NOTICES OF FINAL RULEMAKING

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

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 1. DEPARTMENT OF ADMINISTRATION

[R07-436]

PREAMBLE

1. Sections Affected **Rulemaking Action**

R2-1-801	Amend
R2-1-805	Amend

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

Authorizing statute: A.R.S. § 41-703

Implementing statute: A.R.S. § 41-786

3. The effective date of the rules:

February 5, 2008

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

Notice of Rulemaking Docket Opening: 12 A.A.R. 4023, October 27, 2006

Notice of Proposed Rulemaking: 13 A.A.R. 1558, May 4, 2007

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

Name:	Kayelen Rolfe, Manager Travel Reduction Programs
Address:	Department of Administration 100 N. 15th Ave., 4th Floor, Suite 431 Phoenix, AZ 85007
Telephone:	(602) 542-3638
Fax:	(602) 542-3125
or	
Name:	Rob Smook Rules Administrator
Address:	Department of Administration 1501 W. Madison Phoenix, AZ 85007
Telephone:	(602) 542-6161
Fax:	(602) 542-3125

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

The purpose of this rulemaking is to address the issues identified in the previous five-year-review report approved by the Governor's Regulatory Review Council. The subject matter of the rulemaking prescribes how public or private transportation subsidies can be administered to state employees. The new rulemaking will make minor changes to reflect current practice on the administration of public and private transportation subsidies to state employees.

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

The agency did not utilize a study for evaluating or justifying the rulemaking.

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

Not applicable

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

Adoption of this minor rule change will have minimal financial impact. Besides reprinting the application form, which occurred when supplies were low, the only other costs involve staff time associated with preparing, reviewing, and publishing these rules.

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

Based on suggestions from Council staff, minor, non-substantive changes were made in the rules to improve clarity. The suggestions included grammatical and other changes necessary to clarify the rules.

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

None

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

None

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

None

14. Were the rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 1. DEPARTMENT OF ADMINISTRATION

ARTICLE 8. REIMBURSEMENT FOR PUBLIC OR PRIVATE TRANSPORTATION

Section
R2-1-801. Definitions
R2-1-805. Transportation Program Reduced Cost Procedure

ARTICLE 8. REIMBURSEMENT FOR PUBLIC OR PRIVATE TRANSPORTATION

R2-1-801. Definitions

In this Article, unless otherwise specified:

1. "Bus" means a motor vehicle designed to carry 16 or more passengers, including the driver.
2. "Commute" means travel to and from an employee's place of employment.
3. "Director" means the chief executive officer of the Department of Administration or the director's designee.
4. "Eligible employee" means an individual who is employed by the state of Arizona, in pay status, and lives or works in a vehicle emissions control area, as defined in A.R.S. § 49-541, except a university employee or an employee of the State Compensation Fund under ~~subject to the provisions of~~ A.R.S. § 23-981.01.
5. "Pay status" has the ~~same~~ meaning ~~as~~ in ~~R2-5-101(36)~~ R2-5-101(48).
6. "Private transportation" means the conveyance of passengers, by a commercial enterprise, on scheduled routes by bus ~~on an~~ for which an individual passenger ~~fare-paying basis~~ pays a fare.
7. "Public transportation" has the ~~same~~ meaning ~~as~~ in A.R.S. § 41-786(B).

~~10.~~8. "Reduced cost" means an eligible employee's share of the total cost of public or private transportation that remains after the reimbursement subsidy is paid.

~~11.~~9. "Reimbursement subsidy" means the portion of the total cost of public or private transportation that is paid through a contract with the state of Arizona on behalf of an eligible employee under A.R.S. § 41-786.

~~8.~~10. "Transportation card" means the evidence of an eligible employee's participation in a transportation program, issued to the employee by the Department of Administration.

~~9.~~11. "Transportation program" means a system for reimbursement or subsidy of public or private transportation expenses under A.R.S. § 41-786.

R2-1-805. Transportation Program Reduced Cost Procedure

A. An eligible employee seeking to pay a reduced cost shall complete, sign, and submit an application and payroll deduction authorization form to the office designated by the Department of Administration. The application form shall contain the following:
1. The employee's name and ~~social security number~~ employee identification number;
2. The name and mailing address of the state agency compensating the employee;
3. For public transportation, the type of public transportation card requested; and
4. The employee's agreement to comply with the conditions in subsection (B).

B. As a condition of receiving a transportation card, an eligible employee shall agree:
1. Not to allow anyone else to use the transportation card;
2. To use the transportation card only for trips to and from work with a state agency, board, or commission, unless the employee incurs the maximum monthly charge in commuting;
3. To be responsible for charges incurred with the transportation card;
4. To notify the office designated by the Department of Administration if the transportation card is lost or stolen;
5. To pay $5 on a payroll deduction to replace a lost, damaged, or stolen transportation card;
6. To surrender the transportation card upon termination of employment with the state; and
7. That use of the transportation card after receiving notice from the Department of Administration of change in the transportation program policies constitutes the employee's agreement to the change.

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

[R07-426]

PREAMBLE

1. Sections Affected **Rulemaking Action**

R2-8-202 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. § 38-714(F)(5)

Implementing statute: Arizona Session Laws 1995, Chapter 32, Section 24, as amended by Arizona Session Laws 1999, Chapter 66, Section 1

3. The effective date of the rules:

February 2, 2008

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

Notice of Rulemaking Docket Opening: 13 A.A.R. 2448, July 6, 2007

Notice of Proposed Rulemaking: 13 A.A.R. 2384, July 6, 2007

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

Name:	Susanne Dobel, Manager, External Affairs
Address:	State Retirement System Board 3300 N. Central, 14th Fl. Phoenix, AZ 85012
Telephone:	(602) 240-2039
Fax:	(602) 240-5303
E-mail:	SusanneD@azasrs.gov
or	
Name:	Patrick Klein

Address: State Retirement System Board
3300 N. Central, 14th Fl.
Phoenix, AZ 85012

Telephone: (602) 240-2044

Fax: (602) 246-5303

E-mail: PatK@azasrs.gov

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

R2-8-202 and its table constitute the Board's direction to the Actuary, the professional organization contracted by the ASRS under A.R.S. § 38-714(H)(2) and (3), to perform the actuarial analysis of the ASRS defined contribution plan (the "System") for financial reporting purposes and for determining the appropriateness of the current annuity amounts. The Actuary must use the mortality table and interest assumption to calculate the present value of future benefits payable from the System and to determine the funded status of the System. R2-8-202 will be amended to change the methodology of valuation of liabilities and calculation of benefits.

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

In amending the rule, the ASRS reviewed and relied on the following: 2005 Actuarial Valuation Report, November 23, 2005, Actuarial Valuation Report, October 20, 2006, and the Actuarial Valuation of the System as of June 30, 2007 as presented to the ASRS Board of Trustees at their regular meeting on October 19, 2007 all issued by the actuarial firm, Buck Consultants, LLC. The public may obtain a copy of the reports from the individuals listed in item 5.

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

Not applicable

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

The proposed rule change will have no economic impact on the group of ASRS defined contribution system members as a whole. Rather, it will potentially limit increases in monthly benefits in the short term in order to prevent significant decreases in benefits in the long term. Ultimately, the total amount of benefits paid will remain the same. If the Board continues to use the current mortality table in valuating the System's liabilities and calculating new retirees' benefits, members will likely live longer than the mortality table projects. As a result, the System may incur unrecognized losses in the short term and pay out greater benefits than it should. This would lead to retirees being subject to potentially significant benefit reductions in the future when the members outlive their projected mortality under the current table and the true liabilities are finally recognized. Simply put, paying out too much in benefits today will result in reduction of benefits tomorrow.

Both retired and non-retired members of the System and their named beneficiaries will benefit from this rule in that their annuity amounts will be less likely to be subject to future reductions arising from improved longevity. However, initial monthly benefits will be less using the generational mortality table, than under the current mortality table. For example, the table below shows the initial monthly annuity amounts under both the current and new mortality table for 2008, for System members retiring at ages 60 or 65, each with total balances of $200,000:

	Initial Monthly Annuity		
Retirement Age	Current Table	New Table For 2008	% Reduction
60	$1,607.84	$1,581.46	1.64%
65	$1,747.68	$1,716.34	1.79%

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

Minor technical and grammatical changes were made at the suggestion of G.R.R.C. staff and the Office of the Secretary of State.

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

The ASRS held an oral proceeding on the proposed rulemaking and received no comments on the rule.

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

Not applicable

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

Not applicable

14. Was this rule previously made as an emergency rule?
No

15. The full text of the rule follows:

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

ARTICLE 2. STATE RETIREMENT DEFINED CONTRIBUTION PROGRAM

Section
R2-8-202. Actuarial Assumptions

ARTICLE 2. STATE RETIREMENT DEFINED CONTRIBUTION PROGRAM

R2-8-202. Actuarial Assumptions
The following actuarial assumptions apply to this Article:

1. The interest and investment yield rate is 8% per annum, compounded annually~~; and~~.
~~2. Mortality rates are based on the 1994 Group Annuity Mortality Static Table Projected to 2005 with Scale AA Unisex 50% Male/50% Female as provided in Table 1.~~
2. The mortality table used by ASRS (the "ASRS table") for benefit determination purposes is the generational table based on the 1994 Group Annuity Reserving Table projected with Scale AA Unisex 50% Male/50% Female, (the "1994 table"). The 1994 table is incorporated by reference as amended in subsection (3). For valuation purposes, the mortality rates in the ASRS table are reduced for members with annual annuities from the System in excess of $14,400, as described in subsection (4).
3. The 1994 Table is published in the Transactions of the Society of Actuaries, Volume 47, Table 1, pages 866 and 867 and is hereby incorporated by reference, not including any future editions or amendments. The 1994 Table can be viewed at the Phoenix office of the ASRS during regular business hours, 3300 N. Central Ave., Phoenix, AZ 85012 and is available from the Society of Actuaries, 475 N. Martingale Road, Suite 600, Schaumburg, IL, 60173. The ASRS Table amends the 1994 Table as follows:
   a. The ASRS Table converts the 1994 Table's sex-distinct mortality rates to sex-neutral mortality rates by adding 50% of the rate for males and 50% of the rate for females at each age.
   b. The ASRS mortality rate for benefit determination purposes for a member age x in year y is the unisex rate of the published table for age x, projected to year y by the unisex projection scale AA in the 1994 Table.
4. For valuation purposes, the mortality rates are the same as those determined in subsection (3)(b), except that the mortality rates are reduced for members with annual annuities in excess of $14,400. The reduction factors are:
   a. 80% for a member age 0 through 75, and
   b. 86% for a member age 75 or above.

~~**Table 1. 1994 Group Annuity Mortality Static Table Projected to 2005 with Scale AA Unisex 50% Male/ 50% Female**~~

~~Age~~	~~Probability of Death~~	~~Age~~	~~Probability of Death~~	~~Age~~	~~Probability of Death~~
~~1~~	~~0.000450~~	~~41~~	~~0.000849~~	~~81~~	~~0.051402~~
~~2~~	~~0.000299~~	~~42~~	~~0.000910~~	~~82~~	~~0.057321~~
~~3~~	~~0.000236~~	~~43~~	~~0.000970~~	~~83~~	~~0.063155~~
~~4~~	~~0.000181~~	~~44~~	~~0.001029~~	~~84~~	~~0.069697~~
~~5~~	~~0.000165~~	~~45~~	~~0.001091~~	~~85~~	~~0.076704~~
~~6~~	~~0.000156~~	~~46~~	~~0.001165~~	~~86~~	~~0.084615~~
~~7~~	~~0.000148~~	~~47~~	~~0.001259~~	~~87~~	~~0.094330~~
~~8~~	~~0.000135~~	~~48~~	~~0.001374~~	~~88~~	~~0.104971~~
~~9~~	~~0.000130~~	~~49~~	~~0.001499~~	~~89~~	~~0.116582~~
~~10~~	~~0.000131~~	~~50~~	~~0.001647~~	~~90~~	~~0.129410~~
~~11~~	~~0.000139~~	~~51~~	~~0.001819~~	~~91~~	~~0.142306~~
~~12~~	~~0.000150~~	~~52~~	~~0.002029~~	~~92~~	~~0.156856~~
~~13~~	~~0.000168~~	~~53~~	~~0.002270~~	~~93~~	~~0.172239~~

~~14~~	~~0.000198~~	~~54~~	~~0.002526~~	~~94~~	~~0.187824~~
~~15~~	~~0.000230~~	~~55~~	~~0.002842~~	~~95~~	~~0.205337~~
~~16~~	~~0.000261~~	~~56~~	~~0.003226~~	~~96~~	~~0.222079~~
~~17~~	~~0.000286~~	~~57~~	~~0.003692~~	~~97~~	~~0.240105~~
~~18~~	~~0.000303~~	~~58~~	~~0.004227~~	~~98~~	~~0.258633~~
~~19~~	~~0.000315~~	~~59~~	~~0.004797~~	~~99~~	~~0.275951~~
~~20~~	~~0.000324~~	~~60~~	~~0.005440~~	~~100~~	~~0.293584~~
~~21~~	~~0.000335~~	~~61~~	~~0.006215~~	~~101~~	~~0.315045~~
~~22~~	~~0.000350~~	~~62~~	~~0.007056~~	~~102~~	~~0.333712~~
~~23~~	~~0.000372~~	~~63~~	~~0.008071~~	~~103~~	~~0.353524~~
~~24~~	~~0.000393~~	~~64~~	~~0.009147~~	~~104~~	~~0.374436~~
~~25~~	~~0.000421~~	~~65~~	~~0.010310~~	~~105~~	~~0.395411~~
~~26~~	~~0.000454~~	~~66~~	~~0.011618~~	~~106~~	~~0.415408~~
~~27~~	~~0.000476~~	~~67~~	~~0.012902~~	~~107~~	~~0.433391~~
~~28~~	~~0.000494~~	~~68~~	~~0.014069~~	~~108~~	~~0.450956~~
~~29~~	~~0.000514~~	~~69~~	~~0.015317~~	~~109~~	~~0.468810~~
~~30~~	~~0.000536~~	~~70~~	~~0.016544~~	~~110~~	~~0.484535~~
~~31~~	~~0.000559~~	~~71~~	~~0.017986~~	~~111~~	~~0.495733~~
~~32~~	~~0.000579~~	~~72~~	~~0.019784~~	~~112~~	~~0.500000~~
~~33~~	~~0.000592~~	~~73~~	~~0.021701~~	~~113~~	~~0.500000~~
~~34~~	~~0.000603~~	~~74~~	~~0.023851~~	~~114~~	~~0.500000~~
~~35~~	~~0.000614~~	~~75~~	~~0.026316~~	~~115~~	~~0.500000~~
~~36~~	~~0.000632~~	~~76~~	~~0.029086~~	~~116~~	~~0.500000~~
~~37~~	~~0.000660~~	~~77~~	~~0.032686~~	~~117~~	~~0.500000~~
~~38~~	~~0.000696~~	~~78~~	~~0.036667~~	~~118~~	~~0.500000~~
~~39~~	~~0.000738~~	~~79~~	~~0.041097~~	~~119~~	~~0.500000~~
~~40~~	~~0.000791~~	~~80~~	~~0.046001~~	~~120~~	~~1.000000~~

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 7. BOARD OF CHIROPRACTIC EXAMINERS

[R07-425]

PREAMBLE

1. Sections Affected **Rulemaking Action**

R4-7-1102	Amend
R4-7-1103	Amend

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

Authorizing statute: A.R.S. § 32-904(B)(2)

Implementing statute: A.R.S. § 32-904(B)(3) and A.R.S. § 32-926(A)(2)

3. The effective date of the rules:

February 2, 2008

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

Notice of Rulemaking Docket Opening: 13 A.A.R. 122, January 12, 2007

Notice of Proposed Rulemaking: 13 A.A.R. 1076, March 30, 2007

Notice of Supplemental Proposed Rulemaking: 13 A.A.R. 2772, August 10, 2007

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

Name: Patrice A. Pritzl, Executive Director

Address: 5060 N. 19th Ave., Suite 416
Phoenix, AZ 85015-3210

Telephone: (602) 864-5088

Fax: (602) 864-5099

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

The rule amendment will require registration of chiropractic assistants with the Board within seven days of hire, change the number of hours of required training for chiropractic assistants who work under the supervision of a doctor of chiropractic who is certified to perform acupuncture, clarify the procedures that may be performed by a chiropractic assistant, specify those duties that a chiropractic assistant shall not perform, and prevent a person who has a revoked, suspended, or denied license from being a chiropractic assistant. The Board has initiated the rule for the following reasons. The Board does have a rule that requires chiropractic assistants to begin training within three months of hire and complete the training within one year. The Board has found that in order to enforce the law, it is necessary to have a record of the date the chiropractic assistant was hired on file with the Board. The number of hours for training in acupuncture has been reduced in response to public comment that twelve hours of education for a chiropractic assistant in acupuncture is excessive because of the limited role a C.A. would have in acupuncture treatments.

The Board has also provided clarification regarding procedures that a chiropractic assistant may or may not perform. The Board has received frequent requests for more clarification of those services that a C.A. can perform. The procedures that a chiropractic assistant may perform lists those procedures that the Board most frequently receives questions about, but does not limit the chiropractic assistant to those procedures. Chiropractic assistants are able to assist a doctor of chiropractic with a variety of physiotherapy procedures under the doctor's certification to perform physiotherapy. In addition, because the health care arena is dynamic, the rule needs to be open rather than limited. Therefore, the rule does not attempt to list all procedures that could be performed by a chiropractic assistant, nor is it likely that the Board could produce a list to the full satisfaction of all members of the profession. The rule as proposed balances the interests of those who request more clarification with those who do not support more clarification. Finally, the rule prohibiting a doctor of chiropractic who has had a licensed revoked, suspended, or denied from providing patient care as a chiropractic assistant is in response to occurrences of ongoing practice by doctors who have been found to pose a current threat to the health, welfare, and safety of the public by continuing to practice under the title of a chiropractic assistant.

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

The Board did not review any study relevant to the rule.

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

Not applicable

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

Current rule already requires that chiropractic assistants be registered with the board and requires that the chiropractic assistant be trained. This amendment requires registration of a chiropractic assistant prior to the end of training, as does the current rule. The registration information is limited to those items listed in R4-7-1102 (C), which would take approximately one minute to complete and can be faxed or mailed to the Board. Therefore, the amendments will have little economic impact beyond that under current rule. The reduction of hours for training in acupuncture will benefit those chiropractors who are certified to perform acupuncture by reducing training costs by approximately $150. The clarification of services that can be performed by a chiropractic assistant is based on generally accepted professional standards and are for clarification purposes. In this regard, there is no economic impact anticipated because services that can be performed by an assistant are already authorized by statute, nor is the rule intended to restrict services that are currently authorized under statute. The amendment restricting a person who has had a license revoked, suspended, or denied from being a chiropractic assistant has no economic impact since it cannot be presumed that such a person would be employed as, or have a right to be employed as, a chiropractic assistant.

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

The time-frame in which a chiropractic assistant is required to begin training was changed from the proposed revision of one month to the original three months that is currently reflected in rule and was noticed in a supplemental notice of proposed rulemaking. Under R4-7-1103(A)(3), language was added to clarify that the rule amendment is not intended to restrict services to those items specifically listed. The amendment is for clarification purposes and does

not substantially change the intent or impact of the proposed rule. Under R4-7-1103(B)(1), the words "administer diagnostic tests" were deleted because of a conflict with R4-7-1103(A)(3). The change is not substantial because it does not expand or restrict the services that may be performed by a chiropractic assistant from that reflected in the proposed rulemaking. Minor technical and grammatical changes were also made at the suggestion of G.R.R.C. staff.

11. A summary of the principal comments and the agency response to them:
The agency did not receive written or oral comment regarding the rule.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable

13. Incorporation by reference and their location in the rules:
Not applicable

14. Was this rule previously made as an emergency rule?
No

15. The full text of the rules follows:

TITLE 4. COMMERCE, PROFESSIONS AND OCCUPATIONS

CHAPTER 7. BOARD OF CHIROPRACTIC EXAMINERS

ARTICLE 11. CHIROPRACTIC ASSISTANTS

Section
R4-7-1102. Chiropractic Assistant Training
R4-7-1103. Scope of Practice

ARTICLE 11. CHIROPRACTIC ASSISTANTS

R4-7-1102. Chiropractic Assistant Training

A. A C.A. shall complete 24 clock hours of coursework, with a minimum of four hours in each of the following subjects: chiropractic principles, management of common diseases, history taking, recordkeeping, professional standards of conduct, and CPR. If a chiropractor supervising a C.A. is certified in ~~a specialty~~ physiotherapy under A.R.S. § 32-922.02, the C.A. shall complete 12 hours of ~~additional~~ training in ~~that specialty~~ physiotherapy in addition to the 24 hours of coursework. If a chiropractor supervising a C.A. is certified in acupuncture under A.R.S. § 32-922.02, the C.A. shall complete two hours of training in acupuncture in addition to the 24 hours of coursework.

B. A C.A. shall take coursework from a Board-approved facility or chiropractor. The facility or chiropractor providing coursework shall submit documentation that describes each subject listed in subsection (A) to the Board for approval prior to offering the course.

C. A chiropractor shall inform the Board, in writing, that the chiropractor has employed a chiropractic assistant within seven days of hiring the C.A. by submitting the name of the C.A., the name and license number of the supervising chiropractor, the address and phone number where the C.A. is employed, and the initial date of hire. A C.A. shall begin Board-approved coursework within three month~~s~~ of initial employment with a supervising chiropractor, and shall complete the coursework within one year of initial employment with the supervising chiropractor.

D. A C.A. shall register with the Board ~~or its designee~~ upon completing required coursework. A C.A. shall submit a separate registration form for each place of employment and each supervisor. A C.A. shall ~~submit~~ register by submitting documentation to the Board ~~or its designee~~ on a Board-approved form, signed by the supervising chiropractor, showing the date that the C.A. completed each required subject. The Board shall issue the C.A.'s registration upon approval of the registration form.

E. A chiropractor supervising a C.A. shall maintain at the C.A.'s place of employment a copy of the C.A.'s registration.

R4-7-1103. Scope of Practice

A. A C.A. ~~shall~~ may only perform ~~only tasks~~ clinical duties that are:
1. Consistent with a supervising chiropractor's licensure and certification; and
2. Delegated by the supervising chiropractor.

B. Clinical duties that a chiropractic assistant may perform as directed by the supervising chiropractor under subsection (A) include, but are not limited to:
1. Asepsis and infection control,
2. Taking patient histories and vital signs,
3. Performing first aid and CPR,

4. Preparing patients for procedures,
5. Assisting the supervising chiropractor with examinations and treatments, and
6. Collecting and processing specimens.

C. A chiropractic assistant who meets the education requirements for physiotherapy under R4-7-1102(A) may administer, under the direct supervision of a chiropractor certified in physiotherapy, but is not limited to administering:
1. Whirlpool treatments,
2. Diathermy treatments,
3. Electronic galvanization stimulation treatments,
4. Ultrasound therapy,
5. Massage therapy,
6. Traction treatments,
7. Transcutaneous nerve stimulation unit treatments, and
8. Hot and cold pack treatments.

D. A chiropractic assistant that meets the education requirements for acupuncture under R4-7-1102(A) may prepare and sterilize instruments and may remove acupuncture needles under the direct supervision of a chiropractor certified in acupuncture.

E. A C.A. shall not: ~~take an x-ray.~~
1. Take an x-ray,
2. Perform an independent examination,
3. Diagnose a patient,
4. Determine a regimen of patient care,
5. Change the regimen of patient care set by the supervising chiropractor,
6. Perform an adjustment, or
7. Perform acupuncture by needle insertion.

F. A person who has had a license to practice chiropractic or any other health care profession suspended, revoked, or denied for any reason other than failing to meet education or licensing examination requirements in this or any other jurisdiction shall not perform the clinical duties of a chiropractic assistant.

G. As per A.R.S. § 32-900(3), a chiropractic assistant shall not be licensed to practice chiropractic in this or any other jurisdiction.

~~**C.**~~**H.** A supervising chiropractor shall be responsible for all acts or omissions of a ~~supervised~~ C.A.

~~**D.**~~**I.** A person who does not meet the ~~coursework~~ requirements of R4-7-1102 shall perform only clerical or administrative duties.

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

[R07-431]

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R12-4-701	Amend
R12-4-702	Amend
R12-4-703	Amend
R12-4-704	Amend
R12-4-705	Amend
R12-4-706	Amend
R12-4-707	Amend
R12-4-708	Amend
R12-4-709	Amend
R12-4-710	Amend
R12-4-711	Amend
R12-4-712	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. § 17-231

Implementing statutes: A.R.S. Title 17, Chapter 2, Article 6

3. The effective date of the rules:

February 2, 2008

4. A list of all previous notices appearing in the *Register* addressing the rules:

Notice of Rulemaking Docket Opening: 13 A.A.R. 1747, May 18, 2007

Notice of Proposed Rulemaking: 13 A.A.R. 1693, May 18, 2007

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

Name: Jennifer Stewart, Rules & Risk Manager

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Phoenix, AZ 85086

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

The Arizona Game and Fish Department is amending rules in Title 12, Chapter 4, Article 7 in accordance with the preceding 2006 five-year-review report approved by the Governor's Regulatory Review Council on March 7, 2006.

The Department is amending R12-4-701 to add a definition for the term "extension." Although the term is used in this Article, no definition exists, which has affected the Article's clarity and understandability. A definition for "extension" is significant because special provisions apply to a Heritage Grant project and a grant recipient if the project's contract expiration date extends beyond the approved project period. The Department is also adding a definition for the term "term of public use." Additional amendments are being made in rule that necessitate the inclusion of a definition, particularly to clarify reporting requirements on Heritage Grant projects.

The Department is also providing a definition for "eligible applicant." The definition will allow non-governmental nonprofit organizations to apply for Heritage Grants. Additional amendments will be made throughout the Article to make other rules consistent with the definition.

In the past, the Department has had conflict with the regulated community over a participant's ability to use the time committed to a project by a permanent employee for in-kind match. Some participants apply for and obtain Heritage Grant dollars as starter money for a project, and then apply for additional grants and revenue sources to match those grants. Contributions that qualify for matching funds may also include hours an employee spends working on a project. The intent of R12-4-702 and its authorizing statutes is not to limit the revenue that may be used to complete a project designed to conserve wildlife, but to ensure that Heritage Grants are used wisely and responsibly for a project and only for that project. Consequently, the Department is amending subsection (J) of the rule to authorize a participant to use a permanent employee's time as in-kind match, but only for the project for which the application was submitted. The amendment would only allow a permanent employee's time to be used as a match so as to prevent a participant from inflating hours.

The Department is also amending R12-4-702 by adding a new subsection (M) that is identical to subsection (D) in R12-4-705. This subsection describes projects that are ineligible for Heritage Grants, and is more suited for the rule that prescribes general requirements for the application and issuance of grants.

The Department is amending R12-4-704 to remove outdated or inapplicable information. The Department is deleting the communities of Green Valley, Flowing Wells, Sun City, and Sun City West from subsection (B)(2) because at the time this rule was written these communities were, under A.R.S. § 17-296(6), "in close proximity to an urban area that [received] significant impact from human use." Due to expanding development, these communities are now covered by the remaining two criteria: an individual may still apply for Heritage Grants to support projects in these areas because they are either "within the corporate limits of an incorporated city or town," under subsection (B)(1), or "within five miles, in straight distance, of the boundary of an incorporated area," under subsection (B)(3). The Department is also amending subsection (C) to replace "in harmony with urban environments" with the more appropriate "consistent with urban environments."

The Department is also amending R12-4-705 to clarify that public access grants issued by the Game and Fish Heritage Fund are intended for improving public access to recreational opportunities that are related to wildlife. The Department receives numerous grant proposals for bike trails, hiking trails, and other projects that are not directly related to wildlife. Alternatives to Heritage Fund Grants exist for these types of projects, such as those grants distributed through other agencies like the State Parks Department, but these projects are not consistent with the Department's responsibilities of wildlife management, watercraft recreation, and off-highway vehicle use. Also, as stated previously, subsection (D) will be deleted and moved to R12-4-702.

Under this rulemaking, the Department is amending R12-4-706 to remove the $10,000 limit on grants for environmental education projects. The Department recognizes the significance of these grants in establishing a sense of

understanding and ownership in the state's wildlife and does not want to limit valid projects that would contribute to this.

The Department is amending R12-4-707 to prescribe additional eligibility requirements for schoolyard habitat grants. The Department is also adding items under subsection (B) to closely emulate applicable content in subsection (B) of R12-4-706. The Department will require that an eligible project develop awareness, appreciation, and understanding or the state's wildlife and its environment; use Arizona wildlife as its focus; and have an impact on Arizona schools and school children. The Department is deviating from the preceding five-year review by not creating a grant ceiling. The Department believes that a ceiling is not necessary to preclude submission of impractical projects and that the regular application review process will eliminate them from consideration.

The Department is amending R12-4-709(F)(10) to require non-profit organizations applying for heritage grants to provide proof of their exemption. The Department is allowing non-profit organizations to apply for Heritage Grant funds, and requiring proof of non-profit status will ensure that the applicant is in fact a non-profit and as a result eligible to apply for Heritage Grant funds.

The Department is amending R12-4-711(2) and (6) to remove a violation of state law as grounds for recovery of Heritage Funds. A violation of state law could be broadly interpreted to include violations that have no bearing or relevance to a grant participant's qualifications or required duties for completion. The Department's intent behind these provisions is not to exclude those individuals who violate state law in a manner unrelated to the grant agreement. Instead, "violation of state law" will be replaced with "material breach of contract" as grounds for recovery.

Finally, the Department is amending R12-4-712 to ensure that a project participant finishes post-completion reporting after a project is done. During a project's development, the Department is not always aware if progress is being made. If a problem occurs that stalls or delays a project, it may result in a waste of Heritage dollars or a project that is incomplete. In either event, for the sake of the completion of the project, the Department is amending the rule to state that during the project period, a participant shall submit a project status report within 30 days after the end of the mid-year reporting period (ending June 30) and within 30 days after the end of the end-of-the-year reporting period (ending December 31). The Department is also making a stronger effort to ensure that these projects are maintained after they are completed for the period of time for which they were intended to be used. The Department is amending the rule to place a post-completion obligation on the participant, and require that the participant certify compliance with the participant agreement each year until the end of the term of public use stated in the grant application. To further facilitate compliance, the Department is also amending the rule to require that a participant complete a post-completion report for each year until the end of the term of public use, and to amend subsection (D), formerly (C), to give the Department maximum flexibility to conduct audits to ensure post-completion reporting. Lastly, the Department is amending this subsection to allow electronic copies to substitute for original records, rather than microfilm copies due to the obsolescence of the technology.

The Department is not substantively amending R12-4-703, R12-4-708, or R12-4-710. Additional amendments will be made to make rule language consistent with APA requirements.

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

The agency did not rely on any study in its evaluation of or justification for the rules.

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

Not applicable

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

The rulemaking will primarily affect applicants for Heritage Grants and the Department. The rulemaking will not have a significant impact to other political subdivisions, businesses, or employees. The rulemaking will not affect state revenues. The Department has determined that there are no alternative means of achieving the objectives of the rulemaking.

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

In the Notice of Proposed Rulemaking, the new definition for "eligible applicant" in R12-4-701 made reference to projects in extension under R12-4-905(6). This was a typo, and the intent was to refer to R12-4-711(4). In the final rules the Department has corrected the cross reference. There are no substantial substantive changes between the proposed rules and the final rules. Where applicable the Department also made changes necessary for internal consistency within the Article.

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

The Department received one written comment regarding the rules.

Written Comment: Don't delete the word "and" within the first sentence of R12-4-712(D).

Agency Response: The Department agrees that deleting "and" in the first sentence of R12-4-712(D) would make the sentence grammatically incorrect. Therefore, the Department will not delete it.

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

Not applicable

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

None

14. Were the rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 7. HERITAGE GRANTS

Section
R12-4-701. Heritage Grant Definitions
R12-4-702. General Provisions
R12-4-703. Review of Proposals
R12-4-704. Urban Wildlife and Urban Wildlife Habitat Grants
R12-4-705. Public Access Grants
R12-4-706. Environmental Education Grants
R12-4-707. Schoolyard Habitat Grants
R12-4-708. IIAPM: Grants for Identification, Inventory, Acquisition, Protection, and Management of Sensitive Habitat
R12-4-709. Grant Applications
R12-4-710. State Historic Preservation Office Certification
R12-4-711. Grant-in-aid Participant Agreements
R12-4-712. Reporting and Record Requirements

ARTICLE 7. HERITAGE GRANTS

R12-4-701. Heritage Grant Definitions

In addition to the definitions provided in A.R.S. §§ 17-101 and 17-296, the following definitions apply to this Article:

1. "Administrative subunit" means the branch, department, division, section, school, or other similar divisional entity of ~~a public agency~~ an eligible applicant where a participant contact is directly employed, for example, an individual school, but not the entire school district; an individual field office or project office, but not the entire agency; or an individual administrative department, but not the entire city government.
2. "Approved application" means a participant's application including any changes, exceptions, deletions, or additions made by the Department before approval.
3. "Commission" means the Game and Fish Commission.
4. "Department" means the Game and Fish Department.
5. "Eligible applicant" means any public agency or non-profit organization exempt from federal income taxation under Section 501(c) of the Internal Revenue Code that has met the applicable requirements of this Article and not obtained an extension of the project period under R12-4-711(4).
6. "Extension" means a contract expiration date extended beyond the approved project period.

~~5.~~7. "Facilities" means capital improvements.

~~6.~~8. "Fund" means a granting source from the Game and Fish Heritage Fund, under A.R.S. § 17-297.

~~7.~~9. "Grant effective date" means the date the Director of the ~~Arizona Game and Fish~~ Department signs the Grant-in-Aid Participant Agreement.

~~8.~~10. "Grant Prioritization Process" means a document approved by the ~~Game and Fish~~ Commission based upon the Department mission statement, strategic plans, and current guiding statements that defines the Department's priorities. This document is also used for prioritizing grant applications.

~~9.~~11. "Heritage Grant" means ~~an Arizona Game and Fish~~ a Commission Heritage Fund ~~Grant~~ grant.

~~10~~.12. "Participant" means an eligible applicant that has been awarded a grant from the fund.

~~11.~~13. "Participant contact" means an eligible applicant's employee who is responsible for administering a Heritage Grant funded project.

~~12.~~14. "Project" means an activity, or series of related activities, which is described in the specific project scope of work and which results in specific products or services.
~~13.~~15. "Project period" means the time during which all approved work and related expenditures associated with an approved project are to be accomplished by the participant.
~~14.~~16. "Public agency" means the federal government or any federal department or agency, an Indian tribe, this state, all departments, agencies, boards, and commissions of this state, counties, school districts, cities, towns, all municipal corporations, and any other political subdivision of this state.
~~15.~~17. "Specific scope of work" means the units of work to be accomplished by an approved project.
18. "Term of public use" means the time period during which the project or facility is expected to be maintained for public use.

R12-4-702. General Provisions

A. The application deadline is the last working day of November each year and funds become available July 1 of the following year. The Department shall ensure that the exact time and date for the application deadline and the exact application submission location are designated in the ~~Arizona Game and Fish~~ Department's "Grant Application Manual." The Department shall ensure that the "Heritage Grant Application Manual," all application forms and instructions, the Grant Prioritization Process, and any annualized information on project emphasis for each fund are available from the Department's Funds Planning Section within the Phoenix office.

B. ~~Applicants shall be public agencies~~ An eligible applicant, as defined in R12-4-701, may apply for Heritage Grants under this Article. Eligible applicants ~~and~~ shall apply for Heritage ~~grants~~ Grants in accordance with A.R.S. §§ 17-296, 17-297, 17-298, and Commission rules within 12 A.A.C. 4, Article 7, to ~~be eligible for~~ receive consideration. An eligible applicant who has failed to comply with the rules or conditions of a Grant-in-Aid Participant Agreement ~~is not eligible~~ shall not be considered for further ~~grants~~ Heritage Grants until the eligible applicant's project is brought into compliance.

C. The Department shall notify eligible applicants in writing of the results of their applications and announce ~~grant~~ Heritage Grant awards at a regularly scheduled open meeting of the ~~Game and Fish~~ Commission. An unsuccessful eligible applicant may submit an appeal regarding a grant award within 30 calendar days of the Commission meeting in accordance with A.R.S. Title 41, Chapter 6, Article 10, Uniform Administrative Appeals Procedures.

D. Participants shall not begin projects described in an application until the grant effective date as defined in R12-4-701. A participant shall complete projects as specified in the Grant-in-Aid Participant Agreement. A participant shall submit records that substantiate the expenditure of Heritage Grant funds.

E. A participant shall operate and maintain properties, facilities, equipment, and services funded by a Heritage ~~grant~~ Grant for the benefit of the public for the useful life of the project.

F. ~~The~~ A participant shall control land or waters on which capital improvements are to be made, through fee title, lease, easement, or agreement. To be eligible for a Heritage Grant, the ~~applicant's~~ participant's management or control rights to the proposed site shall be ~~equivalent~~ proportional to the proposed investment in at least one of the following three respects:
1. The time remaining on the use agreement is a term sufficient, in the ~~judgment~~ sole discretion of the Department, to ensure a period of public use equal in value to the expenditure of awarded funds.
2. The use agreement is not revocable at will by the property owner and provides for the option to renew by the managing agency.
3. The eligible applicant ~~shows evidence~~ demonstrates that public access exists to the actual site where the project is proposed, unless the purpose of the project proposal is to specifically create access or limit access.

G. A participant shall give public acknowledgment of grant assistance for the life of a project. If a project involves acquisition of property, development of public access, or renovation of a habitat site, the participant shall install a permanent sign describing the funding sources and dollar amounts of all funds. The participant may include the cost of this signage as part of the original project, but is responsible for maintenance or replacement of the sign as required. For other project types, the participant shall include funding acknowledgment on any publicly available or accessible products resulting from the project.

H. The Department shall not accept project proposals for less than $1000.

I. A participant shall pay operation and maintenance costs for the project, including costs for reprinting of publications or other media.

J. A participant shall not use ~~grant~~ Heritage Grant funds to pay compensation in excess of the legally established salary for any permanent public employee. A participant may use a permanent employee's time as in-kind match, but only for the project for which the application was submitted.

K. If specified in the Grant-in-Aid Participant Agreement, including the Special Conditions attachment, the participant shall provide evidence of compliance with local, state, and federal law to the Department before the release of the initial ~~grant~~ Heritage Grant funds and before project implementation.

L. If a participant contact has a Heritage Grant funded project in extension, the participant contact and the administrative subunit employing the participant contact ~~are not eligible~~ shall not be considered for further Heritage Grants until the project under extension is completed. This restriction does not apply to the participant contact's public agency as a whole, or to any other participant contact employed by the same public agency in any other administrative subunit, so long as the

other participant contact does not have a Heritage Grant funded project in extension. For the purposes of this restriction, the Department shall determine what constitutes an administrative subunit.

M. Ineligible projects are those projects not in compliance with this Article and those project types listed as examples of ineligible projects in the Heritage Grant Application Manual or other materials available from the Department's Funds Planning Section in the Phoenix Office.

R12-4-703. Review of Proposals

A. Heritage Grant proposals are competitive and the Department shall make awards based on a proposed project's compatibility with the priorities of the ~~Game and Fish~~ Department and the project's feasibility, merit, and usefulness. The Department shall evaluate and rank all eligible proposals under the criteria established in this ~~Section~~ Article and the Department's Grant Prioritization Process as approved by the Commission and available from the Department's Funds Planning Section in the Phoenix office.

B. The Department shall make funding of an awarded project contingent upon revision of the application if the Department determines that substantive changes are necessary for the successful completion of the project.

R12-4-704. Urban Wildlife and Urban Wildlife Habitat Grants

A. *"Urban wildlife" means the wildlife that occurs within the limits of an incorporated area or in close proximity to an urban area that receives significant impact from human use.* (A.R.S. § 17-296(6)).

B. ~~In order~~ In addition to complying with the requirements prescribed in R12-4-702, to be considered ~~eligible~~ for ~~a~~ an urban wildlife or urban wildlife habitat grant award, an eligible applicant shall ensure that a proposed project location meets one of the following criteria:

1. It is within the corporate limits of an incorporated city or town; or
2. ~~It is within the communities of Green Valley, Flowing Wells, Sun City, or Sun City West;~~
3. ~~3.~~2. It is within five miles, in straight distance, of the boundary of an incorporated area ~~or one of the communities listed above~~.

C. ~~In order~~ In addition to the requirements prescribed in subsection (B), to be considered ~~eligible~~ for an urban wildlife or urban wildlife habitat grant award, eligible applicants shall also ensure that proposed projects are designed to conserve, enhance, and establish wildlife habitats and populations ~~in harmony~~ consistent with urban environments, and increase public awareness of and support for urban wildlife resources.

R12-4-705. Public Access Grants

A. "Public access" has the meaning prescribed in A.R.S. § 17-296(1).

B. "Publicly held lands" means federal, public, and reserved lands, State Trust Lands, and other lands within Arizona that are owned, controlled, or managed by the United States, the state of Arizona, agencies, or political subdivisions of the state.

C. ~~To be eligible for a public access grant award~~ In addition to complying with the requirements prescribed in R12-4-702, an eligible applicant shall ensure that a ~~proposed~~ project is designed to increase or maintain public access for recreational use that is related to wildlife, and is in cooperation with federal land managers, local and state governments, private landowners, and public users. An eligible applicant shall also ensure that a proposed project is consistent with the Department's mission, and is designed to inform and educate the public about recreational use of publicly held lands and public access to those lands. ~~To be eligible for Heritage access grant funding, an~~ An eligible applicant's potential project shall provide for substantive wildlife-related recreational access opportunities. Examples include providing ~~new~~ access into an area where no access currently exists~~,~~; re-establishing access into an area where access existed historically~~,~~; maintaining, relocating, or enhancing existing access routes to better serve a specific segment of the population~~,~~; or ~~relocating an existing access corridor~~ to avoid biologically sensitive areas.

~~**D.** Ineligible projects are those projects not in compliance with this Section and those project types listed as ineligible in the Heritage Grant Application Manual or other materials available from the Department's Funds Planning Section in the Phoenix office.~~

R12-4-706. Environmental Education Grants

A. "Environmental education" has the meaning prescribed in A.R.S. § 17-296(7).

B. In addition to complying with the requirements prescribed in R12-4-702, ~~To~~ to be ~~eligible~~ considered for an environmental education grant, an eligible applicant shall ensure that a project proposal is for no less than $1,000 ~~and no more than $10,000,~~ and that a proposed project is designed to:

1. Develop awareness, appreciation, and understanding of Arizona's wildlife and its environment and increase responsible actions toward wildlife;
2. Use Arizona wildlife as its focus and present wildlife issues in a balanced and fair manner; and
3. Have an impact on Arizona schools and school children.

R12-4-707. Schoolyard Habitat Grants

A. ~~In order~~ Schoolyard habitat grants are limited to public schools in Arizona. In addition to complying with the requirements prescribed in R12-4-702, to be ~~eligible~~ considered for a schoolyard habitat grant, ~~the applicant must be~~ a public school ~~within Arizona~~ shall apply through an eligible applicant, such as a school district.

B. ~~In order to~~ To be ~~eligible~~ considered for a schoolyard habitat grant, ~~applicants~~ an eligible applicant shall ensure that proposed projects are designed to:
1. Develop awareness, appreciation, and understanding of the state's wildlife and its environment;
~~1.~~2. Encourage wildlife education on school sites or adjacent areas that allow wildlife education activities and encourage use by urban wildlife species;
3. Use Arizona wildlife as its focus;
~~2.~~4. Encourage native wildlife species, utilize a majority of native plant materials, and demonstrate water conservation techniques;
~~3.~~5. Actively use school children in the planning, development, and construction process~~,~~; demonstrate long-term sustainability~~,~~; and be fully integrated into the school curriculum~~.~~; and
6. Have an impact on Arizona schools and school children.

R12-4-708. IIAPM: Grants for Identification, Inventory, Acquisition, Protection, and Management of Sensitive Habitat

A. "Habitat protection" has the meaning prescribed in A.R.S. § 17-296(9).
B. "Sensitive habitat" has the meaning prescribed in A.R.S. § 17-296(2).
C. In addition to complying with the requirements prescribed in R12-4-702, ~~To~~ to be ~~eligible~~ considered for an IIAPM grant, an eligible applicant shall ensure that the proposed project is designed to:
1. Preserve and enhance Arizona's natural biological diversity, and
2. Incorporate at least one of the following elements:
   a. Identification, inventory, acquisition, protection, or management of sensitive habitat, listed by the Department in accordance with subsection (D); or
   b. Inventory, identification, protection, or management of species, ~~as addressed within A.R.S. § 17-296~~ listed by the Department in accordance with subsection (D).

D. ~~Each year the Department shall provide a listing of habitat and species as defined within A.R.S. § 17-296 that it will consider in~~ In accordance with biological, conservation, and management status changes, the Department shall publish each year a list of sensitive habitat and species for the use of IIAPM grant applicants.

R12-4-709. Grant Applications

A. To be ~~eligible~~ considered for a Heritage ~~grant~~ Grant, an eligible applicant shall submit a grant application in accordance with the schedule and requirements ~~established by~~ prescribed in R12-4-702.
B. The eligible applicant shall submit a separate application for each funding source.
C. The eligible applicant shall submit the original plus two copies of each application on paper sized 8 1/2" x 11" and shall ensure that the original and the copies are legible.
D. The Department shall not accept facsimile or "faxed" copies of a grant application.
E. The eligible applicant shall ensure that the "Application Checklist" lists all items included within the application. The eligible applicant shall check off an item if it is included within the application, and initial each item that is not applicable.
F. The eligible applicant shall provide the following information on the grant application form:
1. Name of the eligible applicant;
2. Any county and legislative district where the project will be developed or upon which the project will have impact;
3. The official mailing address of the eligible applicant;
4. The name, title, and telephone number of the individual who will have the day-to-day responsibility for the proposed project;
5. Identification of the particular grant fund from which assistance is being requested, under R12-4-704, R12-4-705, R12-4-706, R12-4-707, or R12-4-708;
6. The proposed project title incorporating the name of the site, if any, and the type of work to be accomplished;
7. A clear and concise description of the scope and objective of the proposed project, the nature of what is to be accomplished, the methods to be used, and the desired result from the project;
8. The beginning and ending dates for the project; ~~and~~
9. The funding amounts that will be needed to accomplish the project, including the Heritage Grant funds requested, and evidence of secured matching funds or contributions~~.~~; and
10. If the eligible applicant is a non-profit organization exempt from federal income taxation under Section 501(c) of the Internal Revenue Code, documentation or other evidence of the exemption.

G. ~~The person who on behalf of the applicant has~~ Only a person with authority to bind the eligible applicant to the terms of the Grant-in-Aid Participant Agreement shall sign the grant application form. The person signing the grant application form represents that the eligible applicant has authority to enter into agreements, accept funding, and fulfill the terms of the Grant-in-Aid Participant Agreement.
H. The eligible applicant shall submit a map clearly identifying project locations or project proposal areas, and, if applicable, ~~the applicant shall also submit~~ a site plan and floor plan.
I. The eligible applicant shall submit with the grant application the following information to provide evidence of control and

tenure at the project site. The Department shall determine the appropriateness of the evidence of control and tenure as a part of the grant application review process:

1. If the project site is owned by the eligible applicant, a copy of the legal document showing title in the name of the eligible applicant and the legal description of the property;
2. If the project site will be managed by the eligible applicant, a copy of the lease, special use permit, intergovernmental agreement, or other official instrument or documentation; or
3. For research project proposals relating to sites not controlled by the eligible applicant, a copy of the permit or agreement allowing the research or, at a minimum, evidence of permission from the land manager allowing the research.

J. The eligible applicant shall submit an estimated project cost sheet form with the following information:

1. Project title as designated on the application form;
2. If applicable, pre-agreement costs requested;
3. If applicable, all estimated development costs in order of priority of need, facilities to be constructed, unit measurements, number of items, and total costs;
4. All land parcels to be acquired listed in priority order, with acreage involved and anticipated dates of acquisition;
5. The cost, title, and name of personnel who would accomplish the project objectives and who would receive benefit from the grant; and
6. The total cost for the entire project proposal with each of the following amounts listed separately:
   a. Heritage ~~grant~~ Grant funds requested;
   b. ~~Applicant~~ Eligible applicant contribution to the project, if applicable; and
   c. Any other sources of funding.

K. The eligible applicant shall answer all questions relevant to the grant applied for and to the Grant Prioritization Process by which the Department evaluates and ranks proposals.

R12-4-710. State Historic Preservation Office Certification

The Department shall not release ~~grant~~ Heritage Grant funds until certification is received from the State Historic Preservation Officer in accordance with A.R.S. §§ 41-861 through 41-864, the State Preservation Act, which mandates that all state agencies consider the potential of activities or projects to impact significant cultural resources.

R12-4-711. Grant-in-Aid Participant Agreements

Before any transfer of funds, a participant shall agree to and sign a Grant-in-Aid Participant Agreement that includes the following minimum stipulations:

1. The participant shall use awarded ~~grant~~ Heritage Grant funds solely for eligible purposes of the funding program as defined by law and as approved by the Department. The participant shall not exceed the ~~grant~~ Heritage Grant allocation unless the parties amend the Grant-in-Aid Participant Agreement.
2. If both parties agree that all project costs shall be expended within the first quarter of the project period, the Department shall transfer the total amount of awarded grant funds to the participant within the first quarter of the project period. In all other cases, the Department shall transfer awarded grant funds, less 10 percent, to the participant within one year of the grant effective date. The Department shall transfer the final 10 percent less any adjustment for actual expenditures upon receipt of a written request and a certification of project completion from the participant, unless the participant ~~violates state law or~~ materially breaches the Grant-in-Aid Participant Agreement. The Department ~~has the authority under~~ shall include provisions in the Grant-in-Aid Participant Agreement that authorize the Department to perform completion inspections and reviews before release of final payment.
3. The participant shall deposit transferred ~~grant~~ Heritage Grant funds in a separate project account carrying the name and number of the project. The participant shall expend funds from the account only as authorized under the terms of the Grant-in-Aid Participant Agreement.
4. The participant may request changes to the terms, scope, conditions, or provisions of the Grant-in-Aid Participant Agreement by writing to the Department. Requests for extension beyond the approved project period shall be submitted by the participant no later than 30 days before the contract expiration date. The Department shall prepare in writing any approved amendments, which ~~must~~ shall be signed by both the participant and the Department to be valid.
5. Notwithstanding subsection (4), the Department shall issue an administrative extension to unilaterally extend the project period by no more than 90 days to perform completion inspections or to complete administrative work if completion inspections or administrative work cannot be completed within the time-frame of the existing Grant-in-Aid Participant Agreement.
6. If the participant ~~violates state law or~~ materially breaches the Grant-in-Aid Participant Agreement, the Department shall seek recovery of all funds granted and classify the participant as ineligible for Heritage ~~Funds grants~~ Grants for a period not to exceed five years.
7. The participant shall operate and maintain ~~grant-assisted~~ all Heritage Grant funded capital improvements and provide reasonable protection of any project improvements.
8. The participant sponsoring a third party or subcontractor is responsible for compliance with the Grant-in-Aid Participant Agreement provisions if the third party or subcontractor defaults.

9. The participant shall use awarded ~~grant~~ Heritage Grant funds solely for costs associated with approved project work incurred during the project period.
10. The project period is designated to be three years from the grant effective date unless otherwise agreed upon by the Department and the participant.
11. If a balance of awarded ~~grant~~ Heritage Grant funds is available upon completion of approved project elements, the participant may, with Department approval, develop additional scope elements.
12. The participant shall request amendments to accommodate additions or changes to the Grant-in-Aid Participant Agreement in writing, stating the need and rationale for the amendments.
13. The participant shall use equipment purchased with ~~grant~~ Heritage Grant funds for an approved public purpose for the useful life of the equipment, or surrender the equipment to the Department upon completion of the project, whichever comes first, if the equipment has an acquisition cost of more than $500. If the equipment is sold, the participant shall pay the Department the amount of any resulting proceeds in the ratio equivalent to the funds provided for the purchase.
14. The participant shall ensure that the value of real property purchased with ~~grant~~ Heritage Grant funds assistance is appraised by an Arizona certified appraiser within one year before the purchase or lease according to the Uniform Standards of Professional Appraisal Practice. The Department has the authority to select an appraiser for an independent evaluation if the Department has evidence that the appraised value of real property is not accurate as submitted by the participant. The Department's acceptance of land conveyance documents is contingent upon approval by the ~~Game and Fish~~ Commission and the ~~governor~~ Governor.
15. The Department shall delay ~~grant~~ payment of Heritage Grant funds to a participant who fails to submit project-status reports as required in R12-4-712 until the participant has submitted all past due project-status reports.
16. The Department ~~has the authority under~~ shall include provisions in the Grant-in-Aid Participant Agreement that authorize the Department to conduct inspections to ensure compliance with all terms of the contract.
17. The participant shall not use ~~grant~~ Heritage Grant funds for the purpose of producing income. However, the participant may engage in income-producing activities incidental to the accomplishment of approved purposes if the participant uses the activities to further the purposes of the approved project or returns the income to the original funding source designated in the Grant-in-Aid Participant Agreement. The participant shall return funds remaining at the end of the project period to the Department.

R12-4-712. Reporting and Record Requirements

A. A participant shall submit ~~biannual project status~~ project status reports to the Department covering activities for the project period within 30 days following the mid-year reporting period (ending June 30) and the end-of-the-year reporting period (ending December 31), unless otherwise specified in the Grant-in-Aid Participant Agreement, including the Special Conditions attachment. The exact timing of the submission of reports to the Department will be as specified in the Grant-in-Aid Participant Agreement and the Special Conditions attachment. A participant shall include a separate section in each report covering all of the following subjects:
1. Progress in completing approved work~~,~~;
2. Itemized, cumulative project expenditures~~,~~; and
3. Anticipated delays and problems preventing on-time completion of the project.

B. A participant shall account for income or interest derived from project funds in the participant's report.

C. After a project is completed and for each year until the end of the term of public use, a participant shall certify compliance with the Grant-in-Aid Participant Agreement and shall complete a post-completion report form.

~~C.~~D. Each participant shall retain and shall contractually require each subcontractor to retain all books, accounts, reports, files, and other records relating to the acquisition and performance of the contract for a period of five years after the completion of the contract. The Department may inspect and audit participant and subcontractor records ~~based on verified complaints or evidence that indicates the need for an inspection or audit~~ at any time during the contract period or within five years after the completion of the contract upon reasonable notice. Upon the Department's request, a participant or subcontractor shall produce a legible copy of these records. The participant shall bear full responsibility for acceptable performance by a subcontractor under each subcontract. The participant may substitute ~~microfilm~~ electronic copies in place of the original records after project costs have been verified.

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 7. OIL AND GAS CONSERVATION COMMISSION

[R07-427]

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R12-7-115	Amend
R12-7-121	Amend

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

Authorizing statutes: A.R.S. §§ 27-515(B)(3), 27-516(A) and 27-656

Implementing statutes: A.R.S. §§ 27-516(A)(2) and (A)(12), 27-522, 27-653, and 27-661

3. The effective date of the rules:

February 2, 2008

4. A list of all previous notices concerning the rules:

Notice of Rulemaking Docket Opening: 13 A.A.R. 43, January 5, 2007

Notice of Proposed Rulemaking: 13 A.A.R. 1213, April 6, 2007

Notice of Oral Proceeding on Proposed Rulemaking: 13 A.A.R. 3046, August 31, 2007

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

Name: Steven L. Rauzi, Oil & Gas Administrator

Address: Arizona Geological Survey
416 W. Congress, Suite 100
Tucson, AZ 85701-1315

Telephone: (520) 770-3500

Fax: (520) 770-3505

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

R12-7-115 specifies requirements for directional drilling and deviation surveys and R12-7-121 specifies completion and filing requirements for drilled wells. The agency is amending R12-7-115 to clarify what is meant by the normal vertical course of a well and require testing at reasonably frequent intervals to determine the deviation from vertical. The agency is amending R12-7-121 to improve understandability by adding language to make the rule consistent with governing statues and state that the completion report is confidential in addition to all other well information.

The agency extended the time for public comment because of a defect in the July 13 oral proceeding to adopt the rules. The agency closed the record, prepared new documents, and submitted the final rule package to the Governor's Regulatory Review Council after taking additional public comment.

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

None

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

Not applicable

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

These rules directly impact companies drilling for oil, gas, and geothermal resources. The rules are mostly procedural in nature and will not significantly impact the economy or have a significant impact upon small businesses or consumers. The proposed rulemaking will benefit the regulated community by clarifying what is meant by the normal vertical course of a well and clearly stating that the completion report is confidential in addition to other well data. No private persons or consumers are directly affected by the proposed rulemaking.

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

Minor changes were made at the suggestion of the Governor's Regulatory Review Council's staff to improve the clarity, conciseness, and understandability of the rules.

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

No written comments were received. No oral comments were received at the July 13, 2007 or October 19, 2007 oral proceedings to adopt the amended rules.

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

None

13. Any material incorporated by reference and its location in the text:

None

14. Were these rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 7. OIL AND GAS CONSERVATION COMMISSION

ARTICLE 1. OIL, GAS, HELIUM, AND GEOTHERMAL RESOURCES

Section
R12-7-115. Deviation of Hole and Directional Drilling
R12-7-121. Well Completion and Filing Requirements

ARTICLE 1. OIL, GAS, HELIUM, AND GEOTHERMAL RESOURCES

R12-7-115. Deviation of Hole and Directional Drilling

A. ~~No~~ An operator drilling a well ~~may be~~ shall not intentionally ~~deviated~~ deviate from ~~its~~ the normal vertical course of the well unless the operator ~~shall~~ first ~~file~~ files an application and ~~obtain~~ obtains approval from the Commission after notice and hearing. The normal vertical course of a well is defined by ~~a tolerance wherein the maximum deviation of the well does not exceed a 100-foot radius from the surface location~~ an average deviation from vertical of not more than five degrees in any 500-foot interval. The operator shall test any vertical or deviated well that is drilled or deepened at least once each 500 feet or at the first bit change succeeding 500 feet. The operator shall tabulate all deviation tests run and file the tabulation with the Commission within 30 days after drilling is completed. Deviation from the vertical for short distances is permitted in the drilling of a well without special approval only to straighten the hole, sidetrack junk, or correct other mechanical difficulties.

B. An application for directional drilling shall include
1. The name, address, and ~~phone~~ telephone number of the operator;
2. The field name, lease name, well number, state permit number, reservoir name, and county where the proposed well is located;
3. A plat or sketch showing the distance from the surface location to section and lease lines and to the target location within the intended producing interval;
4. The reason for the intentional deviation; and
5. The signature of the operator.

C. The operator of any well capable of production and whose producing interval or any portion ~~thereof~~ of the producing interval is located 330 feet or less in the case of an oil well or 1,660 feet or less in the case of a gas well from the boundary of any drilling unit shall run a directional survey before running the production casing.

D. In order to ensure compliance with this Section, the Commission may require the operator to run a directional survey of any hole at the operator's expense. The Commission may require an operator to run a directional survey of any hole at the request of an offset operator at the expense and risk of the offset operator unless the survey shows that the well is completed at a point outside the drilling unit or at an unauthorized point.

E. Within 30 days following the completion of drilling a directionally-drilled well, the operator shall file with the Commission a complete angular deviation and directional survey of the well, obtained by a well survey company.

F. ~~Nothing in these rules shall be interpreted to permit the drilling of any~~ An operator shall not drill a well in ~~such~~ a manner that ~~it crosses the~~ results in the well crossing drilling unit lines, except by approval obtained from the Commission after notice and hearing.

R12-7-121. Well Completion and Filing Requirements

A. An operator shall file a completion report with the Commission within 30 days after a well is completed. The completion report shall contain a description of the well and lease, the casing, tubing, liner, perforation, stimulation, and cement squeeze records, and data on the initial production. The operator shall submit other well data to the Commission within 30 days of the date the work is done, including any:
1. Lithologic, mud, or wireline log;
2. Directional survey;
3. Core description and analysis;
4. Stratigraphic or faunal determination;
5. Formation or drill-stem test;
6. Formation fluid analysis; or
7. Other similar information or survey.

B. An operator shall furnish samples of all drilled cuttings, at a maximum interval of 10 feet, to the Commission within 30 days after drilling is completed. The operator may furnish samples of continuous core in chips at 1-foot intervals. The operator shall:
1. Wash and dry all samples;
2. For each sample, place approximately 3 tablespoons of the sample in an envelope with the following identifying information: the well from which the sample originates, the location of the well, the Commission's permit number for the well, and the depth at which the sample is taken; and
3. Package sample envelopes in protective boxes and ship prepaid to:
   Oil and Gas Administrator
   Arizona Geological Survey
   416 ~~West~~ W. Congress, ~~Suite~~ Ste. 100
   Tucson, AZ 85701

C. Confidential records:
1. The Commission shall keep the completion report and all well information required by this Section for any well drilled for oil and gas in unproven territory confidential for ~~1~~ one year after the drilling is completed unless the operator gives written permission to release the information at an earlier date. The Commission shall provide notice to the operator 60 days before confidential records become subject to public inspection and, at the operator's request, extend the confidential period for ~~6~~ six months to ~~2~~ two years from the date of the request if the Commission finds that the operator has ~~demonstrated that release would~~ provided credible evidence that disclosure of the information is likely to cause harm to the operator's competitive position with respect to unleased land in the vicinity of the well.
2. The Commission shall keep the completion report and all well information required by this Section for any well drilled in search of geothermal resources confidential for one year after drilling is completed upon operator request.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 1. DEPARTMENT OF TRANSPORTATION ADMINISTRATION

[R07-424]

PREAMBLE

1. Sections Affected:	Rulemaking Action:
R17-1-501	Amend
R17-1-502	Amend
R17-1-503	Amend
R17-1-504	New Section
R17-1-505	Renumber
R17-1-505	Amend
R17-1-506	Renumber
R17-1-506	Amend
R17-1-507	Renumber
R17-1-507	Amend
R17-1-508	Renumber
R17-1-508	Amend

R17-1-509	Renumber
R17-1-509	Amend
R17-1-510	Renumber
R17-1-510	Amend
R17-1-511	Renumber
R17-1-511	Amend
R17-1-512	Renumber
R17-1-512	Amend
R17-1-513	Renumber
R17-1-513	Amend
R17-1-514	New Section

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

Authorizing statute: A.R.S. § 28-366

Implementing statute: A.R.S. §§ 1-243, 28-1321, 28-1385, 28-1463, 28-2059(B), 28-3306, 28-3310, 28-4143, 28-4144, 28-4153, 28-4366, 28-4495, 28-4498, 28-4499, 28-4538, 28-4554, 28-5004, 28-5107, 28-5725, 28-5865, 28-5924, 28-7906, 28-8244, 41-1061, & 41-1062

3. The effective date of the rules:

February 3, 2008

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

Notice of Rulemaking Docket Opening: 13 A.A.R. 1563, May 4, 2007

Notice of Proposed Rulemaking: 13 A.A.R. 2753, August 10, 2007

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

Name: Janette M. Quiroz

Address: Administrative Rules Unit
Department of Transportation
Motor Vehicle Division
1801 W. Jefferson, MD 530M
Phoenix, AZ 85007

Telephone: (602) 712-8996

Fax: (602) 712-3081

E-mail: jmquiroz@azdot.gov

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.dot.state.az.us/about/rules/index.htm.

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

The Division has amended these rules by adding several Arizona Supreme Court Rules to provide a more clear, concise and understandable process as well as provide continuity to the Administrative Hearings rules.

Additional amendments were made which provide for timely filing of motions and subpoenas, as well as other non substantive amendments.

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

The Division did not review nor rely upon any study relevant to this rulemaking.

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

Not applicable

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

The Division anticipates a negligible economic impact to most parties as a result of this rulemaking.

However, the Division does anticipate that there will be an unquantifiable impact to either a petitioner or respondent as a result of the addition of timeliness as a consideration in the issuance of a subpoena. Adding timeliness as a consideration for subpoena may impact potential witnesses or materials subpoenaed as a request made in an untimely manner may cause an undue burden being placed upon either a person being subpoenaed, or a person responsible for providing material.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):
Minor technical and grammatical changes were made by the Division and at the suggestion of Council staff.

11. A summary of the comments made regarding the rules and the agency response to them:
No public comments were received by the Division.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
None

13. Incorporations by reference and their location in the rules:
None

14. Was this rule previously adopted as an emergency rules?
No

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 1. DEPARTMENT OF TRANSPORTATION ADMINISTRATION

ARTICLE 5. ADMINISTRATIVE HEARINGS

Section
R17-1-501. Definitions
R17-1-502. Request for Hearing
R17-1-503. Notice of Hearing
R17-1-504. Representation
~~R17-1-504.~~R17-1-505. Administrative Hearing Procedure
~~R17-1-505.~~R17-1-506. Administrative Hearing Evidence
~~R17-1-506.~~R17-1-507. Time Computation
~~R17-1-507.~~R17-1-508. Motion Practice
~~R17-1-508.~~R17-1-509. Subpoena Issuance
~~R17-1-509.~~R17-1-510. Document Filing
~~R17-1-510.~~R17-1-511. Continuing an Administrative Hearing
~~R17-1-511.~~R17-1-512. Rehearing and Judicial Review
~~R17-1-512.~~R17-1-513. Summary Review of an Administrative Suspension Order Under A.R.S. § 28-1385
~~R17-1-513.~~R17-1-514. Maintaining Administrative Hearing Decorum

ARTICLE 5. ADMINISTRATIVE HEARINGS

R17-1-501. Definitions

~~In this Article, unless a statute or specific rule otherwise requires:~~ The following definitions apply to this Article unless otherwise required:

1. "Administrative hearing" means a scheduled ~~executive hearing office~~ Executive Hearing Office proceeding for deciding a dispute based on the evidence presented to an administrative law judge. An administrative hearing includes:
   a. Advance notice to participants of record,
   b. An opportunity for witnesses to testify under oath, and
   c. Presentation of documentary evidence.
2. "Administrative law judge" means a person who conducts a summary review or presides at an administrative hearing, with the powers listed ~~in R17-1-504(A) and R17-1-504(B)~~ under these rules.
3. "Affidavit" means a declaration or statement of facts made:
   a. In writing, and
   b. Under oath or affirmation.
4. "Agency action" means an action affecting a license, permit, certificate, approval, registration, or other permission issued by the Arizona Department of Transportation or the Division.
5. "Attorney" means:
   a. An individual who is an active member in good standing with the State Bar of Arizona,

b. An individual approved to appear pro hac vice before the Executive Hearing Office pursuant to Rule 38(A) of the Arizona Supreme Court, or
c. An individual authorized by Rule 31 of the Arizona Supreme Court to appear on behalf of another person or legal entity at a hearing before the Executive Hearing Office.

~~5.~~6. "Business day" means a day other than a Saturday, Sunday, or state holiday.
~~6.~~7. "Deposition" means a witness' testimony:
a. Given under oath or affirmation,
b. Brought out by another person's oral or written questions, and
c. Reduced to writing for a proceeding.
~~7.~~8. "Director" means the Arizona Department of Transportation, Motor Vehicle Division Director.
~~8.~~9. "Division" means the Arizona Department of Transportation, Motor Vehicle Division.
~~9.~~10. "Executive ~~hearing office~~ Hearing Office" means the branch of the Director's office that conducts an administrative hearing or a summary review.
~~10.~~11. "In writing" means:
a. An original document,
b. A photocopy,
c. A facsimile, or
d. An electronic mail message.
~~11.~~12. "Motion" means a written or oral proposal for consideration and action filed by a person with ~~the executive hearing office~~ Executive Hearing Office.
~~12.~~13. "Participant of record" means:
a. A petitioner or a respondent;
b. An attorney representing a petitioner~~, a~~ or respondent, ~~or a person or entity under subsection (12)(c)~~; ~~and~~ or
c. A person or entity with an interest in the subject matter of an administrative hearing as determined from Division records or from Arizona Department of Transportation records.
~~13.~~14. "Petitioner" means a person or entity that requests an administrative hearing or a summary review from the ~~executive hearing office~~ Executive Hearing Office.
~~14.~~15. "Respondent" means a person against whom relief is sought in an ~~executive hearing office~~ Executive Hearing Office proceeding.
~~15.~~16. "Summary review" means an ~~executive hearing office~~ Executive Hearing Office proceeding~~, other than an administrative hearing~~, conducted under A.R.S. § 28-1385(L).
~~16.~~17. "Under oath or affirmation" means a witness' sworn statement made to a person with the power to administer an oath or affirmation.

R17-1-502. Request for Hearing

A. A petitioner or petitioner's attorney shall file a request for a hearing:
1. By mail or hand delivery to the ~~executive hearing office's~~ Executive Hearing Office's street address: Executive Hearing Office, Arizona Department of Transportation, Motor Vehicle Division, 3737 N. 7th ~~Street~~ St., Suite 160, Phoenix, AZ 85014-5017;
2. By fax to (602) 241-1624; or
3. By e-mail to the ~~executive hearing office's~~ Executive Hearing Office's electronic mail address: ~~HEARINGOFFICE@dot.state.az.us.~~ hearingoffice@azdot.gov
4. Timeliness of filing is determined as of the date the ~~executive hearing office~~ Executive Hearing Office receives a ~~hearing~~ request for hearing.

B. ~~If a statute does not provide a period to request a hearing, the period lasts for~~ A request for hearing shall be submitted to the Executive Hearing Office within 15 days ~~after~~ of the date of an agency action notice.

C. A request for a hearing shall include the petitioner's name, ~~and~~ mailing address, and telephone number.

R17-1-503. Notice of Hearing

A. If a petitioner timely files a request for a hearing as provided under R17-1-502, the ~~executive hearing office~~ Executive Hearing Office shall send a notice of hearing to the petitioner's mailing address in the request for hearing and to any other participant of record.

B. The notice of hearing shall state the:
1. Time, date, and place of the administrative hearing,
2. Type of administrative hearing, and
3. Statutory authority for the administrative hearing.

R17-1-504. Representation

A. Prior to any appearance, a petitioner's or respondent's attorney licensed in a state other than Arizona, shall file with, and obtain approval from, the Executive Hearing Office the following documentation:
1. An original motion to appear pro hac vice,

2. The Notice of Receipt of Complete Application from the State Bar of Arizona, and
3. The original certificate of good standing from the licensing State Bar.

B. Documentation under subsection (A) shall be filed with the Executive Hearing Office at least five business days before date of appearance.

C. Non-compliance with this Section shall result in the exclusion of a petitioner's or respondent's attorney licensed in a state other than Arizona from participation in an administrative hearing.

~~R17-1-504.~~ R17-1-505. Administrative Hearing Procedure

A. An administrative law judge shall preside at an administrative hearing and shall:
1. Administer oaths or affirmations;
2. Conduct fair and impartial hearings;
3. Have the parties state orally at the hearing their positions on the issues;
4. Rule on motions filed ~~according to R17-1-507~~ under R17-1-508;
5. Maintain an administrative hearing record; ~~and~~
6. Issue a written decision, including findings of fact and conclusions of law, based on the record~~.~~, and
7. Sustain an agency action supported by the record, state and administrative law.

B. In addition to the requirements of subsection (A), an administrative law judge may:
1. Issue a subpoena for the attendance of a relevant ~~witnesses~~ witness or for the production of relevant documents or things, ~~or~~ and
2. Question a witness.

C. An administrative law judge may order summary suspension of a license according to A.R.S. § 41-1064(C).

~~D.~~ ~~An administrative law judge shall sustain an agency action supported by the record and the law.~~

D. A.R.S. § 41-1063 applies to the contents and service of an administrative hearing decision.

~~E.~~ ~~A.R.S. § 41-1063 applies to the contents and service of an administrative hearing decision.~~

E. A participant of record shall not communicate, either directly or indirectly, with the administrative law judge about any substantive issue in a pending matter unless:
1. All participants of record are present;
2. Communication is during a scheduled proceeding, where an absent participant of record fails to appear after proper notice; or
3. Communication is by written motion with copies to all participants of record.

F. At the request of a participant of record or at the judge's discretion, an administrative law judge may order a witness excluded from the hearing room except:
1. A participant of record, or
2. A person whose presence is shown to be essential to the presentation of a participant of record's case.

~~R17-1-505.~~ R17-1-506. Administrative Hearing Evidence

A. A.R.S. §§ ~~41-1062(A)(1) through 41-1062(A)(3) apply~~ 41-1062(A) applies to evidence offered in an administrative hearing.

B. ~~If a witness cannot be subpoenaed or is unable to attend an administrative hearing, the~~ The administrative law judge may admit ~~the~~ a witness' deposition or affidavit and determine its evidentiary weight. The party taking a witness' deposition or affidavit shall bear all deposition-related or affidavit-related costs.

~~R17-1-506.~~ R17-1-507. Time Computation

In computing a time period under this Article, the ~~executive hearing office~~ Executive Hearing Office shall:
1. Exclude the day of the act triggering the period;
2. If the last day is a Saturday, Sunday, or legal holiday, extend the period to the end of the next business day;
3. If the period is 10 days or less, count only the business days; and
4. If service is by mail, extend the period by five days.

~~R17-1-507.~~ R17-1-508. Motion Practice

A. A party or a party's attorney making a motion shall state in the motion the relief sought, the factual basis, and the legal authority for the requested relief.
1. For a pre-hearing motion, a party or a party's attorney shall:
   a. Make the motion in writing, and
   b. File the motion with the ~~executive hearing office~~ Executive Hearing Office at least five business days before the administrative hearing.
2. For a motion made at an administrative hearing:
   a. A party or a party's attorney may make the motion orally, and
   b. The administrative law judge may require the party or the party's attorney to file the motion in writing.

B. An administrative law judge may include a ruling on a motion in an administrative hearing decision.

~~R17-1-508.~~ R17-1-509. Subpoena Issuance

A. In connection with an administrative hearing, an administrative law judge may issue a subpoena to compel the attendance of a witness or the production of documents or things.
1. A party or a party's attorney requesting a subpoena shall file a written subpoena request, briefly stating the substance of the evidence sought and why the evidence is necessary for the hearing.
2. An administrative law judge has discretion to issue or deny a subpoena based on the:
   a. Relevance of the evidence sought, ~~or~~
   b. Reasonable need for the evidence sought, and
   c. Timeliness of the request.

B. A party or a party's attorney requesting a subpoena shall:
1. Draft the subpoena in the correct format, including:
   a. The caption and docket number of the matter;
   b. A list of documents or things to be produced;
   c. The full name and address of:
      i. The custodian of the documents or things listed, or
      ii. The person ordered to appear;
   d. The time, date, and place to appear or to produce documents or things; and
   e. The name, address, and telephone number of the party or the party's attorney requesting the subpoena;
2. Obtain an administrative law judge's signature on the subpoena,
3. Ensure service of the subpoena on the person named in the subpoena under subsection (C), and
4. Bear all subpoena-related costs.

C. Unless otherwise provided by statute or administrative rule, a party or a party's attorney requesting a subpoena shall have the subpoena served by a person who:
1. Is at least age 18 and is not a party to the administrative hearing;
2. Delivers, within Arizona, a copy of the subpoena to the person named in the subpoena;
3. If the subpoena requires the named person's attendance at an administrative hearing, hands the named person the amount prescribed in A.R.S. § 12-303 as the witness fee for one day's attendance and allowed mileage; and
4. Files with the ~~executive hearing office~~ Executive Hearing Office a proof of service, signed by the person who served the subpoena, certifying:
   a. The date of service,
   b. The manner of service, and
   c. The name of the person served.

D. A party or a person served with a subpoena who objects to the subpoena or a portion of the subpoena, may file an objection in writing with the ~~executive hearing office~~ Executive Hearing Office. The party or person served with the subpoena shall:
1. State in the objection the reasons for objecting; and
2. File the objection:
   a. Within five days after service of the subpoena; or
   b. If the subpoena is served less than five days before an administrative hearing, at the start of the hearing.

E. An administrative law judge may quash or modify a subpoena if:
1. The subpoena is unreasonable or imposes an undue burden, or
2. The evidence sought may be obtained by another method.

F. Unless otherwise provided by statute or administrative rule, a party or a party's attorney requesting a subpoena or the Arizona Department of Transportation shall enforce the subpoena in the Superior Court of Arizona, in the county where the administrative hearing is held.

~~R17-1-509.~~ R17-1-510. Document Filing

A. A document filed in an ~~executive hearing office~~ Executive Hearing Office proceeding shall state:
1. The description and title of the proceeding,
2. The name of the party filing the document,
3. The date the document is signed,
4. The title and address of the document's signer, and
5. If applicable, the attorney's name, state bar number, law firm, address, and telephone number.

B. A party or a party's attorney shall sign a document filed with the ~~executive hearing office~~ Executive Hearing Office. By signing, the signer certifies that:
1. The signer read the document;
2. The document is supported by the facts and the law or by a good faith argument to extend, modify, or reverse the law; and
3. The document is not filed to harass, delay, or needlessly increase the cost of the ~~executive hearing office~~ Executive Hearing Office proceeding.

C. A document is filed as of the date the ~~executive hearing office~~ Executive Hearing Office receives the document.

~~R17-1-510.~~ R17-1-511. Continuing an Administrative Hearing

A. An administrative hearing participant of record requesting a continuance shall file the request with the Executive Hearing Office at least seven business days before the hearing. The continuance request shall state a reason for continuing the administrative hearing.

B. An administrative law judge shall not grant a continuance unless the participant of record establishes good cause for the continuance. ~~For an untimely request, the administrative law judge shall not grant the request unless the participant of record establishes good cause for the delay in filing the request.~~

~~**C.** An administrative law judge shall include in the record the reason for denying a continuance~~.

C. An administrative law judge shall not grant a request for continuance which is untimely unless the participant of record establishes good cause for the delay in filing the request.

~~R17-1-511.~~ R17-1-512. Rehearing and Judicial Review

A. A party may file a written motion for rehearing with the executive hearing office, stating in detail the reasons a rehearing should be granted. ~~Unless otherwise provided by statute, a motion for rehearing is timely if received by the executive hearing office within:~~

~~1. Fifteen days after the date of in-person service of the administrative hearing decision, or~~
~~2. Fifteen days after the mailing date of the administrative hearing decision.~~

B. Unless otherwise provided by statute, a motion for rehearing is timely if received by the Executive Hearing Office within the later of:

1. Fifteen days after the date of in-person service of the administrative hearing decision, or
2. Fifteen days after the mailing date of the administrative hearing decision.

~~B.~~C. A timely motion for rehearing stays an agency action, other than:

1. A summary suspension under A.R.S. § 41-1064(C), or
2. An agency action sustained under subsection ~~(I)~~ (J).

~~C.~~D. An administrative law judge may grant a rehearing for any of the following reasons materially affecting a party's rights:

1. Irregularity in the proceedings of the Arizona Department of Transportation or the Division, or any order or abuse of discretion, that deprived the moving party of a fair hearing;
2. Misconduct of the Arizona Department of Transportation or the Division, its staff, an administrative law judge, or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
5. Excessive penalty;
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings;
7. That the administrative hearing decision is a result of passion or prejudice; or
8. That the findings of fact or decision is not justified by the evidence or is contrary to law.

~~D.~~E. An administrative law judge may affirm or modify an administrative hearing decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection ~~(C)~~ (D). An order modifying an administrative hearing decision or granting a rehearing shall specify ~~with particularity~~ the grounds for the order.

~~E.~~F. ~~In spite of any motion for rehearing, an~~ An administrative law judge may order a rehearing for a reason under in subsection ~~(C)~~ (D).

~~F.~~G. An administrative law judge may require the filing of written briefs on the issues raised in a motion for rehearing.

~~G.~~H. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. An administrative law judge may extend this period for a maximum of 20 days for good cause as described in subsection ~~(H)~~ (I) or by written stipulation of the parties. Reply affidavits may be permitted at the discretion of the administrative law judge.

~~H.~~I. An administrative law judge may extend the time limits in subsections (A) and ~~(G)~~ (H) upon a showing of good cause. A party demonstrates good cause by showing that the grounds for the party's motion or other action could not have known in time, using reasonable diligence, and a ruling on the motion will:

1. Further administrative convenience, expedition, or economy; or
2. Avoid undue prejudice to any party.

~~I.~~J. An administrative law judge shall issue an administrative hearing decision as a final decision without an opportunity for a rehearing if the administrative law judge makes specific findings that:

1. The public health, safety, and welfare require immediate effectiveness of the administrative hearing decision; and
2. A rehearing of the decision is impractical, unnecessary, or contrary to the public interest.

~~J.~~K. A party may appeal or request judicial review of a final administrative hearing decision in the Superior Court of Arizona as provided by statute.

~~R17-1-512.~~R17-1-513. Summary Review of an Administrative Suspension Order under A.R.S. § 28-1385

A. A petitioner issued a driving privilege suspension order under A.R.S. § 28-1385, may request summary review instead of a hearing.
1. The requirements of R17-1-502 apply to a summary review request.
2. The petitioner or the petitioner's attorney may include with the summary review request a written statement of:
   a. The reasons why the Division should not suspend the petitioner's driving privilege, and
   b. ~~Evidence that~~ Reasons to find that at least one issue in subsections (C)(1) through (C)(3) is not met by the affidavit filed by a law enforcement officer with the Department.

B. An administrative law judge conducting summary review of a suspension order under A.R.S. § 28-1385 shall:
1. Conduct the summary review without the petitioner's presence,
2. Examine the documents in the ~~executive hearing office~~ Executive Hearing Office case file, and
3. Issue a written summary review decision sustaining or voiding the suspension order.

C. An administrative law judge conducting summary review of a suspension order under A.R.S. § 28-1385 shall consider the following factors:
1. Whether the law enforcement officer's certified report reflects the officer had reasonable grounds to believe the petitioner was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor;
2. Whether the law enforcement officer's certified report reflects the officer placed the petitioner under arrest for a violation of A.R.S. §§ 4-244(33), 28-1381, 28-1382, or 28-1383, and the petitioner complied with A.R.S. § 28-1321;
3. Whether the law enforcement officer's certified report reflects petitioner's test results indicating at least the applicable alcohol concentration stated in A.R.S. § 28-1385; and
4. Whether the petitioner's written statement of the reasons why the Division should not suspend the petitioner's driving privilege provides convincing evidence that at least one issue in subsections (C)(1) through (C)(3) was not met.

~~R17-1-513.~~R17-1-514. Maintaining Administrative Hearing Decorum

A. All hearings are open to the public, however ~~A~~ a person shall not interfere with access to or from a hearing room, or interfere, or threaten interference with a hearing. ~~If a person interferes, threatens interference, or disrupts a hearing, the administrative law judge may order the disruptive person to leave or be removed.~~

B. If a person interferes, threatens interference, or disrupts a hearing, the administrative law judge may order the disruptive person to leave or be removed.

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 12. DEPARTMENT OF ENVIRONMENTAL QUALITY UNDERGROUND STORAGE TANKS

[R07-430]

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R18-12-101	Amend
R18-12-263	Amend
R18-12-263.04	New Section
R18-12-264.01	Amend
Article 9	New Article
R18-12-901	New Section
R18-12-902	New Section
R18-12-903	New Section

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

Authorizing statutes: A.R.S. §§ 49-104(B)(4), 49-104(B)(16), 49-1014(A); Laws 2004, Ch. 273, § 12

Implementing statutes: A.R.S. §§ 49-1005, 49-1015.01, 49-1052

3. The effective date of the rules:

February 2, 2008

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

Notice of Rulemaking Docket Opening: 12 A.A.R. 3570, September 29, 2006

Notice of Proposed Rulemaking: 13 A.A.R. 2760, August 10, 2007

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

Name: Joseph Karl Drosendahl

Address: 1110 W. Washington St.
Phoenix, AZ 85007

Telephone: (602) 771-4845

Fax: (602) 771-4346

E-mail: Drosendahl.joseph@azdeq.gov

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

Summary

The Arizona Department of Environmental Quality (ADEQ) has finalized rules: 1) for issuance of no further action (NFA) letters for leaking underground storage tank (LUST) sites once the source of contamination has been removed and a corrective action plan has been approved that includes monitored natural attenuation (MNA); 2) to implement the MNA account to be used by ADEQ to continue to monitor LUST sites that have been issued an NFA letter and to perform additional corrective actions if necessary, and 3) allowing ADEQ to close certain groundwater LUST cases where there is an exceedance of the aquifer water quality standards.

History

A.R.S. § 49-1005(E) allows the Department to close certain leaking underground storage tank (LUST) sites where groundwater quality exceeds water quality standards. Laws 2004, Ch. 273, (SB 1306) created the No Further Action (NFA) letter, and the Regulated Substance Fund which includes the Monitored Natural Attenuation (MNA) Account.

As of June 1, 2007, the cumulative number of LUSTs reported was 8,299. Of these, 84 percent, or 6,975 had been closed and 16 percent or 1,324 remained open. As of June 1, 2007, there were approximately 800 known LUST sites associated with groundwater contamination.

The State Assurance Fund (SAF) was created in 1993, to provide funding to certain UST owners and operators in order to perform corrective actions at eligible LUST sites. However, SB 1306 phased out the SAF, and therefore, after June 30, 2010, UST owners will have to access their required financial assurance mechanism to pay for corrective action costs.

In accordance with SB 1306, UST releases reported after June 30, 2006, are not eligible for SAF reimbursement, and pre-approval work plans will not be accepted after June 30, 2009. After June 30, 2010, SAF applications will not be accepted, and on July 1, 2011, monies remaining in the SAF will be deposited into the Regulated Substance Fund.

Throughout the process of developing these rules, the Department has involved UST stakeholders. The Department convened a series of stakeholder meetings in 2007, with the purpose of discussing the rulemaking. Participants included members of the business community, UST owners and operators, environmental consultants, the interested public, and regulators. In addition, the UST Policy Commission reviewed the draft rules and recommended approval of the rules with a couple of modifications that were incorporated.

Agency's reason for initiating the rules

SB 1306, Section 12 states, "The director of environmental quality shall adopt rules to implement sections 1, 2 and 9 of this act, including rules that may relate to the imposition of reasonable fees for review of reports related to releases and corrective actions after June 30, 2011." Further, in accordance with A.R.S. § 49-1052(N), the Department can only issue a NFA letter on adoption of rules, and after other requirements specified in that Section are met. Lastly, under A.R.S. § 49-1005(E), the Department director is required adopt rules to implement the process to close certain groundwater leaking underground storage tank (LUST) sites with water quality exceeding water quality standards. This rulemaking was intended to meet the requirements of SB 1306, Section 12 and A.R.S. § 49-1005(E).

General Description of the Programs Created by SB1306

Two aspects of SB1306 are addressed in this rulemaking: the MNA program and a new process for the Department to address groundwater LUST case closures.

In certain circumstances, groundwater cleanup can be achieved by allowing natural processes to take their course. These "natural attenuation" processes include physical, chemical, and biological processes. SB 1306 created a program for assisting UST owners and operators in paying for corrective actions even after the SAF eligibility expires on June 30, 2010. The MNA Program applies to SAF eligible LUST sites and is strictly a voluntary program. The MNA Account will be available to the Department to finance continued corrective actions, if UST owners and operators meet the conditions of the MNA Program. Under the MNA Program, the Department will issue a NFA letter to the UST owner or operator, which relieves the UST owner or operator from performing further corrective actions. NFA letters are not LUST case closure letters. The Department will conduct monitoring to track the natural attenuation process until the site is eligible for LUST case closure. These rules set forth the requirements for the MNA program.

The new process for groundwater LUST case closures is not related to the MNA Program or NFA letters. The process applies to SAF and non-SAF LUST sites that are determined to be eligible. While public notice will be required, a Declaration of Environmental Use Restriction (DEUR) will not be required. The Arizona Department of Water Resources will be notified, and ADEQ intends to maintain a list of sites closed under this rule which will be available to the public.

Section-by-Section explanation of the final rules

This section of the preamble describes specific changes in the final rules compared to the existing rules. In the preparation of the proposed rule, the Department tried to address comments received and questions raised at the stakeholder meetings, as well as comments received subsequent to those meetings. No comments were received after the rules were proposed.

R18-12-101. Definitions:

This Section adds three new definitions to the existing definitions: monitored natural attenuation, natural attenuation, and source of contamination.

R18-12-263. Remedial Response

Subsection (B) is amended to include the citation to R18-12-263.04 which is the proposed alternative process for obtaining LUST case closures for certain LUST sites that have exceedances of the aquifer water quality standards.

R18-12-263.04. Groundwater LUST Case Closures:

Subsection (A) specifies two ways that ADEQ can approve corrective actions that result in exceedances of the aquifer water quality standards: under the existing rule, and under this new Section.

Subsection (B) lists site specific information that ADEQ will consider in making the decision to close a LUST case.

Subsection (C) requires ADEQ to provide public notice when considering LUST case closure under this new Section.

Subsection (D) explains conditions for approving LUST case closure under this new Section.

Subsection (E) requires ADEQ to notify the UST owner and operator when approving LUST case closure under this new Section.

Subsection (F) specifies conditions that warrant ADEQ reopening the LUST case and requiring additional corrective actions.

R18-12-264.01. Public Participation:

This Section was amended to make it applicable to groundwater LUST case closures.

R18-12-901. Regulated Substance Fund:

This Section describes the regulated substance fund and its purposes.

R18-12-902. Monitored Natural Attenuation (MNA) Account:

This Section describes the uses of the MNA account.

R18-12-903. Monitored Natural Attenuation (MNA) Program:

Subsection (A) specifies which LUST sites are eligible for this new program.

Subsection (B) describes the contents of the MNA Program application.

Subsection (C) explains the conditions for approving the MNA Program application.

Subsection (D) requires ADEQ to notify the applicant when approving the MNA Program application.

Subsection (E) describes the contents of a no further action letter.

Subsection (F) describes the future corrective actions that will be performed by ADEQ.

Subsection (G) describes the conditions under which ADEQ may rescind the approval of a MNA Program application and no further action letter.

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

None

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

Not applicable

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

Rule Identification. This rulemaking amends 18 A.A.C. 12, Articles 1 and 2, and creates a new Article 9. Refer to item 6 of this preamble for additional information.

Entities Affected. ADEQ expects this rulemaking to impact the following classes of persons: the public, including people living near leaking underground storage tanks and prospective purchasers of real property; UST owners and operators of leaking underground storage tank (LUST) sites; businesses conducting remediation; and ADEQ as the implementing agency.

Brief Overview of Changes and Applicability.

These rules: 1) allow for issuance of a no further action (NFA) letter for leaking underground storage tank (LUST) sites once the source of contamination has been removed and a corrective action plan has been approved that includes monitored natural attenuation (MNA); 2) allow ADEQ to close certain groundwater LUST cases where there is an exceedance of the aquifer water quality standards, and 3) implement the MNA account that will be used by ADEQ to continue to monitor LUST sites that have been issued an NFA letter and to perform additional corrective actions if necessary.

As of June 1, 2007, the cumulative number of UST releases reported to ADEQ was 8,299. Of these, 84 percent, or 6,975 had been closed and 16 percent or 1,324 remained open. As of June 1, 2007, there were approximately 800 known LUST cases associated with groundwater contamination. These final rules provide options for the 800 known LUST cases associated with groundwater contamination.

Cost-Benefit Analysis.

ADEQ expects this rulemaking to generate benefits that easily exceed the costs associated with these rules.

R18-12-903 provides for the issuance of a no further action letter to an UST owner or operator of a LUST site, or a person undertaking corrective action there, if the site qualifies for the monitored natural attenuation (MNA) program. A no further action letter means that ADEQ will not require the UST owner or operator of a LUST site to perform additional corrective action at the site. The letter also provides specific economic benefits to the property owner by reducing the uncertainty associated with the contamination at the site, allowing the property to be more easily sold or used as collateral, and allowing it to be developed with reduced concerns of environmental liability. Indirect benefits should accrue to neighboring property owners. There is minimal cost to the UST owner or operator of a LUST site in preparing and submitting an application for the MNA Program. ADEQ provides the required public notice at no cost to the applicant. Costs associated with source control or removal which must be performed prior to obtaining a no further action letter may be reimbursed under the SAF (State Assurance Fund).

R18-12-263.04 provides an alternative way of reducing uncertainty at a LUST site with groundwater contamination, by allowing ADEQ to close certain groundwater LUST cases where there is an exceedance of the aquifer water quality standards. ADEQ will consider site specific conditions such as complete source control or removal, and the existence of natural attenuation before approving LUST case closure. LUST case closure means that corrective action on the site is complete. As with no further action letters, LUST case closure also provides specific economic benefits to the property owner by ending the uncertainty associated with the contamination at the site, allowing the property to be more easily sold or used as collateral, and allowing it to be developed without concerns of environmental liability. In addition, R18-12-263.04 allows ADEQ to approve closure without an institutional control, which means that the owner or operator can save the costs of drafting a declaration of environmental use restriction (DEUR), submitting it for approval, recording it, and submitting annual reports to ADEQ. There is minimal cost to the UST owner or operator of a LUST site to submit a request for LUST case closure, and ADEQ provides for the required public notice at no cost to the applicant. With groundwater LUST case closures, costs associated with source control or removal may be reimbursed under SAF, if the LUST site is eligible for the SAF.

Businesses Conducting Remediation. Both of the above rule changes facilitate employing monitored natural attenuation and thereby may deter LUST owners and operators from contracting with persons in the business of providing active remediation services. As a result, there is the potential for a negative impact on persons in the business of providing remediation services.

Impact on ADEQ. For sites that are accepted into the MNA program, ADEQ will assume the necessary monitoring and other related activities. Under A.R.S. § 49-1015.01(D), these costs are to be paid out of the monitored natural attenuation account of the regulated substances fund. The cost of making this rule is minimal, and will be outweighed by the benefits to UST owners and operators of LUSTs described above.

The rest of the changes in the rules support the above items. In particular, R18-12-901 and 902 are included to provide clarity about the sources of funding for these rules.

Employment/Revenue Impacts. No incremental changes in public or private employment are foreseen as a result of this rulemaking. This rulemaking is not expected to negatively impact state revenues.

Small Businesses Subject to the Rule. Some of the businesses owning or operating UST sites with known LUST could be classified as small businesses. These rules treat all entities the same and do not differentiate requirements based on business size. Because this rule is expected to result in benefits to all owners and operators, ADEQ has not attempted to isolate the impact on small businesses or identify alternatives for reducing those impacts on small businesses.

Reduction of Impact on Small Businesses. A.R.S. § 41-1035 requires state agencies to reduce the impact of a rulemaking on the class of small businesses, if possible. ADEQ has determined that the authorizing statutes require that the rules apply to all entities owning or operating USTs whether or not they are small businesses. The requirements in statute are based on potential adverse health effects from contamination regardless of the size of the business owning or operating USTs. The statutory objectives which are the basis of the rules require ADEQ to establish requirements that are protective of human health and the environment based on the potential human exposure to contaminated soil and groundwater. ADEQ was not able to reduce the impact of these rules for small businesses in a way that meets statutory requirements.

Less Intrusive or Less Costly Alternatives. No less intrusive or less costly alternatives were authorized by the legislature or determined by ADEQ.

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

ADEQ removed proposed R18-12-902(B) from the final rule after determining that it was unnecessary at this time to redirect unused monitored natural attenuation account monies. The account is scheduled to be funded some time after June 30, 2011. The Department plans to revisit the issue of unused monitored natural attenuation account monies at some point in the future.

Other changes were made between the proposed and final rules to make the rules clear, concise, and understandable.

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

Comment 1: R18-12-263.04(B)(5): Please revise to require consideration of both future and existing uses of the water resource, for example changing the language to "Actual or potential threat or impact to potable water resources." The City of Phoenix is concerned that in some cases reliance on monitored natural attenuation as a long-term remedy could conflict with the development of new groundwater supply wells that are essential to providing a reliable water supply for the citizens of Phoenix. Phoenix would attempt to point out such cases during the public notice period, but ADEQ should consider this potential impact during the initial evaluation. For example, larger plumes of several acres in size might be judged in conflict with potential water supply development whereas smaller plumes confined to the area immediately adjacent to a street corner with existing commercial development might be less likely to be in conflict with future water resource development.

Analysis: The existing rule language specifies consideration of existing drinking water wells that are threatened or impacted. It also states that A.R.S. § 49-1005(D) is to be considered during the evaluation. One of the corrective action criteria specified in A.R.S. § 49-1005(D) is "To the extent practicable, provide for the control, management or cleanup of regulated substances so as to allow the maximum beneficial use of the water and soil of this state". In addition, ADEQ may not know of future uses of water resources, which is one of the purposes of the public notice process. Finally, new R18-12-263.04(F) anticipates that future conditions may change and allows ADEQ to re-open the LUST case and require that the UST owner or operator perform additional corrective actions.

Response: No change to rule.

Comment 2: R18-12-903(E)(7): Sometimes the property owner is not the UST owner or operator, or the person undertaking a voluntary corrective action, but is simply the owner of property contaminated by a LUST owned and operated by another person. In that case, ADEQ could not perform necessary corrective actions without a property access agreement from the property owner, which possibly would not be provided to ADEQ as the rule is currently written. Subsections (a) and (b) should be revised to simply state that ADEQ is requiring of the UST owner or operator or volunteer an access agreement signed by the property owner. In this way, ADEQ would not bear the burden and expense of obtaining access from a property owner not directly associated with the corrective action.

Analysis: A person who volunteers to take corrective actions under A.R.S. § 49-1052(I) has to be the property owner or a person with principal control of the property, and is required to grant ADEQ site access as a condition of the MNA Program. However, ADEQ cannot require a UST owner or operator to arrange legal agreements between ADEQ and third party property owners. Currently, the ADEQ State Lead Program routinely obtains site access from property owners in order to perform corrective actions.

Response: No change to rule.

Comment 3: R18-12-903(G): A third condition that presumably would justify rescinding an approved MNA Program application and NFA letter would be the installation of a potable water supply well capturing a portion of the water resource to be remediated by the MNA Program. In such instances we believe the UST owner or operator should be responsible for implementing a contingency remedial action to protect the water supply. Please add language to the rule enabling ADEQ to pass this responsibility back to the UST owner or operator.

Analysis: The Legislature anticipated that MNA may not be the appropriate final remedial remedy for some LUST sites due to future changes in the use of the aquifer. The statute regarding the MNA Program (A.R.S. § 49-1015.01) specifies that "Monies in the fund may also be used for corrective actions related to a work plan or corrective action plan approved by the Department before July 1, 2010 in which monitored natural attenuation is all or a portion of the selected remedy, **including corrective actions at sites at which monitored natural attenuation is not adequate**."

As part of the MNA Program, ADEQ will perform corrective actions at sites at which MNA is inadequate using the MNA Account.

Response: No change to rule.

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

None

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

None

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

No

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 12. DEPARTMENT OF ENVIRONMENTAL QUALITY
UNDERGROUND STORAGE TANKS

ARTICLE 1. DEFINITIONS; APPLICABILITY

Section
R18-12-101. Definitions

ARTICLE 2. TECHNICAL REQUIREMENTS

Section
R18-12-263. Remedial Response
R18-12-263.04. Groundwater LUST Case Closures
R18-12-264.01. Public Participation

ARTICLE 9. REGULATED SUBSTANCE FUND

Section
R18-12-901. Regulated Substance Fund
R18-12-902. Monitored Natural Attenuation (MNA) Account
R18-12-903. Monitored Natural Attenuation (MNA) Program

ARTICLE 1. DEFINITIONS; APPLICABILITY

R18-12-101. Definitions

In addition to the definitions prescribed in A.R.S. §§ 49-1001 and 49-1001.01, the terms used in this Chapter have the following meanings:

"Accidental release" No change

"Ancillary equipment" No change

"Annual" No change

"Applicant" No change

"Application" No change

"Assets" No change

"Aviation fuel" No change

"Bodily injury" No change

"CAP" No change

"Cathodic protection" No change

"Cathodic protection tester" No change

"CERCLA" No change

"CFR" No change

"Change-in-service" No change

"Chemical of concern" No change

"Chief financial officer" No change
"Clean Water Act" No change
"Compatible" No change
"Conceptual site model" No change
"Connected piping" No change
"Consultant" No change
"Contamination" No change
"Contractor" No change
"Controlling interest" No change
"Copayment" No change
"Corrective action rules" No change
"Corrective action service provider" No change
"Corrective action services" No change
"Corrective action standard" No change
"Corrosion expert" No change
"Cost work sheet" No change
"Current assets" No change
"Current liabilities" No change
"Decommissioning" No change
"De minimis" No change
"Department" No change
"Derived waste" No change
"Dielectric material" No change
"Diesel" No change
"Director" No change
"Direct payment" No change
"Direct payment request" No change
"Electrical equipment" No change
"Eligible activities" No change
"Eligible person" No change
"Emergency power generator" No change
"Engineering Control" No change
"Excavation zone" No change
"Excess lifetime cancer risk level" No change
"Existing tank system" No change
"Exposure" No change
"Exposure assessment" No change
"Exposure pathway" No change
"Exposure route" No change
"Facility" No change
"Facility identification number" No change
"Facility location" No change
"Facility name" No change
"Farm tank" No change
"Financial reporting year" No change
"Firm" No change
"Flow-through process tank" No change

"Free product" No change
"Gathering lines" No change
"Grant request" No change
"Groundwater" No change
"Hazard Index" No change
"Hazard quotient" No change
"Hazardous substance UST system" No change
"Heating oil" No change
"Hydraulic lift tank" No change
"IFCI" No change
"Implementing agency" No change
"Incremental cost" No change
"Incurred" No change
"Indian country" No change
"Induration" No change
"Installation" No change
"Institutional control" No change
"Legal defense cost" No change
"Liquid trap" No change
"Local government" No change
"LUST" No change
"LUST case" No change
"LUST number" No change
"LUST site" No change
"Maintenance" No change
"Monitored natural attenuation" means the reliance on natural attenuation processes, within the context of a carefully controlled and monitored site cleanup approach, to achieve site-specific remediation objectives within a time-frame that is reasonable compared to that offered by other more active methods.
"Motor vehicle fuel" No change
"Natural attenuation" means a reduction in mass or concentration of a chemical of concern in groundwater over time or distance from the release point due to naturally occurring physical, chemical, and biological processes, such as: biodegradation, dispersion, dilution, sorption, and volatilization.
"Nature of the regulated substance" No change
"Nature of the release" No change
"New tank system" No change
"Noncommercial purposes" No change
"On-site control" No change
"On the premises where stored" No change
"Operational life" No change
"Overfill" No change
"Owner identification number" No change
"Petroleum marketing facility" No change
"Petroleum marketing firm" No change
"Petroleum UST system" No change
"Phase of corrective action" No change
"Pipe" or "Piping" No change
"Pipeline facility" No change
"Point of compliance" No change

"Point of exposure" No change
"Property damage" No change
"Provider of financial assurance" No change
"RCRA" No change
"Receptor" No change
"Release confirmation" No change
"Release confirmation date" No change
"Release detection" No change
"Remediation" No change
"Repair" No change
"Report of work" No change
"Reserved and designated funds" No change
"Residential tank" No change
"Retrofit" No change
"Risk characterization" No change
"Routinely contains product" or "routinely contains regulated substance" No change
"SARA" No change
"Septic tank" No change
"Site location map" No change
"Site plan" No change
"Site Vicinity Map" No change
"Solid Waste Disposal Act" No change
"Source area" No change
"Source of contamination" means with respect to this Chapter, the conditions described in A.R.S. § 49-1052(N).
"Spill" No change
"Storage facility" No change
"Storm-water or wastewater collection system" No change
"Submitted" No change
"Substantial business relationship" No change
"Substantial governmental relationship" No change
"Substituted work item" No change
"Summary of work" No change
"Supplier" No change
"Supplier identification number" No change
"Surface impoundment" No change
"Surface water" No change
"Surficial soil" No change
"Suspected release discovery date" No change
"Suspected release notification date" No change
"Tangible net worth" No change
"Task" No change
"Tax" No change
"Taxpayer" No change
"Tester" No change
"Underground area" No change
"Underground storage tank" No change
"Under review" No change

"Unreserved and undesignated funds" No change
"Upgrade" No change
"UST" No change
"UST grant account" or "grant account" No change
"UST regulatory program" No change
"UST system" or "tank system" No change
"Vadose zone" No change
"Volatile regulated substance" No change
"Volunteer" No change
"Wastewater treatment tank" No change
"Work item" No change
"Work objectives of the preapproved work plan" No change

ARTICLE 2. TECHNICAL REQUIREMENTS

R18-12-263. Remedial Response

A. No change
B. Remedial response required. The owner or operator shall remediate contamination at and from the LUST site as required by this Section. Remediation activities shall continue until:
1. Contaminant concentration of any chemical of concern, in each contaminated medium, at the point of compliance, is documented to be at or below the corrective action standard determined in R18-12-263.01; ~~and~~
2. The requirements for LUST case closure in R18-12-263.03 are completed and approved by the Department~~.~~; or
3. The requirements for groundwater LUST case closure in R18-12-263.04 are met and approved by the Department.

C. No change
1. No change
2. No change
3. No change
   a. No change
   b. No change
   c. No change

D. No change
1. No change
2. No change
3. No change
4. No change

E. No change
1. No change
2. No change
3. No change
4. No change
5. No change

F. No change
1. No change
   a. No change
   b. No change
2. No change
3. No change

G. No change
1. No change
2. No change
3. No change
4. No change
5. No change
6. No change

R18-12-263.04. Groundwater LUST Case Closures

A. Applicability. Pursuant to A.R.S. § 49-1005(E), the Director may approve a corrective action that may result in aquifer water quality exceeding aquifer water quality standards established under A.R.S. § 49-223 after completion of the correc-

tive action, if, in addition to complying with the other corrective action requirements in this Article, the corrective action:
1. Includes a Tier 2 or Tier 3 evaluation performed in accordance with R18-12-263.01(A)(2) or (3), and (4); or
2. Complies with the process described in subsections (B) through (F).

B. Site-specific requirements. The Director may approve LUST case closure where there is an exceedance of an aquifer water quality standard without requiring the placement of institutional controls on the deeds of all properties affected by the groundwater contamination related to the UST release, after consideration of the following:
1. Characterization of the groundwater plume,
2. Removal or control of the source of contamination,
3. Groundwater plume stability,
4. Natural attenuation,
5. Threatened or impacted drinking water wells,
6. Other exposure pathways,
7. Requirements of A.R.S. § 49-1005(D) and (E), and
8. Other information that is pertinent to the LUST case closure approval.

C. Public notice. If, after consideration of the criteria specified in subsection (B), the Department determines that the LUST site is eligible for LUST case closure, the Department shall provide public notice in accordance with R18-12-264.01.

D. Conditions for approval of LUST case closure. After consideration of comments obtained through the public notice process, the Department shall evaluate whether the LUST case meets the requirements of this Section and A.R.S. § 49-1005; and determine if the LUST case closure can be approved.

E. Notice of LUST case closure decision. The Department shall provide written notice to the owner or operator whether the LUST case closure is approved.

F. Future corrective actions. Subsequent to LUST case closure, if the Department becomes aware of site-specific conditions that warrant additional corrective actions, the LUST case file may be re-opened. Future corrective actions shall be performed as follows:
1. If a no further action letter in accordance with R18-12-903(D) has not been issued for the release or has been rescinded in accordance with R18-12-903(G), the UST owner or operator shall perform additional corrective actions necessary to comply with the requirements of R18-12-261 through R18-12-264.01; or
2. If a no further action letter issued by the Department in accordance with R18-12-903(D) is in effect, the additional corrective actions shall be performed by the Department in accordance with A.R.S. §§ 49-1015.01 and 49-1017.

R18-12-264.01. Public Participation

A. Public notice. If public notice is required by A.R.S. § 49-1005, or rules made under that Section, the Department shall provide a minimum of 30 calendar days notice to the public regarding a public comment period. The Department shall use one or more methods of public notice designed to reach those members of the public directly affected by the release and the planned corrective actions ~~including~~, which may include, but is not limited to the following: publication in a newspaper of general circulation, posting at the facility, mailing a notice to ~~owners of property affected or potentially affected by contamination from the release and corrective actions~~ applicable persons, or posting on the Department's internet site. ~~If a CAP includes a corrective action standard for water based on a Tier 2 or Tier 3 evaluation, the Department shall send a copy of the notice to the Arizona Department of Water Resources, the applicable county and any municipality where the CAP will be implemented, water service providers and persons having water rights that may be impacted by the release.~~ At a minimum, the notice shall be sent to the following applicable persons:
1. The UST owner and operator;
2. Owners of property and other parties directly affected or potentially directly affected by contamination from the release, corrective actions, or LUST case closure;
3. The Arizona Department of Water Resources;
4. The applicable county and municipality; and
5. Water service providers and persons having water rights that may be impacted by the release.

B. Public notice contents. The Department shall provide notice to the public that includes all of the following:
1. Identifies the name of the document ~~submitted to the Department~~ that is available for public comment;
2. Identifies the facility where the release occurred and the site of the proposed corrective actions, or LUST case closure in accordance with R18-12-263.04.
3. ~~Identifies~~ If the document is a CAP, identifies the date the ~~document~~ CAP was submitted to the Department, and name of the person who submitted the ~~document~~ CAP;
4. Provides a specific explanation if a corrective action standard for water is based on a Tier 2 or Tier 3 evaluation;
5. Identifies ~~at least 2 locations~~ the location where a copy of the document can be viewed by the public~~, including the Department's Phoenix office and the public library located nearest to the LUST site~~;
6. Explains that any comments on the document shall be sent to the Underground Storage Tank Program of the Department within the time-frame specified in the notice; and
7. Describes the public meeting provisions of subsection (C).

C. Public meeting. ~~After consideration of the amount of public interest, and before approving a document requiring public~~

~~participation, the~~ The Department may hold a public meeting to receive comments on a document undergoing public review. If the Department holds a public meeting, the Department shall schedule the meeting and notify the public, in accordance with subsection (A), of the meeting time and location.

ARTICLE 9. REGULATED SUBSTANCE FUND

R18-12-901. Regulated Substance Fund

Monies in the regulated substance fund created under A.R.S. § 49-1015.01 and deposited in the fund on and after July 1, 2011, except those in the monitored natural attenuation account, may be used by the Director to perform corrective actions in accordance with A.R.S. §§ 49-1017 and 49-1018.

R18-12-902. Monitored Natural Attenuation (MNA) Account

Monies in the monitored natural attenuation account created under A.R.S. § 49-1015.01(D) and deposited in the account on or after July 1, 2011, may be used by the Director to perform corrective actions in accordance with R18-12-903.

R18-12-903. Monitored Natural Attenuation (MNA) Program

A. MNA Program eligibility. An UST owner or operator, or a person who undertakes corrective actions pursuant to A.R.S. § 49-1052(I) may request that the Department perform groundwater corrective actions in accordance with A.R.S. § 49-1015.01(D) beginning July 1, 2011, if the following conditions occur:
1. The UST release or releases of a regulated substance were reported to the Department before July 1, 2006; and are eligible for the assurance fund in accordance with A.R.S. § 49-1052;
2. Removal or control of the source of contamination is complete, to the extent practicable;
3. The soil contamination associated with the release is at or below the applicable corrective action standards in accordance with R18-12-263.01;
4. Natural attenuation is occurring;
5. A groundwater corrective action plan conforming to R18-12-263.02, has been submitted and approved by the Department before July 1, 2010, in which monitored natural attenuation is all or a portion of the selected remedy; and
6. A MNA Program application in accordance with subsection (B) has been submitted and approved by the Department before July 1, 2010.

B. Contents of an MNA Program application. The MNA Program application shall be on or attached to a form provided by the Department and include:
1. Information on the applicant;
2. Information on each applicable release;
3. Environmental media currently impacted by each applicable release;
4. A site vicinity map, site location map and a site plan;
5. The as built construction diagrams of existing monitoring wells;
6. A tabulation of soil and groundwater analytical results and water level data;
7. Documentation that removal or control of the source of contamination has been completed to the extent practicable;
8. Documentation that natural attenuation is occurring; and
9. Other information that is pertinent to the MNA Program application approval.

C. Conditions for approval of a MNA Program application. After receipt of a MNA Program application submitted in accordance with subsections (A) and (B), the Department shall review and approve, deny, or request modifications to the application. The Director may deny a MNA Program application if approval would present an imminent and substantial danger to public health, welfare, or the environment. The Department may request additional information before acting on the application. The Department shall approve the application if the applicant has demonstrated to the Department's satisfaction that the information submitted under subsections (A) and (B) is true, accurate, and complete. Approval of an application under this Section means that a no further action letter as described in subsection (E) will be sent to the applicant and the Department will perform future corrective action in accordance with subsection (F).

D. Notice of approval of a MNA Program application. The Department shall provide written notice to the applicant that the MNA Program application has been approved by issuing a no further action letter in accordance with subsection (E).

E. Contents of no further action letter. The no further action letter shall notify the applicant of the following:
1. The Department is not requiring the applicant to perform additional corrective actions for soil or groundwater for the property at which the referenced UST release occurred;
2. The soil contamination associated with the release is at or below the applicable corrective action standards in R18-12-263.01;
3. The groundwater contamination associated with the release is greater than the applicable corrective action standards in R18-12-263.01;
4. The additional corrective actions will be performed by the Department as specified in subsection (F);
5. The Department shall not approve closure of the LUST case file under R18-12-263.03(E) until the applicable groundwater corrective action standards in R18-12-263.01, or the conditions of R18-12-263.04, are met for the groundwater contamination;

6. The conditions of subsection (G) that may result in rescinding the MNA Program application and no further action letter; and
7. The Department is requiring:
   a. A property access agreement from the UST owner or operator if they own the property, or from the person who undertakes corrective actions pursuant to A.R.S. § 49-1052(I), which allows the Department to access the property to perform the necessary corrective actions specified in subsection (F);
   b. A transfer of ownership of monitor wells selected by the Department to be used to perform the corrective actions specified in subsection (F), from the UST owner or operator, or a person who undertakes corrective actions pursuant to A.R.S. § 49-1052(I) to the Department;
   c. The proper abandonment of monitor wells not selected by the Department for future monitoring; and
   d. The decommissioning of any remedial equipment not selected by the Department.

F. Additional corrective actions. The following corrective actions shall be performed by the Department in accordance with A.R.S. §§ 49-1005, 49-1015.01, and 49-1017:
1. Activities related to monitoring the natural attenuation of the groundwater contamination related to the UST release;
2. Other necessary corrective actions in accordance with A.R.S. § 49-1005 and the rules made thereunder, if information, which was previously not known to the Department, is received by the Department and indicates that soil or groundwater contamination on the property at which the referenced UST release occurred does not meet the applicable corrective action standard under R18-12-263.01; and
3. Other necessary corrective actions in accordance with A.R.S. § 49-1005 and the rules made thereunder, if site conditions change rendering monitored natural attenuation not adequate to meet the applicable corrective action standard under R18-12-263.01.

G. Rescinding an approved MNA Program application and no further action letter. The Department may rescind the approval of the MNA Program application and no further action letter under subsection (C) and require the UST owner or operator to perform corrective actions pursuant to A.R.S. § 49-1005 and the rules made thereunder, if one of the following occurs:
1. Information submitted pursuant to subsections (A), (B), or (C) was inaccurate, false, or misleading, or
2. Upon written request by the applicant.