financial capacity of a public water system not listed, to rank public water systems for purposes of the master priority list:

1. Size of population served. The greater the population, the higher the ranking.

2. Type of public water system. In order of priority, highest magnitude first: community owned, then nontransient non-community, then transient noncommunity).

3. Type of ownership. The following types of public water systems are ranked higher than other types: defunct or revoked corporation, unincorporated sole proprietorship or water association that is not regulated by the Arizona Corporation Commission, or public water system that is in receivership.

4. Water source. Public water systems that use surface water are ranked higher than those that use ground water.

5. Monitoring assistance program. A public water system that participates in the monitoring assistance program is ranked higher than a public water system that does not participate in the monitoring assistance program.

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6. Major deficiencies. A public water system that has a record of monitoring or reporting deficiencies will be ranked higher than a system without a record of monitoring or reporting deficiencies.
 7. MCL violations. A public water system that has a record of acute or non-acute MCL violations will be ranked higher than a system without a record of monitoring or reporting deficiencies.
 8. Compliance violations. A public water system that has a record of operation or maintenance violations will be ranked higher than a system without a record of monitoring or reporting deficiencies.
 9. Certified operator. A public water system that does not have a certified operator will be ranked higher than a system that does not have a certified operator.
 10. Prior assistance. A public water system that has not received assistance from the Department or the Water Infrastructure Finance Authority in the last five years will be ranked higher than a system that has received assistance from the Department or the Water Infrastructure Finance Authority in the last five years.
- C.** The Department shall provide technical assistance to eligible owners or operators of public water systems, as funding permits. The Department shall give priority of funding to public water systems that are ranked the highest on the master priority list. If all other criteria are equal, the Department shall assign priority to public water systems with the most operation or maintenance violations.
- D.** If the Department determines that a public water system is not able to proceed with technical assistance within the next fiscal year, the Department may bypass the public water system. The Department shall provide written notice to a public water system that is being bypassed. The Department shall replace a bypassed public water system with the public water system next in line to receive technical assistance in accordance with the priority criteria in (D).

R18-4-803. Types of Technical Assistance and Methods of Delivery

The Department may award either operational technical assistance, system evaluation assistance, or both to a public water system. The Department may provide the assistance directly, or the Department may employ a consultant to provide the assistance. Consultants shall be employed in accordance with applicable procurement requirements.

R18-4-804. Maximum Amount of Technical Assistance

The Department shall award no more than 25% of the total annual funding allocated by the Department for technical assistance to an individual public water system.

R18-4-805. Master Priority List

- A.** Each year the Department shall develop a master priority list for all community and noncommunity public water systems in the annual capacity development report.
- B.** The master priority list shall rank public water systems according to criteria set forth in the annual capacity development report. A public water system will be assigned priority points on the basis of this criteria.

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY

SAFE DRINKING WATER

**ARTICLE 2. MAXIMUM CONTAMINANT LEVELS AND MONITORING REQUIREMENTS;
MONITORING ASSISTANCE PROGRAM**

PREAMBLE

1. Sections Affected

R18-4-207
R18-4-209
R18-4-217
R18-4-224
R18-4-225
Table A
R18-4-226
R18-4-227
R18-4-403

Rulemaking Action

Amend
Amend
Amend
Amend
Amend
Repeal
Amend
New Section
Amend

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

Authorizing statute: A.R.S. § 49-360(H), as amended by Laws 2001, Chapter 178, § 1

Implementing statute: A.R.S. § 49-360, as amended by Laws 2001, Chapter 178, § 1

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

Notice of Rulemaking Docket Opening: 7 A.A.R. 1263, March 16, 2001

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

Name: Jeffrey W. Stuck, Manager, Drinking Water Section, or
Moncef N. Tihami, Manager, Monitoring and Assessment Program

Address: Arizona Department of Environmental Quality
3033 North Central Avenue (M0248A)
Phoenix, AZ 85012-2809

Telephone: Jeff Stuck, (602) 207-4617
Moncef Tihami, (602) 207-4425

(In Arizona, call (800) 234-5677 and ask for the four-digit extension)

Fax: (602) 207-4634

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

This rulemaking concerns the Department's drinking water rules, specifically, the monitoring assistance program, 18 A.A.C. 4, Article 2. The primary purpose of the rulemaking is to amend the rules concerning the monitoring assistance program, to reflect the statutory changes recently enacted by the legislature.

A. Background

In 1998, the Arizona Legislature enacted the monitoring assistance program (MAP) to assist small public water systems with water quality sampling and monitoring required by the federal Safe Drinking Water Act (SDWA). The program is administered by the Arizona Department of Environmental Quality (ADEQ) and provides monitoring for the following categories of contaminants: volatile organic chemicals; synthetic organic chemicals; and inorganic chemicals except for asbestos, copper, lead, nitrates and nitrites (A.R.S. § 49-360). The goal of the program is to keep the water systems in compliance with the SDWA through a regular testing schedule. The program was enacted with a sunset date of January 1, 2002.

A public water system is defined in A.R.S. § 49-352 as providing water for human consumption through pipes or other constructed conveyances and has at least 15 service connections or regularly serves at least 25 persons for at least 60 days a year. In Arizona, there are approximately 1700 regulated public water systems. Of those regulated water systems, 15% of the largest systems provide water to approximately 90% of the population. The remaining 85% of the water systems serve the remaining 10% of the population.

Public water systems serving less than 10,000 persons are required to participate in MAP. Each participating system pays an annual fee into the monitoring assistance fund, which provides for the collection, transportation and analysis of samples by a contractor or contractors hired by ADEQ. The current fee structure provides for the collection of fees from participating water systems over a three-year period. The systems elect which year to receive the program services. Program fees collected in 1999 were \$867,640 and in 2000 fees generated \$916,697. Over this two-year period, the program has been overfunded by an annual average of \$300,000.

The fees for the program are addressed in Arizona Administrative Code R18-4-225. The calculation for a system with 100 or more service connections is the meter weight factor (based on size and GPM) times the number of meters in each size/GPM category times \$3.50. For billing years 2000 and 2001 a public water system with fewer than 100 service connections paid an annual fee of \$350, adjusted if necessary, by the weighted percentage increase in contract costs in the previous calendar year.

Prior to amending A.R.S. § 49-360 this past legislative session, the Department was allowed to use a maximum of ten percent of MAP revenues for program administration, which was insufficient to run the program. For example, in 1999 revenue generated was \$867,640, which allows for an administrative budget of \$86,764; however, the Department's actual administrative costs were \$183,340.

In December 2000, the Senate Subcommittee on Environment held a public hearing to receive a report from the Department on the status of MAP and receive stakeholder input on the program. All 876 participating water systems

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were notified of the hearing and were requested to provide input on the program. While some of the larger systems participating in the program indicated that the services provided by the program were of little benefit to them for the cost, most of the participating systems rated the program favorably and made suggestions for improvements. The Department also held workshops to receive comments from stakeholders.

B. Purpose

This rulemaking will amend 18 A.A.C. 4, Article 2, "Maximum Contaminant Levels and Monitoring Requirements; Monitoring Assistance Program." The amendments are required by SB 1365, amending A.R.S. § 49-360, codified at 2001 Laws Ariz. Chapter 178. The rulemaking will also incorporate changes required to maintain primacy of the MAP, conform the language to current rulemaking style, and make other miscellaneous changes, some of which fulfill commitments made in the five-year review report approved at the September 14, 1999 meeting of the Governor's Regulatory Review Council. Summaries of the changes to the rules follow.

The purpose of this rulemaking is to implement statutory changes, including the following:

The MAP is extended until January 1, 2005 (from 2002).

A water system participating in the MAP will not be able to opt out of the program (starting January 1, 2002.)

Additional contaminants to be monitored are radiochemicals, asbestos and nitrites.

If the monitoring assistance fund has a surplus after the previous year's contract, any surplus in excess of \$200,000 in any year shall be used to reduce fees for the following year.

The cap on administrative costs is increased from 10% of the annual fund revenues to 15% or \$184,000, whichever is less.

B. Section-by-section Explanation of the Rules

R18-4-207 sets forth monitoring requirements for asbestos; language is added which allows MAP contractors to conduct monitoring on behalf of a public water system.

R18-4-209 sets forth monitoring requirements for nitrite; language is added which allows MAP contractors to conduct monitoring on behalf of a public water system.

R18-4-217 sets forth MCLs and monitoring requirements for radiochemicals; language is added which allows MAP contractors to conduct monitoring on behalf of a public water system.

R18-4-224 sets forth general criteria concerning the monitoring assistance program.

R18-4-225 sets forth criteria for monitoring assistance program fees.

Table A sets forth meter weights, and is being repealed.

R18-4-226 sets forth criteria for the collection and payment of fees.

R18-4-227 sets forth administrative and fiduciary duties of the Department in administering the monitoring assistance fund.

R18-4-403 sets forth monitoring requirements for nickel; language is added which allows MAP contractors to conduct monitoring on behalf of a public water system.

C. Relevant Five-year review Reports

A five-year-review report for 18 A.A.C. 4 was approved by the Governor's Regulatory Review Council September 14, 1999.

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

None

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:

This preliminary economic, small business, and consumer impact statement (EIS) is provided pursuant to A.R.S. § 41-1022 and A.A.C. R1-1-502(B)(6). This rulemaking concerns 18 A.A.C. 4, Article 2, concerning the monitoring assistance program. The following subsections address the impact of the changes to the monitoring assistance program.

The Arizona Department of Environmental Quality

ADEQ expects to realize at least one specific economic benefit from this rulemaking; the enacting legislation authorizes an increase in the funding allocation to the Department for its administrative costs. The overall economic effect of this rulemaking is positive.

Other Public Agencies

ADEQ may incur a slight increase in administrative costs; however, the increase will be offset by the increase in the allocation to the Department for its administrative costs. The state will incur normal rule development costs incidental to rulemaking, including review by the Governor's Regulatory Review Council and the cost of publication by the Office of the Secretary of State.

Private Persons and Businesses Directly Affected

Costs of services will decrease for most public water systems affected by these rules, due to the economies of scale associated with the Department's contract with the entity which conducts required monitoring for the public water systems. The proposed revisions should not increase any public water system's cost of doing business to comply with these rules.

Consumers

The cost of the monitoring and assistance program will decrease for almost all public water systems, possibly resulting in savings which public water systems could pass on to consumers.

Private and Public Employment

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

State Revenues

This rulemaking will not directly affect state revenues; there will be a positive indirect effect as a result of the increased allocation to the Department for its administrative costs.

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: Moncef Tihami
Address: Arizona Department of Environmental Quality
3033 North Central Avenue (M0248A)
Phoenix, AZ 85012-2809
Telephone: (602) 207-4425
(in Arizona, (800) 234-5677; ask for the four-digit extension)
E-mail: mnt@ev.state.az.us
Fax: (602) 207-4634

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:

ADEQ has scheduled oral proceedings to receive oral comments on the rules, in accordance with A.R.S. § 41-1023. The time, place, and location of the hearings are listed below:

TUCSON
July 31, 2001
10:30 a.m. to 12:30 p.m.
State Office Complex
400 West Congress, Room 158

PHOENIX
August 1, 2001
11:00 a.m. to 1:00 p.m.
Arizona Department of Environmental Quality
3033 North Central Avenue, Room 1710
Phoenix, AZ 85012-2809

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FLAGSTAFF
August 2, 2001
11:30 a.m. to 1:30 p.m.
Arizona Game and Fish Department
3500 S. Lake Mary Road

ADEQ is committed to complying with the Americans With Disabilities Act. If any individual with a disability needs any type of accommodation, please contact ADEQ at least 72 hours before the hearing.

Anyone wishing to provide written comments regarding the rulemaking may submit their comments to ADEQ between 8:00 a.m. and 5:00 p.m., Monday through Friday, until 5:00 p.m., August 8, 2001, to the person and address in item #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 18. ENVIRONMENTAL QUALITY

CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY

SAFE DRINKING WATER

**ARTICLE 2. MAXIMUM CONTAMINANT LEVELS AND MONITORING REQUIREMENTS;
MONITORING ASSISTANCE PROGRAM**

Section

R18-4-207. Asbestos; Monitoring Requirements
R18-4-209. Nitrite; ~~monitoring requirements~~ Monitoring Requirements
R18-4-217. Radiochemicals; MCLs and Monitoring Requirements
R18-4-224. The Monitoring Assistance Program
R18-4-225. Fees for the Monitoring Assistance Program
R18-4-226. Collection and Payment of Fees
R18-4-227. Monitoring Assistance Fund

ARTICLE 4. SPECIAL MONITORING REQUIREMENTS

Section

R18-4-403. Special Monitoring for Nickel

**ARTICLE 2. MAXIMUM CONTAMINANT LEVELS AND MONITORING REQUIREMENTS;
MONITORING ASSISTANCE PROGRAM**

R18-4-207. Asbestos; Monitoring Requirements

- A.** ~~Each A community water system [CWS] and nontransient, noncommunity water system [NTNCWS], or a contractor on behalf of a CWS or NTNCWS,~~ shall conduct monitoring to determine compliance with the ~~maximum contaminant level MCL~~ for asbestos. A transient, noncommunity water system is not required to monitor for asbestos.
- B.** ~~Each A CWS and NTNCWS, or a contractor on behalf of a CWS or NTNCWS,~~ shall conduct monitoring for asbestos in the monitoring year designated by the Department during the initial compliance period of each compliance cycle, beginning in the compliance period which starts on January 1, 1993.
- C.** ~~Each A CWS and NTNCWS that is vulnerable to asbestos contamination due solely to source water, or a contractor on behalf of the CWS or NTNCWS,~~ shall conduct source water monitoring for asbestos at each sampling point as prescribed in R18-4-218. A CWS or NTNCWS, or a contractor on behalf of a CWS or NTNCWS, shall take ~~4~~ one sample for asbestos at each sampling point.
- D.** A CWS or NTNCWS, or a contractor on behalf of a CWS or NTNCWS, may composite samples for asbestos as prescribed in R18-4-219.

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- E. ~~Each~~ A CWS and NTNCWS that is vulnerable to asbestos contamination solely because of corrosion of asbestos-cement pipe in the distribution system, or a contractor on behalf of the CWS or NTNCWS, shall take a minimum of ~~+~~ one sample at a tap served by asbestos-cement pipe under conditions where asbestos contamination is most likely to occur.
- F. A CWS or NTNCWS that is vulnerable to asbestos contamination due both to its source water supply and corrosion of asbestos-cement pipe, or a contractor on behalf of the CWS or NTNCWS, shall take ~~+~~ one sample at a tap served by asbestos-cement pipe under conditions where asbestos contamination is most likely to occur.
- G. ~~The Department may accept monitoring data from a sampling point that was collected after January 1, 1990, to satisfy initial monitoring requirements for asbestos provided the data are generally consistent with the requirements prescribed in this Section.~~
- ~~H.~~ If the analytical results of an initial sample do not exceed 7 MFL ~~{(greater than 10 microns)},~~ then a CWS or NTNCWS is not required to take another sample at that sampling point until the initial compliance period of the next compliance cycle.
- ~~I.~~ If the concentration of asbestos in a sample exceeds 7 MFL ~~{(greater than 10 microns)},~~ then a CWS or NTNCWS, or a contractor on behalf of a CWS or NTNCWS, shall conduct quarterly monitoring at that sampling point, beginning in the quarter immediately following collection of the sample which exceeded the ~~maximum contaminant level MCL.~~
1. A CWS or NTNCWS, or a contractor on behalf of a CWS or NTNCWS, shall continue quarterly monitoring at a groundwater sampling point until a minimum of 2 consecutive quarterly samples are taken and the concentration of asbestos in each sample is below 7 MFL ~~{(greater than 10 microns)}.~~ If the analytical results from 2 consecutive quarterly samples are less than 7 MFL ~~{(greater than 10 microns)},~~ then the system is not required to take a repeat sample at the groundwater sampling point until the initial compliance period of the next compliance cycle. The decision by the Department to allow a groundwater system to return to base monitoring frequency shall be in writing.
 2. A CWS or NTNCWS, or a contractor on behalf of a CWS or NTNCWS, shall continue quarterly monitoring at a surface water sampling point until a minimum of 4 consecutive quarterly samples are taken and the concentration of asbestos in each sample is below 7 MFL ~~{(greater than 10 microns)}.~~ If the analytical results from 4 consecutive quarterly samples are less than 7 MFL ~~{(greater than 10 microns)},~~ then the system is not required to take a repeat sample at the surface water sampling point until the initial compliance period of the next compliance cycle. The decision by the Department to allow a CWS or NTNCWS to return to base monitoring frequency shall be in writing.
- ~~J.~~ Where the results of sampling for asbestos indicate an exceedance of the ~~maximum contaminant level MCL,~~ the Department may require that ~~+~~ one confirmation sample be collected. The confirmation sample shall be collected at the same sampling point as soon as possible but no later than ~~2~~ two weeks after the initial sample was taken.
- ~~K.~~ A CWS or NTNCWS is out of compliance with the ~~maximum contaminant level MCL~~ for asbestos if the concentration of asbestos in a single sample is greater than 7 MFL, ~~except where~~ unless a confirmation sample is taken. If a confirmation sample is required by the Department, then the results of the initial sample and the confirmation sample shall be averaged. The resulting average shall be used to determine compliance with the ~~maximum contaminant level MCL~~ for asbestos.
- ~~L.~~ ~~K.~~ If a ~~water supplier~~ public water system believes that a CWS or NTNCWS is not vulnerable to asbestos contamination of its source water or of its distribution system due to corrosion of asbestos-cement pipe, or both, then ~~a water supplier~~ the public water system may make a written request for an asbestos monitoring waiver from the Department. If the Department grants a waiver, the CWS or NTNCWS is not required to monitor for asbestos. ~~The Department shall not grant a waiver from initial monitoring requirements for the compliance period which begins January 1, 1993.~~
1. The Department may grant an asbestos monitoring waiver based on a consideration of the following factors:
 - a. Potential asbestos contamination of the water source; and
 - b. The use of asbestos-cement pipe for distribution of water; and
 - c. Water corrosivity.
 2. An asbestos monitoring waiver remains in effect for a compliance cycle. If an asbestos monitoring waiver is not renewed in the ~~4th~~ first year of the initial compliance period of the following compliance cycle, then a CWS or NTNCWS, or a contractor on behalf of a CWS or NTNCWS, shall conduct repeat monitoring for asbestos before the end of the initial compliance period of that compliance cycle.
 3. A decision by the Department to grant an asbestos monitoring waiver shall be in writing and shall set forth the grounds for the decision. A ~~water supplier~~ CWS or NTNCWS may make a written request for an asbestos monitoring waiver or the waiver may be granted on the Department's initiative. A ~~water supplier~~ CWS or NTNCWS shall provide documentation of analytical results which supports the request for a monitoring waiver.

R18-4-209. Nitrite; ~~monitoring requirements~~ Monitoring Requirements

- A. ~~All~~ A public water systems system, or a contractor on behalf of a CWS or NTNCWS, shall monitor to determine compliance with the MCL for nitrite.
- B. ~~Each~~ A public water system, or a contractor on behalf of a CWS or NTNCWS, shall monitor for nitrite at each sampling point as prescribed in R18-4-218.
- C. A public water system, or a contractor on behalf of a CWS or NTNCWS, may composite nitrite samples as prescribed in R18-4-219.

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- D. A public water system, ~~or a contractor on behalf of a CWS or NTNCWS,~~ shall take ~~± one~~ sample at each sampling point during the initial compliance period. ~~Each A public water system, or a contractor on behalf of a CWS or NTNCWS,~~ shall monitor for nitrite in the initial monitoring year designated by the Department within the initial compliance period.
- E. If the analytical result of the initial nitrite sample at a sampling point is ~~< less than~~ 0.5 mg/L (as N), a public water system is not required to take another nitrite sample at that sampling point until the ~~1st~~ first compliance period of the next compliance cycle.
- F. If the analytical result of the initial nitrite sample at a sampling point is ~~≥~~ greater than or equal to 0.5 mg/L (as N), a public water system, ~~or a contractor on behalf of a CWS or NTNCWS,~~ shall conduct quarterly monitoring at that sampling point for at least ~~4~~ four consecutive quarters.
- G. The Department may reduce the monitoring frequency at a sampling point from quarterly to annually if the concentration of nitrite in ~~4~~ four consecutive quarterly samples is ~~< less than~~ 1 mg/L (as N). If the Department reduces the monitoring frequency from quarterly to annually, the public water system shall take annual samples during the quarter which previously yielded the highest analytical result for nitrite. If the Department reduces the monitoring frequency at a sampling point from quarterly to annually and there is a subsequent detection of nitrite at the sampling point in a concentration that is ~~≥ greater than or equal to~~ 0.5 mg/L but ~~≤ less than or equal to~~ 1 mg/L, the detection shall not trigger quarterly monitoring. The Department's decision to reduce monitoring frequency shall be in writing.
- H. The Department shall not accept monitoring data collected before the initial monitoring year to satisfy initial monitoring requirements for nitrite.
- I. Monitoring waivers for nitrite are prohibited.
- J. If the concentration of nitrite in a sample exceeds 1 mg/L (as N), the ~~water supplier public water system, or a contractor on behalf of a CWS or NTNCWS,~~ shall take a confirmation sample at the same sampling point within 24 hours of receiving the analytical results of the initial sample. A ~~water supplier public water system~~ that cannot take a confirmation sample within 24 hours shall issue public notice to persons served by the system in accordance with R18-4-105. A ~~water supplier public water system~~ that cannot take a confirmation sample within 24 hours and that issues public notice shall take and complete the analysis of a confirmation sample within 2 weeks of receiving the analytical results of the initial sample.
- K. Compliance with the MCL for nitrite is based upon the average of the analytical results of the initial sample and the confirmation sample. If a ~~water supplier public water system~~ fails to take the required confirmation sample, compliance is based upon the analytical results from the initial sample.

R18-4-217. Radiochemicals; MCLs and Monitoring Requirements

- A. Water distributed by a CWS shall not exceed the following MCLs:
 1. 5 pCi/l for combined radium-226 and radium-228,
 2. 15 pCi/l for gross alpha particle activity, including radium-226 but excluding radon and uranium, and
 3. The average annual concentration of beta particle and photon radioactivity from man-made radionuclides shall not produce an annual dose equivalent to the total body or any internal organ ~~>4~~ greater than four millirem ~~per year~~.
 - a. Except for Tritium and Strontium-90, the concentration of man-made radionuclides causing ~~4~~ four millirem total body or organ dose equivalents shall be calculated on the basis of a ~~≥ two~~ two-liter per day drinking water intake using the 168-hour data listed in "Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and in Water for Occupational Exposure," NBS Handbook 69, U.S. Department of Commerce, (as amended August 1963 and no future editions), which is incorporated by reference and on file with the Office of the Secretary of State and the Department.
 - b. The following average annual concentrations of Tritium and Strontium-90 are assumed to produce a total body or organ dose equivalent of ~~4~~ four millirem per year:

<i>Radionuclide</i>	<i>Critical organ</i>	<i>pCi/L</i>
Tritium	Total body	20,000
Strontium-90	Bone marrow	8

- c. If ~~≥ two~~ two or more radionuclides are present, the sum of their annual dose equivalents to the total body or to any internal organ shall not exceed ~~4~~ four millirem/year.
- B. A CWS, ~~or a contractor on behalf of a CWS,~~ shall monitor for gross alpha particle activity, radium-226, and radium-228 as follows:
 1. A CWS, ~~or a contractor on behalf of a CWS,~~ shall monitor each sampling point as prescribed in R18-4-218 once every ~~4~~ four years. A CWS, ~~or a contractor on behalf of a CWS,~~ shall take ~~4~~ four consecutive quarterly samples at each sampling point for gross alpha particle radioactivity, radium-226, and radium-228 analysis.
 2. The Department shall determine compliance with the MCLs in subsections (A)(1) and (A)(2) from the analytical results of a composite sample composed of ~~4~~ four consecutive quarterly samples or the average of the analytical results of ~~4~~ four consecutive quarterly samples.

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3. A gross alpha particle activity measurement may be substituted for the required radium-226 and radium-228 analyses provided that the measured gross alpha particle activity does not exceed \pm five pCi/L at a confidence level of 95% (1.65 Fs where Fs is the standard deviation of the net counting rate of the sample).
 - a. If a gross alpha particle activity measurement exceeds \pm five pCi/L, the same sample shall be analyzed for radium-226. If the concentration of radium-226 exceeds \pm three pCi/L, the same sample shall be analyzed for radium-228.
 - b. If a gross alpha particle activity measurement exceeds 15 pCi/L, the same sample shall be analyzed for uranium and the uranium result shall be subtracted from the gross alpha particle activity measurement to determine compliance with subsection (A)(2).
 - c. In localities where radium-228 may be present in drinking water, the Department may require radium-226 and radium-228 analyses if the gross alpha particle activity exceeds \pm two pCi/L.
- C. If the MCL for gross alpha particle activity or combined radium-226 and radium-228 is exceeded, the CWS, or a contractor on behalf of a CWS, shall monitor quarterly at the sampling point until a monitoring schedule that is a condition of a variance, exemption, compliance agreement, or enforcement action is effective or the annual average concentration no longer exceeds the MCL due to \pm one or more of the following:
 1. Treatment,
 2. Removal of a source from service, or
 3. An approved blending plan.
- D. The Department may order a CWS to conduct more frequent monitoring for gross alpha particle activity, radium-226, or radium-228 if the Department determines \pm one of the following:
 1. The CWS is in the vicinity of mining or other operations that may contribute alpha particle radioactivity to either surface or groundwater sources of drinking water,
 2. There is possible radiochemical contamination of surface or groundwater sources of drinking water,
 3. Changes in the distribution system or treatment process occur that may increase the concentration of radioactivity in drinking water, or
 4. The Department may order a CWS to conduct annual monitoring for gross alpha particle radioactivity, radium-226, or radium-228 at a sampling point if the concentration of radium-226 exceeds 3 pCi/L.
- E. The Department may reduce monitoring for gross alpha particle radioactivity, radium-226, or radium-228 as follows:
 1. The Department may allow a CWS to substitute a single annual sample for the 4 four consecutive quarterly samples prescribed in subsection (B) annual record establishes that the average annual concentration is less than \pm one-half the MCLs prescribed in subsection (A).
 2. The Department may allow a CWS to stop monitoring for radium-228 if:
 - a. The CWS has monitored radium-228 at least once using the quarterly monitoring procedure prescribed in subsection (B), and
 - b. The radium-226 concentration is \leq less than 3 pCi/L.
- F. A CWS shall take 4 four consecutive quarterly samples as prescribed in subsection (B) at the point-of-entry to the distribution system within \pm one year of the introduction of a new water source.
- G. The Department may order a CWS that uses \geq two or more sources that are combined before the point-of-entry into the distribution system and that have different concentrations of radioactivity to monitor each source and to monitor the blended water at the point-of-entry.
- H. A CWS that is a surface water system that serves more than 100,000 persons and any CWS that the Department finds subject to potential health risks from man-made radioactivity shall monitor for gross beta particle radioactivity, Tritium, and Strontium-90 as follows:
 1. A CWS that is a surface water system that serves more than 100,000 persons shall monitor at each surface water sampling point as prescribed in R18-4-218. A CWS that the Department determines is subject to potential health risks from man-made radioactivity shall monitor at sampling points designated by the Department.
 2. A CWS shall take 4 four consecutive quarterly samples at each sampling point for gross beta particle radioactivity, Tritium, and Strontium-90 analysis once every 4 four years.
 - a. If the average annual concentration of gross beta particle radioactivity \leq less than 50 pCi/L, the sample shall be analyzed to determine the concentrations of Tritium and Strontium-90. A CWS is in compliance with the MCLs for man-made radioactivity prescribed in subsection (A)(3) if the average annual concentration of gross beta particle radioactivity is \leq less than 50 pCi/L, the average annual concentration of Tritium is \leq less than 20,000 pCi/L, the average annual concentration of Strontium-90 is \leq less than 8 pCi/L, and the sum of the annual dose equivalents for Tritium and Strontium-90 is less than 4 millirem / year.
 - b. If gross beta particle radioactivity \leq less than 50 pCi/L, the sample shall be analyzed to identify the major radioactive constituents present and the appropriate internal organ and total body doses shall be calculated to determine compliance with subsection (A)(3).
 3. A CWS that utilizes water that may be contaminated by effluent from a nuclear facility shall monitor for gross beta particle radioactivity, Iodine-131, Strontium-90, and Tritium as follows:

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- a. A CWS shall monitor monthly for gross beta particle radioactivity. Compliance shall be based upon the analysis a composite sample made up of ~~3~~ three monthly samples or the average concentration of ~~3~~ three monthly samples.
 - i. If the concentration of gross beta particle radioactivity ~~< less than~~ < less than 15 pCi/L, the same sample shall be analyzed for Strontium-89 and Cesium-134. A CWS is in compliance with the MCLs for man-made radioactivity prescribed in subsection (A)(3) if the average concentration of gross beta particle radioactivity is ~~< less than~~ < less than 50 pCi/L, the average concentration of Cesium-134 is ~~< less than~~ < less than 80 pCi/L, the average concentration of Strontium-89 is ~~< less than~~ < less than 80 pCi/L, and the sum of the annual dose equivalents for Strontium-89 and Cesium-134 is ~~< less than~~ < less than 4 millirem / year.
 - ii. If the concentration of gross beta particle radioactivity ~~< less than~~ < less than 50 pCi/L, the same sample shall be analyzed to identify the man-made radionuclides that are present. The internal organ and total body dose equivalents shall be calculated for the man-made radionuclides that are present to determine compliance with the MCL prescribed in subsection (A)(3).
 - b. A CWS shall take a composite of ~~5~~ five consecutive daily samples once each quarter for Iodine-131 analysis. If Iodine-131 is detected, the CWS shall conduct more frequent monitoring at a frequency designated by the Department. If the concentration of Iodine-131 in the composite sample is ~~< less than~~ < less than 3 pCi / L, the CWS is out of compliance.
 - c. A CWS shall take ~~4~~ four consecutive quarterly samples for Strontium-90 and Tritium analyses each year. Compliance shall be based upon the analysis of a composite sample or the annual average concentration of ~~4~~ four consecutive quarterly samples. A CWS is in compliance with the MCLs for man-made radioactivity prescribed in subsection (A)(3) if the average annual concentration of Tritium is ~~< less than~~ < less than 20,000 pCi/L, the average annual concentration of Strontium-90 is ~~< less than~~ < less than 8 pCi/L, and the sum of the annual dose equivalents for Tritium and Strontium-90 is ~~< less than~~ < less than 4 millirem ~~/ per~~ year.
 - d. The Department may allow the substitution of environmental surveillance data taken in conjunction with a nuclear facility for direct monitoring of man-made radioactivity by ~~the water supplier~~ a CWS, provided the Department determines that such data are applicable to ~~a community water system~~ the CWS.
4. A CWS that violates a MCL for man-made radioactivity shall monitor monthly until the average concentration for 12 consecutive months no longer exceeds the MCL or the Department specifies a monitoring schedule as a condition to a variance, exemption, compliance agreement, or enforcement action.
 5. A CWS that is a surface water system shall monitor at surface water points-of-entry. If the Department determines that a CWS is subject to potential health risk from man-made radioactivity the CWS shall monitor at points-of-entry designated by the Department.

R18-4-224. The Monitoring Assistance Program

- A. A community water system or nontransient, noncommunity public water system that serves 10,000 or fewer persons shall participate in the monitoring assistance program. Within 60 days of receiving notice of participation in the monitoring assistance program, a public water system that determines that it serves more than 10,000 persons shall substantiate its determination by submitting that portion of the most recent census provided by the Arizona Department of Economic Security, Research Administration, Population Statistics Unit that supports the public water system's determination. By October 1 of each year, ~~the~~ a participating public water system shall report the population it ~~served as of June 30 of that year~~ currently serves to the Department.
- B. A public water system that ~~serves more than 10,000 persons~~ is not obligated to participate in the monitoring assistance program may elect to participate in the monitoring assistance program ~~for a minimum of 3 years, based upon its compliance period. The~~ if the owner of the public water system:
 1. ~~shall notify~~ Notifies the Department in writing; ~~of the public water system's intention to participate in the monitoring assistance program; at least 1 year in advance of its assigned monitoring year, unless its assigned monitoring year is 1999.~~ of the public water system's intention to participate in the monitoring assistance program;
 2. Agrees to participate in the monitoring assistance program for a minimum of three years; and
 3. Pays the fees required by R18-4-225. Subject to payment of the required fees, the public water system's participation shall begin at the start of its assigned monitoring the next full calendar year of a compliance period.
- C. Under the monitoring assistance program, a contractor shall collect, transport, and analyze water samples from a participating public water system. The contractor shall monitor for all inorganic chemicals listed in R18-4-206, R18-4-401, and R18-4-402; all VOCs listed in R18-4-211 and R18-4-404, and all SOCs listed in R18-4-215 and R18-4-405. the chemicals listed below:
 1. All inorganic chemicals (IOCs) listed in R18-4-206, R18-4-207, R18-4-209, R18-4-401, and R18-4-402;
 2. All volatile organic chemicals (VOCs) listed in R18-4-211;
 3. All synthetic organic chemicals (SOCs) listed in R18-4-215; and
 4. Radiochemicals required by R18-4-217.

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- D. An environmental laboratory utilized by the Department to analyze samples collected under the monitoring assistance program or a contractor shall deliver copies of monitoring analysis results to the contractor, the owner of the public water system, and the Department.
- E. A Although a contractor performs the monitoring when a public water system participates in the monitoring assistance program, the owner of a public water system remains responsible for compliance shall comply with the public notice requirements of R18-4-105.
- F. A An owner of a public water system shall notify the Department; by ~~October 1~~ July 1 of each year of:
 1. any change in ownership and mailing The owner's name, current mailing address; and phone number;
 2. The public water system identification number; and
 3. The public water system shall notify the Department of the name of the person to whom billing is to be addressed, and number of meters or and service connections of each size that currently in the public water system had on June 30 that year.

R18-4-225. Fees for the Monitoring Assistance Program

- A. The Department shall bill a public water system that serves 10,000 or fewer persons annually. The Department shall assess, and a public water system participating in the monitoring assistance program shall pay, the following annual fees, subject to adjustments referenced in (B):
 1. An annual fee of \$250; and
 2. A unit fee of \$2.57 per meter or service connection.
- B. For the billing year 1999, a public water system with >100 service connections shall use a unit fee of \$3.50 to determine the total fee to be paid under R18-4-225(D). In years 2000 and 2001, the public water system shall pay a unit fee of \$3.50 adjusted on January 1 to reflect the weighted percentage increase, if any, in the contract costs as of the close of the 12 month period ending on December 31 of the previous year.
If there is a surplus in the monitoring assistance fund pursuant to R18-4-227(C), the Department will apply the surplus to reduce annual fees for public water systems that previously paid annual monitoring assistance program fees. The first year it participates in the monitoring assistance program, a public water system shall pay the full amount of annual fees due under this Section, not subject to a fee reduction resulting from a surplus in the monitoring assistance fund.
- C. For the billing year 1999, a public water system with fewer than 100 service connections shall pay an annual fee of \$350. For the billing years 2000 and 2001, the public water system shall pay an annual fee of \$350 adjusted on January 1 to reflect the weighted percentage increase, if any, in the contract costs as of the close of the 12 month period ending on December 31 of the previous year.
If a public water system serving 10,000 or fewer persons at the beginning of a compliance period increases service to the point where the public water system serves over 10,000 persons annually, the public water system can elect to cease participation in the monitoring assistance program under the following conditions:
 1. If the monitoring assistance program has already conducted monitoring for the public water system during the compliance period, the public water system must remain in the monitoring assistance program, and pay annual fees, for the remainder of the compliance period.
 2. If the monitoring assistance program has not conducted monitoring for the public water system during the compliance period, the public water system can cease participating in the monitoring assistance program, and the Department will refund any monitoring fees paid by the public water system during the compliance period.
- D. The Department shall calculate a total fee to the public water system as follows:
 1. Multiply the meter weight by the number of meters or service connections of each size that were capable of providing water as of October 1, preceding the billing date;
 2. Add the results for each category; and
 3. Multiply the result in subsection (D)(2) by the unit fee.
- E. A public water system that serves more than 10,000 persons and that chooses to participate in the monitoring assistance program shall participate for the entire compliance period and shall pay fees in accordance with this Section.

Table A

Meter Size	Gallon Per Minute (GPM)	Meter Weight
≤3/4"	30	1.00
1"	50	1.67
1-1/2"	100	3.33
2"	160	5.33
3"	300	10.00
4"	500	16.67
6"	1000	33.33
≥8"	1600	53.33

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R18-4-226. Collection and Payment of Fees

- A. The Department shall mail an invoice for fees to ~~a public water system~~ the owner of a public water system participating in the monitoring assistance program annually. The ~~owner of the~~ public water system shall pay the invoiced amount to the Department, at the address listed on the invoice, by the indicated due date.
- B. The Department ~~may shall~~ make refunds or billing corrections for a public water system that ~~can demonstrate~~ demonstrates an overpayment, or error in the amount, or number, or size of meters billed. The ~~owner of a~~ public water system shall send a written request for a refund or correction to the Department, at the address on the invoice, within 90 days of the invoice date.
- C. The Department may verify the number ~~and size of meters, or if unmetered,~~ and the number of service connections.
- D. The Department shall not waive program fees.
- E. A The owner of a public water system that fails to pay its fees assessed by the Department in a timely manner shall be subject to the penalties listed in A.R.S. §§ 49-354. Failure to maintain an accurate mailing address will not relieve an owner of a public water system from liability for penalties on the basis of lack of notice.

R18-4-227. Monitoring Assistance Fund

- A. All fees collected by the Department from participating public water systems shall be deposited into the monitoring assistance fund administered by the Director. Interest earned on monies in the fund shall be credited to the fund.
- B. Monies in the fund shall be used to pay monitoring assistance program contractors, environmental laboratories utilized to analyze samples collected under the monitoring assistance program, and administrative costs incurred by the Department. Administrative costs of the Department are limited to no more than 15% of monies deposited in the monitoring assistance fund annually or \$184,000.00, whichever is less. As used in this subsection, administrative costs include only those costs necessary:
 - 1. To assure contractor performance and quality control;
 - 2. To administer contracts;
 - 3. To collect fees; or
 - 4. To provide direct technical assistance required to implement the monitoring assistance program.
- C. If the monitoring assistance fund has a surplus after execution of the previous year's contract, any surplus in excess of two hundred thousand dollars in any year shall be used to reduce future fees in a manner consistent with the program invoicing system.

ARTICLE 4. SPECIAL MONITORING REQUIREMENTS

R18-4-403. Special Monitoring for Nickel

- A. ~~Each~~ A CWS and NTNCWS, or a contractor on behalf of a CWS or NTNCWS, shall monitor for nickel.
- B. ~~Each~~ A CWS and NTNCWS, or a contractor on behalf of a CWS or NTNCWS, shall monitor for nickel at each sampling point as prescribed in R18-4-218.
- C. A CWS or NTNCWS, ~~or a contractor on behalf of a CWS or NTNCWS,~~ may composite samples for nickel as prescribed in R18-4-219.
- D. ~~Each~~ A CWS and NTNCWS, or a contractor on behalf of a CWS or NTNCWS, shall monitor for nickel at the following frequencies:
 - 1. ~~Each~~ A CWS and NTNCWS, or a contractor on behalf of a CWS or NTNCWS, shall take one sample at each ground-water sampling point once every three years.
 - 2. ~~Each~~ A CWS and NTNCWS, or a contractor on behalf of a CWS or NTNCWS, shall take one sample at each surface water sampling point annually.
- E. A public water system may request a reduction in the monitoring frequency for nickel as follows:
 - 1. Groundwater sampling points: The Department may reduce monitoring frequency from once every three years to a less frequent basis if ~~the~~ a CWS or NTNCWS, or a contractor on behalf of a CWS or NTNCWS, has monitored for nickel at least once every three years for nine years at the groundwater sampling point and all analytical results were below 0.1 mg/L.
 - 2. Surface water sampling points: The Department may reduce monitoring frequency from annually to a less frequent basis if a CWS or NTNCWS, ~~or a contractor on behalf of a CWS or NTNCWS,~~ has monitored annually at the surface water sampling point for at least three consecutive years and all analytical results for nickel were below 0.1 mg/L.
 - 3. No change.
 - 4. A CWS or NTNCWS, or a contractor on behalf of a CWS or NTNCWS, shall take at least one sample for nickel during the reduced monitoring term.
 - 5. No change.
 - 6. No change.
 - 7. No change.

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 5. DEPARTMENT OF ENVIRONMENTAL QUALITY
ENVIRONMENTAL REVIEWS AND CERTIFICATIONS**

ARTICLE 1. CLASSIFICATION OF TREATMENT PLANTS AND CERTIFICATION OF OPERATORS

PREAMBLE

- 1. Sections Affected**
- | | |
|-----------|-------|
| R18-5-101 | Amend |
| R18-5-102 | Amend |
| R18-5-104 | Amend |
| R18-5-105 | Amend |
| R18-5-106 | Amend |
| R18-5-112 | Amend |
| R18-5-115 | Amend |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
- Authorizing statutes: A.R.S. §§ 49-104, 49-202, 49-203, 49-351, 49-352, 49-353, 49-361
- Implementing statute: A.R.S. § 49-352
- 3. A list of all previous notices appearing in the Register addressing the final rule:**
- Notice of Rulemaking Docket Opening: 7 A.A.R. 2776, June 29, 2001
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- Name: Jeffrey W. Stuck, Manager, Drinking Water Section, or
Anthony J. Bode, Manager, Program Development and Outreach, Drinking Water Section
- Address: Arizona Department of Environmental Quality
3033 North Central Avenue (M0248A)Phoenix, AZ 85012-2809
- Telephone: Jeff Stuck
(602) 207-4617
- Tony Bode
(602) 207-4648
- (In Arizona: (800) 234-5677, ask for the four-digit extension.)
- Fax: (602) 207-4634
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**
- This rulemaking concerns the Department's operator certification program, 18 A.A.C. 5, Article 1.
- The primary purpose of the rulemaking is to make a few minor amendments to the operator certification rules, which were recently amended, effective February 16, 2001. The changes are being implemented primarily in order to satisfy primacy requirements of the U.S. Environmental Protection Agency (E.P.A.), which interprets several of the recent changes to be less stringent than the previous rules. By making the changes, Arizona's continued primacy of the operator certification program will be ensured. The Department is also taking advantage of the opportunity to clarify the language in several other Sections of Article 1.
- A. Section-by-section Explanation of the Rules**
- R18-5-101 sets forth definitions for 18 A.A.C. 5, Article 1.
- R18-5-102 sets forth establishes the scope of applicability of 18 A.A.C. 5, Article 1.
- R18-5-104 sets forth general requirements for facility owners and operators.
- R18-5-105 sets forth the requirements for eligibility for certification.

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R18-5-106 sets forth requirements for taking an examination.

R18-5-112 sets forth experience and education requirements for certification.

R18-5-115 sets forth criteria for grading of water treatment plants and distribution systems.

B. Relevant Five-year Review Reports

A five-year review report for 18 A.A.C. 5, Articles 1 and 4, was approved by the Governor's Regulatory Review Council December 1, 1998.

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

None

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:

This preliminary economic, small business, and consumer impact statement (EIS) is provided pursuant to A.R.S. § 41-1022 and A.A.C. R1-1-502(B)(6).

The primary purpose of this rulemaking is to implement minor changes to 18 A.A.C. 5, Article 1, concerning drinking water and waste water operator certification. The changes to the operator certification rules will have no discernable economic impact on the Department, other public agencies, state revenues, private persons or businesses, consumers, small businesses, or private and public employment. The state will incur normal rule development costs incidental to rulemaking, including review by the Governor's Regulatory Review Council and the cost of publication by the Office of the Secretary of State.

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: Tony Bode

Address: Arizona Department of Environmental Quality
3033 N. Central Avenue (M0248A)
Phoenix, AZ 85012-2809

Telephone: Tony Bode(602) 207-4648

(In Arizona, call (800) 234-5677 and ask for the four-digit extension.)

Fax: (602) 207-4634

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:

ADEQ has scheduled oral proceedings to receive oral comments on the rules, in accordance with A.R.S. § 41-1023. The time, place, and location of the hearings are listed below:

TUCSON

July 31, 2001

10:30 a.m. to 12:30 p.m.

State Office Complex

400 West Congress, Room 158

PHOENIX

August 1, 2001

11:00 a.m. to 1:00 p.m.

Arizona Department of Environmental Quality

3033 North Central Avenue, Room 1710

Phoenix, AZ 85012-2809

FLAGSTAFF

August 2, 2001

11:30 a.m. to 1:30 p.m.

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Arizona Game and Fish Department
3500 S. Lake Mary Road

ADEQ is committed to complying with the Americans With Disabilities Act. If any individual with a disability needs any type of accommodation, please contact ADEQ at least 72 hours before the hearing.

Anyone wishing to provide written comments regarding the rulemaking may submit their comments to ADEQ between 8:00 a.m. and 5:00 p.m., Monday through Friday, until 5:00 p.m., August 8, 2001, to the person and address in item #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 18. ENVIRONMENTAL QUALITY

**CHAPTER 5. DEPARTMENT OF ENVIRONMENTAL QUALITY
ENVIRONMENTAL REVIEWS AND CERTIFICATIONS**

ARTICLE 1. CLASSIFICATION OF TREATMENT PLANTS AND CERTIFICATION OF OPERATORS

Section

R18-5-101.	Definitions
R18-5-102.	Applicability
R18-5-104.	General Requirements
R18-5-105.	Certification
R18-5-106.	Examinations
R18-5-112.	Experience and Education
R18-5-115.	Grades of Water Treatment Plants and Distribution Systems

ARTICLE 1. CLASSIFICATION OF TREATMENT PLANTS AND CERTIFICATION OF OPERATORS

R18-5-101. Definitions

No change

~~“Operational experience” means skill or knowledge obtained through employment in a position that includes responsibility for operational control of all or part of a facility.~~

No change

~~“Qualifying experience” means operational experience, related experience, and supervisory experience, skill, or knowledge obtained through prior employment that is applicable to the technical or operational control of all or part of a facility.~~

~~“Related experience” means the skill or knowledge obtained in employment that can be applied directly in the operation of a facility.~~

No change

~~“Supervisory experience” means skill or knowledge obtained by employment that includes responsible, technical, and operational direction of a facility or a portion of a facility.~~

No change

R18-5-102. Applicability

A. No change

B. The following facilities are exempt from the requirements of this Article:

1. A public water system that meets the nonapplicability criteria in R18-4-102(~~C~~).
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change

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- 9. No change
- 10. No change

R18-5-104. General Requirements

- A. No change
- B. If the owner of a facility replaces a ~~designated~~ an operator in direct responsible charge with another operator, the facility owner shall notify the Department in writing within ten days of the replacement.
- C. No change
- D. No change
- E. No change

R18-5-105. Certification

- A. No change
- B. To apply for operator certification, an applicant shall submit or arrange to have submitted to the Department the following information, as applicable, in a format acceptable to the Department:
 - 1. The applicant's full name, social security number, and operator number;
 - 2. The applicant's current mailing address, home and work telephone numbers, fax number, and e-mail address;
 - 3. The applicant's place of employment, including the facility identification number;
 - 4. The class and grade of the facility where the applicant is employed;
 - 5. Proof of successful completion of the examination for the applicable class and grade; ~~and~~
 - 6. Documentation of the applicant's experience and education required under R18-5-112-; and
 - 7. The date and grade of operator examinations taken by the applicant in the previous 12 months.

R18-5-106. Examinations

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
- E. An applicant who fails an examination shall wait 30 days from the date the applicant took the examination before applying for reexamination. Applicants who fail the same examination level three times in a one year period shall wait a minimum of one year from the date they failed the examination for the third time to apply for re-examination.

R18-5-112. Experience and Education

- A. No change
- B. No change
- C. No change
- D. An applicant shall meet the following requirements for admission to a certification examination:
 - 1. For Grade 1, high school graduation or the equivalent.
 - 2. For Grade 2, at least:
 - a. High school graduation or the equivalent and one year of qualifying experience as a Grade 1 operator or the equivalent of a Grade 1 operator in another jurisdiction;
 - b. Two years of post-secondary education in a qualifying discipline and one year of qualifying experience, including six months as a Grade 1 operator or the equivalent of a Grade 1 operator in another jurisdiction; or
 - c. A bachelor's degree in a qualifying discipline and six months of qualifying experience.
 - 3. For Grade 3, at least:
 - a. High school graduation or the equivalent and two years of qualifying experience, including one year as a Grade 2 operator or the equivalent of a Grade 2 operator in another jurisdiction;
 - b. Two years of post-secondary education in a qualifying discipline; and 18 months of qualifying experience, including one year as a Grade 2 operator or the equivalent of a Grade 2 operator in another jurisdiction; or
 - c. A bachelor's degree in a qualifying discipline and one year of qualifying experience.
 - 4. For Grade 4, at least:
 - a. High school graduation or the equivalent and three years of qualifying experience, including one year as a Grade 3 operator or the equivalent of a Grade 3 operator in another jurisdiction;
 - b. Two years of post-secondary education in a qualifying discipline and 30 months of qualifying experience, including one year as a Grade 3 operator or the equivalent of a Grade 3 operator in another jurisdiction; or
 - c. A bachelor's degree in a qualifying discipline, and ~~one year~~ two years of qualifying experience.

R18-5-115. Grades of Water Treatment Plants and Distribution Systems

- A. No change

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- B.** Grading of water distribution systems. The Department shall grade a distribution system according to the sum of the points it assigns for each system characteristic.
1. No change
 2. No points are added for Grade 1 small systems that:
 - a. Only distribute groundwater;
 - b. Serve fewer than ~~500~~ 501 persons;
 - c. Have no disinfection or disinfect by chlorine gas or hypochlorite only; and
 - d. Do not store water or store water only in storage tanks.
 3. No change