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 6. ECONOMIC SECURITY

CHAPTER 13. DEPARTMENT OF ECONOMIC SECURITY
STATE ASSISTANCE PROGRAMS

Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 1244.) The Governor's Office authorized the notice to proceed through the rulemaking process on October 3, 2011.

[R12-80]

PREAMBLE

1. Article, Part, or Section Affected (as applicable)	Rulemaking Action
Article 1	New Article
R6-13-102	New Section
R6-13-103	New Section
R6-13-104	New Section
R6-13-105	New Section
R6-13-106	New Section
R6-13-107	New Section
R6-13-108	New Section
R6-13-109	New Section
R6-13-110	New Section
R6-13-111	New Section
R6-13-112	New Section
R6-13-113	New Section
R6-13-114	New Section
R6-13-115	New Section
R6-13-116	New Section
R6-13-117	New Section
R6-13-118	New Section
R6-13-119	New Section
R6-13-120	New Section
R6-13-121	New Section
R6-13-122	New Section
R6-13-123	New Section
R6-13-124	New Section
R6-13-125	New Section
R6-13-126	New Section
R6-13-127	New Section
R6-13-128	New Section
R6-13-129	New Section
R6-13-130	New Section
R6-13-131	New Section
R6-13-132	New Section
R6-13-133	New Section
R6-13-134	New Section
R6-13-135	New Section
R6-13-136	New Section
R6-13-137	New Section
R6-13-138	New Section

R6-13-139	New Section
R6-13-140	New Section
R6-13-141	New Section
R6-13-142	New Section
R6-13-143	New Section
R6-13-144	New Section
R6-13-145	New Section
R6-13-146	New Section
R6-13-147	New Section
R6-13-148	New Section
R6-13-149	New Section
R6-13-150	New Section
R6-13-151	New Section
R6-13-152	New Section
R6-13-153	New Section
R6-13-154	New Section
R6-13-155	New Section
R6-13-156	New Section
R6-13-157	New Section
R6-13-158	New Section
R6-13-159	New Section
R6-13-160	New Section
R6-13-161	New Section
Article9	Repeal
R6-13-902	Repeal
R6-13-903	Repeal
R6-13-904	Repeal
R6-13-905	Repeal
R6-13-906	Repeal
R6-13-907	Repeal
R6-13-908	Repeal
R6-13-909	Repeal
R6-13-910	Repeal
R6-13-911	Repeal
R6-13-913	Repeal
R6-13-914	Repeal
R6-13-915	Repeal
R6-13-916	Repeal
R6-13-917	Repeal
R6-13-919	Repeal
R6-13-920	Repeal
R6-13-921	Repeal
R6-13-922	Repeal

2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):

Authorizing statutes: A.R.S. §§ 41-1954(A)(3) and 46-134(A)(12)

Implementing statutes: A.R.S. § 36-716

3. The effective date of the rules:

June 30, 2012

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable

4. Citations to all related notices published in the *Register* to include the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 16 A.A.R. 932, June 11, 2010

Notice of Rulemaking Docket Opening: 17 A.A.R. 1313, July 15, 2011

Notice of Rulemaking Docket Opening: 17 A.A.R. 2503, December 16, 2011

Notice of Proposed Rulemaking: 17 A.A.R. 2526, December 23, 2011

5. The agency's contact person who can answer questions about the rulemaking:

Name: Beth Broeker

Address: Department of Economic Security
P.O. Box 6123, Site Code 837A
Phoenix, AZ 85005

or

Department of Economic Security
1789 W. Jefferson St., Site Code 837A
Phoenix, AZ 85007

Telephone: (602) 542-6555

Fax: (602) 542-6000

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6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The Department is initiating this rulemaking in response to a five-year review report approved by the Governor's Regulatory Review Council on January 5, 2010, in order to update the Tuberculosis Control program rules in Chapter 13.

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 rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

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

In fiscal year 2011, 12 individuals received Tuberculosis Control payments. The Family Assistance Administration issued $6,144.78 in Tuberculosis Control payments in FY 2011. No other state agency is expected to incur any costs associated with the rulemaking. The Department does not anticipate any new full-time employees as a result of the rulemaking.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

R6-13-912 and R6-13-918, which were proposed to be repealed in the Notice of Proposed Rulemaking, were removed from the Notice of Final Rulemaking because they expired August 29, 2009.

The following text was removed from R6-13-146(A)(5): "5. The appellant does not request that the Department stay the implementation of a separate pending or subsequent adverse action." The Department determined that a separate or subsequent adverse action should have no bearing on a request for a stay of an adverse action.

Language was changed or added to the following rules to clarify the timing of mailing dates and necessary responses, while allowing for the possibility that notices may be mailed electronically in the future: R6-13-137(B), R6-13-139(D), R6-13-141(B)(2) and (C), R6-13-143(B), R6-13-146(A), R6-13-147(C), R6-13-148(C), R6-13-156(C), R6-13-158(A), and R6-13-159(D).

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

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

The Department received no comments on the rulemaking.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

Not applicable

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:
Not applicable

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:
Not applicable

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:
None

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:
Not applicable

15. The full text of the rules follows:

TITLE 6. ECONOMIC SECURITY

CHAPTER 13. DEPARTMENT OF ECONOMIC SECURITY STATE ASSISTANCE PROGRAMS

ARTICLE 1. ~~RESERVED~~ TUBERCULOSIS CONTROL PROGRAM

Section

R6-13-136. Completion of Treatment
R6-13-137. Eligibility Review
R6-13-138. Requirement to Report Changes
R6-13-139. Agency Responsibilities for Processing Changes
R6-13-140. Reinstatement of Terminated Benefits
R6-13-141. Notice of Adverse Action
R6-13-142. Entitlement to a Hearing; Appealable Action
R6-13-143. Computation of Time
R6-13-144. Request for Hearing: Form; Time Limits; Presumptions
R6-13-145. Family Assistance Administration: Transmittal of Appeal
R6-13-146. Stay of Adverse Action Pending Appeal
R6-13-147. Hearings: Location; Notice; Time
R6-13-148. Postponing the Hearing
R6-13-149. Hearing Officer: Duties and Qualifications
R6-13-150. Change of Hearing Officer; Challenges for Cause
R6-13-151. Subpoenas
R6-13-152. Parties' Rights
R6-13-153. Withdrawal of an Appeal
R6-13-154. Failure to Appear; Default; Reopening
R6-13-155. Hearing Proceedings
R6-13-156. Hearing Decision
R6-13-157. Effect of the Decision
R6-13-158. Further Administrative Appeal
R6-13-159. Appeals Board
R6-13-160. Judicial Review
R6-13-161. Availability of TC Payments

ARTICLE 9. ~~TUBERCULOSIS CONTROL~~ REPEALED

Section
R6-13-902. ~~Age~~ Repealed
R6-13-903. ~~Residence~~ Repealed
R6-13-904. ~~Citizenship~~ Repealed
R6-13-905. ~~Limitations on Value of Real and Personal Property~~ Repealed
R6-13-906. ~~Transfer of Property~~ Repealed
R6-13-907. ~~Employability~~ Repealed
R6-13-908. ~~Receipt of Other Public Assistance~~ Repealed
R6-13-909. ~~Institutional Status~~ Repealed
R6-13-910. ~~Diagnosis and Treatment~~ Repealed
R6-13-911. ~~Referral of Cases to the Department of Economic Security~~ Repealed
R6-13-913. ~~Return of Nonresidents~~ Repealed
R6-13-914. ~~Computing the Tuberculosis Control Grant~~ Repealed
R6-13-915. ~~Termination of the Tuberculosis Control Grant~~ Repealed
R6-13-916. ~~Termination of TC Grant with AFDC Grant Continuing in Household~~ Repealed
R6-13-917. ~~Overpayment~~ Repealed
R6-13-919. ~~Redeterminations~~ Repealed
R6-13-920. ~~Available Services~~ Repealed
R6-13-921. ~~Right of Appeal~~ Repealed
R6-13-922. ~~Reporting Change of Status~~ Repealed

ARTICLE 1. ~~RESERVED~~ TUBERCULOSIS CONTROL PROGRAM

R6-13-101. Reserved

R6-13-102. Definitions

The following definitions apply to this Chapter:

1. "Administration" means the Family Assistance Administration of the Department.
2. "Adverse action" means that the Department has:
   a. Denied an application for assistance,
   b. Failed to take action to approve or deny an application within 30 days of the application file date,
   c. Terminated or reduced assistance,
   d. Determined that it overpaid a Tuberculosis Control (TC) payment recipient, or

e. Denied a request for a waiver of an overpayment.

3. "Applicant" means a person who has directly or through a representative filed an application for TC payments with the Department.
4. "Assistance unit" means a group of persons whose needs, income, resources, and other circumstances the Department considers as a whole for the purpose of determining eligibility and benefit amount for Tuberculosis Control payments.
5. "CA" or "Cash Assistance" means temporary assistance for needy families paid to a recipient for the purpose of meeting basic living expenses under A.R.S. § 46-291 et seq.
6. "Collateral verification" means the use of an agency, organization, or qualified individual who has knowledge of the requested eligibility information, and who the Department may use as a collateral contact when requested to do so or when documented verification is not available to the applicant.
7. "Countable income" means income from every source minus income excluded under R6-13-118.
8. "Department" means the Arizona Department of Economic Security.
9. "FAA" or "Family Assistance Administration" means the administration within the Department's Division of Benefits and Medical Eligibility responsible for providing financial and nutrition assistance to eligible persons and determining eligibility for medical assistance.
10. "FAA Manual" means the policies and procedures used to determine an assistance unit's eligibility for TC payments.
11. "Homestead property" has the same meaning as A.R.S. § 46-101(14).
12. "In-kind income" means the value of goods or services received for work in lieu of the receipt of wages.
13. "Legal claim for support or care" means that the recipient has a duty under the law to look after or provide financially for the person with the legal claim for support or care.
14. "Lump-sum payment" means a single payment, such as retroactive monthly Social Security or other benefits, nonrecurring pay adjustments or bonuses, inheritances, lottery winnings, or personal injury and workers' compensation awards.
15. "Notice of adverse action" means a written notice sent to a recipient when the Department takes adverse action under R6-13-141.
16. "Office of Appeals" means the Department's independent, quasi-judicial, administrative hearing body that includes hearing officers appointed under A.R.S. § 41-1992(A).
17. "Recipient" means a person who receives TC payments.
18. "Resources" means the assistance unit's real and personal property and liquid assets.
19. "TC" means Tuberculosis Control, a program administered by the Department that provides monetary assistance to an assistance unit that includes an adult who is certified by the state Tuberculosis Control Officer to have active tuberculosis or suspected tuberculosis, and that satisfies the eligibility requirements in this Article.
20. "Vendor payment" means a payment from a person or organization that is not a member of an assistance unit to a third party to cover an assistance unit's expenses.

R6-13-103. Individuals Who May Qualify for Assistance

A. The following persons are eligible for TC payments only if they meet all financial and nonfinancial eligibility requirements:
1. An adult who is certified by the state Tuberculosis Control Officer to have active tuberculosis or suspected tuberculosis,
2. Any person residing with the adult who has a legal claim for support or care from the adult, including:
   a. The adult's spouse; and
   b. A minor child. Also, a child age 18 if attending a secondary school or a high school equivalency program;
   c. A mentally or physically disabled child more than age 18; and
   d. A child who is temporarily absent from the home because the child is attending school, as long as the child returns home at least once a year.

B. A person may receive TC payments only if the individual is not eligible to receive Cash Assistance under A.R.S. Title 46, Chapter 2, Article 5.

R6-13-104. Applicant Responsibilities at Initial Application

A. A person shall apply for TC payments by submitting an identifiable Department-approved application to an FAA office in person, by mail, fax, or electronic transmittal.

B. An identifiable application means an application that contains:
1. The legible name and address of the applicant; and
2. The signature of the applicant, the applicant's representative, or if the applicant is incompetent or incapacitated, someone legally authorized to act on behalf of the applicant.

C. The application filing date is the date an FAA office receives an identifiable application. If the applicant is eligible, the Department shall pay TC payments calculated from this date.

R6-13-105. Department Responsibilities at Initial Application

A. Upon receipt of an identifiable application, the Department shall:
1. Date stamp the application with the application filing date, and
2. Schedule an initial eligibility interview with the applicant at:
   a. A location that ensures a reasonable amount of privacy, or
   b. A homebound applicant's residence, or
3. Schedule a telephone initial eligibility interview.

B. The Department shall assist the applicant in completing the application if necessary. A completed application shall contain:
1. The names of all persons living in the applicant's dwelling and their relationship to the applicant,
2. A request to receive TC payments, and
3. All financial and nonfinancial eligibility information requested on the application form.

R6-13-106. Applicant Responsibilities at the Initial Interview

A. The applicant shall attend the interview. A person of the applicant's choosing may also attend and participate in the interview with the applicant.

B. Missed appointments.
1. If the applicant misses a scheduled appointment for an interview, the applicant shall:
   a. Request to reschedule the interview no later than close of business on the day of the missed appointment, and
   b. Attend the second scheduled appointment.
2. If the applicant fails to comply with the requirements in subsection (B)(1)(a) or (b) without good cause, the Department shall deny the application, and the applicant shall reapply in order to receive TC payments. Good cause for failure to comply with the requirements in subsection (B)(1)(a) or (b) is any unanticipated occurrence that, in the discretion of the Department, made it impossible or unreasonable for the applicant to attend the interview or contact the local office.

C. An applicant for assistance shall:
1. Give the Department complete and truthful information;
2. Inform the Department of all changes in income, assets, or other circumstances affecting eligibility that occur after the date of application for TC payments;
3. Comply with Electronic Benefit Transfer (EBT) requirements; and
4. Comply with any other procedural requirements contained in this Chapter or in state or federal law.

D. An applicant shall provide required verification of financial and nonfinancial eligibility information or request assistance from the Department in obtaining the information.
1. An applicant shall provide the Department with all requested verification of financial and nonfinancial eligibility factors, or request the Department's assistance in obtaining the requested verification, within 10 calendar days from the date of a written request for such information.
2. An applicant shall provide the Department with verification of financial and nonfinancial eligibility factors by submitting to the Department:
   a. Documents originating from an agency, organization, or individual qualified to have knowledge of the provided information; or
   b. When documents required in subsection (D)(2)(a) are not available to the applicant, the name, telephone number, and address of an agency, organization, or individual qualified to have knowledge of the requested eligibility information that the Department may use as a collateral contact; or
   c. When the items in subsections (D)(2)(a) and (b) are not available, a signed written statement from the applicant that describes facts specific to an eligibility factor. The Department shall not accept an applicant's signed written statement as acceptable verification of identity, relationship of household members, or expenses.

R6-13-107. Agency Responsibilities at the Initial Interview

A. During the initial interview, a Department representative shall:
1. Discuss how the applicant and the other assistance unit members previously met their needs and why they now need financial assistance;
2. Provide the applicant with written information explaining:
   a. The terms, conditions, and obligations of the TC program;
   b. Any additional required verification information that the Department requires the applicant to provide in order to conclude the eligibility evaluation;
   c. The Department's practice of exchanging eligibility and income information through the State Verification and Exchange System (SVES);
   d. The coverage and scope of the TC program;
   e. Related services that may be available to the applicant;
   f. The applicant's rights, including the right to appeal adverse action;

g. The requirement to report all changes, as specified in R6-13-138, within 10 calendar days from the date the change becomes known; and
h. Other benefits for which any person in the assistance unit is potentially eligible and the requirement that any person in the assistance unit apply for and, if eligible, accept those other benefits;

3. Inform the applicant that the Department shall assist the applicant in obtaining required verification at the request of the applicant, when the verification provided by the applicant is insufficient to complete an eligibility determination, or when the required verification is difficult or impossible for the applicant to obtain;
4. Review the penalties for perjury and fraud, as printed on the application;
5. Review any verification information provided with the application or at the initial interview;
6. Review all ongoing reporting requirements and the potential consequences for failure to make timely reports, including overpayment liability; and
7. Offer an applicant who is a United States citizen the opportunity to register to vote and provide the applicant with a voter registration form if requested.

B. The Department shall obtain independent verification or corroboration of information provided by the applicant when required by law, or when necessary to determine eligibility or benefit level.

C. The Department may verify or corroborate information by any reasonable means, including:
1. Contacting third parties, such as employers;
2. Asking the applicant to provide documented verification, such as billing statements or pay stubs;
3. Asking the applicant to provide a signed written statement that describes facts specific to an eligibility factor when documented or collateral verification is not available;
4. Conducting a computer data match through SVES; and
5. Referring a case to the Department's Office of Special Investigations (OSI) for investigation when:
a. The Department has a valid reason to suspect that an act has been committed for the purpose of deception, misrepresentation, or concealment of information relevant to a determination of eligibility or the amount of a benefit payment; or
b. The Department has a valid reason to suspect the commission of theft or fraud related to TC eligibility or payments, or any conduct listed in A.R.S. § 46-215.

R6-13-108. Processing the Initial Application

A. The Department shall complete the eligibility determination and benefit level computation within 30 calendar days of the initial application filing date, unless:
1. The applicant withdraws the application. An applicant may withdraw an application at any time before the Department completes an eligibility determination by requesting the withdrawal from the Department either verbally or in writing.
a. If an applicant verbally requests to withdraw an application, the Department shall:
i. Document the names of individuals and the types of benefits or services from which the applicant wishes to withdraw, and
ii. Deny the application and notify the applicant.
b. A withdrawal is effective as of the date of initial application.
c. When an applicant withdraws an application, an applicant may file a new application to request TC payments.
2. The applicant dies. If an applicant dies while the application is pending, the Department shall deny the application.
3. The Department is aware of a delay in receiving verification of a required eligibility factor. In this case, the Department shall assist the applicant in obtaining the required verification, even if the delay extends beyond 30 days.

B. The Department shall deny an application and send the applicant a written notice of denial that shall include an explanation of appeal rights when the applicant fails to:
1. Complete the application under R6-13-105(B);
2. Complete an eligibility interview under R6-13-106;
3. Cooperate with all required Department procedures without good cause; however, the Department shall not deny the application for this reason unless the Department has advised the applicant of these procedural requirements in writing;
4. Meet all of the mandatory financial and nonfinancial eligibility criteria used to establish eligibility for the TC program; or
5. Meet the verification requirements in R6-13-106(D).

R6-13-109. Case Record

A. The case record shall contain all data collected or used by the Department in evaluating and determining eligibility and benefit amount.

B. The Department shall maintain a case record for every TC applicant or recipient. The case record shall include all documents maintained or stored in any format.

C. Except as otherwise provided in subsections (D) and (E), the Department shall retain the case record for a period of three

years after the last date the Department denied TC assistance to an applicant or terminated TC assistance to a recipient.

D. The Department shall retain a case record that contains an unpaid overpayment until:
1. The overpayment is paid back in full, or
2. The Department no longer requires the assistance unit to repay the overpayment.

E. The Department shall retain a case record that includes a disqualification imposed under A.R.S. § 13-3418, an Intentional Program Violation (IPV), or any other disqualification or sanction that prohibits the receipt of assistance.

R6-13-110. Confidentiality

The Department shall maintain the confidentiality of a TC applicant's or recipient's records and limit the release of safeguarded information to the Department of Health Services and as prescribed under 6 A.A.C. 12, Article 1 and 9 A.A.C. 6, Article 1.

R6-13-111. Manuals

The Department shall make the FAA Manual, as defined in R6-13-102, available to the public on the Department's web site, and each FAA office shall make the FAA Manual accessible for public inspection during regular business hours.

R6-13-112. Nonfinancial Eligibility Determination

A. Age. An applicant for TC payments shall be at least 18 years of age.

B. Identity. An applicant for TC payments shall provide the Department with verification that reasonably establishes the applicant's identity.
1. Verification that reasonably establishes identity includes:
   a. A driver license or state-issued identification card that contains a photo of the applicant;
   b. Documents such as the applicant's birth certificate, school identification card, citizenship and immigration documents, identification card from health benefits or other social service programs, wage stubs, work identification card, voter registration card, or other similar documents; or
   c. Collateral verification, as defined at R6-13-102, from an individual who shall not benefit from the applicant's receipt of TC payments.
2. An applicant's written statement is not sufficient verification of identity.

C. Tuberculosis Certification. An applicant must be certified by the state Tuberculosis Control Officer to have active or suspected tuberculosis.

R6-13-113. Resource Limitations

A. An applicant is not eligible for TC payments if the applicant has resources in excess of the following, after applying the exclusions in subsection (B):
1. $1000 for an assistance unit consisting of only the applicant.
2. $1400 for an assistance unit consisting of the applicant and the applicant's spouse.

B. The Department shall exclude the equity value of the resources listed below:
1. The homestead property of the assistance unit, as defined in R6-13-102, not to exceed a current equity of $50,000;
2. Household furnishings that the assistance unit members use in their residence and personal effects essential for day-to-day living;
3. The current equity value up to $1500 of one vehicle in the assistance unit. When two or more vehicles are owned, the Department shall apply the exclusion to the vehicle with the highest equity value. Jointly owned vehicles with ownership records containing the word "or" between the owners' names are available in full to each owner unless it can be proven by the assistance unit member that the vehicle is not available to him or her or not in the assistant unit member's possession. When more than one owner is a member of an assistance unit, the equity value of the resource is counted only once;
4. Funds established in connection with settling liability claims concerning Agent Orange death or disability; and
5. Any other resource specifically excluded by law.

R6-13-114. Resource Verification

The Department shall verify all resources.

R6-13-115. Availability and Ownership of Resources

A. The Department shall consider a resource as countable to the assistance unit only when the resource is legally and physically available or in the possession of the assistance unit member.

B. The Department shall consider the availability of property to the assistance unit based on the type of ownership.
1. The sole and separate property of one spouse is available to the other spouse only when the spouse/owner makes the property available. A resource shall be considered sole and separate property only when obtained in one of the following ways:
   a. Before the present marriage, or
   b. At any time by gift or inheritance.
2. Jointly owned resources with ownership records containing the words "and" or "and/or" between the owners' names

are deemed available when all owners can be located and consent to disposal of the resource, except that such consent is not required when all owners are members of the assistance unit.

C. The Department considers the following resources unavailable to the assistance unit:
1. Any resource owned solely by a spouse who is receiving Supplemental Security Income (SSI) paid by Title XVI of the Social Security Act.
2. Resources disputed in divorce proceedings or in probate matters.
3. Real property situated on a Native American reservation.

R6-13-116. Nonrecurring Lump-sum Payments

A. The Department shall count nonrecurring lump-sum payments, as defined in R6-13-102, as a resource in the month received.

B. The Department shall count any part of a lump-sum payment that recurs in future months as income in the month received.

R6-13-117. Treatment of Income; Overview

A. "Income" shall include the following when actually received by the assistance unit:
1. Gross earned wages from public or private employment before any deductions;
2. In-kind income, as defined in R6-13-102;
3. For self-employed persons, the sum of gross business receipts minus business expenses;
4. Unearned monetary gains such as benefits or assistance grants, minus any deductions to repay prior overpayments or attorney fees; and
5. A prorated share of any Cash Assistance program benefit received by the applicant's spouse.

B. In determining eligibility, the Department shall consider all gross income available to the assistance unit, except those types of income excluded under R6-13-118.

R6-13-118. Income Exclusions

The Department shall not count the types of income in this Section when determining the income available to an assistance unit.
1. One-half of the countable income of the applicant's spouse;
2. One-half of the prorated share of any Cash Assistance program benefit received by the applicant's spouse;
3. Loans;
4. Educational grants or scholarships;
5. Income tax refunds;
6. The value of Nutrition Assistance (NA) program benefits and benefits from the Special Supplemental Food Program for Women, Infants, and Children (WIC);
7. Energy assistance payments or allowances provided under any federal, state, or local law, including Negative Rent Utility Payments issued by the Department of Housing and Urban Development for the purpose of energy assistance;
8. Vendor payments, as defined in R6-13-102;
9. Vocational rehabilitation program payments made as reimbursements for training-related expenses, subsistence and maintenance allowances, and incentive payments that are not intended as wages;
10. Agent Orange payments;
11. Burial benefits that are dispersed solely for burial expenses;
12. Reimbursements for work-related expenses that do not exceed the actual expense amount;
13. Insurance payments issued to repay a specific bill, debt, or estimate that cannot be used to meet basic daily needs such as housing, food, or other personal expenses;
14. Attorney fees that are included in the gross payment of industrial compensation paid under the workers' compensation law or in legal settlements;
15. In-kind income, as defined in R6-13-102;
16. Earned income received from employment through the Workforce Investment Act (WIA), including earnings received from on-the-job-training; and
17. Any other income specifically excluded by applicable state or federal law.

R6-13-119. Determining Income Eligibility and a Cash Benefit Amount for an Assistance Unit

A. To determine the countable monthly income of an assistance unit, the Department shall:
1. Calculate a countable monthly gross income amount using the methods listed in R6-13-120, and
2. Calculate a countable monthly net income by subtracting the applicable earned income deduction in R6-13-123 from the countable monthly gross income.

B. The Department shall determine the cash benefit amount by subtracting the countable monthly net income from the TC Payment Standard for the number of eligible TC recipients in the assistance unit as prescribed in R6-13-124.

R6-13-120. Determining Monthly Gross Income

A. The Department shall calculate an assistance unit's countable monthly gross income by converting countable income

received other than monthly into a monthly amount using the methods in R6-13-121.

B. The Department shall include in its calculation all gross income from every source available to the assistance unit as provided in R6-13-117, unless specifically excluded in R6-13-118 or by federal or state law.

C. The Department shall include in its calculation income that the assistance unit has received and reasonably expects to receive in a benefit month and that is based on the Department's reasonable expectation and knowledge of the assistance unit's current, past, and anticipated future circumstances.

R6-13-121 Methods to Determine Monthly Income

A. The Department shall convert income received in a regular amount on an ongoing basis into a monthly amount as follows:
1. Multiply weekly amounts by 4.3,
2. Multiply biweekly amounts by 2.15,
3. Multiply semimonthly amounts by 2,
4. Divide quarterly amounts by 3,
5. Divide semiannual amounts by 6, and
6. Divide annual amounts by 12.

B. Averaging income.
1. The Department shall average income for an assistance unit that receives income:
   a. Irregularly; or
   b. Regularly, but from sources or in amounts that vary.
2. When using this method, the Department shall add together income from a representative number of weeks or months and then divide the resulting sum by the same number of weeks or months.

C. Prorating income.
1. Except as provided in subsection (C)(2), the Department shall prorate income when an assistance unit receives income from a fixed-term employment contract in the following manner:
   a. Income is prorated over the number of months the contract is intended to cover, unless the contract specifies piecemeal or hourly income.
   b. Applicable earned income disregards apply as if the assistance unit received the prorated amounts in each month of the contract.
2. The Department shall count income in the month received using the income conversion methods in subsections (A) and (B) when the contract specifies that the assistance unit will receive income on a piecemeal or an hourly basis.

D. Actual income. The Department shall use the actual income of an assistance unit that:
1. Receives or reasonably expects to receive less than a full month's income from a new source,
2. Receives or reasonably expects to receive less than a full month's income from a terminated source of income, or
3. Is paid daily.

R6-13-122. Income Verification

The Department shall verify all income as provided in R6-13-107 before determining eligibility and benefit amount.

R6-13-123. Earned Income Deduction

For the purpose of determining the countable monthly net income in R6-13-119(A)(2) and for use in the TC Payment Standard Test as provided in R6-13-124, the Department shall deduct a $24 work expense deduction from the countable monthly earned income of each employed person in the assistance unit.

R6-13-124. Determining Income Eligibility and Cash Benefit Amount

A. To determine income eligibility for a TC cash benefit, the Department shall:
1. Establish whether to use an A-1 Standard or an A-2 Standard shelter cost factor to complete the financial determination.
   a. The Department shall use the A-1 Standard when:
      i. The assistance unit pays, or has an obligation to pay, all or part of the shelter costs for the place in which assistance unit members reside. Shelter costs include rent, mortgage, and property taxes;
      ii. The assistance unit members reside in subsidized public housing; or
      iii. A member of the assistance unit works in exchange for rent.
   b. The Department shall use the A-2 Standard:
      i. For all circumstances not covered under subsection (A)(1)(a), or
      ii. When an organization or a person who is not a member of the assistance unit pays shelter costs for three consecutive months or longer.
2. Conduct a TC Payment Standard Test.
   a. Using the size of the assistance unit and the applicable A-1 or A-2 Standard, the Department shall compare the countable monthly net income to the applicable maximum TC cash benefit amount shown on the TC Payment Standard chart in subsection (A)(3).
   b. If the countable monthly net income is at least one dollar less than the TC maximum cash benefit amount, the

household is eligible for TC benefits. If the countable monthly net income is equal to or greater than the TC maximum cash benefit amount, the assistance unit is ineligible for TC benefits.

3. The TC Payment Standard Chart.

Number of Individuals	Maximum Monthly TC Cash Benefit For A-1 Standard (Based on 0 Countable Income)	Maximum Monthly TC Cash Benefit For A-2 Standard (Based on 0 Countable Income)
1	$173	$108
2	$233	$145
3	$293	$183
4	$353	$220
5	$412	$258
6	$472	$295
Each additional	$60	$38

B. To determine the amount of the cash benefit payment:

1. The Department shall deduct the countable monthly net income from the maximum cash benefit amount, as shown in the chart in subsection (A)(3), and round the difference down to the next whole dollar. The Department shall pay that amount to the assistance unit.
2. The Department shall prorate the initial month's benefits by the number of days remaining in the month from the application filing date.

R6-13-125. Benefit Payments

A. The Department shall pay benefits to an assistance unit for each month in which the Department determines it to be eligible.

B. The Department shall make benefits available no later than the 30th day following the date of application for the initial month, and on the first day of each month for which the assistance unit is eligible thereafter.

R6-13-126. Payment Method

The Department shall provide benefit payments by making direct deposits into:

1. An Electronic Benefit Transfer (EBT) account established for the assistance unit by the Department, or
2. A financial institution account established by the recipient.

R6-13-127. EBT Card Issuance

A. The Department shall authorize access to an EBT account to:

1. The recipient, or
2. An EBT Alternate Card Holder, as provided in R6-13-128.

B. The Department shall:

1. Provide the recipient with a brochure that explains EBT usage,
2. Inform the recipient that the EBT card will be issued to the recipient by mail,
3. Provide the recipient with the EBT provider's Customer Service Hotline telephone number in order for the recipient to obtain a Personal Identification Number (PIN) and to report EBT account problems, and
4. Inform the recipient about the availability of TC Direct Deposit into an open banking account and the process for establishing Direct Deposit.

R6-13-128. EBT Alternate Card Holder

A recipient may designate up to two EBT Alternate Card Holders who shall have full access to the TC benefit available in the EBT account. The EBT Alternate Card Holder shall:

1. Receive his or her own EBT card by mail, and
2. Contact the EBT provider's Customer Service Hotline telephone number in order to obtain a Personal Identification Number (PIN).

R6-13-129. Change in Arizona Residency

When an assistance unit moves to another state, it is entitled to any benefits remaining in its EBT account. The assistance unit may obtain benefits by accessing the account with the EBT card before leaving Arizona or at an Automated Teller Machine (ATM) displaying the QUEST symbol in the assistance unit's new state of residence.

R6-13-130. Replacing Lost, Stolen, or Damaged Cards

The assistance unit shall report a lost, stolen, or damaged EBT account access card as soon as possible, either by telephone to the EBT 24-hour Customer Service Hotline or to the Department during normal business hours.

1. Any funds removed from an EBT account prior to the assistance unit's reporting the card as lost or stolen will not be

replaced.

2. When the client reports a lost, stolen, or damaged EBT account access card by telephone to the EBT 24-hour Customer Service Department, the EBT 24-hour Customer Service Department shall deactivate the EBT account access card and shall issue a new card by mail.
3. The Department shall issue a replacement card when the recipient reports having not received a new EBT account access card by mail by the close of business on the fourth workday following the date the recipient requested a replacement card from the EBT 24-hour Customer Service Department.

R6-13-131. Inactive Accounts; Unused Benefits

The assistance unit shall retain the right to access the EBT account for one year from the original date of benefit availability, regardless of the status of the TC case.

1. If the assistance unit does not access an EBT account for 60 days, the Department shall notify the assistance unit in writing. The notice shall state that immediate access to the EBT account will terminate in 30 days unless the assistance unit contacts the Department or accesses the EBT account.
2. The assistance unit shall lose immediate access to any benefits in an EBT account that has been inactive for 90 days. To regain access to these benefits, the assistance unit shall contact the Department and request that it reinstate the assistance unit to the EBT account.
3. If the assistance unit has not accessed benefit payments in an EBT account for 365 days after the original date of availability, the Department shall recoup the benefits, and the assistance unit shall lose all rights to regain those benefits.
4. Upon the death of a TC payment recipient, the Department shall recoup from the EBT account any TC payments paid to the recipient after the month of the recipient's death.

R6-13-132. Supplemental Payments

A. The Department shall correct underpayments of TC assistance by issuing the assistance unit a supplemental payment regardless of whether the underpaid individual is eligible on the date the supplemental payment is issued.

B. The Department shall not count such supplemental payments as a resource or as income.

R6-13-133. Overpayments: Date of Discovery; Collection

An overpayment exists when an assistance unit receives a TC payment that exceeds the amount the assistance unit was eligible to receive.

1. The Department shall pursue collection of all overpayments under A.R.S. § 46-213.
2. The Department shall a send the recipient a notice of overpayment within 90 days of the date of discovery. The date of discovery is the date the FAA has all of the information necessary to accurately calculate a potential overpayment and writes an overpayment report to the Department's Office of Accounts Receivable and Collections (OARC).
3. If the FAA suspects that fraudulent activity caused the overpayment, the FAA shall refer the potential overpayment to the Department's Office of Special Investigations (OSI) for further investigation and potential prosecution. The overpayment report may be delayed pending the outcome of the OSI investigation.
4. The Department's failure to comply with the time-frame in subsection (2) shall not affect the validity or collection of the overpayment.

R6-13-134. Methods of Collection and Recoupment

A. When an overpaid assistance unit is currently receiving benefits, the Department shall seek recovery using one or more of the following repayment methods:

1. Offset against any amounts underpaid to the assistance unit and due in the current month;
2. Cash payments;
3. Reduction in current benefits in an amount not to exceed 10% of the assistance unit's monthly payment, unless the assistance unit desires a larger reduction; or
4. A combination of the above methods.

B. If the assistance unit is not receiving benefits, the Department shall pursue recovery by appropriate action under state law.

R6-13-135. Overpayment Calculation Date

When determining an overpayment amount, an assistance unit's overpayment period begins in one of the following:

1. The benefit month for which an initial TC payment is issued, when the assistance unit was ineligible for the amount of assistance paid; or
2. The first day of the second month following the month in which a change that caused the overpayment of the TC payment occurred.

R6-13-136. Completion of Treatment

When the Department of Health Services notifies the FAA that an individual receiving TC payments has completed treatment for active or suspected tuberculosis, that individual is no longer eligible for TC payments.

R6-13-137. Eligibility Review

A. The Department shall complete a review of all eligibility factors for each assistance unit at least once every six months. The first eligibility review shall begin in the fifth month following the first month of TC eligibility.
B. The Department shall mail, or otherwise transmit as provided by law, the recipient a notice 30 days prior to the Department's review date advising the recipient of the need for a review. The recipient shall file an application and complete a review interview by the date specified on the notice.
C. The Department shall schedule and conduct a review interview in the same manner as an initial interview, described in R6-13-106.
D. The Department shall verify the assistance unit's resources and income and any eligibility factors that have changed or are subject to change. The Department shall also verify with the state Tuberculosis Control Officer that the individual continues to have active or suspected tuberculosis and that the individual continues to receive treatment for that condition. The Department may verify other factors if current verification is not in the case file.

R6-13-138. Requirement to Report Changes
A. The assistance unit shall report, verbally or in writing, all changes that have the potential to affect eligibility or the benefit amount within 10 days from the date the change becomes known. This includes changes to any of the following:
1. Residential address;
2. Shelter expenses to establish the applicable A-1 or A-2 shelter cost factor used to complete the financial eligibility determination, described in R6-13-124;
3. Sources and amounts of income, financial assistance, or any other assistance that provides help to the assistance unit members in meeting their needs;
4. Disability and employability status of the TC payment recipient;
5. Approval or denial of federal disability benefits by the Social Security Administration;
6. Individuals residing in the home; and
7. Types, sources, and amounts of resources.

B. The assistance unit shall provide any verification of changes requested in writing by the Department on or before the verification due date specified on the Department's request for verification, using the verification methods prescribed in R6-13-106.

R6-13-139. Agency Responsibilities for Processing Changes
A. The Department shall redetermine eligibility for TC benefits and, if applicable, recalculate a TC benefit amount when the assistance unit reports a change directly to the Department, when someone acting on behalf of the assistance unit reports a change, or if an automated system report reveals a change.
B. When a change results in either a decrease in the cash benefit or renders the assistance unit ineligible for TC payments, the Department shall effect the change within 10 days from the date the change was reported, when possible, using one of the following methods:
1. Reduce the benefit or terminate eligibility for the first possible month allowing time for notice of adverse action requirements prescribed in R6-13-141, without further verification, if there is sufficient and reliable information to effect the change; or
2. Attempt to obtain verification by the 10th day from the date the change was reported when there is not sufficient information to effect the change without additional verification. The Department shall:
   a. Send the assistance unit a written request for verification with a due date that is the 10th day from the date the verification is requested; and
   b. Contact third parties to obtain the needed verification, when possible.

C. If the assistance unit fails to provide the requested verification by the due date and does not request assistance from the Department to obtain the verification, the Department shall terminate TC payments for the first possible month, allowing time for notice of adverse action requirements prescribed in R6-13-141.
D. When a reported change results in an increase in the cash benefit, the Department shall effect the increase only after the change has been verified. The Department shall send the assistance unit a written request for verification with a due date that is 10 days from the date the Department mails the written request, or otherwise transmits the written request as provided by law.
1. When the assistance unit provides the requested verification on or before the due date, the Department shall increase the cash benefit for the first monthly payment issued after the date the change is reported.
2. When the assistance unit provides the requested verification after the due date, the Department shall increase the cash benefit for the first monthly payment issued after the date the verification is received.
3. When the assistance unit does not provide the requested verification, the Department shall not increase the cash benefit but shall continue issuing the current cash benefit amount.

R6-13-140. Reinstatement of Terminated Benefits
A. The Department shall reinstate terminated benefit payments within 10 calendar days when:
1. The Department terminated benefit payments in error,
2. The Department receives a court order or administrative hearing decision mandating reinstatement, or

3. The recipient timely files a request for fair hearing and requests continued benefits as provided in R6-13-146.

B. When a six-month review under R6-13-137 was not completed due to the termination of benefits, the Department shall conduct the review at the earliest opportunity following reinstatement.

R6-13-141. Notice of Adverse Action

A. A notice of adverse action shall contain:
1. The adverse action taken,
2. The reason for the adverse action,
3. The effective date of the adverse action,
4. The name and telephone number of the Administration office to contact for additional information,
5. The telephone number for free legal assistance, and
6. The recipient's appeal rights.

B. Timely Notice of Adverse Action.
1. When the Department intends to reduce or terminate benefits, the Department shall provide the assistance unit with a timely notice of adverse action under this subsection, unless the reduction or termination is for one of the reasons in subsection (C).
2. The Department shall mail the notice of adverse action by first-class mail, postage prepaid, or otherwise transmit the notice as provided by law, to the last known residential address for the assistance unit or other designated address for the assistance unit so that the Department can reasonably expect the assistance unit to receive the notice at least 10 days prior to the first day of the month in which the reduction or termination of benefits shall occur.

C. The Department may dispense with timely notice, but shall mail, first-class, postage prepaid, or otherwise transmit as provided by law, the notice of adverse action to the last known residential address for the assistance unit or other designated address for the assistance unit, so that the Department can reasonably expect the assistance unit to receive the notice no later than the first day of the month in which the reduction or termination of benefits shall occur, when:
1. A recipient makes a written or verbal request for termination,
2. A recipient is ineligible because of admission to a facility where the recipient's needs are being met. This includes:
   a. Incarceration,
   b. Long-term hospitalization when the recipient is not expected to return to the home, and
   c. Institutionalization in a skilled nursing care or intermediate care facility,
3. The recipient's address is unknown,
4. The Department has verified that another state has accepted the recipient for assistance, or
5. An administrative tribunal or court of law has found that the recipient committed an Intentional Program Violation (IPV).

R6-13-142. Entitlement to a Hearing; Appealable Action

A. An applicant or recipient who appeals an adverse action is entitled to request an administrative hearing to challenge the action as provided in this Article.

B. An adverse action resulting from a uniform change in federal or state law is not appealable unless the Department misapplies the law to the person seeking the hearing.

R6-13-143. Computation of Time

A. In computing any time period:
1. "Day" means a calendar day;
2. "Workday" means Monday through Friday, excluding Arizona state holidays;
3. The Department does not count the date of the act, event, notice, or default from which a designated time period begins to run as part of the time period; and
4. The Department counts the last day of the designated time period unless it is a Saturday, Sunday, or Arizona state holiday.

B. The Department deems a document that the Department mailed as given to the addressee on the date mailed, or otherwise transmitted as provided by law, to the addressee's last known address. The Department presumes that the mailing date is the date shown on the document unless the facts show otherwise.

R6-13-144. Request for Hearing: Form; Time Limits; Presumptions

A. A person who wishes to appeal an adverse action shall make a verbal or written request for a hearing to the FAA within 30 days of the date on the notice or letter advising the person of the adverse action. The FAA shall provide a form for this purpose and, upon request, shall help an appellant complete the form. If the person makes a verbal request for hearing, the FAA shall reduce the appeal and the stated reasons for the appeal to writing, record the date of the verbal request, and forward the request to the Office of Appeals.

B. An appellant shall include the following information in the request for hearing:
1. Name, address, and telephone number of the individual subject to the adverse action;
2. A description of the adverse action that is the subject of the appeal;

3. The date of the notice of adverse action; and
4. A statement explaining why the adverse action is unauthorized, unlawful, or an abuse of discretion.

C. The Department shall process an appeal even if the request does not include all the information listed in subsection (B), as long as the request contains sufficient information for the Department to determine the identity of the appellant.

D. The Department deems a request for hearing filed on:
1. The mailing date as shown by the postmark if the appellant sent the request by first-class mail, postage prepaid, through the United States Postal Service to the Department; or
2. The date the Department actually receives the request, if not mailed as provided in subsection (D)(1).

E. A document is timely filed if the sender of the document can demonstrate that any delay in submission was due to any of the following reasons:
1. Department error or misinformation,
2. Delay or other action by the United States Postal Service, or
3. Delay due to the appellant's changing mailing addresses at a time when the appellant had no duty to notify the Department of the change.

F. When the Office of Appeals receives a request for a hearing that the appellant did not timely file, the Office of Appeals shall schedule a hearing to determine whether the delay in submission is excusable, as provided in subsection (E).

G. An appellant whose appeal the Office of Appeals denies as untimely is entitled to petition for review of this issue as provided in R6-13-158.

R6-13-145. Family Assistance Administration: Transmittal of Appeal

A. The FAA shall notify the Office of Appeals of a request for hearing within two workdays of receipt of the request.

B. No less than 10 workdays before the scheduled hearing date, unless otherwise ordered, the FAA shall send the Office of Appeals and the appellant a prehearing summary. The prehearing summary shall include, at a minimum:
1. The appellant's name,
2. The appellant's Social Security number,
3. The local office that issued the adverse action under appeal,
4. A brief summary of the facts leading to the adverse action, and
5. The legal or Administration policy basis for the adverse action.

R6-13-146. Stay of Adverse Action Pending Appeal

A. The Department shall stay the implementation of the adverse action until the hearing officer renders a decision on the appeal, if the appellant makes a request to stay the adverse action within 10 days from the date the Department mails the notice of adverse action, or otherwise transmits the notice as provided by law, except in the following circumstances:
1. The appellant expressly waives the delay of adverse action,
2. The adverse action is a result of a uniform change in federal or state law,
3. The appellant is requesting continued benefits when the time period for which the Department has approved benefits has expired,
4. The Department has denied the appellant's initial or renewal application,
5. The appeal challenges an action that is not appealable according to R6-13-142(B),
6. The appellant withdraws the request for hearing, or
7. The appellant fails to appear for the hearing without good cause.

B. The Department shall extend the 10-day time period in subsection (A) if the appellant establishes good cause. Good cause includes any unanticipated occurrence that, in the discretion of the Department, made it impossible or unreasonable for the appellant to make the request as specified in subsection (A).

R6-13-147. Hearings: Location; Notice; Time

A. The Office of Appeals shall schedule the hearing. The Office of Appeals may schedule a telephonic hearing or permit a witness, upon request, to appear telephonically.

B. Unless the parties stipulate to another hearing date, the Office of Appeals shall schedule the hearing no earlier than 20 days from the date the Department receives the appellant's request for hearing.

C. The Office of Appeals shall mail, or otherwise transmit as provided by law, a notice of hearing to all interested parties at least 20 days before the scheduled hearing date.

D. The notice of hearing shall be in writing and shall include the following information:
1. The date, time, and place of the hearing;
2. The name of the hearing officer;
3. A general statement of the issues involved in the case;
4. A statement listing the parties' rights as specified in R6-13-152; and
5. A general statement of the hearing procedures.

R6-13-148. Postponing the Hearing

A. A party may ask for postponement of a hearing by calling or writing the Office of Appeals and providing good cause as to

why the Office of Appeals should postpone the hearing. Good cause exists if circumstances beyond the party's reasonable control make it unduly difficult or burdensome for the party or the party's counsel to attend the hearing on the scheduled date.

B. Except in emergency circumstances, the appellant shall ensure that the Office of Appeals receives the request for postponement at least five workdays before the scheduled hearing date. The Office of Appeals is entitled to deny an untimely request. Emergency circumstances mean circumstances:
1. Beyond the reasonable control of the party,
2. That did not arise until after the five-day period, and
3. That the party could not reasonably anticipate.

C. When the Office of Appeals reschedules a hearing under this Section, the Office of Appeals shall mail, or otherwise transmit as provided by law, the notice of rescheduled hearing at least 11 days prior to the date of the rescheduled hearing.

R6-13-149. Hearing Officer: Duties and Qualifications

A. An impartial hearing officer in the Office of Appeals shall conduct all hearings.

B. The hearing officer shall:
1. Administer oaths and affirmations;
2. Regulate and conduct hearings in an orderly and dignified manner that avoids unnecessary repetition and affords due process to all participants;
3. Ensure consideration of all relevant issues;
4. Exclude evidence that is not competent, relevant, or material, or that is unduly repetitious from the record;
5. Request, receive, and incorporate relevant evidence into the record;
6. Subpoena witnesses or documents needed for the hearing upon compliance with the requirements of R6-13-151;
7. Open, conduct, and close the hearing;
8. Rule on the admissibility of evidence offered at the hearing;
9. Direct the order of proof at the hearing;
10. Upon the request of a party, or on the hearing officer's own motion, and for good cause shown, take action the hearing officer deems necessary for the proper disposition of an appeal, including the following:
    a. Disqualify himself or herself from the case,
    b. Continue the hearing to a future date or time,
    c. Reopen the hearing to take additional evidence prior to the entry of a final decision,
    d. Deny or dismiss an appeal or request for hearing in accordance with the provisions of this Article,
    e. Exclude nonparty witnesses from the hearing room; and
11. Issue a written decision resolving the appeal.

R6-13-150. Change of Hearing Officer; Challenges for Cause

A. A party may request a change of hearing officer as prescribed in A.R.S. § 41-1992(B) by filing an affidavit that shall include:
1. The case name and number,
2. The hearing officer assigned to the case, and
3. The name and signature of the party requesting the change.

B. The party requesting the change shall file the affidavit with the Office of Appeals and send a copy to all other parties at least five days before the scheduled hearing date.

C. A party shall request only one change of hearing officer unless that party is challenging a hearing officer for cause under subsection (E).

D. A party may not request a change of hearing officer once the hearing officer has heard and decided a substantive motion except as provided in subsection (E).

E. At any time before a hearing officer renders a decision, a party may challenge a hearing officer on the grounds that the hearing officer is not impartial or disinterested in the case.

F. A party who brings a challenge for cause shall file an affidavit as provided in subsection (A) and send a copy of the affidavit to all other parties. The affidavit shall explain the reason why the assigned hearing officer is not impartial or disinterested.

G. The hearing officer being challenged for cause may hear and decide the challenge unless:
1. A party specifically requests that another hearing officer make the determination, or
2. The assigned hearing officer disqualifies himself or herself from the decision.

H. The Office of Appeals shall transfer the case to another hearing officer when:
1. A party requests a change as provided in subsections (A) through (D); or
2. The hearing officer is removed for cause, as provided in subsections (E) through (G).

I. The Office of Appeals shall send the parties written notice of the new hearing officer assignment.

R6-13-151. Subpoenas

A. A party who wishes to have a witness testify at a hearing or to offer a particular document or item in evidence shall first

attempt to obtain the witness or evidence by voluntary means. Department documents are available to the appellant as prescribed in R6-13-152(2).

B. If the party cannot procure the voluntary attendance of the witness or production of the evidence, the party may ask the hearing officer assigned to the case to issue a subpoena for a witness, document, or other physical evidence or to otherwise obtain the requested evidence.

C. The party seeking the subpoena shall send the hearing officer a written request for a subpoena. The request shall include:

1. The case name and number;
2. The name of the party requesting the subpoena;
3. The name and address of any person to be subpoenaed, with a description of the subject matter of the witness's anticipated testimony;
4. A description of any documents or physical evidence the appellant desires the hearing officer to subpoena, including the title, appearance, and location of the item if the appellant knows its location, and the name and address of the person in possession of the item;
5. A statement about the expected substance of the testimony or other evidence as well as the relevance and importance of the requested testimony or other evidence; and
6. A description of the party's efforts to obtain the witness or evidence by voluntary means.

D. A party who wants a subpoena shall ask for the subpoena at least five days before the scheduled hearing date.

E. The hearing officer shall deny the request if the witness's testimony or the physical evidence is not relevant to an issue in the case or is duplicative.

F. The Office of Appeals shall prepare all subpoenas and serve them by mail, except that the Office of Appeals may serve subpoenas to state employees who are appearing in the course of their jobs, by regular mail, hand-delivered mail, electronic mail, or interoffice mail.

R6-13-152. Parties' Rights

The claimant and the Department have the following rights:

1. The right to request a postponement of the hearing as provided in R6-13-148;
2. The right to copy before or during the hearing any documents in the Department's file on the appellant and documents the Department might use at the hearing, except documents shielded by the attorney-client or work-product privilege or as otherwise protected by federal or state confidentiality laws;
3. The right to request a change of hearing officer as provided in A.R.S. § 41-1992(B) and R6-13-150;
4. The right to request subpoenas for witnesses and evidence as provided in R6-13-151;
5. The right to present the case in person or through an authorized representative, subject to any limitations on the unauthorized practice of law in the Rules of the Supreme Court of Arizona, Rule 31;
6. The right to present evidence and to cross-examine witnesses; and
7. The right to further appeal, as provided in R6-13-158 and R6-13-160 if dissatisfied with a decision reached by the Office of Appeals.

R6-13-153. Withdrawal of an Appeal

A. An appellant may withdraw an appeal at any time prior to the time the hearing officer renders a decision.

1. An appellant may withdraw an appeal verbally, either in person or by telephone. The Department may record the audio of the withdrawal.
2. An appellant may withdraw an appeal by signing a written statement expressing the intent to withdraw. The Department shall make a withdrawal form available for this purpose.

B. The Office of Appeals shall dismiss the appeal upon receipt of a withdrawal request signed by the appellant or the appellant's representative, or upon receipt of a statement of withdrawal made on the record when the hearing officer has accepted the withdrawal.

R6-13-154. Failure to Appear; Default; Reopening

A. If an appellant fails to appear at the scheduled hearing, the hearing officer shall:

1. Enter a default and issue a decision dismissing the appeal, except as provided in subsection (B);
2. Rule summarily on the available record; or
3. Adjourn the hearing to a later date and time.

B. The hearing officer shall not enter a default if the appellant notifies the Office of Appeals before the scheduled time of hearing that the appellant cannot attend the hearing because of good cause and still desires a hearing or wishes to have the matter considered on the available record.

C. A party who did not appear at a scheduled hearing date may file, no more than 10 days after a dismissal date, a request to reopen the proceedings. The request shall be in writing and shall demonstrate good cause for the party's failure to appear.

D. The hearing officer shall set the matter for a hearing to determine whether the appellant had good cause for failing to appear.

E. If the hearing officer finds that the party had good cause for failure to appear, the hearing officer shall reopen the proceedings and schedule a new hearing with notice to all interested parties as prescribed in R6-13-147.

F. Good cause, for the purpose of reopening a hearing, is established if the failure to appear at the hearing and the failure to timely notify the hearing officer were beyond the reasonable control of the nonappearing party. Good cause also exists when the nonappearing party demonstrates excusable neglect for both the failure to appear and the failure to timely notify the hearing officer. "Excusable neglect" has the meaning applied to "excusable neglect" as that term is used in Arizona Rules of Civil Procedure, Rule 60(c).

R6-13-155. Hearing Proceedings

A. The hearing is a de novo proceeding. The Department has the initial burden of going forward with evidence to support the adverse action being appealed.
B. To prevail, the appellant shall prove, by a preponderance of the evidence, that the Department's action was unauthorized, unlawful, or an abuse of discretion.
C. The Arizona Rules of Evidence do not apply at the hearing. The hearing officer may admit and give probative effect to evidence as prescribed in A.R.S. § 23-674(D).
D. The Office of Appeals shall record all hearings. The Office of Appeals need not transcribe the proceedings unless a transcription is required for further administrative or judicial proceedings.
E. The Office of Appeals charges a fee of 15¢ per page for providing a transcript. A party may obtain a waiver of the fee by submitting an affidavit stating that the party cannot afford to pay for the transcript.
F. A party may, at his or her own expense, arrange to have a court reporter present to transcribe the hearing, provided that such transcription does not delay or interfere with the hearing. The Office of Appeal's recording of the hearing shall constitute the official record of the hearing.
G. The hearing officer shall call the hearing to order and dispose of any prehearing motions or issues.
H. With the consent of the hearing officer, the parties may stipulate to factual findings or legal conclusions.
I. Upon request and with the consent of the hearing officer, a party may make opening and closing statements. The hearing officer shall consider any statements as argument and not evidence.
J. A party may testify, present evidence, and cross-examine adverse witnesses. The hearing officer may also take witness testimony or admit documentary or physical evidence on his or her own motion.
K. The hearing officer shall keep a complete record of all proceedings in connection with an appeal.
L. The hearing officer may require the parties to submit memoranda on issues in the case if the hearing officer finds that the memoranda would assist the hearing officer in deciding the case. The hearing officer shall establish a briefing schedule for any required memoranda.

R6-13-156. Hearing Decision

A. No later than 60 days after the date the appellant files a request for hearing with the Department, the hearing officer shall render a decision based solely on the evidence and testimony produced at the hearing and the applicable law. The 60-day time limit is extended for any delay necessary to accommodate hearing continuances or extensions, or postponements requested by a party.
B. The hearing decision shall include:
1. Findings of fact concerning the issue on appeal,
2. Citations to the law and authority applicable to the issue on appeal,
3. A statement of the conclusions derived from the controlling facts and law and the reasons for the conclusions,
4. The name of the hearing officer,
5. The date of the decision, and
6. A statement of further appeal rights and the time period for exercising those rights.

C. The Office of Appeals shall mail, or otherwise transmit as provided by law, a copy of the decision to each party's representative or to the party if the party is unrepresented.

R6-13-157. Effect of the Decision

A. If the hearing officer affirms the adverse action against the appellant, the adverse action is effective as of the date of the initial determination of adverse action by the Department. The adverse action remains effective until the appellant appeals and obtains a higher administrative or judicial decision reversing or vacating the hearing officer's decision.
B. If the hearing officer vacates, sets aside, or reverses the Administration's decision to take adverse action, the Administration shall not take the action or shall reverse any adverse action taken unless and until the Appeals Board, under A.R.S. § 23-672, or Arizona Court of Appeals issues a decision affirming the adverse action.

R6-13-158. Further Administrative Appeal

A. A party can appeal an adverse decision issued by a hearing officer to the Department's Appeals Board as prescribed in A.R.S. § 41-1992(C) and (D) by filing a written petition for review with the Office of Appeals within 15 days of the mailing date, or the transmittal date when transmitted in a manner other than by mail, as provided by law, of the hearing officer's decision.
B. The petition for review shall:
1. Be in writing,

2. Describe why the party disagrees with the hearing officer's decision, and
3. Be signed and dated by the party or the party's representative.

C. The party petitioning for review shall mail a copy of the petition to all other parties.

D. The Appeals Board is not obligated to have the proceedings of the hearing transcribed.

R6-13-159. Appeals Board

A. The Appeals Board shall conduct proceedings in accordance with A.R.S. §§ 41-1992(D) and 23-672.

B. Following notice to the parties, the Appeals Board may receive additional evidence or hold a hearing if the Appeals Board finds that additional information will help in deciding the appeal. The Appeals Board may also remand the case to the Office of Appeals for rehearing, specifying the nature of the additional evidence required or any further issues for consideration.

C. The Appeals Board shall decide the appeal based solely on the record of proceedings before the hearing officer and any further evidence or testimony presented to the Appeals Board.

D. The Appeals Board shall issue and mail, or otherwise transmit as provided by law, to all parties a final written decision affirming, reversing, setting aside, or modifying the hearing officer's decision. The decision of the Appeals Board shall specify the parties' rights to further review and the time for filing a request for review.

R6-13-160. Judicial Review

Any party adversely affected by an Appeals Board decision may seek judicial review as prescribed in A.R.S. § 41-1993.

R6-13-161. Availability of TC Payments

The availability of TC payments is subject to budgetary restrictions.

ARTICLE 9. ~~TUBERCULOSIS CONTROL~~ REPEALED

R6-13-902. ~~Age~~ Repealed

~~A Tuberculosis Control grant will not be issued if the person certified as tubercular is a minor, unless authorized by the district Public Assistance Program Manager.~~

R6-13-903. ~~Residence~~ Repealed

~~**A.** The Department of Health Services is responsible for determination of residence.~~

~~**B.** Inter-county transfers are permitted.~~

~~**C.** Assistance may be granted out-of-state with Department of Health Services approval.~~

R6-13-904. ~~Citizenship~~ Repealed

~~There is no citizenship requirement.~~

R6-13-905. ~~Limitations on Value of Real and Personal Property~~ Repealed

~~The following resource limitations apply:~~

~~1. Household furnishings used in the usual place of residence;~~
~~2. Wearing apparel and necessary personal effects;~~
~~3. A home in which the recipient resides and land contiguous thereto which has a gross market value not in excess of $25,000;~~
~~4. An automobile with a gross retail market value of $1,200 or less. If such value exceeds $1,200 the excess value shall be counted against other property or assets specified in subsection (6);~~
~~5. Tools of trade;~~
~~6. Other property or assets having a total gross market value of $1,000 for a single recipient or $1,400 for a recipient and spouse, or two or more recipients in a single household;~~
~~7. Real and personal property shall be valued at their gross market value.~~

R6-13-906. ~~Transfer of Property~~ Repealed

~~Transfer of property does not affect eligibility.~~

R6-13-907. ~~Employability~~ Repealed

~~Employability is determined by the Department of Health Services.~~

R6-13-908. ~~Receipt of Other Public Assistance~~ Repealed

~~When a recipient with dependents is eligible for AFDC as well as TC:~~

~~1. The maximum allowable from the AFDC program will be granted.~~
~~2. Any unmet need will be provided by a TC grant up to 100% of allowable need.~~

R6-13-909. ~~Institutional Status~~ Repealed

~~**A.** A TC grant will be made for personal care expense to eligible recipients receiving care in an institution.~~

~~**B.** Department of Health Services approval is required.~~

~~**C.** The amount of the grant will be according to the assistance standard.~~

R6-13-910. ~~Diagnosis and Treatment~~ Repealed
~~**A.** The physician treating the case is responsible to determine whether contagious tuberculosis exists.~~
~~**B.** Decisions of eligibility for care and treatment are made by the Department of Health Services.~~

R6-13-911. ~~Referral of Cases to the Department of Economic Security~~ Repealed
~~**A.** The local Department of Health Services initiates referrals for Tuberculosis Control financial assistance.~~
~~**B.** After acting on an application for TC, the local DES office will notify the Department of Health Services of the decision reached.~~
~~**C.** When the Department of Health Services refers the case and it is shown that the patient resides at home, no other approval is required for home care.~~
~~**D.** Approval for institutional care must be given by the Department of Health Services.~~

R6-13-913. ~~Return of Nonresidents~~ Repealed
~~The Tuberculosis Control Officer of the Department of Health Services will contact DES, other agencies, or relatives when a tuberculosis patient is to be sent outside of the state.~~

R6-13-914. ~~Computing the Tuberculosis Control Grant~~ Repealed
~~The assistance grant shall be equal to the budgetary need amount, minus countable income. An Eligible Recipient means the medically eligible person and the person's legal dependents who reside in a home maintained by the family, regardless of whether the medically eligible person is present in the home, providing such dependents do not have their total needs met from another source or from another assistance grant.~~

R6-13-915. ~~Termination of the Tuberculosis Control Grant~~ Repealed
~~When the Department of Health Services notifies the local DES office that a TC grant is to be stopped, it will be stopped in the specified month.~~

R6-13-916. ~~Termination of TC Grant with AFDC Grant Continuing in Household~~ Repealed
~~Incapacity must be established if AFDC is to be continued.~~

R6-13-917. ~~Overpayment~~ Repealed
~~In the Tuberculosis Control Program, overpayments will be reported but not collected unless repaid voluntarily.~~

R6-13-919. ~~Redeterminations~~ Repealed
~~Tuberculosis Control cases must be review each six months.~~

R6-13-920. ~~Available Services~~ Repealed
~~Basic services in the Tuberculosis Control program are:~~
~~1. Meeting financial need of eligible persons,~~
~~2. Services related to treatment and home supervision are the responsibility of the Department of Health Services.~~

R6-13-921. ~~Right of Appeal~~ Repealed
~~An applicant or recipient who is dissatisfied with a decision on the applicant's or recipient's case has the right to appeal.~~

R6-13-922. ~~Reporting Change of Status~~ Repealed
~~An applicant or recipient shall report, within 10 days from the date the change occurs, all changes in current income, resources, and any other circumstances which may affect eligibility or the amount of the assistance payment.~~

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 1244.) The Governor's Office authorized the notice to proceed through the rulemaking process on May 20, 2011.

[R12-78]

PREAMBLE

1.	Article, Part, or Section Affected (as applicable)	Rulemaking Action
	R12-4-121	Amend

2. Citations to the agency's statutory authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(A)(7), 17-231(A)(8), 17-331(A), 17-332, 17-333, and 17-346

3. The effective date of the rules:

June 30, 2012

a. If the agency selected a date earlier than the 60 days effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable

b. If the agency selected a date later than the 60 days effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(B):

Not applicable

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:

Notice of Rulemaking Docket Opening: 17 A.A.R. 2345, November 18, 2011

Notice of Proposed Rulemaking: 17 A.A.R. 2336, November 18, 2011

5. The agency's contact person who can answer questions about the rulemaking:

Name: Celeste Cook, Rules Analyst

Address: Game and Fish Department
5000 W. Carefree Highway
Phoenix, AZ 85086

Telephone: (623) 236-7390

Fax: (623) 236-7677

E-mail: ccook@azgfd.gov

Please visit the AZGFD web site to track progress of this rule and any other agency rulemaking matters at http://www.azgfd.gov/inside_azgfd/rules/rulemaking_updates.shtml.

6. An agency's justification and reason why the rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

Laws 2010, 2nd Regular Session, Ch. 287, § 28(B)(7) allows an agency to eliminate or replace archaic or illegal rules.

On May 20, 2011, the Governor's office approved the Commission's request to pursue rulemaking to amend R12-4-121.

The Commission proposes to amend R12-4-121 to establish requirements for transferring a big game tag to an eligible minor child or grandchild. Laws 2007, 1st Regular Session, Ch. 5, amended A.R.S. § 17-332 to allow grandparents to transfer their unused big game tag to their minor grandchild.

The current rule is more restrictive than statute as it allows only a parent or legal guardian to transfer their unused big game tag to their minor child. Individuals unable to use their big game tag are not aware of their ability to transfer the tag to their minor grandchild.

7. A reference to any study relevant to the rule that the agency reviewed and proposes to either rely on or 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 rule.

8. A showing of good cause why the rulemaking 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. A summary of the economic, small business, and consumer impact:

The Commission anticipates the rulemaking will benefit the regulated community and the Department by replacing archaic information and aligning the rule with statute. The Department currently charges $4 for each big game tag transferred between a minor child and their parent, grandparent, or guardian; there is no charge for big game tags

transferred to a qualifying organization. The rulemaking will not impose increased monetary or regulatory costs on other state agencies, or political subdivisions of this state, persons, or individuals so regulated.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

R12-4-121(B)(5) is amended to allow any grandparent, parent, or legal guardian to accompany the minor child in the field, regardless of which family member donated the unused tag to the minor child. This is done to make the rule less restrictive.

Minor grammatical and style corrections were made at the request of the Governor's Regulatory Review Council staff.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

The agency did not receive any public or stakeholder comments about the rulemaking.

12. All agency's shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used, and if not, the reason why a general permit is not used:

The rule requires alternative permits specifically authorized under A.R.S. §§ 17-333 and 17-346.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law, and if so, citation to the statutory authority to exceed the requirements of federal law:

Federal law is not applicable to the subject of the rule.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

The agency has not received an analysis that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

Not applicable

14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-4-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

Section
R12-4-121. Big Game Permit or Tag Transfer

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

R12-4-121. Big Game Permit or Tag Transfer

~~**A.** A parent or guardian to whom a big game hunt permit-tag is issued is issued may transfer the unused permit or tag to the parent's guardian's minor child may transfer the unused permit or tag to the parent's or guardian's minor child, if:~~

~~1. The minor child is from 10 to 17 years old on the date of transfer,~~
~~2. The minor child has a valid hunting license on the date of transfer, and~~
~~3. A minor child less than 14 years old satisfactorily completes a Department approved hunter education course by the beginning date of the hunt.~~

~~**B.** A parent or guardian may obtain a transfer, in person, at any Department office. To obtain a transfer, a parent, or guardian shall provide the following:~~

~~1. Proof of ownership of the big game permit or tag to be transferred;~~
~~2. The minor's valid hunting license; and~~

~~3. The unused big game permit or tag.~~

~~**C.** An individual to whom a hunt permit-tag is issued or the individual's legal representative may donate the unused tag to a non-profit organization if:~~

~~1. The organization is exempt from federal taxation under Section 501(c) of the Internal Revenue Code;~~
~~2. The organization provides opportunities and experiences to children with life-threatening medical conditions; and~~
~~3. The individual or legal representative that donates the tag provides the organization with some type of statement that indicates that the tag is voluntarily donated to that organization.~~

~~**D.** A non-profit organization that receives a hunt permit-tag under subsection (C) may obtain a transfer by contacting any Department office. To obtain a transfer, an organization shall:~~

~~1. Provide proof of donation of the big game permit-tag to be transferred;~~
~~2. Provide the unused big game permit or tag;~~
~~3. Provide proof of the minor child's valid hunting license; and~~
~~4. Transfer the tag to a minor child who meets the following criteria:~~
~~a. Has a life-threatening medical condition;~~
~~b. Is 10 to 17 years old by the date of the transfer;~~
~~c. Has a valid hunting license; and~~
~~d. If is less than 14 years old, satisfactorily completes a Department-approved hunter education course before the beginning date of the hunt.~~

~~**E.** The Department shall issue a transfer permit or tag in the name of the minor child if it is lawfully submitted according to this Section.~~

A. For the purposes of this Section, "unused tag" means a big game hunt permit-tag, non-permit tag, or special license tag that has not been attached to any animal.

B. A parent, grandparent, or guardian issued a big game hunt permit-tag, non-permit tag, or special license tag may transfer the unused tag to the parent's, grandparent's, or guardian's minor child or grandchild.
1. A parent, grandparent, or guardian issued a tag may transfer the unused tag to a minor child or grandchild at any time prior to the end of the season for which the unused tag was issued.
2. A parent, grandparent, or guardian may transfer the unused tag by providing all of the following documentation in person at any Department office:
   a. Proof of ownership of the unused tag to be transferred,
   b. The unused tag, and
   c. The minor's valid hunting license.
3. If a parent, grandparent, or legal guardian is deceased, the personal representative of the individual's estate may transfer an unused tag to an eligible minor. The individual acting as the personal representative shall present:
   a. The deceased individual's death certificate, and
   b. Proof of the individual's authority to act as the personal representative of the deceased individual's estate.
4. To be eligible to receive an unused tag from a parent, grandparent, or legal guardian, the minor child shall meet the criteria established under subsection (D).
5. A minor child or grandchild receiving an unused tag from a parent, grandparent, or legal guardian shall be accompanied into the field by any grandparent, parent, or legal guardian of the minor child.

C. An individual issued a tag or the individual's legal representative may donate the unused tag to a non-profit organization for use by a minor child who has a life threatening medical condition or permanent physical disability.
1. A qualifying organization:
   a. Is exempt from federal taxation under Section 501(c) of the Internal Revenue Code, and
   b. Provides hunting opportunities and experiences to children with life-threatening medical conditions or permanent physical disabilities.
2. The individual or legal representative that donates the unused tag shall provide the non-profit organization with a written statement indicating the unused tag is voluntarily donated to the organization.
3. The non-profit organization receiving a donated tag under this subsection may transfer the unused tag to an eligible minor child by contacting any Department office.
   a. To obtain a transfer, the non-profit organization shall:
      i. Provide proof of donation of the unused tag to be transferred,
      ii. Provide the unused tag,
      iii. Provide proof of the minor child's valid hunting license; and
   b. To be eligible to receive a donated unused tag from a qualifying organization, the minor child shall meet the criteria established under subsection (D).

D. To receive an unused tag authorized under subsections (B) or (C), an eligible minor child shall meet the following criteria:
1. Possess a valid hunting license, and
2. Is 10 to 17 years of age on the date of the transfer. A minor child under the age of 14 shall have satisfactorily completed a Department-approved hunter education course before the beginning date of the hunt.

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 1244.) The Governor's Office authorized the notice to proceed through the rulemaking process on May 20, 2011.

[R12-79]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) **Rulemaking Action**
R12-4-202 Amend

2. Citations to the agency's statutory authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statute: A.R.S. §§ 17-332(F), 17-333(A)(9), and 17-336(A)(2)

3. The effective date of the rules:

June 30, 2012

a. If the agency selected a date earlier than the 60 days effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable

b. If the agency selected a date later than the 60 days effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(B):

Not applicable

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:

Notice of Rulemaking Docket Opening: 17 A.A.R. 2346, November 18, 2011

Notice of Proposed Rulemaking: 17 A.A.R. 2339, November 18, 2011

5. The agency's contact person who can answer questions about the rulemaking:

Name: Celeste Cook, Rules Analyst

Address: Game and Fish Department
5000 W. Carefree Highway
Phoenix, AZ 85086

Telephone: (623) 236-7390

Fax: (623) 236-7677

E-mail: ccook@azgfd.gov

Please visit the AZGFD web site to track progress of this rule and any other agency rulemaking matters at http://www.azgfd.gov/inside_azgfd/rules/rulemaking_updates.shtml.

6. An agency's justification and reason why the rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

Laws 2010, 2nd Regular Session, Ch. 287, § 28(B)(7), which allows an agency to eliminate or replace archaic or illegal rules.

On May 20, 2011, the Governor's office approved the Department's request to pursue rulemaking to amend R12-4-202.

The Commission proposes to amend R12-4-202 to remove the requirement that the Department of Veterans' Services (DVS) include the applicant's date of birth. The DVS certification does not consistently provide the date of birth information. Because the date of birth requirement is required by rule, an applicant whose certification does not include the date of birth information is denied a disabled veteran's license. When an application is denied for this rea-

son, the disabled veteran must put forth additional time and effort to obtain and resubmit a compliant DVS certification.

The rule is also amended to ensure conformity to Arizona Administrative Procedure Act, the Secretary of State, and the Governor's Regulatory Review Council rulemaking format and style requirements.

7. A reference to any study relevant to the rule that the agency reviewed and proposes to either rely on or 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 or justification for the rule.

8. A showing of good cause why the rulemaking 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. A summary of the economic, small business, and consumer impact:

The Commission anticipates the proposed rulemaking will make the Disabled Veteran's license application less burdensome and will not impose increased monetary or regulatory costs on other state agencies, political subdivisions of this state, persons, or individuals so regulated.

The Department currently issues approximately 490 Disabled Veteran's Licenses each fiscal year. Since the Department already has a mechanism in place for the application review and issuance or denial of Disabled Veteran's Licenses, the Commission has determined that the rulemaking will not require any additional full-time employees to implement and enforce the proposed rule.

The Commission anticipates the proposed rulemakings will benefit the regulated community and the Department.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

Minor grammatical and style corrections were made at the request of the Governor's Regulatory Review Council staff.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

The agency did not receive any public or stakeholder comments about the rulemaking.

12. All agency's shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used, and if not, the reason why a general permit is not used:

The rule does not require a general permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law, and if so, citation to the statutory authority to exceed the requirements of federal law:

Federal law is not applicable to the subject of the rule.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

The agency did not receive an analysis that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

Not applicable

14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-4-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

The rule was not previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 2. MISCELLANEOUS LICENSES AND PERMITS

Section
R12-4-202. Disabled Veteran's License

ARTICLE 2. MISCELLANEOUS LICENSES AND PERMITS

R12-4-202. Disabled Veteran's License

A. A disabled veteran's license grants all of the hunting and fishing privileges of a Class F combination hunting and fishing license and an urban fishing license.

B. An individual ~~who meets~~ meeting the criteria ~~in~~ prescribed under A.R.S. § ~~17-336(2)~~ 17-336(A)(2) may apply for a disabled veteran's license ~~as follows~~. Eligibility for the disabled veteran's license is based on 100% disability~~, and~~ not on the percentage of compensation received by the veteran.

1. An applicant ~~for~~ desiring a disabled veteran's license shall apply on an application form furnished by the Department and available ~~from~~ at any Department office. The applicant shall provide all of the following information on the application form:
   a. The applicant's ~~name, date of birth, Department identification number, and physical description~~:
      i. Name,
      ii. Date of birth,
      iii Department identification number,
      iv. Physical description;
   b. ~~Current residence or physical location of residence~~ All physical addresses for the calendar year immediately preceding application;
   c. ~~Current mailing~~ Mailing address; and
   ~~d. If the applicant has resided at the current residence or physical location of residence for less than one year, the address or physical location of each residence within the year immediately preceding application; and~~
   ~~e.~~d. The applicant's signature, ~~either~~ acknowledged before a Notary Public or witnessed by a Department employee ~~or notarized~~.
2. An applicant shall submit with the application form an original certification from the Department of Veterans' Services~~, that includes~~ The certification shall include all of the following information:
   a. ~~Full~~ The applicant's full name ~~and date of birth of the applicant;~~,
   b. Certification that the applicant is receiving compensation for permanent service-connected disabilities rated as 100% disabling~~;~~,
   c. Certification that the 100% rating is permanent and:
      i. ~~will~~ Will not require reevaluation, or
      ii. ~~that the 100% rating is permanent but will~~ Will be reevaluated in three years~~;~~, and
   d. ~~Signature~~ The signature and title of an agent of the Department of Veterans' Services who issued or approved the certification.

C. If the certification required under subsection (B)(2)(c) indicates that the applicant's disability rating of 100% is permanent and:

1. Will not be reevaluated, the disabled veteran's license will not expire.
2. Will be reevaluated in three years, the disabled veteran's license will expire three years from the date of issuance.

~~C.~~D. The Department shall deny a disabled veteran's license ~~if~~ to an applicant who:

1. ~~is~~ Is not eligible for the license,
2. ~~fails~~ Fails to comply with the requirements of this Section, or
3. ~~provides~~ Provides false information during the application process.

E. The Department shall provide written notice to the applicant if the disabled veteran's license is denied. The applicant may appeal the denial to the Commission as prescribed ~~in~~ under A.R.S. Title 41, Chapter 6, Article 10.

~~D.~~F. A disabled veteran's license holder may request a duplicate license if:

1. The license has been lost or destroyed~~;~~,
2. The license holder submits a written request to the Department for a duplicate license~~;~~, and
3. The Department has a record that shows a disabled veteran's license was previously issued to that individual.

~~**E.** If the certification required in subsection (B) indicates that the applicant's disability rating of 100% is permanent but will be reevaluated, the disabled veteran's license is valid for three years from the date of issuance. If the Department of Veterans' Services certifies that the applicant's disability rating of 100% is permanent and will not be reevaluated, the license does not need to be renewed.~~

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY HAZARDOUS WASTE MANAGEMENT

Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 1244.) The Governor's Office authorized the notice to proceed through the rulemaking process on August 23, 2011.

[R12-77]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) **Rulemaking Action**

R18-8-260	Amend
R18-8-270	Amend

2. Citations to the agency's statutory rulemaking authority to include the authorizing statutes (general) and the implementing statutes (specific):

Authorizing Statutes: A.R.S. § 49-104(B)(17); Laws 2011, 1st Regular Session, Ch. 220

Implementing Statutes: A.R.S. §§ 49-922(B)(5) and 49-931(A)

3. The effective date of the rule:

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

July 1, 2012; to coincide with the beginning of the state fiscal year.

4. Citations to all related notices published in the *Register* to include the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 17 A.A.R. 1822, September 16, 2011

Notice of Proposed Rulemaking: 17 A.A.R. 1916, September 30, 2011

5. The agency's contact persons who can answer questions about the rulemaking:

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Telephone:	(602) 771-4117, or (800) 234-5677, enter 771-4117 (Arizona only)
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6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

Summary. This rulemaking was conducted as required by Laws 2011, 1st Regular Session, Ch. 220 (hereafter "HB 2705"), which also enacted temporary hazardous waste fees for Fiscal Year (FY) 2012. The final rule increases existing hazardous waste fees beginning July 1, 2012 to address the direct and indirect costs of the Department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing hazardous waste permits and enforcing the requirements of the regulatory program. The goal is to achieve self sufficiency of the Arizona Department of Environmental Quality's (ADEQ or the Department) Hazardous Waste Program and replace General Fund monies no longer appropriated to the Program. The new fees from this rule are effective July 1, 2012.

Background. The Arizona Hazardous Waste Program is required by A.R.S. § 49-922 and consists primarily of a permitting function and an inspection and compliance function. Like other environmental programs, it is based largely on federal law that calls for states to adopt and implement certain federal regulations as stringently as EPA. As a consequence of Arizona being granted "authorization" to implement the federal regulations in Arizona "in lieu of" the United States Environmental Protection Agency (EPA), ADEQ also receives a regular two-year grant from EPA, known as the RCRA (Resource Conservation and Recovery Act) grant.

Since ADEQ was first granted authorization for the Hazardous Waste Program in 1985, the federal RCRA grant has played a key part in the funding and authorization of the Arizona Hazardous Waste Program. However, the grant was never designed to be the sole source of funding. In 1991, fees from hazardous waste generators, permit processing fees, and fees from civil and criminal penalties were added as revenue sources to the Hazardous Waste Management Fund. Civil and criminal penalties were redirected to the General Fund in 1996. In addition, until recently, there has always been General Fund support for ADEQ's Hazardous Waste Program.

As a result of the economic downturn in 2007-2008, many states including Arizona began to experience budget shortfalls. Lump sum budget reductions and fund transfers to the General Fund from state agencies, including the ADEQ were undertaken by the legislature. Monies from various ADEQ funds including the Hazardous Waste Management Fund were transferred to the General Fund. In addition, the FY 2011 budget eliminated all of the ADEQ's General Fund ($6,247,700) for operations. Special session legislation allowed ADEQ to increase fees through exempt rules for air, water, and waste programs for FY 2011. (Laws 2010, 7th Spec. Sess., Ch. 7, § 5) In 2011, HB 2705 gave ADEQ the authority to continue increased waste program fees for FY 2012. The increased fees in this rule are also authorized by HB 2705 and would begin July 1, 2012 for FY 2013.

HB 2705. HB 2705 directed ADEQ to establish fees for two types of hazardous waste entities: hazardous waste generators and facilities that store, treat, or dispose of hazardous waste. The statute directs that the fees are to be set based on hazardous waste generated and disposed, and for the costs of evaluating hazardous waste facility permits. The bill set out a number of further requirements for those fee increases contained in A.R.S. §§ 49-104(B)(17), 49-922, and 49-931. Two principal requirements are: 1) the fees should "be fairly assessed and impose the least burden and cost to the parties subject to the fees"; and 2) the permit fees are to be based on "the direct and indirect costs of the department's relevant duties" … "related to issuing licenses" … "and enforcing the requirements of the applicable regulatory program." Other requirements also apply and are discussed later.

In the context of this rulemaking, ADEQ has interpreted these two main requirements to mean it should collect an amount necessary to maintain an approvable program and to satisfy the detailed requirements to protect the public and the environment from hazardous wastes that are set out in A.R.S. § 49-922. ADEQ interprets "fairly assessed" to mean that the amount of fees collected from any class of hazardous waste entities should be proportional to the "direct and indirect costs" that can be attributed to that class.

Informal Comment. In 2011, ADEQ facilitated extensive informal comment on funding for the Hazardous Waste Program and hosted four public meetings. An e-mail 'listserv' was created consisting of hazardous waste related entities and each meeting was announced to the listserv and posted on ADEQ's web site. The meetings were held in Phoenix and ADEQ provided a call-in mechanism to allow participation by phone. Attendance averaged 50-75 people per meeting. Meetings on January 24 and January 31 concentrated on concepts and the design of legislation. The meetings on June 30 and July 28 reviewed draft rule language and responded to comments from the public. Oral comments were recorded at the meetings, and written comments were accepted after each meeting. At the time, the hazardous waste listserv contained over 450 e-mail addresses for the hazardous waste rule.

Explanation of New Fees. These final rules increase fees in the Hazardous Waste Programs for hazardous waste generation and disposal, and permits. The first set of fees increased is the per ton hazardous waste generation fee and the per ton hazardous waste disposal fee at A.R.S. § 49-931. Disposal fees apply only to hazardous waste disposed in Arizona. HB 2705 removed the fees previously established by that statute and authorized ADEQ to establish the fees by rule. The table below shows how the new fee amounts compared to previous fee amounts.

Table 1. Hazardous Waste Generation and Disposal Fees

Type of Hazardous Waste "Facility"	FY 2010 and before	FY 2011 and FY 2012	New fee beginning FY 2013	Maximum fee per site beginning FY 2013
A.R.S. § 49-931(A)(1)	$10/ton	$70/ton	$67.50/ton	$200,000
A.R.S. § 49-931(A)(2)	$40/ton	$280/ton	$270/ton	$5,000,000
A.R.S. § 49-931(A)(3)	$4/ton	$28/ton	$27/ton	$160,000

The second set of increased fees are the fees for processing hazardous waste permits, which were previously in rule at R18-8-270. The tables below show how the new application fees, maximum fees, and hourly rate compare to the previous amounts.

Table 2. Hazardous Waste Permits
New and Previous Application and Maximum Fees for Various License Types

License Type	Application Fee Previous/New	Maximum Fee Previous/New
Permit for: Container Storage/Container Treatment	$10,000/$20,000	NA/$250,000
Permit for: Tank Storage/Tank Treatment	$10,000/$20,000	NA/$300,000
Permit for: Surface Impoundment	$10,000/$20,000	NA/$400,000
Permit for: Incinerator/Boiler and Industrial Furnace (BIF)/Landfill/ Miscellaneous Unit	$10,000/$20,000	NA/$500,000
Permit for: Waste Pile/Land Treatment/Drip Pad/Containment Building/Research, Development, and Demonstration	$10,000/$20,000	NA/$300,000
Corrective Action Permit/Remedial Action Plan (RAP) Approval	$10,000/$20,000	NA/$300,000
Post-Closure Permit	$10,000/$20,000	NA/$400,000
Closure of Container/Tank/Drip Pad/Containment Building	$2,500/$5,000/unit	NA/$100,000
Closure of Miscellaneous Unit/Incinerator/BIF/Surface Impoundment/Waste Pile/Land Treatment Unit/Landfill	$2,500/$5,000/unit	NA/$300,000
Class 1 Modification (requiring Director Approval)	$1,000/$1,000	NA/$50,000
Class 2 Modification	$2,500/$5,000	NA/$250,000
Class 3 Modification (for Incinerator, BIF, Surface Impoundment, Waste Pile, Land Treatment Unit, or Landfill)	$10,000/$20,000	NA/$400,000
Class 3 Modification (except for Incinerator, BIF, Surface Impoundment, Waste Pile, Land Treatment Unit, or Landfill)	$10,000/$10,000	NA/$250,000

Table 3. Hazardous Waste Hourly Rate

Hazardous Waste permits	April 2006 to July 2010	FY 2011 and FY 2012	New beginning FY 2013
Hourly rate	$95.29	$95.29	$136.00

The application fee increases in Table 2 are a result of the increase in the hourly rate. ADEQ needs to obtain sufficient monies up front so that payments do not lag behind services provided. The maximum fees for hazardous waste permit actions are new and are required by HB 2705. Maximum fees are set to provide predictability to permit applicants while also allowing ADEQ to be reasonably certain that it meets Licensing Time-frames and not expend more resources processing a permit than the amount for which it can be reimbursed. ADEQ has increased the hourly rate it uses for permit review from $95.29 to $136.

Explanation of hourly rate.

ADEQ estimated the hourly rate of $136 per hour for hazardous waste permitting staff (project management and technical review) based on the permitting work of a full-time employee (FTE) and made the following assumptions:

Hours

- Assumes an FTE works 2080 hours annually (40 hours X 52 weeks).
- NON-PROGRAM HOURS include:
  - hours related to employee leave (sick, vacation, holiday), calculated at the maximum available of 320 hours.
  - hours related to training, meetings and minor tasks estimated at 315 hours.

- hours lost due to employee turnover – assuming a rate of 10 percent - 208 hours.
- TOTAL NON-PROGRAM HOURS estimated at 843 hours annually.

- PROGRAM HOURS are what remain when non-program hours are subtracted from the total annual hours. Program hours include both review and decision-making on specific applications (i.e. billable), and those hours not related to review hours of specific applications (i.e. non-billable). Some of the Program Hours are therefore not billable.
  - TOTAL PROGRAM HOURS = 2080 - 843 = 1237 hours/year.
  - NON-BILLABLE PROGRAM HOURS includes, among other duties, customer service time, inter-division and inter-agency coordination, permit administration, and program development (rules and policies). This is estimated at 403 hours annually.
  - BILLABLE PROGRAM HOURS = 1237 - 403 = 834 hours/year.

Costs

- Salaries + employee related expenses (ERE) related to Billable Program Hours performed by an FTE.
  - ERE (e.g., health insurance, worker's compensation) benefits at rate of 42 percent of salary.
  - A portion of Non-Program Hours in support of Billable Program Hours are included in costs. This is estimated at 568 hours/year (67.4 percent of total Non-Program Hours).
  - Program staff includes Project Managers, Engineers, and Hydrologists at an average hourly rate of $27.40.

Cost = (834 + 568 hours) X $27.40/hour X 1.42 = $54,549

- Management/ Supervisory hours in support of the program staff work are included in costs, and are estimated at 300 hours/year. This includes unit and section managers at an average hourly rate of $33.96.

Cost = (300 hours) X $33.96/hour X 1.42 = $14,467

- Administration Support hours in support of the program staff and management's and supervisors' work are included in costs, estimated at 200 hours/year at an average hourly rate of $15.73.

Cost = (200 hours) X $15.73/hour X 1.42 = $4,467

- Subtotal of personnel services and ERE for the project manager, management staff, and administrative support staff ($54,549 + $14,467 + $4,467 = $73,483).
- Add Indirect expenses (49.53 percent of personal services and ERE by federal formula) for rent, utilities, etc., estimated at $36,396 ($73,483 X 0.4953 = $36,396).
- Add Other Expenses such as per diem travel, equipment, operating expenses (supplies, etc.) and professional services, estimated at $3,500.
- Total Costs Related to Permit Process for one FTE= $113,379. ($73,483 + $36,396 + $3,500 = $113,379)

Hourly Rate

Dividing the total costs of an FTE ($113,379) by Billable Program Hours (834) yields the hourly rate for permit processing of $136/hour ($113,379 ÷ 834 billable program hours = $136/hour).

- The remaining 678 hours of an FTE's work year are not directly billable to permit processing (e.g., non-billable program hours and balance of the non-program hours (403 + 32.6 percent X 843 = 678)) and must be supported through the RCRA grant and annual generator fees.

The rate of $136 per hour is comparable to private sector rates and with the rates charged by other ADEQ divisions and state agencies that are engaged in similar levels of technical review and project management. For comparison, the average private sector consultant rate for similar work activities charged in ADEQ's hazardous waste permit program typically ranges from $135 to $145 per hour. Using this same hourly rate calculation methodology, the Air Quality Division currently charges $141.50 per hour, and the Water Quality Division currently charges $122 per hour. The Arizona Department of Water Resources, using the same hourly rate calculation methodology, currently charges $118 per hour. The nominal differences in fees charged between the divisions and agencies largely relate to the hourly rate differences between the specialty staff needed by each particular program. Those programs requiring more specialty technical review (e.g., by hydrologists or engineers) will have slightly higher hourly rates.

Billing Details. During the informal public participation process, stakeholders asked ADEQ for a rule requirement to put more detail on the periodic and final bills they get from ADEQ. ADEQ added this requirement to the proposed rule at R18-8-270(G)(5). At the time of the Notice of Proposed Rulemaking, ADEQ stated that its proposal to provide a detailed hours breakdown on every bill [See R18-8-270(G)(5)(b)] was not currently practicable due to the lack of an automated software system. ADEQ has begun developing an automated tracking system to facilitate the collection of detailed billing information. The continuing shortage of resources has caused ADEQ to place a new starting date for certain billing information requirements in R18-8-270(G)(5). ADEQ now expects the system will be in place by the end of CY 2012.

Hazardous Waste Generation Fees; Maximums. ADEQ has increased hazardous waste generation fees from the amounts they were before FY 2011. As can be seen from Table 1, the new permanent rates are slightly lower than they were for the previous two fiscal years.

The prior hazardous waste generation fees were set in statute at A.R.S. § 49-931, but the statute did not establish maximum fees. ADEQ has established maximum fees for hazardous waste generators in units of dollars per generator site per year because it believes that generators with multiple sites are able to treat each of their sites as separate fiscal units. This provides predictability on a per site basis. The maximum fees are set to provide assurance to ADEQ that it will continue to collect about the same revenues if generation rates remain approximately the same, while providing certainty to generators that changes in operations or regulations will not drive their fees over a specified amount.

ADEQ analyzed different combinations of per ton fees and generator site maximums using various factors including proportionality and impacts on small businesses. Since federal regulations have definitions for large quantity generator (LQG) and small quantity generator (SQG), these categories allow assessment of both the proportionality and the small business impact of various hazardous waste generation fee and cap combinations.

Although other criteria can apply, under federal regulations, an entity that generates more than 2,200 pounds of hazardous waste in any month is an LQG, while one that generates more than 220 pounds but less than 2,200 pounds in any month is normally an SQG. When these categories are matched against ADEQ's database of generators, the new per ton fee and fee caps will result in approximately 85% of the hazardous waste generation fees paid by LQGs of hazardous waste and approximately 15% paid by SQGs. ADEQ estimates that in 2009-2010 it expended approximately 60% of its hazardous waste resources on LQGs and approximately 40% on SQGs. These resource figures are subject to change based on ADEQ compliance initiatives, RCRA grant workplan requirements and EPA inspection and compliance initiatives that are established on a year to year basis. The preponderance of ADEQ resources expended on LQGs is partially accounted for by the fact that there are more requirements that apply to LQGs. Not only do inspections of LQGs take more time, but ADEQ also inspects LQGs more frequently.

Finally, ADEQ seeks to minimize the impact of these fees on small businesses. ADEQ believes that SQGs are more likely to be small businesses than LQGs. (The maximum amount of hazardous waste an SQG can generate in a year is about 12 tons.) ADEQ believes that under this fee and fee cap arrangement, it has both fairly assessed the fees and minimized the impact on small business.

ADEQ discusses other fee and fee cap alternatives in item 9 of this Notice.

Under A.R.S. § 49-104(B)(17)(b), (c), and (d), ADEQ must also consider the availability of other funds, the impact of the fees on the parties subject to the fees, and the fees charged for similar duties performed by the Department, other agencies, and the private sector.

ADEQ has already discussed the availability, regular use, and conditions required for using the federal RCRA grant, and ADEQ is using the grant to the maximum extent. It was noted earlier that civil and criminal penalties that result from hazardous waste enforcement go to the General Fund and no longer to the Hazardous Waste Management Fund, so that these funds are not available to mitigate these fee increases. The same is true of hazardous waste fuel penalties under A.R.S. § 49-932. Finally, under A.R.S. § 49-929, all hazardous waste entities pay small registration fees into the Water Quality Assurance Revolving Fund (WQARF) established under A.R.S. § 49-282, but the WQARF statute does not allow WQARF funds to be used for either hazardous waste permitting or inspections, except as provided in A.R.S. § 49-282(E)(7), which allows a limited amount to be used for hazardous waste compliance monitoring, investigation and enforcement activities.

As discussed earlier, ADEQ has considered the impact of the fees on the parties subject to the fees through its collection of the least amount of fees necessary to sustain an approvable program, and a fair, proportional assessment of those fees.

In considering the fees charged for similar duties performed by the Department, other agencies, and the private sector, ADEQ notes that it has already compared hourly rates for the most similar duties. Many agencies are not required to recover their full processing costs with fees, and in that case, it is more difficult to make a direct comparison. For example in Nevada, the hourly rate for hazardous waste permit processing is $50 per hour, (NAC 444.8446) but the purpose of Nevada's fee is merely to "offset the cost to process and review the application." (emphasis added) In Arizona, the hourly rate has to cover both the direct and indirect costs. In addition, Nevada charges a significant annual operating fee as well as miscellaneous "[a]dditional fees to offset cost of inspection and other regulation." Similar scenarios exist for hazardous waste generation fees, where states charge lower fees but where the fees are not designed to sustain so much of program costs.

7. A reference to any study relevant to the rules that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rules, 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 rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

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

Identification of the rulemaking: 18 A.A.C. 8, Article 2, amending R18-8-260 and R18-8-270. (For further information, see item 6 of this preamble.) These rules are not designed to change the conduct of any regulated hazardous waste entities. The rules are designed to collect increased fees for some hazardous waste entities. The per ton fees for generation and disposal of hazardous waste are increased in R18-8-260. Maximum fees are set and the application fees and hourly rate are increased for processing hazardous waste permits in R18-8-270.

Program Description. Under A.R.S. § 49-922 and federal law, Arizona's Hazardous Waste Program is responsible for ensuring that all regulated hazardous waste in Arizona is stored, transported, and disposed of properly, and is largely a preventative program to keep hazardous waste from entering the environment. The program maintains an inventory of hazardous waste generators, transporters and treatment, storage, and disposal (TSD) facilities in Arizona. Permits are issued, managed, and maintained for TSD facilities; this activity includes permit modifications, renewal, closure plan, and financial assurance reviews. Generators, transporters and TSD facilities are periodically inspected. Hazardous waste complaints are investigated. Compliance data is collected and stored. Hazardous waste is tracked from generation to disposal. Compliance assistance is provided, enforcement actions are pursued against significant violators, and oversight is provided for the remediation of contaminated sites.

Regulatory Universe. ADEQ's Hazardous Waste Program regulates a universe of over 1500 facilities, including metal platers, chemical manufacturers, laboratories, explosive and munition manufacturers, pesticide manufacturers, hazardous waste TSDs, and military installations. There are currently 13 permitted TSD facilities, 181 to 265 large quantity generators, 901 to 1513 small quantity generators, and 217 to 340 transporters. An EPA listing of Arizona's 50 largest hazardous waste generators and other related information can be found at http://www.epa.gov/osw/inforesources/data/br09/state09.pdf.

Proposed Hazardous Waste Staff. Due to the elimination of the General Fund appropriation, the transfer of funds from the Hazardous Waste Management Fund to the General Fund and other budget reductions, the Hazardous Waste Program experienced a reduction in staffing levels over the past few years. Some positions were eliminated entirely and others have not been filled following staff lay-offs or voluntary departures. In FY 2008, the Hazardous Waste Program had five permit writers and 11 inspections and compliance officers. The minimum staffing needed to operate the Hazardous Waste Program consists of seven inspectors and 2.8 permit writers. An additional 13 full-time-equivalent positions (FTEs) consisting of support staff include a full-time RCRA attorney from the Attorney General's Office, a hydrologist, pollution prevention staff, records management staff, budget, database and clerical staff, and management. ADEQ believes these staffing levels represent the minimum necessary to process the existing and future workload efficiently and within applicable licensing time-frames. ADEQ does not anticipate the programs or associated staffing levels to expand as a result of this rulemaking.

Budget. The budget necessary to operate the Hazardous Waste Program with the proposed staffing is approximately $3.3 million. In FY 2010, hazardous waste permitting and generation fees only generated approximately $357,000. In addition, the portion of a federal grant known as the RCRA grant that was allocated for FY 2010 was $1.4 million and the WQARF contribution under A.R.S. § 49-287(E)(7) was $142,600. This rule is designed to address the additional $1.4 million revenue shortfall.

Implemented Efficiencies. The Hazardous Waste Program has changed its operation in recent years to accomplish required work with fewer resources. Permitting program efficiencies include: using contractors for permit application reviews when necessary for technical support or schedule concerns; working to improve web site resources to provide better information to the regulated community; utilizing EPA resources to review new permits; and utilizing EPA resources to review some financial assurance mechanisms.

Compliance program efficiencies include: using boilerplate language for inspection reports and enforcement documents to increase overall productivity, efficiency and timeliness for completing inspection related documents; scheduling field work to reduce travel dollars and increase productivity; taking advantage of no-cost training opportunities from outside entities, and cross-training within ADEQ; developing standardized presentations for the general public and for in-house training; using new data search tools to increase proficiency for understanding regulations and searching for EPA and ADEQ regulatory guidance documents; working to improve web site resources to provide better information and increase outreach efforts.

Discussion and Demonstration: The Regulatory Objective. A.R.S. § 49-922 requires that ADEQ establish and implement a hazardous waste management program "equivalent to and consistent with" the federal hazardous waste program. EPA likewise requires states to adopt a program at least as stringent as the federal program in order to be authorized to implement the federal program in lieu of EPA. As a result of being authorized, ADEQ receives RCRA grant funding from EPA to partially offset the cost of running the program. Through the grant and delegation process, EPA maintains close scrutiny of the Arizona program and requires it to achieve certain benchmarks.

Based on stakeholder comments, most in the regulated community agree that ADEQ should implement the federal program rather than EPA, and that ADEQ should continue to meet the criteria and benchmarks for program authorization in order to implement the program and receive the federal RCRA grant. The grant provides approximately $1.4 million to ADEQ per year and must be spent according to grant priorities. In 2010, 50% of the overall grant had to be spent for enforcement, 35% for permitting and corrective action, and 15% for pollution prevention, while $200,000 was earmarked specifically for program activities at the Mexico border. In addition, Arizona must match the RCRA

grant with 25% additional state funds (approximately $375,000). In FY 2010, hazardous waste permit and generation fees totaled only $357,000. Those fees require an additional $1.4 million in order to replace the General Fund monies and other funding removed in FY 2010 and make the program more self-sufficient.

Resource Reduction Impacts. Failure to adequately staff and fund the program may cause the loss of the EPA-delegated program and approximately $1.4 million in state matched federal dollars. If the program reverts back to EPA, Arizona will lose control over enforcement and permitting decisions. If the program continues to receive federal dollars, but is not adequately funded by the state, efforts will be focused on the EPA grant required performance measures. Continuation of some services, such as outreach, technical assistance, timely complaint response, and inspections of small quantity generators, conditionally exempt small quantity generators, and transporters will cease.

Least burden and cost; description of alternatives. A.R.S. § 41-1052(D)(3) requires ADEQ to demonstrate it has selected the alternative with the least burden and cost necessary to achieve the underlying regulatory objective. A nearly identical issue was discussed in item 6 of the preamble with regard to A.R.S. § 49-104(B)(17), which requires that the fees should "be fairly assessed and impose the least burden and cost to the parties subject to the fees"; and that the fees are to be based on "the direct and indirect costs of the department's relevant duties" … "related to issuing licenses" … "and enforcing the requirements of the applicable regulatory program."

In the context of this hazardous waste rule, ADEQ has interpreted these two main requirements to mean collecting an amount necessary to maintain an approvable program and satisfy the detailed requirements to protect human health and the environment from hazardous wastes that are specified in A.R.S. § 49-922. ADEQ considers "fairly assessed" to mean that the amount of fees collected from any class of hazardous waste entities should be proportional to the "direct and indirect costs" that can be attributed to that class.

ADEQ analyzed different combinations of per ton fees and generator site maximums using various factors including proportionality and impacts on small businesses. Several members of the regulated community requested that ADEQ consider additional fee scenarios that would keep the generator site maximums lower than the amounts being considered by ADEQ. As a result, ADEQ evaluated the following alternative per ton fee/generator site maximum scenarios for facilities that fall under A.R.S. § 49-931(A)(1) under which most of the generator fees are collected.

Tonnage cap: 250 ton
Facilities covered by the cap: 14
Tonnage fee for this cap: $140.50 per ton
Money saving threshold: 518 tons
Facilities saving money due to the cap: 5

Tonnage cap: 95 ton
Facilities covered by the cap: 35
Tonnage fee for this cap: $205.50 per ton
Money saving threshold: 289 tons
Facilities saving money due to the cap: 12

ADEQ determined that fee scenarios like the two described above would place a substantial hardship on small businesses. Under the scenarios described above and considered at the request of several in the regulated community, generators would see their hazardous waste generation fees increase from $10/ton to $140.50/ton and even $205.50/ton instead of the $67.50/ton rate in the final rule. ADEQ could not justify such drastic per ton fee increases for the sake of lowering the generator site maximum, which would ultimately benefit five to 12 of the largest generators of hazardous waste in the state.

ADEQ considered the impact of the fees on the parties subject to the fees through its collection of the least amount of fees necessary to sustain an approvable program, and a fair, proportional assessment of those fees. Under the fee scenario proposed by ADEQ ($67.50/ton with a $200,000 generator site maximum), two generators would come within $14,000 to $16,000 of the cap based on CY2010 hazardous waste generation data.

Generation rates vary from year to year. Based on a review of CY 2009, 2008, and 2007 hazardous waste generation data, generators who undergo major renovations and generate substantially higher volumes of hazardous waste as a result will have a significant cost savings. For instance, in 2008, one facility generated 11,537 tons of hazardous waste. If the new per ton fee ($67.50) is applied to this volume of hazardous waste, the generator would meet the cap at 2,963 tons and would not pay generation fees on the remaining 8,574 tons.

Cost/Benefit. The probable costs for this rule are the $1.4 million in estimated increased fees necessary for the program described above. This amount would replace the General Fund monies and other sources that partially funded the Hazardous Waste Program in the past without cost to the regulated community.

The probable benefits are:

- *Ability of Arizona to implement the federal hazardous waste program.* EPA currently does not have the staff to perform hazardous waste inspections and permitting activities in Arizona; therefore, there could be a significant period of time during which there would be no hazardous waste oversight in Arizona, including responding to citizens' complaints regarding hazardous waste issues. In terms of permitting activities, ADEQ is held to specific licensing time-frames to issue hazardous waste permits in a timely manner; EPA would not be bound by Ari-

zona's rules on licensing time-frames. EPA administration of the hazardous waste program would most certainly result in a delay of statutorily mandated permit processing, causing Arizona businesses to delay start-up, expansion or modification.

- *Local control over enforcement and permitting decisions:* Hazardous waste enforcement and permitting are inexact processes. ADEQ engages heavily with the regulated community during these processes. Arizona businesses could suffer from the inability to engage with the regulators in a timely manner at a convenient location since they would have to engage with EPA staff in San Francisco. Furthermore, the regulated community could no longer take advantage of ADEQ's efforts to educate regulated entities about enforcement policies. ADEQ developed the Compliance and Enforcement Handbook, which is available to the public, with the purpose of promoting appropriate, consistent, and timely enforcement of Arizona's environmental statutes and rules in a manner that is transparent to all who are affected, including the regulated community. EPA does not have a similar guidance document that is tailored to the needs of Arizona businesses.
- *Control over other hazardous waste activities:* RCRA has numerous reporting requirements for generators of hazardous waste. Because Arizona has the authority to implement the hazardous waste program, the business community in Arizona submits documentation to and requests required information (e.g., EPA identification numbers) from ADEQ. Absent an Arizona-specific hazardous waste program, Arizona businesses will be forced to submit reports to and request needed information from EPA in San Francisco. ADEQ receives hundreds of calls each month from Arizona businesses handling hazardous waste, requesting compliance assistance. This service to Arizona businesses would no longer be available.
- *Arizona businesses will be subject to Arizona's Penalty Authority rather than EPA's Administrative Penalty Authority:* ADEQ has authority to seek a penalty of up to $1,000 per day for the violation of a Compliance Order [A.R.S. § 49-923] or to seek penalties of up to $25,000 per day for violations of the Arizona Hazardous Waste Management Act [A.R.S. § 49-924]. In contrast, EPA can assess a penalty of up to $37,500 per day for RCRA violations and this amount is periodically adjusted for inflation. EPA's penalty authority places the burden on the responsible party to contest EPA's alleged violations whereas ADEQ's places the burden on the state.
- *Rulemaking oversight:* A.R.S. § 49-922 requires the Director to adopt rules to establish a hazardous waste program. Hazardous waste rules adopted by ADEQ currently go through the Governor's Regulatory Review Council and stakeholder review processes. When EPA adopts a new regulation, Arizona currently has the authority to review the regulation and decide whether to propose it for adoption. If the Hazardous Waste Program is reverted to EPA, Arizona would lose the ability to decide whether to adopt federal regulations; future EPA regulations would become effective in Arizona at the same time they became effective nationwide.
- *Compliance assistance outreach to regulated community:* Throughout the year, ADEQ staff participates in numerous conferences and training seminars with the goal of educating the regulated community about ADEQ hazardous waste requirements and policies. It is unlikely that EPA would schedule trips to Arizona for staff to participate in short-term outreach events.

In addition to these benefits, there is a general benefit to the state budget due to the Hazardous Waste Program moving toward a fee-based revenue system without the need for General Fund support. At the same time, the rule is fair and equitable, in that more of the costs of the Hazardous Waste Program would be borne by those who need it.

ADEQ believes that the benefits exceed the cost.

Rules More Stringent than Corresponding Federal Law. [A.R.S. § 41-1052(D)(9)] There is no corresponding federal law that requires hazardous waste fees.

Probable Impact on Political Subdivisions of this State Directly Affected by this Rulemaking [A.R.S. § 49-1055 (B)(3)(b)]

Political subdivisions that will be directly impacted by this fee rule are generators of hazardous waste, or one that holds or applies for a hazardous waste permit. It is known that several municipal water treatment plants are small quantity hazardous waste generators. These, such as the 24th Avenue treatment plant owned by the City of Phoenix and which generated three tons in 2009, would be minimally impacted by this fee rule. Also in 2009, the three state universities together generated a total of 210 tons of hazardous waste. The average impact to each university of the generation fee being increased from $10 to $67.50 is 70 tons X $57.50 or $4025, which is less than the cost of one in-state tuition. ADEQ has classified this impact as minimal.

Reduction of Impact on Small Businesses. A.R.S. § 41-1035 requires state agencies to reduce the impact of a rulemaking on small businesses, if any of the following methods are legal and feasible in meeting the statutory objectives which are the basis of the rulemaking:

1. Establish less stringent compliance or reporting requirements in the rule for small businesses.
2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.
3. Consolidate or simplify the rule's compliance or reporting requirements for small businesses.
4. Establish performance standards for small businesses to replace design or operational standards in the rule.
5. Exempt small businesses from any or all requirements of the rule.

Although the listed methods are not generally relevant to a rule establishing fees, (fees must be fairly assessed and based on direct and indirect costs) ADEQ believes that it has appropriately reduced the impact of the rule on small businesses by the way it established the per ton rate and maximum fee for generation and disposal fees under A.R.S. § 49-931.

Probable Impact on Small Businesses. [A.R.S. § 41-1055(B)(5)] ADEQ has looked at its database of hazardous waste generators and permittees and tried to determine which ones are likely to be small businesses. An example would be dry cleaners. Dry cleaners are often independently owned and operated and not likely to exceed the revenue and employee limits in the statutory definition of small business. Most dry cleaners are also SQGs, so that the impact of the increased generation fees will be based on generation of 12 tons or less. It is likely that most small businesses that generate hazardous waste will be small quantity generators and that the increased generation fees will have limited to moderate impact on them.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

ADEQ inserted a later effective date (January 1, 2013) for certain billing information requirements in R18-8-270(G)(5)(b) to compensate for delay in the development of an automated invoice tracking system. ADEQ's goal is to implement a new agency wide Revenue Invoice Collection System or RICS by December 31, 2012.

Minor clarifications and grammar corrections were made at the request of G.R.R.C. staff.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

Comment 1: There should be separate, reduced hazardous waste generation fees for hazardous waste generated during remediation or other permit-mandated activity.

Response 1: There is no chemical or environmental impact difference between remediated and generated hazardous waste. The commenter asserts that ADEQ should charge lower fees for remediated waste for the policy reason that it would encourage the cleanup of waste that might otherwise remain unremediated. While ADEQ is unaware of any empirical evidence that this would in fact be the case, ADEQ disagrees with this approach for several policy reasons. First, the proper handling of hazardous waste should be encouraged, not discouraged, as it would by giving the mishandling of hazardous waste a financial incentive. There should not be a lower fee for finally disposing of hazardous waste properly after it has already been released to the environment. Further, a separate fee for hazardous waste excavated during remediation will complicate the program by making it necessary to distinguish between and monitor the mixing of remediation wastes and other hazardous wastes. Finally, a discount for remediated hazardous waste would require ADEQ to charge a higher fee for hazardous waste that is generated normally, in order to keep total fee revenue the same.

Comment 2: The revised federal definition of solid waste would expand the hazardous waste universe if it becomes final.

Response 2: The Department recognizes that EPA action and other events could increase or decrease the amount of hazardous waste fees it collects. The revised federal definition of solid waste is not finalized. The revised definition is proposed and currently undergoing public comment. The Department will consider the revised definition after it is adopted at the federal level along with other factors that may affect generation at that time. The annual report required by HB 2705 on ADEQ's waste revenues and expenditures beginning in 2014, will be part of this effort.

Comment 3: The fees are not fairly assessed for less complex generators. Commenter is a mini-steel mill that asserts fees should be tailored based on the complexity of the generating facility, and that large generators with one or two streams of hazardous waste can be less complex and therefore easier to regulate than smaller generators with multiple streams or multiple points of generation.

Response 3: ADEQ believes that the proposed hazardous waste generation fees are fairly assessed. Under Arizona's Hazardous Waste Program, hazardous waste generators are classified according to the amount of waste that they generate. This premise is determined in statute and is parallel to the structure of the federal Hazardous Waste Program. The commenter suggests that single stream generators, regardless of the quantity of waste generated, are simpler operations than those that handle multiple hazardous waste streams and therefore would require less Departmental resources. In ADEQ's experience, whether a facility handles multiple hazardous wastes or just one hazardous waste is not a reliable indicator of the complexity of the facility.

ADEQ believes that the amount of hazardous waste generated has the best overall correlation to oversight costs attributable to hazardous waste entities. The amount generated is the primary measure used in EPA's national system and is therefore already in use and easiest to verify. There are over 1500 facilities in Arizona that are already classified as either large or small quantity generators. In addition, hazardous waste generators may change operations and processes often. As a result, volume provides a less burdensome way to assess fees than a matrix related to waste streams or generation points. Any system based upon the number of waste streams or points of generation to adjust fees would be complex and more prone to error.

The commenter feels that a large generator such as itself should not have to be responsible for such a large percentage of ADEQ's hazardous waste operating expenses. During the informal comment period, ADEQ reduced the maximum fee from $400,000 to $200,000 to address this concern directly.

Comment 4: There is no record to support the 85/15 LQG/SQG split. Commenter points to statements in the proposed rule preamble that under the proposed fee and cap arrangement 85% of hazardous waste fees will be paid by large quantity generators while only 60% of applicable resources were spent on LQGs. Commenter further states there are no findings related to the impact of this proposed fee and fee cap arrangement on small businesses.

Response 4: The number of large quantity generators (LQGs) compared to the number of small quantity generators (SQGs) varies year to year. Furthermore, a facility may be classified an LQG one month and an SQG the following month, depending on the amount of waste that it generates. The Department attempted to address this disparity by lowering the fee cap. As ADEQ stated in the Notice of Proposed Rulemaking (NPRM) on page 1920, the 60/40 resource split is just a snapshot estimate for one year; the ratio changes from year to year or even month to month based on many factors.

To ensure that ADEQ minimizes the impact of these fees on small businesses from year to year**,** the proposed fee and fee cap arrangement appears slightly more favorable to smaller generators. However, both the amount of fees collected and the amount of resources expended in FY 2013 will likely be different from the estimates in the NPRM. A separate fee for small generators is administratively burdensome because it would require ADEQ to continually determine whether a business fits this classification and may result in possible billing errors. ADEQ presented various options for the fee and fee caps during the workshops and the values in the NPRM appear to be the most acceptable and effective at meeting various needs well into the future.

Comment 5: The rules do not impose the least burden and cost to parties subject to the fees. Commenter states that ADEQ should look at reducing the work that it considers necessary for the hazardous waste program in order to meet the mandate of imposing the least burden and cost on fee payers. Commenter suggests deleting the requirement that a copy of each manifest be submitted to the agency, similar to other states.

Response 5: The Department will continue to explore ways to improve efficiencies and reduce unnecessary regulatory burdens. For example, ADEQ is pilot testing submittal of manifests in electronic format. Hazardous waste manifests are a critical component of Arizona's Hazardous Waste Program. Manifests are used as part of the inspections and compliance process. Manifests are also used by the Department for generator billing and to provide information to the public.

Comment 6: ADEQ should explain what it means by a "valid" withdrawal of a permit application in proposed R18-8-270(G)(2).

Response 6: "Valid withdrawal of the permit application" is used in A.A.C. R18-8-270(G)(2)(c) to prompt a final accounting of applicant monies paid against ADEQ services expended on the application. The phrase refers to the timely withdrawal of a request for a license by the applicant's authorized agent or signatory accompanied by adequate justification that the basis for the submittal is no longer applicable.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

These rules do not require permits. This rulemaking is for the purpose of setting fees for the Hazardous Waste Program only. The rules do not establish or amend program permits, except as they pertain to fees.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

These rules are not more stringent than corresponding federal laws. There is no corresponding federal law that requires hazardous waste fees.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No person has submitted a competitiveness analysis under A.R.S. § 41-1055(G).

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY
HAZARDOUS WASTE MANAGEMENT

ARTICLE 2. HAZARDOUS WASTES

Section
R18-8-260. Hazardous Waste Management System: General
R18-8-270. Hazardous Waste Permit Program

ARTICLE 2. HAZARDOUS WASTES

R18-8-260. Hazardous Waste Management System: General

A. No change
B. No change
C. No change
D. No change
1. No change
2. No change
   a. No change
      i. No change
      ii. No change
   b. No change
      i. No change
      ii. No change
      iii. No change
      iv. No change
   c. No change
      i. No change
      ii. No change
      iii. No change
   d. No change
      i. No change
      ii. No change
      iii. No change
   e. No change
      i. No change
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         (2) No change
      ii. No change
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         (2) No change
      iii. No change
         (1) No change
         (2) No change
         (3) No change
         (4) No change
   f. No change
      i. No change
      ii. No change
      iii. No change
      iv. No change
      v. No change

E. No change
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6. No change
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8. No change
9. No change
10. No change
11. No change
12. No change
    a. No change
    b. No change
    c. No change
    d. No change
    e. No change
    f. No change
    g. No change
    h. No change
    i. No change
13. No change
14. No change
15. No change
16. No change
17. No change
18. No change
19. No change
20. No change
21. No change
22. No change
    a. No change
    b. No change
23. No change
24. No change
25. No change
26. No change
27. No change
28. No change
29. No change
30. No change
31. No change
32. No change

F. No change
1. No change
2. No change
3. No change
    a. No change
    b. No change
    c. No change
4. No change
5. No change
6. No change
7. No change
    a. No change
    b. No change

G. No change
H. No change
I. No change
J. No change
K. No change
L. No change
M. As required by A.R.S. § 49-929, generators and transporters of hazardous waste shall register annually with DEQ and sub-

mit the appropriate registration fee, prescribed below, with their registration:

1. A hazardous waste transporter that picks up or delivers hazardous waste in Arizona shall pay $200 by March 1 of the year following the date of the pick-up or delivery;
2. A large-quantity generator that generated 1,000 kilograms or more of hazardous waste in any month of the previous calendar year shall pay $300; or
3. A small-quantity generator that generated 100 kilograms or more but less than 1,000 kilograms of hazardous waste in any month of the previous year shall pay $100.

N. A person shall pay hazardous waste generation and disposal fees as required under A.R.S. § 49-931. The DEQ shall send an invoice to large-quantity generators quarterly and small-quantity generators annually. The person shall pay an invoice within 30 days of the postmark on the invoice. The following hazardous waste fees shall apply:

1. A person who generates hazardous waste that is shipped offsite shall pay $67.50 per ton but not more than $200,000 per generator site per year of hazardous waste generated;
2. An owner or operator of a facility that disposes of hazardous waste shall pay $270 per ton but not more than $5,000,000 per disposal site per year of hazardous waste disposed; and
3. A person who generates hazardous waste that is retained onsite for disposal or that is shipped offsite for disposal to a facility that is owned and operated by that generator shall pay $27 per ton but not more than $160,000 per generator site per year of hazardous waste disposed.

R18-8-270. Hazardous Waste Permit Program

A. No change

B. No change

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

C. No change

D. No change

E. No change

F. No change

G. § 270.10, titled "General application requirements," is amended by adding the following:

1. When submitting an application for any of the ~~following applications~~ license types in the Table below, an applicant shall remit to the DEQ ~~a permit~~ an application fee ~~of $10,000~~ as shown in the Table.

Table - Hazardous Waste Permitting
Application and Maximum Fees For Various License Types

License Type	Application Fee	Maximum Fee
Permit for: Container Storage/Container Treatment	$20,000	$250,000
Permit for: Tank Storage/Tank Treatment	$20,000	$300,000
Permit for: Surface Impoundment	$20,000	$400,000
Permit for: Incinerator/Boiler and Industrial Furnace (BIF)/Landfill/Miscellaneous Unit	$20,000	$500,000
Permit for: Waste Pile/Land Treatment/Drip Pad/Containment Building/Research, Development, and Demonstration	$20,000	$300,000
Corrective Action Permit/Remedial Action Plan (RAP) Approval	$20,000	$300,000
Post-Closure Permit	$20,000	$400,000
Closure of Container/Tank/Drip Pad/Containment Building	$5,000/unit	$100,000
Closure of Miscellaneous Unit/Incinerator/BIF/Surface Impoundment/Waste Pile/Land Treatment Unit/Landfill	$5,000/unit	$300,000
Class 1 Modification (requiring Director Approval)	$1,000	$50,000
Class 2 Modification	$5,000	$250,000
Class 3 Modification (for a permit with an Incinerator, BIF, Surface Impoundment, Waste Pile, Land Treatment Unit, or Landfill)	$20,000	$400,000

Class 3 Modification (for a permit without an Incinerator, BIF, Surface Impoundment, Waste Pile, Land Treatment Unit, or Landfill)	$10,000	$250,000

~~a. Initial Part B application submitted pursuant to §§ 270.10 and 270.51(a)(1) (as incorporated by R18-8-270);~~
~~b. Part B permit renewal application submitted pursuant to § 270.10(h) (as incorporated by R18-8-270);~~
~~c. Application for a Class 3 Modification according to §§ 270.42 (as incorporated by R18-8-270); and~~
~~d. Application for a research, development, and demonstration permit.~~

2. If the ~~reasonable~~ total cost of processing the application identified in ~~subsection (G)(1)~~ the Table is less than ~~$10,000~~ the application fee listed in the Table, the DEQ shall refund the difference between the ~~reasonable~~ total cost and ~~$10,000~~ the amount listed in the Table to the applicant.
   a. Permits and permit modifications other than post-closure permits and closure plans. If the ~~reasonable~~ total cost of processing the application is greater than ~~$10,000~~ the amount listed plus other amounts paid, the DEQ shall bill the applicant for the difference upon permit approval. ~~and the~~ The applicant shall pay the difference in full before the DEQ issues the permit.
   b. Post-closure permits. If the ~~reasonable~~ total cost of processing the application is greater than ~~$10,000~~ the amount listed plus other amounts paid, the DEQ shall bill the applicant for the difference upon permit issuance. The applicant shall pay the difference in full within 45 days of the date of the bill.
   c. Withdrawals. In the event of a valid withdrawal of the permit application by the applicant, if the total costs of processing the application are less than the amount paid, the DEQ shall refund the difference. If the total costs are greater than the amount paid, the DEQ shall bill the applicant for the difference, and the applicant shall pay the difference within 45 days of the date of the bill.

~~3. When submitting an application for any one of the permit-related activities described in this subsection, the applicant shall remit to the DEQ $2,500. If the reasonable cost of processing the application is greater than $2,500, the applicant shall be billed for the difference between the fee paid and the reasonable cost of processing the application. A refund shall be paid by the DEQ if the reasonable cost is less than the $2,500 fee, either within 45 days of a valid withdrawal of the permit application or upon permit issuance. This subsection applies to all the following:~~
~~a. An application for a modification of a Part B permit pursuant to § 270.41 (as incorporated by R18-8-270);~~
~~b. An application for a Class 2 modification of a permit submitted after permit issuance, according to § 270.42 (as incorporated by R18-8-270);~~
~~c. An application for approval of a final closure plan that is not submitted as part of a Part B application, including the review and approval of the closure report; and~~
~~d. An application for a remedial action plan (RAP) submitted pursuant to 40 CFR 270, Subpart H (as incorporated by R18-8-270).~~

~~4.~~3. With an application for a ~~partial~~ closure plan for a facility, the applicant shall remit to the DEQ ~~a~~ an application fee of ~~$2,500~~ $5,000 for each hazardous waste management unit involved in the ~~partial~~ closure plan or ~~$10,000~~ $20,000, whichever is less. If the ~~reasonable~~ total cost of processing the application, including review and approval of the closure report, is more than the ~~initial~~ application fee paid, the applicant shall be billed for the difference, and the difference shall be paid in full ~~at the time~~ after the DEQ completes review and approval of the closure report ~~associated with the permit~~ and within 30 days of notification by the Director. If the reasonable cost is less than the fee paid by the applicant, the DEQ shall refund the difference within ~~45~~ 30 days of the closure report review and approval ~~associated with the permit~~. The maximum fee for a closure plan is shown in the Table.

~~5.~~4. The fee for a land treatment demonstration permit issued under § 270.63 (as incorporated by R18-8-270) for hazardous waste applies toward the ~~$10,000~~ $20,000 permit fee for a Part B land treatment permit when the owner or operator seeks to treat or dispose of hazardous waste in land treatment units based on the successful treatment demonstration (as incorporated by R18-8-270).

~~6. An applicant shall remit to the DEQ a permit application fee of $1,000 for any one of the following:~~
~~a. An application for a transfer of a Part B permit to a different owner or operator pursuant to § 270.40 (as incorporated by R18-8-270), or~~
~~b. An application for a Class 1 permit modification according to § 270.42 (as incorporated by R18-8-270) that is required as a consequence of mitigating hazardous waste compliance violations. If the reasonable cost of processing the transfer application or modification is greater than $1,000, the applicant shall be billed for the difference between the fee paid and the reasonable cost of processing the application.~~

~~7.~~5. The DEQ shall provide the applicant itemized ~~billings~~ bills at least semiannually for ~~individual costs of the DEQ employees involved in the processing of applications and all other costs to the DEQ pursuant to the following factors when determining the reasonable cost under R18-8-270(G).~~ the expenses associated with evaluating the application and approving or denying the permit or permit modification. The following information shall be included in each bill:
   a. The dates of the billing period;
   b. After January 1, 2013, the date and number of review hours performed during the billing period itemized by employee name, position type and specifically describing:
      i. Each review task performed,

ii. The facility and operational unit involved,
iii. The hourly rate;
c. A description and amount of review-related costs as described in subsection (G)(6)(b); and
d. The total fees paid to date, the total fees due for the billing period, the date when the fees are due, and the maximum fee for the project.

6. Fees shall consist of processing charges and review-related costs as follows:
a. Processing charges. The DEQ shall calculate the processing charges using a rate of $136 per hour, multiplied by the number of review hours used to evaluate and approve or deny the permit or permit modification.
b. Review-related costs means any of the following costs applicable to a specific application:
~~a. Hourly salary and personnel benefit costs;~~
~~b.~~i. Per diem expenses~~;~~,
~~c.~~ii. Transportation costs~~;~~,
~~d.~~iii. Reproduction costs~~;~~,
~~e.~~iv. Laboratory analysis charges performed during the review of the permit or permit modification,~~;~~
~~f.~~v. Public notice advertising and mailing costs~~;~~,
~~g.~~vi. Presiding officer expenses for public hearings on a permitting decision,~~;~~
~~h.~~vii. Court reporter expenses for public hearings on a permitting decision,~~;~~
~~i.~~viii. Facility rentals for public hearings on a permitting decision,~~;~~ and
~~j.~~ix. Other reasonable~~, direct, permit-related~~ and necessary review-related expenses documented in writing by the DEQ and agreed to by the applicant.
c. Total itemized billings for an application shall not exceed the maximum amounts listed in the Table in this Section.

~~8.~~7. Any person who receives a final bill from the DEQ for the processing and issuance or denial of a permit or permit modification under this Article may request an informal review of all billing items and may pay the bill under protest. If the bill is paid under protest, the DEQ shall issue the permit or permit modification if it would be otherwise issuable after normal payment. Such a request shall specify each area of dispute, and it shall be made in writing, within 30 days of the date of receipt of the final bill, to the division director of the DEQ for the ~~Office of~~ Waste Programs Division. The final bill shall be sent by certified mail, return receipt requested. The informal review shall take place within 30 days of the DEQ's receipt of the request unless agreed otherwise by the DEQ and the applicant. ~~Notice of the time and place of informal review shall be mailed to the requester at least 10 working days prior to the informal review.~~ The division director of the DEQ shall review whether or not the amounts of time billed are correct and reasonable for the tasks involved. Disposition of the informal review shall be mailed to the requester within 10 working days after the informal review.

~~9.~~8. The ~~DEQ's~~ division director's decision after the informal review shall become final within 30 days after receipt of the decision, unless the applicant requests in writing a hearing pursuant to R18-1-202.~~]~~

9. For the purposes of subsection (G), "review hours" means the hours or portions of hours that the DEQ's staff spends on a permit or permit modification. Review hours include the time spent by the project manager and technical review team members, and if requested by the applicant, the supervisor or unit manager.

H. No change
I. No change
J. No change
K. No change
L. No change
M. No change
N. No change
O. No change
P. No change
Q. No change
R. No change
S. No change

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 8. DEPARTMENT OF ENVIRONMENTAL QUALITY SOLID WASTE MANAGEMENT

Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 1244.) The Governor's Office authorized the notice to proceed through the rulemaking process on August 23, 2011.

[R12-76]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) — **Rulemaking Action**

Article 5	New Article
R18-13-501	New Section
R18-13-701	Amend
R18-13-702	Amend
R18-13-703	Amend
R18-13-704	Repeal
R18-13-705	Repeal
R18-13-706	Repeal
Article 8	New Article
R18-13-801	New Section
R18-13-1103	Amend
R18-13-1211	New Section
R18-13-1212	New Section
R18-13-1213	New Section
R18-13-1307	Amend
R18-13-1409	Amend
R18-13-1606	Amend
R18-13-2101	Amend
R18-13-2102	Amend
R18-13-2103	Amend

2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statutes (specific):

Authorizing Statutes: A.R.S. § 49-104(B)(17); Laws 2011, 1st Regular Session, Ch. 220

Implementing Statutes: A.R.S. §§ 44-1303, 44-1304.01, 49-104(B)(14), 49-706(B), 49-747(C), 49-761(D), 49-762.03(F), 49-762.05(H), and 49-855(C)

3. The effective date of the rule:

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

July 1, 2012; to coincide with the beginning of the state fiscal year.

4. Citations to all related notices published in the *Register* to include the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 17 A.A.R. 1822, September 16, 2011

Notice of Proposed Rulemaking: 17 A.A.R. 1929, September 30, 2011

5. The agency's contact persons who can answer questions about the rulemaking:

Name: Peggy Guichard-Watters

Address: Department of Environmental Quality
Waste Programs Division
1110 W. Washington St.
Phoenix, AZ 85007

Telephone:	(602) 771-4117, or (800) 234-5677, enter 771-4117 (Arizona only)
Fax:	(602) 771-2383
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or	
Name:	Mark Lewandowski
Address:	Department of Environmental Quality Waste Programs Division 1110 W. Washington St. Phoenix, AZ 85007
Telephone:	(602) 771-2230, or (800) 234-5677, enter 771-2230 (Arizona only)
Fax:	(602) 771-4246
TTD:	(602) 771-4829
E-mail:	lewandowski.mark@azdeq.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

Summary. This rulemaking was conducted as required by Laws 2011, 1st Regular Session, Ch. 220 (hereafter "HB 2705"), which also enacted temporary solid waste fees for Fiscal Year (FY) 2012. These rules increase existing solid waste fees and establish new ones beginning July 1, 2012 to address the direct and indirect costs of the Department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing solid waste management licenses and permits and enforcing the requirements of the applicable regulatory program. The goal is to achieve self sufficiency of the Arizona Department of Environmental Quality's (ADEQ or the Department) Solid Waste Program and replace General Fund monies no longer appropriated to the Program. The new fees from this rule are effective July 1, 2012.

Background. The Arizona solid waste regulatory program is primarily located at 18 A.A.C. 13 and is authorized by A.R.S. Title 49, Chapter 4. It consists of a permitting function, an inspection and compliance function, and a number of registration and licensing functions. It is based in part on federal law that "requires" states to adopt and implement federal regulations with a minimum degree of equivalency. For example, if the United States Environmental Protection Agency (EPA) determines that a state solid waste landfill program is inadequate, EPA can enforce the federal program on certain facilities under the state's jurisdiction. (See 40 CFR 239.2(a)(3)). EPA approved Arizona's municipal solid waste landfill permitting program in 1994. There is no federal funding associated with the program being approved. ADEQ has recently applied to EPA for approval of a modification that includes research, development, and demonstration permits for municipal solid waste landfills.

ADEQ's solid waste programs have historically been funded largely by the General Fund and limited fees from solid waste facilities. Fees from civil and criminal penalties in the Solid Waste Program are directed to the General Fund.

As a result of the economic downturn in 2007-2008, many states including Arizona began to experience budget shortfalls. Lump sum budget reductions and fund transfers to the General Fund from state agencies, including the ADEQ were undertaken by the legislature. In 2008, ADEQ was authorized and adopted a one-year increase in three solid waste fees for FY 2009. Those increases ended on June 30, 2009. In addition, the FY 2011 budget eliminated all of the ADEQ's General Fund ($6,247,700) for operations. Special session legislation allowed ADEQ to increase fees through exempt rules for air, water, and waste programs for FY 2011. (Laws 2010, 7th Spec. Sess., Ch. 7, § 5) In 2011, HB 2705 gave ADEQ the authority to continue increased waste program fees for FY 2012. The increased fees in this rule are authorized by HB 2705 and would begin July 1, 2012 for FY 2013.

HB 2705. HB 2705, effective July 20, 2011, authorized ADEQ to establish fees for the solid waste entities shown in the table below. The fees adopted by ADEQ in this rule either revise existing fees, or are new fees.

Solid Waste Fees Authorized by HB 2705

Solid Waste Entity	Implementing statute in HB 2705	Revised Fee or New Fee
New Waste Tire Collection Sites	A.R.S. § 44-1303(B)	New Fee
Used Tire Storage Sites	A.R.S. § 44-1304.01(A)(8)	New Fee
Septage Hauler Vehicles	A.R.S. § 49-104(B)(14)(b)	New Fee
Solid Waste General Permits	A.R.S. § 49-706(B)	New Fee
Solid Waste Landfills	A.R.S. § 49-747(C)	Revised Fee
Biohazardous Medical Waste Transporters	A.R.S. § 49-761(D)(2)	New Fee

Facilities Needing Solid Waste Plan Approval	A.R.S. § 49-762.03(F)	Revised Fee
Facilities Requiring Self-Certification	A.R.S. § 49-762.05(H)	Revised Fee
Special Waste Generators	A.R.S. § 49-855(C)(2)	Revised Fee

HB 2705 authorizes registration fees, licensing fees, special waste generation fees, and, in the case of facilities requiring solid waste facility plans, fees based on the direct and indirect costs of reviewing the plan. The bill also amended A.R.S. § 49-837 to allow monies in the Recycling Fund to be used for ADEQ's Solid Waste Program activities.

HB 2705 sets out a number of requirements for the new fees and fee increases that are contained in A.R.S. § 49-104(B)(17) and the various implementing statutes. Two principal requirements are: 1) the fees should "be fairly assessed and impose the least burden and cost to the parties subject to the fees"; and 2) the fees are to be based on "[t]he direct and indirect costs of the department's relevant duties" … "related to issuing licenses" … "and enforcing the requirements of the applicable regulatory program."

In the context of this solid waste rulemaking, ADEQ has interpreted the second requirement to mean it should collect an amount necessary to maintain an effective and adequate solid waste program by satisfying the requirements to protect the public and the environment from solid waste that are set out in A.R.S. Title 49, Chapter 4 and federal law. In determining the lowest amount necessary, ADEQ had to make certain assumptions about the amount of funding that would be available from the Recycling Fund. Under A.R.S. § 49-837 as amended by HB 2705, ADEQ is authorized to use Recycling Fund monies to supplement solid waste control program activities. ADEQ has built about $1.2 million from the Recycling Fund into the calculations of the fees that it needs for the Solid Waste Program. This issue is discussed further in the discussion of other funds.

ADEQ interprets "fairly assessed" to mean that the amount of fees collected from any class of solid waste entities should be proportional to the "direct and indirect costs" that can be attributed to that class. ADEQ demonstrates how it has met this requirement after the Explanation of New Fees in this part.

Informal Comment. In 2011, ADEQ facilitated extensive informal comment on funding for the Solid Waste Program and hosted four public meetings. An e-mail 'listserv' was created consisting of relevant solid waste related entities and each meeting was announced to the listserv and posted on ADEQ's web site. The meetings were held in Phoenix and ADEQ provided a call-in mechanism to allow participation by phone. Attendance averaged 50-75 people per meeting. Meetings on January 24 and January 31 concentrated on concepts and the design of legislation. The meetings on June 30 and July 28 reviewed draft rule language and responded to comments from the public. Oral comments were recorded at the meetings, and written comments were accepted after each meeting. At the time, the solid waste listserv contained over 450 e-mail addresses for the solid waste rule.

Explanation of New Fees. All of the following new fees are effective July 1, 2012.

1. New Waste Tire Collection Site Registration Fee. In R18-13-1211, ADEQ has established a registration fee for new waste tire collection sites as authorized by A.R.S. § 44-1303. The initial registration fee is $500 followed by $75 for each annual registration after that. The increased initial registration fee will allow for improved oversight of tire collection sites. The fee will fund the creation of a new ADEQ waste tire collection site database and fund ADEQ inspectors to pay an initial visit to become familiar with the facility and for compliance assistance.

2. Used Tire Storage Site Registration Fee. ADEQ has established a registration fee for used tire collection sites in R18-13-1212 as authorized by A.R.S. § 44-1304.01. The registration requirement has been in existence since 2008. The initial fee is $500 followed by $75 for each annual registration after that. As with the tire collection site registration fee, the increased initial registration fee will allow for improved oversight of used tire storage sites. The fee will fund the creation of a new ADEQ used tire storage site database and fund ADEQ inspectors to pay an initial visit to become familiar with the facility and for compliance assistance.

3. Septage Hauler Vehicle License Fee. ADEQ is establishing a license fee for septage hauler vehicles at R18-13-1103 as authorized by A.R.S. § 49-104(B)(14). ADEQ previously provided these licenses at no charge. The initial fee for each vehicle newly licensed after June 30, 2012 is $250 followed by $75 for each annual license after that. Vehicles licensed before July 1, 2012 are not subject to the initial fee of $250 but are subject to the $75 annual fee. ADEQ has a database of the vehicles it has licensed, but it is not up to date since there is no mechanism for verifying that a licensed vehicle is still operating. ADEQ will use the annual registration to fund verification that licensed vehicles are still operating and keep the database up to date.

ADEQ maintains six Sections of state rule in 18 A.A.C. 13, Article 11, "Collection, Transportation and Disposal of Human Excreta." Some of ADEQ's duties under this Article are delegated to counties but responsibilities exist under the delegation agreements such as monitoring county performance and reports, and assistance and coordination in compliance and enforcement efforts. Currently, 14 of the 15 counties have agreed to handle inspection of septage vehicles under R18-13-1106 for the purpose of ADEQ licensing. Having counties conduct lawful local inspections saves ADEQ or the licensee time, but coordination is required. Allowing funds to be collected for this program will allow ADEQ to establish a system for tracking septage vehicles statewide and to provide support to the delegated counties, among other functions.

4. Solid Waste General Permit Fees. In R18-13-801, ADEQ is establishing initial and annual fees for operation under a general permit as authorized under A.R.S. § 49-706(B). The use of general permits is new to the Solid Waste Program and was authorized in HB 2705. The legislation allows the Department to establish a general permit for any license issued pursuant to A.R.S. Title 49, Chapter 4. ADEQ may issue by rule a general permit for a defined class of facilities, activities, or practices under specific conditions. In addition, the legislation requires ADEQ to establish by rule fees for general permits. In this rulemaking, ADEQ established fees for general permits although no general permits have been developed or are in use in the Solid Waste Program. The general permits themselves would be developed in the future and established in a subsequent rulemaking.

ADEQ established general permit fees based on categories of solid waste facilities: collection, storage and/or transfer facilities; treatment facilities; and disposal facilities. The fees for the first two categories vary for standard general permits and complex general permits, with lesser rates being applied to standard general permits. General permit fees for solid waste disposal facilities (landfills) are established at one flat rate, as the Department determined that all of these facilities have multiple components associated with them and are therefore complex.

The initial fees for operation under a general permit are based on the Department's total anticipated staff hours divided by an estimate of the number of permittees in the category. Total anticipated staff hours include projected time expended for permit development, rule development, review of the notice of intent, data review and input, and customer service.

The annual fees for general permits are based on the Department's estimated staff hours for the average facility. Estimated staff hours for the annual fees include projected time expended for inspections, complaint response, date review and input, enforcement activities, and customer service. No annual fee is established for the disposal category as those facilities are subject to annual landfill registration fees which are intended to cover the costs of these Department activities.

The Department does not intend to consider establishing a general permit for a specific type of facility unless there are at least 10 facilities that meet the requirements of A.R.S. § 49-706(A)(1). The Department believes that the development of a general permit for a smaller number of facilities is not cost effective. Additionally, in calculating the initial general permit fees, the Department did not consider types of facilities for which there is a known inventory of less than 10 such facilities.

5. Solid Waste Landfill Registration Fee. ADEQ is establishing solid waste landfill registration fees in R18-13-2101 through R18-13-2103 as authorized by A.R.S. § 49-747(C). HB 2705 removed the landfill categories and the fees for each category previously contained in that statute and directed ADEQ to establish the fees by rule. ADEQ reduced the number of size categories from six to four and set the fees as follows. Under R18-13-2103(C), existing landfills that cease accepting waste will pay the $1,250 annual registration fee. The table below shows how the new fees compare to previous fees.

Landfill Registration Fees

Landfill annual tons received	New Beginning FY 2013	During FY 2011 and FY 2012*	FY 2010*	10/20/08 to 6/30/09*	Prior to 10/20/08*
Less than 12,000 tons	$1,250	$2,500 to $25,000	$500 to $5,000	$1,000 to $10,000	$500 to $5,000
12,000 - 60,000 tons	$2,500				
60,000 - 225,000 tons	$7,500				
More than 225,000 tons	$12,500				
NMSWLFs**	$3,750	$7,500	$1,500	$3,000	$1,500
SWLFs closed to public, nonhazardous only	$3,750	$7,500	$1,500	$3,000	$1,500

* Registration fees were based on the population served by the landfill rather than the number of tons received per year. **Non-municipal solid waste landfills

6. Biohazardous Medical Waste Transporter License Fee. In R18-13-1409, ADEQ is adopting an annual license fee for biohazardous medical waste transporters as authorized by A.R.S. § 49-761(D)(2). Instead of an initial fee, the annual fee is higher the year the license is first issued and when it is renewed at the end of five years. These years are defined as "licensing years." In a licensing year, a vehicle inspection and plan review charge is added to the annual license fee of $750. The charge is based on the solid waste plan review hourly rate and covers ADEQ inspection of vehicles and review of the transportation management plan and other required information.

7. Solid Waste Plan Review Fee. At R18-13-701 through 703, ADEQ is adopting a new plan review hourly rate, along with new initial and maximum fees, as authorized by A.R.S. § 49-762.03(F). The new hourly rate is compared to recent hourly rates in the table below.

Solid Waste Plan Review Hourly Rate

Solid Waste Plan Review	Sept 2002 to 10/20/08	10/20/08 to 6/30/09	FY 2010	FY 2011 and FY 2012	New Beginning FY 2013
Hourly rate	$58.81	$105.00	$58.81	$127.49	$122.00

Explanation of hourly rate. ADEQ estimated the hourly rate of $122 per hour for solid waste permitting staff (project management and technical review) based on the permitting work of a full-time employee (FTE) and made the following assumptions:

Hours

- Assumes an FTE works 2080 hours annually (40 hours X 52 weeks).
- NON-PROGRAM HOURS include:
  - hours related to employee leave (sick, vacation, holiday), calculated at the maximum available of 320 hours.
  - hours related to training, meetings and minor tasks estimated at 315 hours.
  - hours lost due to employee turnover – assuming a rate of 10 percent - 208 hours.
  - TOTAL NON-PROGRAM HOURS estimated at 843 hours annually.
- PROGRAM HOURS are what remain when non-program hours are subtracted from the total annual hours. Program hours include both review and decision-making on specific applications (i.e. billable), and those hours not related to review hours of specific applications (i.e. non-billable). Some of the Program Hours are therefore not billable.
  - TOTAL PROGRAM HOURS = 2080 - 843 = 1237 hours/year.
  - NON-BILLABLE PROGRAM HOURS includes, among other duties, customer service time, inter-division and inter-agency coordination, permit administration, and program development (rules and policies). This is estimated at 373 hours annually.
  - BILLABLE PROGRAM HOURS = 1237 - 373 = 864 hours/year.

Costs

- Salaries + employee related expenses (ERE) related to Billable Program Hours performed by an FTE.
  - ERE (e.g., health insurance, worker's compensation) benefits at rate of 42 percent of salary.
  - A portion of Non-Program Hours in support of Billable Program Hours are included in costs. This is estimated at 588 hours/year (69.8 percent of total Non-Program Hours).
  - Program staff includes Project Managers, Engineers, and Hydrologists at an average hourly rate of $25.07.

Cost = (864 + 588 hours) X $25.07/hour X 1.42 = $51,690

  - Management/ Supervisory hours in support of the program staff work are included in costs, and are estimated at 200 hours/year. This includes unit and section managers at an average hourly rate of $32.23.

Cost = (200 hours) X $32.23/hour X 1.42 = $9,153

  - Administration Support hours in support of the program staff and management's and supervisors' work are included in costs, estimated at 300 hours/year at an average hourly rate of $17.60.

Cost = (300 hours) X $17.60/hour X 1.42 = $7,498

- Subtotal of personnel services and ERE for the project manager, management staff, and administrative support staff ($51,690 + $9,153 + $7,498 = $68,341).
- Add Indirect expenses (49.53 percent of personal services and ERE by federal formula) for rent, utilities, etc., estimated at $33,849 ($68,341 X 0.4953 = $33,849).
- Add Other Expenses such as per diem travel, equipment, operating expenses (supplies, etc.) and professional services, estimated at $3,500.
- Total Costs Related to Permit Process for one FTE= $105,690. ($68,341 + $33,849 + $3,500 = $105,690)

Hourly Rate

Dividing the total costs of an FTE ($105,690) by Billable Program Hours (864) yields the hourly rate for permit processing of $122/hour ($105,690 ÷ 864 billable program hours = $122/hour).

The new rate of $122 per hour is comparable to private sector rates and with the rates charged by other ADEQ divisions and state agencies that are engaged in similar levels of technical review and project management. For comparison, the average private sector consultant rate for similar work activities charged in ADEQ's solid waste permit program typically ranges from $121 to $156.67 per hour. Using this same hourly rate calculation methodology, the Air Quality Division currently charges $141.50 per hour, and the Water Quality Division currently charges $122 per hour. The Arizona Department of Water Resources, using the same hourly rate calculation methodology, currently charges $118 per hour. The differences in fees charged between the divisions and agencies largely relate to the hourly

rate differences between the specialty staff needed by each particular program. Those programs requiring more specialty technical review (e.g., by hydrologists or engineers) will have slightly higher hourly rates.

Billing Details. During the informal public participation process, stakeholders asked ADEQ for a requirement in rule to put more detail on the periodic and final bills they get from ADEQ. ADEQ added this requirement to the proposed rule at R18-13-702(B). At the time of the Notice of Proposed Rulemaking (NPRM), ADEQ stated that its proposal to provide a detailed hours breakdown on every bill was not currently practicable due to the lack of an automated software system. ADEQ has begun developing an automated tracking system to facilitate the collection of detailed billing information. The continuing shortage of resources has caused ADEQ to place a new starting date for certain billing information requirements in R18-13-702(B). ADEQ expects the system will be in place by the end of CY 2012.

Solid Waste Plan Review Initial and Maximum Fees. The table below summarizes some of the changes.

Solid Waste Plan Review Hourly Rate; Initial and Maximum Fees

Solid Waste Plan Review Category	Sept 2002 to 10/20/08	10/20/08 to 6/30/09	FY 2010	FY 2011 and FY 2012	New Beginning FY 2013
Hourly rate	$58.81	$105.00	$58.81	$127.49	$122.00
MSWLF Initial Fee Max. Fee	 $5936 $56,900	 $11,872 $170,700	 $5936 $56,900	 $15,000 $150,000	 $20,000 $200,000
Other SWF Initial Fee Max. Fee	 $1,609 $23,800	 $3,218 $71,400	 $1609 $23,800	 $10,000 $100,000	 $10,000 $100,000
Financial Responsibility Review Initial Fee Max. Fee	 $278 $1,800	 $556 $5,400	 $278 $1,800	 $500 $5,000	 $600 flat* or $200 $5,000

*The $600 flat fee is for solid waste landfills. Other solid waste facilities would be billed hourly.

The initial (application) fee increases resulted both from an increase in the hourly rate and from the fact that there will be no General Fund monies available to cover gaps in cash flow when billing may occur only quarterly, and payments are normally due 30 days after billing. ADEQ must obtain sufficient monies up front so that payments do not get too far behind services provided. Maximum fees are set to provide predictability to permit applicants while also allowing ADEQ to be reasonably certain that it will meet Licensing Time-frames and not expend more resources processing a permit than the amount for which it can be reimbursed. Other reasonable and necessary review related expenses count toward the fee cap.

8. Self-Certification Fees. This rulemaking establishes new registration fees in R18-13-501 to replace the $500 and $200 fees that were in statute at A.R.S. § 49-762.05. ADEQ has defined three major categories of self-certification facilities and has established initial and annual registration fees for these facilities. The higher initial registration fee will allow ADEQ to create a database and ADEQ inspectors to pay an initial visit to become familiar with the facility and its compliance status before the annual registration fees begin.

For transfer facilities, the new self-certification registration fee is $1,000 for the initial registration, and $500 annually after that. For the waste tire facilities defined in the rule, the fee is $1,000 for the initial registration and $250 annually after that. ADEQ has added an additional Section R18-13-1213 in Article 12 to ensure that a tire facility required to pay registration fees as a self-certification facility under Article 5 will not have to pay an additional fee under Article 12.

9. Special Waste Management/Handling Fee. ADEQ has increased special waste management and maximum fees at R18-13-1307 and R18-13-1606 as authorized by A.R.S. § 49-855(C). HB 2705 removed the fee set by statute and directed ADEQ to establish the fees by rule. The new fees are compared to previous special waste fees in the table below.

Special Waste Handling and Maximum* Fees

Prior to 10/20/08	10/20/08 to 6/30/09	FY 2010	FY 2011 and FY 2012	New Beginning FY 2013
$2/ton $20,000 Max.	$4/ton $40,000 Max.	$2 per ton $20,000 Max.	$5 per ton $50,000 Max.	$4.50 per ton $45,000 Max.

* Per generator site per year

Fees are Fairly Assessed and Impose the Least Burden and Cost. The table below illustrates the proportionality of the fees to the "direct and indirect costs" that can be attributed to the specific program activity. Estimated Employee Time Allocation was based on 2009-2010 records, and is subject to change year to year.

Estimated Annual Solid Waste Fee Revenue

Solid Waste Program Activity	Estimated Employee Time Allocation	Estimated Annual Fee Revenue	% of Total Solid Waste Program Cost
Landfills	29.0%	$409,000	17.8%
Special Waste	21.0%	$198,000	8.6%
Tire Facilities	13.0%	$287,700	12.5%
BMW Transporter & Treatment, Storage and Disposal facilities	13.0%	$135,250	5.9%
Transfer Facilities	5.0%	$50,000	2.2%
Septage Haulers	3.0%	$45,000	2.0%
General Solid Waste Activities (e.g., complaints, illegal dumping)	16.0%	$0	0%
Recycling Fund	N/A	N/A	51%
Total	100%		100%
TOTAL ESTIMATED FEE REVENUE: $1,124,950			
TOTAL ESTIMATED RECYCLING FUND CONTRIBUTION: $1,174,950			
TOTAL ESTIMATED SOLID WASTE PROGRAM COST: $2,299,900			

The table also helps illustrate other important points about the fairness of the fees.

First, every category, regardless of whether they incurred any of the recent temporary fee increases, receives the benefit of the 51% contribution from the Recycling Fund. Landfill owners and operators as well as special waste generators have had to pay fees for a number of years and have had substantial fee increases during the periods 10/20/08 to 6/30/09, FY 2011 and FY 2012. As such, these entities have contributed to the Solid Waste Program funding over the years while other entities have not had to pay fees for services received.

Under A.R.S. § 49-104(B)(17)(b), (c), and (d), ADEQ must also consider the availability of other funds, the impact of the fees on the parties subject to the fees, and the fees charged for similar duties performed by the Department, other agencies, and the private sector.

Availability of other funds. Under A.R.S. § 49-837 as amended by HB 2705, ADEQ is authorized to use Recycling Fund monies to fund solid waste control program activities. ADEQ has built $1.2 million from the Recycling Fund into the calculations of the fees that it needs for the Solid Waste Program. In the past several years, the Recycling Fund balance has been transferred to the General Fund. ADEQ stated in the Notice of Proposed Rulemaking that if the Recycling Fund became unavailable while this rulemaking was pending, that it would terminate the rulemaking and re-propose the rule with higher fees. ADEQ expected that most of the fees would at least double. If the Recycling Fund becomes unavailable at any time after this rule is approved by the Governor's Regulatory Review Council, ADEQ will seek authority to begin a new rulemaking process to establish solid waste fees that do not include a contribution from the Recycling Fund.

ADEQ annually receives 3.5 percent of the tire fees collected under A.R.S. § 44-1302 for monitoring and enforcing A.R.S. Title 44, Chapter 9, Article 8, Waste Tire Disposal. For the purpose of this fee rule, an annual amount of $275,000 has been used, and it makes up most of the $287,700 shown as estimated annual fee revenue from tire facilities in the "Estimated Annual Solid Waste Fee Revenue" table.

Civil and criminal penalties that result from solid waste enforcement go to the General Fund and are not available to fund solid waste control program activities. ADEQ is not aware of any other source of funds that could be used for these activities under current law.

Impact. As discussed earlier, ADEQ has considered the impact of the fees on the parties subject to the fees through its collection of the least amount of fees necessary to sustain the Solid Waste Program, and a fair, proportional assessment of those fees.

Fees for similar duties. In considering the fees charged for similar duties performed by the Department, other agencies, and the private sector, ADEQ notes that it has already compared hourly rates for the most similar duties. With respect to registration and licensing, many agencies are not required to fund their full costs using only fees. It is therefore somewhat difficult to make a direct comparison.

7. A reference to any study relevant to the rules that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rules, 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 rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

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

Identification of the rulemaking: 18 A.A.C. 13, Articles 5, 7, 8, 11, 12, 14, 16, 21. Proposed amendments to R18-13-501, R18-13-701 through R18-13-706, R18-13-801, R18-13-1103, R18-13-1211 through R18-13-1213, R18-13-1307, R18-13-1409, R18-13-1606, R18-13-2101 through R18-13-2103 (For further information, see item 6 of this preamble.) These rules are not designed to change the conduct of any regulated solid waste entities. The rules are designed to collect fees from some solid waste entities.

Program Description. ADEQ's Solid Waste Program reviews and approves design and operation plans for landfills, special waste facilities, and medical waste facilities, and issues licenses and permits to other solid waste facilities and transporters. Facilities are periodically inspected and compliance data is maintained for each facility. Solid waste complaints are investigated. Compliance assistance is provided, and appropriate enforcement actions are pursued for significant noncompliance. The program also advocates for solid waste reduction, reuse, and recycling.

Regulatory Universe. The Solid Waste Program regulates over 460 facilities and over 1600 activities and entities in Arizona. Regulated facilities include: operating solid waste landfills; biohazardous medical waste transfer, storage, treatment and/or disposal facilities; solid waste transfer stations; waste tire collection facilities; used oil marketers, processors, and burners, and special waste generators, treatment and/or disposal facilities. Regulated activities include: septage haulers, used oil transporters, registered alternative medical waste treatment technologies, registered biohazardousmedical waste transporters, special waste transporters, and used oil collection centers.

Implemented Efficiencies. The Program has changed its operation in recent years to accomplish required work with fewer resources. Permitting program efficiencies include: development and use of templates for solid waste facility master plans and Aquifer Protection Permits; use of contractors for permit application reviews when necessary for technical support or schedule concerns; and improvements of web site resources to provide better information to the regulated community.

Compliance program efficiencies include: reducing employee travel time and expense by referring to local authorities where possible, scheduling travel by grouping routine and complaint inspections into regions across the state; streamlining procedures to reduce paperwork; arranging work schedules to ensure prompt response to customer inquiries; improving database tracking; developing boilerplate documents; utilizing available scholarships for applicable training opportunities; and developing standardized fact sheets and presentations for outreach.

Resource Reduction Impacts. Due to reduction in resources, it has become necessary to decrease routine inspection frequencies for lower-risk facilities and limit ADEQ's role in facilitating clean-up of illegal dump sites. Additionally, the program is no longer maintaining commonly requested solid waste data such as landfill tonnage reports and recycling rate data. Courtesy reminder notices for annual financial assurance updates have also been halted.

Failure to adequately staff and fund the program may result in a substantial threat to public health and the environment because the duration of non-compliance at a facility is increased due to reduced inspection frequencies. Failure to regulate biohazardous medical waste handlers puts human health, including solid waste workers, at risk because untreated or inadequately treated biohazardous medical waste, such as contaminated needles, could enter the general solid waste stream. Without oversight, solid waste facilities may fail to implement waste screening programs to exclude unpermitted wastes, such as biohazardous medical waste, hazardous wastes, and other dangerous substances from being disposed in solid waste landfills.

Additionally, the regulated community may be negatively impacted because ADEQ may not be able to provide timely response to requests for new permit processing, permit modifications, and registrations for special waste facilities, battery collection sites, waste tire collection sites, and used oil collection sites.

Staffing Levels. Due to the elimination of General Fund appropriations, the Solid Waste Program has experienced a reduction in staffing levels over the past few years. Some positions were eliminated entirely and others have not been filled following staff lay-offs and voluntary departures. In FY 2008, the Solid Waste Program had three plan reviewers and 10 inspections and compliance officers. In FY 2011, the program has two plan reviewers and four

inspections and compliance officers. Support staff for the program was greatly reduced as well. ADEQ does not anticipate the programs or associated staffing levels to expand over FY 2011 levels as a result of this rulemaking with the exception of the number of solid waste inspectors. The estimated cost of the Solid Waste Program includes filling three currently vacant solid waste inspector positions for a total of seven inspectors who will be responsible for regulation of over 460 facilities and 1600 activities and entities statewide.

Budget. The budget necessary to operate the Solid Waste Program with the proposed staffing is approximately $2,299,900. Based on the new language in A.R.S. § 49-837 enacted in HB 2705, ADEQ has assumed a Recycling Fund contribution of $1,174,950. The total estimated fee revenue necessary to reach $2.3 million is $1,124,950. In FY 2011, base fees from solid waste entities only generated $649,000. Given that no other funds are available, this means that the increased fees and funding necessary to reach $2.3 million is approximately $1,650,000, which includes the assumed Recycling Fund contribution.

Least Burden and Cost. A.R.S. § 41-1052(D)(3) requires ADEQ to demonstrate it has selected the alternative with the least burden and cost necessary to achieve the underlying regulatory objective. A similar requirement exists in A.R.S. § 49-104(B)(17), which requires that the fees should "be fairly assessed and impose the least burden and cost to the parties subject to the fees"; and that the fees are to be based on "the direct and indirect costs of the Department's relevant duties" … "related to issuing licenses" … "and enforcing the requirements of the applicable regulatory program."

In the context of this solid waste rule, ADEQ has interpreted this requirement to mean both collecting an amount necessary to maintain an effective and adequate program and satisfy the detailed requirements to protect the public and the environment from solid wastes that are specified in A.R.S. Title 49, Chapter 4 and, making the amount collected from any class of solid waste entities proportional to the "direct and indirect costs" that can be attributed to that class. The table "Estimated Annual Solid Waste Fee Revenue" in the Notice of Final Rulemaking illustrates the proportionality of the fees.

A.R.S. § 49-761 requires ADEQ to adopt rules for various categories and activities related to solid waste and to consider applicable federal laws. In addition to 40 CFR 257 and 40 CFR 258, which apply to landfills, 40 CFR 239, "Requirements for State Permit Program Determination of Adequacy" is also relevant. For example, if EPA determines that a state solid waste landfill program is inadequate, EPA can enforce the federal program on certain facilities under the state's jurisdiction. [See 40 CFR 239.2(a)(3))]

Based on stakeholder comments, most in the regulated community agree that ADEQ should enforce the federal program rather than EPA, and that ADEQ should continue to meet the criteria and benchmarks for program adequacy in order to implement the program. ADEQ has estimated the cost of the Solid Waste Program to be approximately $2.3 million dollars.

ADEQ's emphasis on inspections and enforcement is reflected in the organizational structure ADEQ proposed as the minimum necessary to keep the Arizona Solid Waste Program adequate and effective. The proposed structure consists of seven inspectors and two permit writers for the nine technical positions. Support staff includes a portion of a hydrologist, records management staff, budget, database and clerical staff, and management.

Cost/Benefit. The probable cost for this rule is approximately $477,400, which is the estimated total amount of increased fees proposed for the program described above. This amount would replace the General Fund monies that partially funded the Solid Waste Program in the past without cost to the regulated community.

The probable benefits are: 1) Solid waste would be adequately regulated and managed in Arizona; 2) Confidence that ADEQ and not EPA will run the solid waste landfill program; 3) Benefits to the state budget due to the Solid Waste Program moving toward a fee-based revenue system without the need for General Fund support; and 4) Increased fairness and equity, in that more of the costs of the Solid Waste program are being borne by those who receive services from the Department.

ADEQ believes that the benefits exceed the cost.

Rules More Stringent than Corresponding Federal Law. [A.R.S. § 41-1052(D)(9)] There is no corresponding federal law that deals with solid waste fees.

Probable Impact on Political Subdivisions of this State Directly Affected by this Rulemaking [A.R.S. § 49-1055(B)(3)(b)]

Political subdivisions are affected by this rule through ownership of tire sites and landfills, and, occasionally, through generation of petroleum contaminated soils that is special waste.

Waste and used tire sites. There are approximately 23 tire sites owned by Arizona counties and 12 owned by Arizona cities and towns. These political subdivisions will have to pay one of the following new fees:

1) Under R18-13-1211, new sites storing more than 500 waste tires on any one day, $500 initially, then $75/yr;
2) Under R18-13-501, any site storing more than 5,000 waste tires on any one day: $1000 initially, then $250/yr;
3) Under R18-13-1212, a site storing 100 or more used tires outdoors: $500 initially, then $75/yr.

Landfills. Landfills owned by counties or cities will pay revised landfill registration fees under this rule. In most cases, the fees will be reduced from those paid in the previous two fiscal years, but higher than those paid in FY 2010.

Special waste generation. Political subdivisions occasionally generate petroleum contaminated soil from vehicle and equipment storage yards and also from cleanups of streets and right of ways. Political subdivisions that generate petroleum contaminated soil are subject to the $4.50 per ton fee in R18-13-1307 and R18-13-1606. The fee is reduced from those paid in the previous two fiscal years, but higher than those paid in FY 2010.

Reduction of Impact on Small Businesses. A.R.S. § 41-1035 requires state agencies to reduce the impact of a rulemaking on small businesses, if any of the following methods are legal and feasible in meeting the statutory objectives which are the basis of the rulemaking:

1. Establish less stringent compliance or reporting requirements in the rule for small businesses.
2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.
3. Consolidate or simplify the rule's compliance or reporting requirements for small businesses.
4. Establish performance standards for small businesses to replace design or operational standards in the rule.
5. Exempt small businesses from any or all requirements of the rule.

Although the listed methods are not generally relevant to a rule establishing fees, (fees must be fairly assessed and based on direct and indirect costs) ADEQ believes that it has appropriately reduced the impact of the rule on small businesses by utilizing Recycling Fund monies to offset a substantial portion of the budget necessary to operate the Solid Waste Program. Without the Recycling Fund contribution, the impact on small businesses would certainly be very high.

Probable Impact on Small Businesses. [A.R.S. § 41-1055(B)(5)] ADEQ has looked at its records of solid waste sites and facilities affected by this rule and tried to determine which ones are small businesses. An important criterion is that they must be independently owned and operated. A look at the list of septage haulers located at http://www.azdeq.gov/environ/water/permits/download/haulers-num.pdf shows that most of these are probably independently owned and operated and not likely to exceed the revenue and employee limits in the statutory definition of small business. Using the same process, it appears likely that a number of used tire storage sites and biohazardous medical waste transporters are also small businesses. In the Notice of Proposed Rulemaking, ADEQ stated that it expected the new fees will have limited to moderate impact on these small businesses. Comments from some septage haulers agreed with ADEQ that most septage haulers are small businesses, but characterized the impact on them as "an unnecessary burden on a community already ravaged by the loss of jobs and homes" and "an insult to an already over taxed business community."

ADEQ investigated the average cost of pumping a septic tank in Arizona. All results were similar to a 2010 University of Arizona Cooperative Extension publication (http://ag.arizona.edu/pubs/water/az1159.pdf) which stated that the cost can range from $150 to $1000 depending on the ease of access and the amount of solids. In comparison, ADEQ's $250 initial or $75 annual fee will usually be less than the fee normally charged to pump one tank. ADEQ continues to believe that the new fees will have limited to moderate impact and that the benefits of funding the statewide program exceed the costs.

ADEQ has also determined that some small businesses may be subject to the $500 initial and $75 annual fee associated with storing 100 or more used tires outdoors under R18-13-1212. ADEQ has classified this impact as minimal to moderate.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

ADEQ inserted a later effective date (January 1, 2013) for certain billing information requirements in R18-8-702(B) to compensate for delay in the development of an automated invoice tracking system. ADEQ's goal is to implement a new agency wide Revenue Invoice Collection System or RICS by December 31, 2012.

In R18-13-1103(C), ADEQ made changes to clarify that the initial fee applies to newly licensed vehicles and not new vehicles. It also added text emphasizing the license renewal requirements in subsection (C)(3).

ADEQ corrected erroneous dates used in R18-13-1211 and R18-13-1212. The general effective date for the authorizing legislation was July 20, 2011. The applicability for the two rule Sections should be after July 20, 2011, not after July 19, 2011.

Minor clarifications and grammar corrections were made at the request of G.R.R.C. staff.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

Comment 1: The maximum fees for plan review of non-municipal solid waste landfills ($200,000) and for non-municipal solid waste landfills operating under an APP ($50,000) seem excessive.

Response 1: As stated in the Notice of Proposed Rulemaking, ADEQ set the maximum fees mindful of the licensing time-frames and sanctions that could apply, while ensuring for the sake of all applicants that it not expend more resources on a plan review than the amount for which it can be reimbursed. In determining the maximum fees, ADEQ assumed a difficult and lengthy public participation process. In the case of a landfill operating under an Aquifer Pro-

tection Permit (APP), ADEQ must ensure that the non-APP requirements in A.R.S. Title 49 and 40 CFR 257 are included and enforceable and that financial assurance requirements are met. For those landfills where plan review includes APP requirements, ADEQ assumed a submittal that is technically complex requiring extensive review time and/or the need to use a third party (outside contractor) with specific expertise. While the resulting maximum fees may seem high, ADEQ believes that for a technically complex application, the hours are realistic. ADEQ further believes that the maximum fee should be the same whether the landfill is municipal or non-municipal. The vast majority of plan reviews should fall well below the maximum fees. With no General Fund supplement, any costs to the agency beyond the maximum fees charged to the applicants will be borne by other programs.

Comment 2: Three commenters stated that ADEQ is not providing any appreciable service to the regulated community to warrant the septage hauler license fees. County inspections do everything necessary, and Yavapai County personnel ably police, guide and regulate these vehicles and owners.

Response 2: The ADEQ fees are not just a charge for services provided. The difference recognized by HB 2705 is that, in addition to ADEQ providing the vehicle license services, ADEQ is also the lead agency for regulating the collection, transportation and disposal of human excreta in the state. (See 18 A.A.C. 13, Article 11). Administering this larger regulatory program represents an additional cost. As a consequence, and in recognition of General Fund support being removed, HB 2705 instructs ADEQ to base the licensing fee not just on the administrative costs of licensing, but also "the department's relevant duties." These duties include the creation, oversight and renewal of county delegation agreements as they relate to human excreta.

ADEQ is required by law to process the paperwork for the licensing of septage haulers. The majority of initial licensing fee is based on the resources necessary to process an application, confer with the local authorities involved, and issue the license. The annual fee was calculated based on the costs of providing oversight for the agreements that delegate some of the regulatory tasks associated with this program, the costs of inspections and compliance staff responding to complaints related to septic waste, and maintaining and updating the licensing database.

ADEQ agrees with the commenters that the counties are closer to the people they serve and regulate, but it is the state statutes and rules, along with separate delegation agreements for each county that provide the counties with the authority to perform these local services. Under HB 2705 and related budget directives, general state tax revenues no longer pay for the part of the program necessary to license and regulate septage hauler vehicles. The vehicle owners, and ultimately the septic tank owners will pay for the program.

Comment 3: Three commenters stated that ADEQ's septage hauler license fee is too high because ADEQ does not know how many vehicles are currently operating, and cannot estimate proportionality.

Response 3: ADEQ has estimated, to the best of its ability, the number of vehicles it has licensed that are still operating, and has used that estimate to establish licensing fees necessary to support the program.

Comment 4: Three commenters stated that ADEQ's septage hauler license fee is too high because it will be passed on to families in the community who are already distressed. Some people may avoid pumping their septic tanks.

Response 4: ADEQ investigated the average cost of pumping a septic tank in Arizona. The results were similar to a 2010 University of Arizona Cooperative Extension publication, (http://ag.arizona.edu/pubs/water/az1159.pdf) which stated that the cost can range from $150 to $1000 depending on the ease of access, the amount of solids in the tank, and the ultimate disposal site. ADEQ's fees will usually be less than the costs to pump one tank. ADEQ continues to believe that the benefits of funding the statewide program exceed the costs.

Nevertheless, based on comments received during the informal rulemaking process, the Department reduced the annual fee from $100 to $75.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

These rules do not require general permits as that term is used in A.R.S. § 49-706. This rulemaking is for the purpose of setting fees for the Solid Waste Program only. The rules do not establish or amend program authorizations, except as they pertain to fees and are specifically authorized by statute.

As required by the legislature in HB 2705, this rule establishes fees for general permits. HB 2705 also states that ADEQ may issue by rule a general permit for a defined class of facilities, activities, or practices under specific conditions. Although the fees have been established with this rulemaking, no general permits have been developed for the Solid Waste Program. The general permits may be developed in a subsequent rulemaking.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

These rules are not more stringent than corresponding federal laws. There is no corresponding federal law that deals with solid waste fees.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:
No person has submitted a competitiveness analysis under A.R.S. § 41-1055(G).

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:
None

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:
Not applicable

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY SOLID WASTE MANAGEMENT

ARTICLE 5. ~~RESERVED~~ REQUIREMENTS FOR SOLID WASTE FACILITIES SUBJECT TO SELF-CERTIFICATION

Section
R18-13-501. Solid Waste Facilities Requiring Self-Certification; Registration Fees

ARTICLE 7. SOLID WASTE FACILITY PLAN REVIEW FEES

Section
R18-13-701. Definitions
R18-13-702. Solid Waste Facility Plan Review Fees
R18-13-703. Review of Bill
R18-13-704. ~~Number of Billable Hours~~ Repealed
R18-13-705. ~~Determining the Average Cost Per Employee~~ Repealed
R18-13-706. ~~Determining the Hourly Billing Rate~~ Repealed

ARTICLE 8. ~~RESERVED~~ GENERAL PERMITS

Section
R18-13-801. General Permit Fees

ARTICLE 11. COLLECTION, TRANSPORTATION, AND DISPOSAL OF HUMAN EXCRETA

Section
R18-13-1103. General Requirements; License Fees

ARTICLE 12. WASTE TIRES

Section
R18-13-1211. Registration of New Waste Tire Collection Sites; Fee
R18-13-1212. Registration of Outdoor Used Tire Sites; Fee
R18-13-1213. Facilities Subject to More Than One Tire Site Registration; Single Fee

ARTICLE 13. SPECIAL WASTE

Section
R18-13-1307. Best Management Practices for Waste from Shredding Motor Vehicles

ARTICLE 14. BIOHAZARDOUS MEDICAL WASTE AND DISCARDED DRUGS

Section
R18-13-1409. Transportation; Transporter License; Annual Fee

ARTICLE 16. BEST MANAGEMENT PRACTICES FOR PETROLEUM CONTAMINATED SOIL

Section
R18-13-1606. Fees

ARTICLE 21. ~~MUNICIPAL~~ SOLID WASTE ~~LANDFILLS~~ LANDFILL REGISTRATION FEES

Section
R18-13-2101. Definitions
R18-13-2102. ~~Formula for Calculating~~ Annual Registration Fee for an Existing ~~Municipal~~ Solid Waste Landfill
R18-13-2103. Annual Landfill Registration: Due Date and Fees

ARTICLE 5. ~~RESERVED~~ REQUIREMENTS FOR SOLID WASTE FACILITIES SUBJECT TO SELF-CERTIFICATION

R18-13-501. Solid Waste Facilities Requiring Self-Certification; Registration Fees

A. The following solid waste facilities requiring self-certification under A.R.S. § 49-762.01 shall register with the Department and pay registration fees as provided in this Section by September 30, 2012 and annually thereafter by September 30th:
1. A transfer facility with a daily throughput of more than 180 cubic yards, including a material recovery facility, but not including:
   a. A material recovery facility where the incoming materials are primarily source separated recyclables; or
   b. Community or neighborhood recycling bins including drop boxes, roll off containers, plastic containers used to collect residential, business, and/or governmental recyclable solid waste.
2. A facility storing 5,000 or more waste tires on any one day and not required to obtain plan approval.
3. A waste tire shredding and processing facility.

B. Initial registration for a new facility. The owner or operator of a planned new facility identified in subsection (A) shall submit the following information to the Department before beginning construction:
1. The name of the solid waste facility.
2. The name, mailing address and telephone number of each owner and operator of the solid waste facility.
3. The physical location of the solid waste facility by physical address, latitude and longitude, or legal description. If none of these are practical, by driving directions from the nearest city or town.
4. A brief description of operations, including waste management methods, types and volumes of waste handled, waste storage and treatment equipment, and the length of time the waste remains onsite.
5. A diagram of the property showing its approximate size and the planned location of the solid waste facility or facilities.
6. Documentation that the facility will comply with local zoning laws or, if the owner is an agency or political subdivision of this state, with A.R.S. § 49-767.
7. Documentation that the facility has any other environmental permit that is required by statute.
8. A copy of the public notice in a newspaper of general circulation in the area where the facility will be located stating the intent to construct and operate a new solid waste facility pursuant to A.R.S. § 49-762.05.

C. Initial and annual registration for an existing facility. The owner or operator of an existing facility shall submit the following information to the Department annually on a form approved by the Department and note any changes since the last registration:
1. The name of the solid waste facility.
2. The name, address and telephone number of each owner and operator of the solid waste facility.
3. The physical location of the solid waste facility by physical address, latitude and longitude, or legal description. If none of these are practical, by driving directions from the nearest city or town.
4. A brief description of operations, including waste management methods, types and volumes of waste handled, waste storage and treatment equipment, and the length of time the waste remains onsite.
5. A diagram of the property showing its approximate size and the location of the solid waste facility or facilities.
6. Documentation that the facility remains in compliance with the most current local zoning laws or with A.R.S. § 49-767, as applicable.
7. Documentation that the facility continues to hold any other environmental permit that is required by statute.

D. Self-certification. With each registration under subsection (B) or (C), the owner or operator shall certify that the information submitted is true, accurate, and complete to the best of the person's knowledge and belief.

E. Registration fees. The owner or operator of a transfer facility under subsection (A)(1) shall pay the Department $1,000 for the initial registration of a new or existing facility, and $500 for each annual registration thereafter. The owner or operator of a tire facility under subsection (A)(2) or (3) shall pay the Department $1,000 for the initial registration of a new or existing facility, and $250 for each annual registration thereafter.

F. As used in this Section:
1. "Department" means the Arizona Department of Environmental Quality.
2. "Material recovery facility" means a transfer facility that collects, compacts, repackages, sorts, or processes commingled recyclable solid waste generated offsite for the purpose of recycling and transport, or where source separated recyclable solid waste is processed for sale to various markets, and where the incoming materials are predominantly recyclable solid waste.

3. "Recyclable solid waste" means a product or material described in subsection (F)(3)(a) or (b), and for which subsection (F)(3)(c) is true:
   a. A product with no useful life remaining for the purposes for which it was produced, or if useful life remains, the product will not, due to location, quantity, or owner choice, remain in use or be reused for a purpose for which it was produced.
   b. A material that is a result of a process or activity whose purpose was to produce something else.
   c. The product or material retains some economic value, with or without further processing, as a raw material or feedstock in some process other than incineration or combustion.

ARTICLE 7. SOLID WASTE FACILITY PLAN REVIEW FEES

R18-13-701. Definitions

In addition to the definitions provided in A.R.S. §§ 49-701, 49-701.01, and 49-851, and 18 A.A.C. 13, the following definitions apply in this Article:

1. "Aquifer Protection Permit," or "APP," means the permit that is required pursuant to A.R.S. § 49-241.
2. "Application" means the solid waste facility plan that an operator submits to the Department for approval.
3. "C & D landfill" means a Non-MSWLF that only accepts construction or demolition waste as defined in A.R.S. § 49-701.
4. "Change" means either a Type III or a Type IV change to an approved solid waste facility plan which the director has determined requires the submission of an amended facility plan in accordance with either A.R.S. § 49-762.06 or the design and operation rules adopted under A.R.S. §§ 49-761 and 49-762.06.
5. "Complex plan" means any of the following:
   a. A solid waste facility plan that contains two or more different types of waste storage, treatment, or disposal components.
   b. A solid waste plan for multiple solid waste facilities.
   c. A solid waste facility plan that includes a special waste management plan component or an application for an Aquifer Protection Permit.
6. "Direct cost" means the costs to the Department to maintain a plan review program, excluding indirect costs, but consisting of programmatic cost, non-billable administrative cost, and non-billable programmatic cost.
7. "Direct labor cost" means time spent by a plan reviewer in: the actual review of a facility plan; data input for licensing time-frames tracking; developing the facility file; time at the facility or proposed site; time at a public hearing; and time at meetings with the applicant or the applicant's representatives.
8. "Indirect cost" means the cost that the Department charges all of its non-general fund programs. Examples of indirect cost are: rent; utilities; and the Department's administrative support programs such as human resources, payroll, time keeping, etc.

9.2. "MSWLF" means a municipal solid waste landfill as defined in A.R.S. § 49-701.

10. "New solid waste facility plan" means either of the following:
    a. A plan submitted for review by the operator of a new solid waste facility, as defined in A.R.S. § 49-701.
    b. The plan submitted by an operator of an existing solid waste facility as defined in A.R.S. § 49-701, that is operating without prior Department plan approval.
11. "Non-billable administrative cost or time" means time spent by a plan reviewer doing activities that are not directly related to a plan review project. Examples of non-billable administrative time are: holidays and leave time; time spent by a plan reviewer in training, attending staff meetings, answering phones, preparing reports, etc.
12. "Non-billable programmatic cost or time" means time spent by a plan reviewer doing activities directly related to a plan review project, but that are outside the applicant's control. Examples of non-billable programmatic time are: answering inquires from the public and attending public meetings about the plan review project; writing progress reports and briefings for supervisors; and traveling to the facility site or to public meetings and hearings.
3. "Non-APP requirements for Non-MSWLFs" means 40 CFR 257 requirements and the restrictive covenant and location restrictions required in A.R.S. Title 49, Chapter 4.

13.4. "Non-MSWLF" means a landfill that is not a municipal solid waste landfill as defined in A.R.S. § 49-701.

14. "Other reasonable direct cost" means costs documented in writing by the Department relating to plan review. Examples of other reasonable direct cost are laboratory analysis charges, public notice advertising, presiding officer expenses, court reporter expenses, facility rentals, and contract services.
15. "Programmatic cost or time" means those costs that are directly associated with a plan review project, consisting of both direct labor cost and other reasonable direct cost.
5. "RD&D" means research, development, and demonstration.
6. "Review hours" means the hours or portions of hours that the Department's staff spends on a request for a plan review. Review hours include the time spent by the project manager and technical review team members, and if requested by the applicant, the supervisor or unit manager.
7. "Review-related costs" means any of the following costs applicable to a specific plan review:

a. Presiding officer services for public hearings on a plan review decision,
b. Court reporter services for public hearings on a plan review decision,
c. Facility rentals for public hearings on a plan review decision,
d. Charges for laboratory analyses performed during the plan review,
e. Other reasonable and necessary review-related expenses documented in writing by the Department and agreed to by an applicant.

~~16.~~8. "Solid waste facility plan" means a plan or the individual components of a plan, such as the design, operational, closure, or post-closure plan, or the demonstration of financial responsibility as required by A.R.S. § 49-770, submitted to the Department for review and plan approval.

~~17. "Special waste management plan component" means a portion of a solid waste facility plan that is prepared and submitted to the Department in accordance with A.R.S. § 49-857 for approval pursuant to A.R.S. §§ 49-857.01 and 49-762.~~

R18-13-702. Solid Waste Facility Plan Review Fees

A. With each application submitted for approval pursuant to A.R.S. § 49-762.03, the applicant shall remit an initial fee in accordance with one of the ~~schedules~~ fee tables in this subsection, unless otherwise provided in subsection (B). This subsection also lists the maximum fees that the Department will bill the applicant. All fees paid shall be payable to the state of Arizona. The Department shall deposit the fees paid into the Solid Waste Fee Fund established pursuant to A.R.S. § 49-881, unless otherwise authorized or required by law.

~~Schedule A~~
~~New - Solid Waste Facility Plan Review Fees~~

	~~Initial~~	~~Maximum~~
~~Solid Waste Facilities Plans:~~		
~~MSWLF~~	~~$5,936~~	~~$56,900~~
~~C & D Landfill and Other~~		
~~Non-MSWLF~~	~~$2,987~~	~~$35,000~~
~~Other Solid Waste Facilities~~	~~$1,609~~	~~$23,800~~
~~Special Waste Management Plan Component~~	~~$556~~	~~$3,700~~

~~Schedule B~~
~~Change and Update of Demonstration of Financial Responsibility - Solid Waste Facility Plan Review Fees~~

	~~Initial~~	~~Maximum~~
~~Change to Solid Waste Facilities Plans:~~		
~~MSWLF~~	~~$766~~	~~$28,400~~
~~C & D Landfill and Other~~		
~~Non-MSWLF~~	~~$597~~	~~$17,500~~
~~Other Solid Waste Facilities~~	~~$322~~	~~$11,900~~
~~Change to Special Waste Management Plan Component~~	~~$278~~	~~$1,800~~
~~Update of Demonstration of Financial Responsibility~~	~~$278~~	~~$1,800~~

~~Schedule C~~
~~Closure - Solid Waste Facility Plan Review Fees~~

	~~Initial~~	~~Maximum~~
~~Solid Waste Facilities Plans:~~		
~~MSWLF~~	~~$1,379~~	~~$15,000~~
~~C & D Landfill and Other~~		
~~Non-MSWLF~~	~~$1,532~~	~~$16,000~~
~~Other Solid Waste Facilities~~	~~$1,226~~	~~$18,300~~
~~Special Waste Management Plan Component~~	~~$111~~	~~$700~~

Fee Tables

Fees for Plan Review of New Solid Waste Facilities		
	Initial	Maximum
Solid Waste Landfills	$20,000	$200,000
Non-APP requirements for Non-MSWLFs operating under an APP	$2,000	$50,000
Other Solid Waste Facilities Subject to Plan Approval	$10,000	$100,000

Fees for Modifications to Solid Waste Facility Plans		
	Initial	Maximum
Solid Waste Landfills - Type IV	$1,500	$150,000
Solid Waste Landfills – Type IV - RD&D	$15,000	$150,000
Solid Waste Landfills - Type III	$750	$75,000
Other Solid Waste Facilities Subject to Plan Approval - Type IV	$750	$75,000
Other Solid Waste Facilities Subject to Plan Approval - Type III	$500	$50,000

Fees for Review of Financial Responsibility Plans for Solid Waste Facilities		
	Initial	Maximum
Annual Review for Solid Waste Landfills	$600 Flat Fee	N/A
Other Solid Waste Facilities	$200	$5,000

~~**B.** For a complex plan, fees shall be determined as follows:~~
~~1. The initial fee submitted with the plan shall be equal to the initial fee for the single component with the highest initial fee as set forth in schedules in subsection (A).~~
~~2. The maximum fee shall be the sum total of the maximum fee for each individual component as set forth in schedules in subsection (A).~~

B. The Department shall bill an applicant for plan review services, subject to an hourly rate, no more than monthly, but at least semi-annually. The following information shall be included in each bill:
1. The dates of the billing period;
2. After January 1, 2013, the date and number of review hours performed during the billing period itemized by employee name, position type and specifically describing:
   a. Each review task performed,
   b. The facility and operational unit involved, and
   c. The hourly rate;
3. A description and amount of any other reasonable review-related cost; and
4. The total fees paid to date, the total fees due for the billing period, the date when the fees are due, and the maximum fee for the project.

C. Within 30 days after the Department makes a final determination whether to approve or disapprove of the facility plan, or when an applicant withdraws or closes the application for review, the Department shall prepare and issue a final itemized bill of its review. ~~The Department shall issue to the applicant a final itemized bill within 30 days after the Department issues the approval or disapproval of the application.~~ If the Department determines that the actual cost of reviewing the plan is less than the initial fee and any interim fees paid, the Department shall refund the difference to the applicant within 30 days after the issuance of the approval or disapproval of the application. If the Department determines that the actual cost of plan review is greater than the corresponding amount listed, the Department shall list the amount that the applicant owes on the final itemized bill, except that the final itemized bill shall not exceed the applicable maximum fee specified in subsection (A) ~~or (B)~~. The applicant shall pay in full the amount due within 30 days of receipt of the final itemized bill.

D. If the final bill is not paid within the 30 days, the Department shall mail a second notice to the applicant. Failure to pay the amount due within 60 days of receipt of the notice shall result in the Department initiation of proceedings for suspension of the approval, in accordance with A.R.S. § ~~41-782~~ 49-782. The suspension shall continue until full payment is received at the Department. If full payment is not received at the Department within 365 days of the date of the approval, the approval shall be revoked in accordance with A.R.S. § ~~41-782~~ 49-782. The Department shall not review any further plans for an entity which has not paid all fees due for a previous review of a solid waste facility plan.

E. When determining actual cost under subsection (C), the Department shall use an hourly billing rate for all ~~direct labor~~ review hours spent working on the review of a plan, ~~plus any other reasonable direct cost~~ and add review-related costs

which were incurred but are not included in the hourly billing rate.

F. The hourly rate is ~~$58.81~~ $122.00, beginning ~~September 1, 2002~~ July 1, 2012, and shall remain in effect until it is either changed or repealed.

R18-13-703. Review of Bill

A. An applicant who disagrees with the final bill received from the Department for plan review and issuance or denial of a solid waste facility plan approval under this Article may make a written request to the Director for a review of the bill and may pay the bill under protest. The request for review shall specify the matters in dispute and shall be received by the Department within 10 working days of the date of receipt of the final bill.

B. Unless the Department and applicant agree otherwise, the review shall take place within 30 days of receipt by the Department of the request. ~~Notice of the time and place of review shall be mailed to the requester at least 10 working days prior to the review.~~ The Director shall make a final decision as to whether the time and costs billed are correct and reasonable. The final decision shall be mailed to the applicant within 10 working days after the date of the review and is subject to appeal pursuant to A.R.S. § 49-769.

R18-13-704. ~~Number of Billable Hours~~ Repealed

~~The Department shall determine the number of billable hours by subtracting from the number of hours in a work year, both the non-billable administrative hours and the non-billable programmatic hours.~~

R18-13-705. ~~Determining the Average Cost Per Employee~~ Repealed

~~The Department shall determine the average cost per employee by dividing the Department's total direct cost for maintaining the plan review program equally between the plan reviewers as outlined in the following steps:~~

~~1. By calculating the average salary of the plan reviewers.~~
~~2. By calculating an average employee related cost and adding the average employee related cost to the average plan reviewer's salary from subsection (1).~~
~~3. By prorating the section's management cost, to which the plan reviewers are assigned, on a per section employee basis, and adding the section management prorated cost to the total cost from subsection (2).~~
~~4. By prorating the unit's management costs, to which the plan reviewers are assigned, on a per unit employee basis, and adding the prorated unit management cost to the total cost from subsection (3).~~
~~5. By prorating the section's operating, travel and equipment cost, to which the plan reviewers are assigned per section employee, and adding the prorated operating, travel and equipment cost to the total cost from subsection (4).~~

R18-13-706. ~~Determining the Hourly Billing Rate~~ Repealed

~~The Department shall determine the hourly billing rate by dividing the average cost per employee from R18-13-705(5) by the number of billable hours from R18-13-704.~~

ARTICLE 8. ~~RESERVED~~ GENERAL PERMITS

R18-13-801. General Permit Fees

A. The Department shall assess annual fees for operation under a general permit established in rule as described in the Table below.

B. In addition to the technical requirements proposed for any general permit to be included in this Article, the Department shall propose the category to be assigned to the permit according to the Table below.

C. An applicant shall pay the initial fee when approval to operate is requested. The Department shall bill an annual fee to facilities that have not notified the Department that they are no longer operating and have met the closure requirements of this Chapter.

D. For the purpose of this Article, "complex" has the meaning in A.A.C. R18-1-501. "Standard" is any facility that is not complex.

Solid Waste General Permits

Category	Initial Fee	Annual Fee
Collection, Storage and Transfer-Standard	$750	$100
Collection, Storage and Transfer-Complex	$7,500	$1,000
Treatment-Standard	$1,000	$100
Treatment-Complex	$10,000	$1,000
Disposal	$15,000	N/A

ARTICLE 11. COLLECTION, TRANSPORTATION, AND DISPOSAL OF HUMAN EXCRETA

R18-13-1103. General Requirements; License Fees

A. Any person owning or operating a vehicle or appurtenant equipment used to store, collect, transport, or dispose of sewage

or human excreta that is removed from a septic tank or other ~~on-site~~ onsite wastewater treatment facility; earth pit privy, pail or can type privy, or other type of privy; sewage vault; or fixed or transportable chemical toilet shall obtain a license for each vehicle from the Department. The person shall apply, in writing, on forms furnished by the Department and shall demonstrate that each vehicle is designed and constructed to meet the requirements of this Article.

B. A person shall operate and maintain the vehicle and equipment so that a health hazard, environmental nuisance, or violation of a water quality standard established under 18 A.A.C. 11 is not created.

C. License terms.

1. For each vehicle newly licensed after June 30, 2012, the initial license fee shall be $250 and shall be submitted with the license application. After initial licensure of a vehicle, the Department will renew the license annually after payment of a $75 fee according to subsection (C)(3). The licensee shall submit the Department approved renewal form and annual license fee to the Department no later than 30 days before expiration.
2. For those vehicles licensed before July 1, 2012, the initial license fee shall be $75 and shall be paid within 30 days of receipt of an invoice from the Department. The license shall be valid for one year. The licensee shall submit the Department approved renewal form and the annual license fee of $75 to the Department no later than 30 days before expiration.

~~1.~~3. Each vehicle license ~~is valid~~ may be renewed ~~so long as~~ if:

a. The annual license fee is paid,
b. The owner or operator is in compliance with subsection (D),
c. ~~the~~ The vehicle is operated by the same person for the same purpose, and
d. The vehicle is maintained according to this Article.

~~2.~~4. The license is not transferable either from person to person or from vehicle to vehicle.

~~3.~~5. The license holder shall ensure that the license number is plainly and durably inscribed in contrasting colors on the side door panels of the vehicle and the rear face of the tank in figures not less than 3 inches high, and that the numbers are legible at all times.

D. Any person owning or operating a vehicle or appurtenant equipment used to collect, store, transport, or dispose of sewage or human excreta shall obtain ~~a~~ any required permit from the local ~~health department~~ county authority in each county in which the person proposes to operate.

ARTICLE 12. WASTE TIRES

R18-13-1211. Registration of New Waste Tire Collection Sites; Fee

A. A new waste tire collection site shall not begin operation after July 20, 2011 until the owner or operator registers with the Department. The owner or operator shall register on a form approved by the Department that includes a statement that the site is in compliance with A.R.S. § 49-762.07(F) and A.R.S. Title 44, Chapter 9, Article 8, as applicable. The owner or operator of a new waste tire collection site that begins operation after July 20, 2011 shall pay an initial registration fee of $500 within 30 days of invoice receipt. For purposes of this Section, "new waste tire collection site" means a waste tire collection site as defined in A.R.S. § 44-1301 that did not operate as a collection site on or before July 20, 2011.

B. The owner or operator shall pay a $75 registration fee annually thereafter within 30 days of invoice receipt.

R18-13-1212. Registration of Outdoor Used Tire Sites; Fee

A. A person shall not store 100 or more used tires outdoors until the person registers with the Department. A person that stores 100 or more used tires outdoors after July 20, 2011 shall pay an initial registration fee of $500 within 30 days of invoice receipt. The person shall register on a form approved by the Department that includes a statement that the site is in compliance with A.R.S. § 49-762.07(F) and A.R.S. Title 44, Chapter 9, Article 8, as applicable.

B. A $75 registration fee shall be paid annually thereafter within 30 days of invoice receipt.

C. For the purposes of this Section:

1. "Used tire" means any tire which has been used for more than one day on a motor vehicle.
2. "Outdoors" means other than inside a building with a weatherproof roof.

R18-13-1213. Facilities Subject to More Than One Tire Site Registration; Single Fee

A person who is required to register a tire facility under more than one of the Sections listed in subsections (1) through (3) shall register and follow procedures under each Section, but is only required to pay the registration fees under the Section with the highest fees.

1. R18-13-1211.
2. R18-13-1212.
3. R18-13-501.

ARTICLE 13. SPECIAL WASTE

R18-13-1307. Best Management Practices for Waste from Shredding Motor Vehicles

A. No change

1. No change

a. No change
i. No change
ii. No change
b. No change
i. No change
ii. No change
2. No change
3. No change
4. No change
a. No change
b. No change
c. No change
5. No change
6. No change
7. No change
8. No change
9. No change
10. No change

B. No change

C. No change
1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change

D. No change

E. No change

F. The owner or operator of a special waste facility shall pay, to the Department, the fees required by A.R.S. §§ ~~49-855(H)~~ 49-855(C)(2) and 49-863 as follows:
1. ~~in the amount of 66¢~~ $1.49 per cubic yard of uncompacted shredder residue; or
2. ~~of $1.50~~ $3.38 per cubic yard of compacted shredder residue received; or
3. ~~$2.00~~ $4.50 per ton; and
4. Not more than $45,000 per generator site per year for shredder residue that is transported to a facility regulated by the Department for treatment, storage or disposal.

G. Shredder residue which has been determined to be nonhazardous pursuant to this Section shall be transported in accordance with the requirements for transportation of garbage as set forth in ~~R18-8-510~~ R18-13-310.

ARTICLE 14. BIOHAZARDOUS MEDICAL WASTE AND DISCARDED DRUGS

R18-13-1409. Transportation; Transporter License; Annual Fee

A. A transporter shall ~~register with~~ obtain a transporter license from the Department as provided under subsections (B), (C), and (D) below in addition to possessing a permit, license, or approval if required by a local health department, environmental agency, or other governmental agency with jurisdiction.

B. Beginning on July 1, 2012, a transporter shall pay an annual fee of $750 for every calendar year according to the following schedule, except that no transporter shall pay more than one annual fee in any calendar year:
1. Transporters registered with the Department before July 1, 2012 shall pay by December 31st of each year until their registration expires and shall apply for a license according to subsections (C) and (D) of this Section no more than 60 days before their registration expires.
2. Transporters who have been issued a license or renewal of a license under this Section and have paid the licensing year fee as provided in subsection (D) shall pay the annual fee by December 31st of each year thereafter.
3. A transporter that has not been registered with the Department shall apply and obtain a license according to subsections (C) and (D) of this Section and pay an annual fee by December 31st of each year thereafter.

~~**B.**~~**C.** ~~Upon receiving all of the following information from a transporter, the Department shall issue the registration after assigning a registration number to the transporter:~~ To apply for or to renew a transporter license, an applicant shall submit all of the following on a form approved by the Department:
1. The name, address, and telephone number of the transportation company or entity.
2. All owners' names, addresses, and telephone numbers.
3. All names, addresses, and telephone numbers of any agents authorized to act on behalf of the owner.

4. A copy of either the certificate of disclosure required by A.R.S. § 49-109 or a written acknowledgment that this disclosure is not required.
5. Photocopies or other evidence of the issuance of a permit, license, or approval if required by a local health department, environmental agency, or other governmental agency with jurisdiction.
6. A copy of the transportation management plan ~~required~~ that meets the requirements in subsection ~~(C)~~ (I).
7. A list identifying each dedicated vehicle.
8. An application fee of $2,000 which shall apply toward the licensing year fee in subsection (D)(3).

D. The Department may only issue a transporter license, including a renewal, after all of the following:
1. All of the items in subsection (C) have been received and determined to be correct and complete;
2. A Department inspection of each transporting vehicle shows that the vehicle is in compliance with this Article; and
3. The applicant has paid a licensing year fee consisting of:
   a. An amount based on the expenses associated with inspecting each transporting vehicle, evaluating the application, and approving the license, minus the application fee. The amount shall be calculated using a rate of $122 per hour, multiplied by the number of personnel hours used in these duties.
   b. The annual fee of $750 for the year as provided for in subsection (B).
   c. The maximum fee for both subsections (D)(3)(a) and (b) shall be $20,000.

E. A transporter license is valid for five years after issuance. To renew the license, the licensee shall submit an application under subsection (C) no later than 60 days before expiration. Renewals shall be issued after payment of a licensing year fee as provided in subsection (D)(3).

F. Amendments. After issuance, the licensee shall submit to the Department any change to the information listed in subsection (C) within 30 days of its occurrence. Vehicles may only be added to the license after a Department inspection shows that the vehicle is in compliance with this Article. Amendments to the transportation management plan or amendments adding vehicles shall be processed after payment of inspection fees and other expenses at the rate listed in subsection (D)(3), except that the application fee shall be $100 and the maximum fee $5,000.

G. An applicant who disagrees with the final bill received from the Department for the amendment, issuance, renewal or denial of a transporter license or vehicle inspections may make a written request to the Director for a review of the bill and may pay the bill under protest. The request for review shall specify the matters in dispute and shall be received by the Department within 10 working days of the date of receipt of the final bill.

H. Unless the Department and applicant agree otherwise, the review shall take place within 30 days of receipt by the Department of the request. The Director shall make a final decision as to whether the time and costs billed are correct and reasonable. The final decision shall be mailed to the applicant within 10 working days after the date of the review and is subject to appeal pursuant to A.R.S. § 49-769.

~~C.~~I. A person who transports biohazardous medical waste shall maintain in each transporting vehicle at all times a transportation management plan consisting of both of the following:
1. Routine procedures used to minimize the exposure of employees and the general public to biohazardous medical waste throughout the process of collecting, transporting, and handling.
2. Emergency procedures used for handling spills or accidents.

~~D.~~J. A transporter who accepts biohazardous medical waste from a generator shall leave a copy of the tracking document described in R18-13-1406(B) with the person from whom the waste is accepted. A transporter shall ensure that a copy of the tracking document accompanies the person who has physical possession of the biohazardous medical waste. Upon delivery to a Department-approved transfer, storage, treatment, or disposal facility, the transporter shall obtain a copy of the tracking document, signed by a person representing the receiving facility, signifying acceptance of the biohazardous medical waste.

~~E.~~K. A transporter who transports biohazardous medical waste in a vehicle dedicated to the transportation of biohazardous medical waste shall ensure that the cargo compartment can be secured to limit access to authorized persons at all times except during loading and unloading. In addition, the cargo compartment shall be constructed in compliance with one of the following:
1. Have a fully enclosed, leak-proof cargo compartment consisting of a floor, sides, and a roof that are made of a non-porous material impervious to biohazardous medical waste and physically separated from the driver's compartment.
2. Haul a fully enclosed, leak-proof cargo box made of a non-porous material impervious to biohazardous medical waste.
3. Tow a fully enclosed leak-proof trailer made of a non-porous material impervious to biohazardous medical waste.

~~F.~~L. A person who transports biohazardous medical waste in a vehicle not dedicated to the transportation of biohazardous medical waste, but that is used longer than 30 consecutive days, shall comply with the following:
1. Subsections (A) and ~~(C)~~ (I) through ~~(G)~~ (M).
2. Clean the vehicle as prescribed in R18-13-1407(A)(2)(b) before it is used for another purpose.

~~G.~~M. A person who transports biohazardous medical waste shall comply with all of the following:
1. Accept only biohazardous medical waste packaged as prescribed in R18-13-1407.
2. Accept biohazardous medical waste only after providing the generator with a signed tracking form as prescribed in

R18-13-1406(B), and keep a copy of the tracking document for one year.

3. Deliver biohazardous medical waste to a Department-approved biohazardous medical waste storage, transfer, treatment, or disposal facility within 24 hours of collection or refrigerate the waste for not more than 90 days at 40° F or less until delivery.
4. Not hold biohazardous medical waste longer than 96 hours in a refrigerated vehicle unless the vehicle is parked at a Department-approved facility.
5. Not unload, reload, or transfer the biohazardous medical waste to another vehicle in any location other than a Department-approved facility, except in emergency situations. Combination vehicles or trailers may be uncoupled and coupled to another cargo vehicle or truck trailer as long as the biohazardous medical waste is not removed from the cargo compartment.

N. As used in this Section, "licensing year" means the calendar year in which the Department issues a license or a renewal of a license under this Section.

ARTICLE 16. BEST MANAGEMENT PRACTICES FOR PETROLEUM CONTAMINATED SOIL

R18-13-1606. Fees

In accordance with A.R.S. §§ 49-855(C)(2) and 49-863, the ~~The~~ treatment, storage, or disposal facility in this state that first receives a shipment of PCS shall remit to the Department a fee of ~~$2.00~~ $4.50 per ton ~~in accordance with A.R.S. § 49-863~~ but not more than $45,000 per generator site per year for PCS that is transported to the facility.

ARTICLE 21. ~~MUNICIPAL~~ SOLID WASTE ~~LANDFILLS~~ LANDFILL REGISTRATION FEES

R18-13-2101. Definitions

In addition to the definitions in A.R.S. §§ 49-701 and 49-701.01, for the purpose of this Article, the terms used in this Article have the following meanings:

1. "Defined time period" means the 12-month period that begins on July 1 of a calendar year and ends on June 30 of the following calendar year and consists of the actual number of calendar days in that 12-month period.
2. "Disposal fee invoice" means the quarterly landfill disposal fee invoice the Department mails to a landfill operator, on which the landfill operator indicates the amount of waste received and the amount of the disposal fees owed to the Department as required under A.R.S. § 49-836.
3. "Full quarter" means any of the standard fiscal quarters of the defined time period for which a municipal solid waste landfill accepted waste on or before the first day of the quarter and on or after the last day of that quarter.
4. ~~"Waste disposal rate" means the average amount of waste disposed in this state by a person daily, which the Department has calculated to be 6.17 pounds per person per day.~~

R18-13-2102. ~~Formula for Calculating~~ Annual Registration Fee for an Existing ~~Municipal~~ Solid Waste Landfill

A. ~~For an~~ An existing ~~municipal~~ solid waste landfill, except those described in subsection (C), ~~the Department shall calculate the~~ shall pay an annual registration fee within 30 days of receipt of an invoice from the Department ~~under A.R.S. § 49-747 after calculating the population served by that municipal solid waste landfill, as follows~~ according to the following:

~~1. Multiply the waste disposal rate by the number of days in the defined time period, and~~
~~2. Divide the total number of pounds of waste received by the municipal solid waste landfill by the product from subsection (A)(1).~~

1. For municipal solid waste landfills that received less than 12,000 tons during the defined time period, $1,250.
2. For municipal solid waste landfills that received at least 12,000 tons but less than 60,000 tons during the defined time period, $2,500.
3. For municipal solid waste landfills that received at least 60,000 tons but less than 225,000 tons during the defined time period, $7,500.
4. For municipal solid waste landfills that received 225,000 tons or more during the defined time period, $12,500.
5. Non-municipal solid waste landfills shall pay a flat fee of $3,750.
6. Solid waste landfills that are closed to the public and that accept nonhazardous waste only shall pay a flat fee of $3,750.

B. The Department shall determine the ~~number of pounds~~ amount of waste received by a municipal solid waste landfill by one of the following methods:

1. For a municipal solid waste landfill that accepted waste over the entire defined time period ~~and~~:
   a. ~~Reported~~ As the reported tons of solid waste received on the disposal fee invoice~~, multiply the number of reported tons by 2,000~~; or
   b. ~~Reported~~ As the reported units of compacted or uncompacted solid waste received on the disposal fee invoice~~, multiply the volume of solid waste~~ and reported under A.R.S. § 49-836(A)(1) ~~by 2,000~~; or
2. For a municipal solid waste landfill that accepted waste for only a portion of the defined time period, but no less than a full quarter, the Department shall project the total amount of waste that would have been received by the landfill over the entire defined time period, using one of the following methods:
   a. For a municipal solid waste landfill that reported receiving waste for at least a full three quarters but less than the

entire defined period, the amount of waste for the remaining quarter is the total amount of the waste reported for the full three quarters divided by three;

b. For a municipal solid waste landfill that reported receiving waste for at least a full two quarters but less than three quarters, the amount of waste for the remaining two quarters is the same as the total amount of waste reported for the two full quarters; or

c. For a municipal solid waste landfill that reported receiving waste for at least one full quarter but less than two quarters, the amount of waste for the remaining three quarters is the total of the amount of the waste reported for the full quarter multiplied by three.

C. For a municipal solid waste landfill that accepted waste for less than a full quarter, the annual landfill registration fee is ~~the minimum fee specified in A.R.S. § 49-747(C)~~ $1,250.

R18-13-2103. Annual Landfill Registration: Due Date and Fees

A. An operator of a new ~~municipal~~ solid waste landfill shall register the ~~municipal~~ solid waste landfill and pay the landfill registration fee as follows:

1. The operator shall pay the initial landfill registration fee within 30 days of the date that the Department approves the facility plan. The initial landfill registration fee is ~~the minimum fee specified in A.R.S. § 49-747(C)~~ $1,250.
2. Registration is valid for one year, except if the landfill is initially registered during October, November, or December of a calendar year, the next landfill registration due date is December 31 of the following calendar year and each calendar year thereafter unless released from the annual landfill registration requirement as specified in subsection (C).
3. The annual registration fee remains ~~the minimum fee rate under A.R.S. § 49-747(C)~~ $1,250 until the first annual registration period after the first full quarter of the defined time period.

B. After the first full quarter, the Department shall calculate the annual registration fee according to R18-13-2102, and specify the fee on the Department's annual landfill registration invoice for the ~~municipal~~ solid waste landfill. The Department shall calculate and the ~~municipal~~ solid waste landfill shall pay the annual landfill registration fee until the first registration period after the ~~municipal~~ solid waste landfill stops accepting waste during a fiscal quarter of the defined time period.

C. From the time a ~~municipal~~ solid waste landfill stops accepting waste as specified in subsection (B), until the owner or operator of the ~~municipal~~ solid waste landfill is released from its obligation to provide financial assurance for closure as required by A.R.S. §§ 49-761 or 49-770, the annual registration fee is ~~the minimum fee specified in A.R.S. § 49-747(C)~~ $1,250.