NOTICES OF FINAL RULEMAKING

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

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 4. DEPARTMENT OF HEALTH SERVICES
NONCOMMUNICABLE DISEASES

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R9-4-105	Repeal
R9-4-501	Renumber
R9-4-501	New Section
R9-4-502	Renumber
R9-4-502	Amend

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

Authorizing statute: A.R.S. § 36-136(F)
Implementing statute: A.R.S. § 36-133

3. The effective date of the rules:

January 17, 2001

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

Notice of Rulemaking Docket Opening: 5 AAR 4375, November 19, 1999
Notice of Proposed Rulemaking: 6 AAR 3698, September 29, 2000

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

Name: Georgia Yee, Office Chief

Address: Arizona Department of Health Services
Bureau of Public Health Statistics
Office of Health Registries
2700 North 3rd Street, Suite 4075
Phoenix, Arizona 85004

Telephone: (602) 542-7308

Fax: (602) 364-0296

E-mail: geyee@hs.state.az.us

or

Name: Kathleen Phillips, Rules Administrator

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

Telephone: (602) 542-1264

Fax: (602) 542-1090

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

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

The Arizona Department of Health Services (Department) rules concerning birth defects reporting are located in Title 9, Chapter 4, Articles 1 and 5, of the Arizona Administrative Code. The rules specify that birth defects is a reportable disease. The rules meet the requirements of A.R.S. § 36-133 that the Department establish procedures for reporting birth defects. The rules also respond to the public's need for a system that monitors the yearly incidence rates of birth defects. The information gathered and compiled by the Department is used by researchers to identify effective treatments and by other health care professionals to provide intervention and prevention programs, thus lowering the infant mortality rate.

The Department is repealing R9-4-105 and proposing a new definitions Section within Article 5. The new Section, R9-4-501, will add new definitions, delete unnecessary definitions, and clarify the language in the existing definitions. Also, the Department is adding a prenatal diagnostic facility as a type of facility required to permit the Department to review patient records. The existing R9-4-501 will be renumbered as R9-4-502 and amended to clarify the language to specify how often the Department will review patient records at hospitals, genetic testing facilities, prenatal diagnostic facilities, and office of Children's Rehabilitative Services program.

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

Not applicable

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

Not applicable

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

As used in this summary, "minimal" economic impact means less than $1,000 per year, "moderate" means between $1,000 and $10,000 per year, and "substantial" means greater than $10,000 per year.

The Department's cost for the preparation of the rule package is moderate and includes writing and printing drafts, consulting stakeholders, and copying and mailing materials.

The estimated cost to the Secretary of State's office is minimal, reflecting staff time to publish the amendments. The estimated cost to the Governor's Regulatory Review Council (GRRC) is minimal, reflecting GRRC members and staff time to review and approve the amendments.

Small businesses that will be affected by the amendments include prenatal diagnostic facilities. Minimal costs will be incurred by prenatal diagnostic facilities for permitting the Department to review patient records for the reporting of birth defects.

Large businesses will not be affected by the amendments.

The public will benefit substantially from a complete population-based birth defects reporting system that may lead to a reduction in the number of individuals who develop birth defects and who may die of birth defects. The information gathered and compiled by the Department is used by researchers to identify effective treatments and by other health care professionals to provide intervention and prevention programs, thus lowering the infant mortality rate.

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

The Department has not made any substantive change in the text of the final rules from that in the proposed rules. The Department made technical and grammatical changes at the suggestion of GRRC staff.

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

The Department did not receive any written or oral comments.

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

Not applicable

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

None

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

No

15. The full text of the rule follows:

TITLE 9. HEALTH SERVICES

CHAPTER 4. DEPARTMENT OF HEALTH SERVICES
NONCOMMUNICABLE DISEASES

ARTICLE 1. DEFINITIONS

~~R9-4-105. Definitions, birth defects monitoring program~~ Repealed

ARTICLE 5. BIRTH DEFECTS MONITORING PROGRAM

R9-4-501. Definitions
~~R9-4-501.~~ R9-4-502. Procedures; ~~access to medical records~~ Permission to Review Patient Records

ARTICLE 1. DEFINITIONS

~~R9-4-105. Definitions, birth defects monitoring program~~ Repealed

~~In Article 5, unless the context otherwise requires:~~

1. ~~"Arizona Birth Defects Monitoring Program" (ABDMP) means birth defects registry within the Department.~~
2. ~~"Adverse reproductive outcome" means conditions which individually and collectively represent unsatisfactory pregnancy results, including spontaneous abortions, low birth weight, fetal deaths, birth defects, infant mortality, chromosomal abnormalities, genetic mutations and changes in sex ratios.~~
3. ~~"Birth defect" means an abnormality of structure, function, or body chemistry, present at or before birth or which may appear later in life.~~
4. ~~"ICD-9-CM" means the *International Classification of Diseases*, 9th Revision, *Clinical Modification*, Volumes One and Two, U.S. Department of Health and Human Resources, Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, incorporated herein by reference and on file with the Office of the Secretary of State.~~
5. ~~"Reportable case" means any child from birth to one year of age who has been diagnosed as having a birth defect.~~
6. ~~"Reporting source" means hospitals, genetic testing facilities and the Department's Children's Rehabilitative Services program.~~

ARTICLE 5. BIRTH DEFECTS MONITORING PROGRAM

R9-4-501. Definitions

In this Article, unless otherwise specified:

1. "ABDMP" means the Arizona Birth Defects Monitoring Program within the Department.
2. "Birth defect" means an abnormality of structure, function, body chemistry, or gene present at or before birth, which may be diagnosed before or at birth, or later in life.
3. "CRS" means the Children's Rehabilitative Services program within the Department.
4. "Genetic testing facility" means an organization, institution, corporation, partnership, business, or entity that conducts tests to analyze and diagnose a genetic condition in a human being.
5. "Patient" means an individual admitted to or receiving care in a hospital, genetic testing facility, prenatal diagnostic facility, or the CRS.
6. "Personal identifiers" means confidential information that can be solely attributed to a specific individual.
7. "Prenatal diagnostic facility" means an organization, institution, corporation, partnership, business, or entity that conducts diagnostic ultrasound or other medical procedures that diagnose a birth defect in a human being.
8. "Reporting source" means a hospital, genetic testing facility, prenatal diagnostic facility, or the CRS.

~~R9-4-501.~~ R9-4-502. Procedures; ~~access to medical records~~ Permission to Review Patient Records

A. ~~Reporting sources with patients up~~ A reporting source providing care to an individual from fertilization to one year of age who ~~have~~ has been diagnosed as having a birth defect shall ~~allow~~ permit the ABDMP to ~~access and to extract~~ review and record personal identifiers, demographic, and diagnostic data from:

1. ~~the~~ The following documents pertaining to the individual and the individual's mother:
   ~~1.~~ a. Disease indices,
   ~~2.~~ b. Intensive care unit logs,
   ~~3. Labor and delivery logs,~~
   ~~4.~~ c. Pathology-autopsy logs ~~(~~for stillbirths~~)~~,
   ~~5.~~ d. Patient medical records, and
   ~~6. Pediatric admission and discharge date,~~
   ~~7. Ultrasound logs, and~~
   ~~8.~~ e. ~~Reports~~ Laboratory reports pertaining to chromosomal analysis and tests for detection of hereditary biochemical disorders.
2. The labor and delivery logs and the ultrasound logs for the individual's mother.

~~C.~~B. ~~The disease indices that hospitals are to make accessible to the ABDMP shall list, in ascending order, each ICD-9-CM diagnosis code and shall indicate~~ A hospital shall prepare a disease index listing an ICD-9-CM diagnosis code for each patient identified in subsection (A) arranged in ascending order. Next to each ICD-9-CM diagnosis code listed in the index, the hospital shall provide the following information:

1. Whether the diagnosis code reflects ~~the primary~~ a principal or ~~a~~ secondary diagnosis,
2. The age of the patient,
3. The dates of admission and discharge, and
4. ~~each~~ The patient's medical record number.

~~B.~~C. ~~Access to the medical records by ABDMP shall be allowed once every six months for hospitals with fewer than 2000 births per year, and once every three months for hospitals with 2000 or more births per year.~~ A reporting source shall permit ABDMP to review the documents listed in subsections (A) once every 30 days.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 24. DEPARTMENT OF HEALTH SERVICES
ARIZONA MEDICALLY UNDERSERVED AREA ~~MEDICAL~~ HEALTH SERVICES

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R9-24-101	New Section
R9-24-102	New Section
R9-24-111	Repeal
R9-24-112	Repeal
R9-24-113	Repeal
Article 2	Amend
R9-24-201	Repeal
R9-24-201	New Section
R9-24-202	Repeal
R9-24-202	New Section
R9-24-203	Repeal
R9-24-203	New Section
R9-24-204	Repeal
R9-24-204	New Section
R9-24-205	Repeal
R9-24-301	Renumber
R9-24-301	New Section
R9-24-302	Renumber
R9-24-302	Amend

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

Authorizing statutes: A.R.S. §§ 36-132(A), 36-136(F), and 36-2352

Implementing statutes: A.R.S. §§ 36-2352 and 36-2354

3. The effective date for the rules:

January 17, 2001

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

Notice of Rulemaking Docket Opening: 5 A.A.R. 4376, November 19, 1999
Notice of Rulemaking Docket Opening: 6 A.A.R. 1033, March 17, 2000
Notice of Proposed Rulemaking: 6 A.A.R. 3621, September 22, 2000
Notice of Proposed Rulemaking: 6 A.A.R. 3903, October 13, 2000

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

Name: Doug Hirano, Bureau Chief

Address: Arizona Department of Health Services
Bureau of Health Systems Development
1740 West Adams, Room 302
Phoenix, Arizona 85007

Telephone: (602) 542-1219

Fax: (602) 542-2011

E-mail: dhirano@hs.state.az.us

or

Name: Kathleen Phillips
Rules Administrator

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

Telephone: (602) 542-1264

Fax: (602) 542-1090

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

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

A.R.S. § 36-2352 requires the Director of the Arizona Department of Health Services to designate medically underserved areas in the state ("Arizona medically underserved areas"). 9 A.A.C. 24, Articles 1 and 2 implement the statute by providing the criteria under which the Director makes the designation. The Director designates an area if it is federally designated as a health professional shortage area or by using an index that measures the availability of services based on number of providers, the area's geographic location, the percentage of population living at or below a designated poverty level, the health needs of the area as determined by a number of factors, and other factors that may be indicative of medically underserved areas. The current rules are outdated and unnecessarily complicated and no longer fully comply with A.R.S. § 36-2352. The rulemaking will bring the rules into compliance with A.R.S. § 36-2352, update the process and criteria used in designating Arizona medically underserved areas, clarify the rules, and bring the rules into compliance with current rulemaking format and style requirements.

A.R.S. §§ 36-2353 and 36-2354 authorize the Department to assist Arizona medically underserved areas to recruit coordinating medical providers and to establish the functions of coordinating medical providers. Article 3 establishes these functions. The Department is amending Article 3 to conform to current rulemaking format and style requirements and to clarify the rule.

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

None

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

Not applicable

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

In 1994, the legislature completely changed the statutory criteria for designation of Arizona medically underserved areas (AzMUAs) so that a federally designated health professional shortage area (HPSA) receives automatic designation and the Department is required to designate other Arizona medically underserved areas by using an index to measure a set of indicators listed in the statute. The Department changed its program in 1994 to make the designation process consistent with the changes in statutory authority, but never changed its rules to reflect the new process. Thus, although the new rules for Articles 1 and 2 are a significant departure from the published rules, they do not deviate substantially from the Department's practice since 1994.

This economic impact summary thus focuses on the actual changes in Articles 1 and 2 resulting from this rulemaking, not the changes resulting from the change in agency practice that occurred in 1994 as a result of legislation. The new rules are designed to be consistent with current statutory authority, the Administrative Procedure Act, and current rulemaking format and style requirements.

The new rules for Articles 1 and 2 change the Department program by including all primary care areas in the primary care index (PCI) used to designate AzMUAs; adjusting the point scales for many of the criteria included in the PCI; setting the cut-off mark for AzMUA designation as a point score or percentage, whichever results in designation of more AzMUAs, rather than as a percentage alone; recognizing that Indian reservations do not have automatic HPSA designation; and adding time-frames and a deadline for the request for a primary care area boundary change.

The new rules for Article 3 add a definitions section for the Article, clarify the existing rule, and conform the existing rule to current rulemaking format and style requirements.

The Department will incur a moderate cost for staff time to write, review, and process the rules through promulgation. The Department anticipates that the changes in the rules themselves will result in either no or a minimal additional burden on the Department. With the exception of the changes described above, the new rules reflect the current Department procedure. The Department anticipates that the changes will not result in any more staff time and resulting burden to the Department than does the current procedure.

The Office of the Secretary of State and the Governor's Regulatory Review Council will also bear minimal-to-moderate costs from the rulemaking process.

The Department does not anticipate that any other person will be directly burdened by the new rules.

It is possible that 1 or more primary care areas may lose AzMUA designation and that 1 or more primary care areas may be newly designated as AzMUAs as a result of the changes. Any primary care area that lost AzMUA designation as a result of the changes would potentially incur substantial costs, albeit indirectly, due to that loss of status. Likewise, any primary care area that became an AzMUA as a result of the changes would potentially be substantially benefitted by that status, as would its residents, actual or prospective.

Areas that are designated AzMUAs potentially benefit substantially from that designation. The benefits are indirect, however, because persons within an AzMUA have to apply for the benefits that are available to areas with AzMUA status. For example, AzMUAs are eligible for funding from the Department for programs related to primary health care services and construction projects and are eligible for placement of physicians serving obligations under the Arizona Medical Student Loan Program (AMSLP). Being an AzMUA also makes an area eligible for health crisis fund monies if basic health services are unforeseeably disrupted and eligible for assistance in recruiting a coordinating medical provider (although this has never occurred). Finally, AzMUA status is a prerequisite for eligibility to establish a health service district under A.R.S. Title 48, Chapter 16, Article 1.

Residents of AzMUAs that receive public funds or receive placement of AMSLP physicians benefit from expanded access to primary health care services at discounted rates. Also, primary care providers in private practice who agree to practice in rural AzMUAs are eligible for the rural private primary care provider loan repayment program (RPPC-PLRP).

Even prospective residents of AzMUAs potentially benefit substantially from the designation. For example, the AMSLP gives preference to students who are committed to serve in AzMUAs, and the University of Arizona College of Medicine gives priority to applicants who are willing to practice in AzMUAs.

The Department anticipates that the changes in the designation process will result in few changes in the areas designated as AzMUAs. The Department ran a primary care index using both the current methodology and the methodology in the rule change. The result was that, out of 123 total primary care areas, 1 primary care area that would have been designated as an AzMUA using the current methodology would not be designated as an AzMUA under the new methodology, while 3 primary care areas that would not have been designated as AzMUAs using the current methodology would be designated as AzMUAs under the new methodology. Otherwise, the lists were identical. It is important to note that this is no more variation than the Department experiences year to year using the current methodology.

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

In the table of contents for Article 2, the Section numbers that were struck out in the republication of the Notice of Proposed Rulemaking are not struck out.

In R9-24-101 and throughout the rules, "nurse practitioner" is replaced with "registered nurse practitioner".

In A.A.C. R9-24-101(1), the word "the" is inserted between "Secretary of" and "United States Department of Health and Human Services".

In A.A.C. R9-24-102(C)(3), the word "deem" is replaced with "consider".

In A.A.C. R9-24-201(1), the word "Fifth" is replaced with "5th".

In A.A.C. R9-24-201(7), the comma in the number "2,500" is deleted.

In A.A.C. R9-24-201(9), the language ", as defined in A.R.S. § 36-301" is deleted.

In A.A.C. R9-24-201, a new definition is added for "vital records".

In A.A.C. R9-24-201(8), (15), and (17), the terms are defined to be consistent with the definitions used by the United States Census Bureau in the most recent decennial census rather than by reference to the most recent decennial census.

In A.A.C. R9-24-202, the words "the United States Department of" are inserted between "Secretary of" and "Health and Human Services".

In A.A.C. R9-24-203(A)(1)(b), internal cross references are added to direct the reader to the criteria in subsection (B).

In A.A.C. R9-24-203(A)(2), the words "on the primary care index" are added.

In A.A.C. R9-24-203(B)(1), redundant language regarding population figures is deleted.

In A.A.C. R9-24-203(B)(2), the words "in the primary care area" are added.

In A.A.C. R9-24-203(B)(6), the words "the percentage of" are deleted.

In A.A.C. R9-24-203(B)(9), a displayed list is added to clarify the data that are added determine the sum.

In A.A.C. R9-24-203(B)(12), the introductory language is modified to clarify how the supplementary criteria score is determined.

In Table 1, language is added to the value range and points cells for the sole provider or no provider score.

In A.A.C. R9-24-302(B), redundant language is deleted, and the words "are not intended to" are replaced with "do not".

The rules also incorporate numerous stylistic, grammatical, and organizational changes recommended by Governor's Regulatory Review Council staff to make the rules more clear, concise, and understandable.

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

Although the Department held an oral proceeding on October 23, 2000, the Department did not receive any oral or written comments regarding the proposed rulemaking.

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

Not applicable

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

R9-24-201: Ambulatory Care Access Project, United Hospital Fund of New York, *Final Code Specifications for: "Ambulatory Care Sensitive" Conditions, "Referral Sensitive" Surgical and Medical Conditions, "Marker" Conditions* (July 30, 1991).

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

No

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 24. DEPARTMENT OF HEALTH SERVICES
ARIZONA MEDICALLY UNDERSERVED AREA ~~MEDICAL~~ HEALTH SERVICES

ARTICLE 1. GENERAL

R9-24-101. ~~Reserved~~ Definitions
R9-24-102. ~~Reserved~~ Time-frames
R9-24-103. Reserved
R9-24-104. Reserved
R9-24-105. Reserved
R9-24-106. Reserved
R9-24-107. Reserved
R9-24-108. Reserved
R9-24-109. Reserved
R9-24-110. Reserved
R9-24-111. ~~Legal Authority~~ Repealed
R9-24-112. ~~Designation~~ Repealed
R9-24-113. ~~Definitions~~ Repealed

ARTICLE 2. ~~CRITERIA~~ ARIZONA MEDICALLY UNDERSERVED AREAS

R9-24-201. ~~Geographic Units~~ Definitions
R9-24-202. ~~Out-of-state Resources~~ Arizona Medically Underserved Area Designation
R9-24-203. ~~Base Criteria~~ Primary Care Index
R9-24-204. ~~Supplementary Criteria~~ Primary Care Area Designation

R9-24-205. ~~Excluded Areas~~ Repealed

ARTICLE 3. COORDINATING MEDICAL PROVIDERS

R9-24-301. Definitions
~~R9-24-301~~ R9-24-302. Functions

ARTICLE 1. GENERAL

R9-24-101. ~~Reserved~~ Definitions

In this Chapter, unless otherwise specified:

1. "Arizona medically underserved area" means a primary care area that is designated by the Secretary of the United States Department of Health and Human Services as a health professional shortage area or that is designated by the Department using the methodology described in A.A.C. R9-24-203.
2. "Days" means calendar days, excluding the day of the act, event, or default from which a designated period of time begins to run and excluding the last day of the period if it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday.
3. "Department" means the Arizona Department of Health Services.
4. "Health professional shortage area" means a geographic region designated by the Secretary of the United States Department of Health and Human Services under 42 U.S.C. § 254e as a primary medical care health professional shortage area.
5. "Physician" has the same meaning as in A.R.S.§ 36-2351.
6. "Physician assistant" has the same meaning as in A.R.S. § 32-2501.
7. "Primary care area" means a geographic region designated as a primary care area by the Department under A.A.C. R9-24-204.
8. "Registered nurse practitioner" has the same meaning as in A.R.S. § 32-1601.

R9-24-102. ~~Reserved~~ Time-frames

A. The overall time-frame described in A.R.S. § 41-1072 for a request for boundary change under A.A.C. R9-24-204 is 90 days. The person requesting a boundary change and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. An extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.

B. The administrative completeness review time-frame described in A.R.S. § 41-1072 for a request for boundary change under A.A.C. R9-24-204 is 30 days and begins on the date that the Department receives a request for boundary change.

1. The Department shall mail a notice of administrative completeness or deficiencies to the person requesting a boundary change within the administrative completeness review time-frame.
   a. A notice of deficiencies shall list each deficiency and the information and documentation needed to complete the request for boundary change.
   b. If the Department issues a notice of deficiencies within the administrative completeness review time-frame, the administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice is issued until the date that the Department receives the missing information from the person requesting a boundary change.
   c. If the person requesting a boundary change fails to submit to the Department all of the information and documents listed in the notice of deficiencies within 30 days from the date that the Department mails the notice of deficiencies, the Department shall consider the request for boundary change withdrawn.
2. If the Department issues an approval to the person requesting a boundary change during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.

C. The substantive review time-frame described in A.R.S. § 41-1072 is 60 days and begins on the date of the notice of administrative completeness.

1. The Department shall mail written notification of approval or denial of the request for boundary change to the person requesting a boundary change within the substantive review time-frame.
2. During the substantive review time-frame, the Department may make 1 comprehensive written request for additional information, unless the Department and the person requesting a boundary change agree in writing to allow the Department to submit supplemental requests for information.
3. If the Department issues a comprehensive written request or a supplemental request for information, the substantive review time-frame and the overall time-frame shall be suspended from the date that the Department issues the request until the date that the Department receives all of the information requested. If the person requesting a boundary change fails to submit to the Department all of the information and documents listed in the comprehensive written request or supplemental request for information within 30 days from the date that the Department mails the comprehensive written request or supplemental request for information, the Department shall consider the request for boundary change withdrawn.

4. The Department shall approve a request for boundary change under A.A.C. R9-24-204 unless the Department determines that the resulting primary care area does not comply with A.A.C. R9-24-204(A).

R9-24-111. ~~Legal Authority~~ Repealed

~~The Arizona Department of Health Services, pursuant to the authority granted in Title 36, Chapter 24, particularly A.R.S §36-2352 and 36-2353, hereby adopts the Regulations in this Chapter.~~

R9-24-112. ~~Designation~~ Repealed

~~Pursuant to A. R. S. § 36-2352, the Department shall periodically designate medically-underserved areas as part of the State Health Plan. Such designations shall be made in conjunction with authorized local agencies as defined in A.R.S. § 36-401, or their successor organizations. The Director, as empowered by A.R.S. § 36-124, may confer and cooperate with any or all other persons, organizations, or government agencies that have an interest in public health problems and needs in preparing and administering the State Health Plan, including the designation of medically-underserved areas.~~

R9-24-113. ~~Definitions~~ Repealed

~~In Articles 1, 2 and 3 of this Chapter, unless the context otherwise requires:~~

1. ~~"Clinical laboratory" means a laboratory licensed pursuant to Title 36, Chapter 4.1, a laboratory of a hospital licensed by the State, or a laboratory which is operated by the Federal government.~~
2. ~~"Civilian population" means the total resident population excluding active duty military personnel. Dependents of active duty military personnel are included in the civilian population.~~
3. ~~"Coordinating medical provider"means a physician or group of physicians, or any combination thereof which has entered into an agreement with a county, incorporated city or town, health service district or the Department to supervise the medical care offered at a medical clinic.~~
4. ~~"Current" means most recently available data.~~
5. ~~"Direction" means authoritative policy or procedural guidance for the accomplishment of a function or activity.~~
6. ~~"Director" means Director of the Department of Health Services.~~
7. ~~"Full time equivalent primary care physician" means a primary care physician who spends at least 40 hours per week providing direct patient care or services, including related administrative duties, diagnosis and treatment and training provided to interns, residents, nurse practitioners, physician assistants, students and trainees while providing direct patient care and services. Each nurse practitioner or physician assistant providing at least 40 hours per week of direct patient care is considered equal to .5 full time equivalent primary care physician.~~
8. ~~"General hospital" means a hospital which provides inpatient services, diagnostic and therapeutic, for a wide variety of medical conditions, both surgical and nonsurgical.~~
9. ~~"Governing board" means the board of directors of health service district to be established pursuant to A.R.S.§ 36-2368.~~
10. ~~"Hospital" means a health care institution licensed as a hospital pursuant to Title 36, Chapter 4, or an institution performing similar functions which is operated by the Federal government.~~
11. ~~"Infant death" means the death of a live-born infant prior to the age of one year.~~
12. ~~"Medical clinic" means a facility, whether mobile or stationary, which provides ambulatory medical care in a medically-underserved area through the employment of physicians, nurses, physicians' assistants, nurse practitioners or other health care technical and paraprofessional personnel.~~
13. ~~"Nurse practitioner" means a registered nurse certified by the Arizona State Board of Nursing to function in the extended role pursuant to Title 32, Chapter 15.~~
14. ~~"Pharmacist" means a person registered as a pharmacist pursuant to Title 32, Chapter 18, or a person practicing as a pharmacist in a Federal health care institution.~~
15. ~~"Pharmacy" means an establishment where prescription orders are compounded and dispensed by or under the direct supervision of a registered pharmacist and which is registered pursuant to Title 32, Chapter 18, or which performs similar functions as a Federally operated facility.~~
16. ~~"Physician" means a person licensed pursuant to Title 32, Chapter 13 or 17, and shall include nonresident practitioners holding area permits pursuant to A.R.S. §§ 32-1426.01 or 32-1823.02, or a person practicing as a physician in a Federal institution.~~
17. ~~"Physician assistant" means any person certified by the Joint Board of Medical Examiners and Osteopathic Examiners in Medicine and Surgery as a physician's assistant.~~
18. ~~"Premature birth" means the live birth of an infant weighing 2500 grams (5-1/2 pounds) or less at birth.~~
19. ~~"Primary care physician" means a general practitioner, family practitioner, internist, obstetrician, obstetrician-gynecologist, or pediatrician.~~
20. ~~"Registered nurse" means a person licensed pursuant to Title 32, Chapter 15, or a person practicing as a registered nurse in a Federal health care institution.~~
21. ~~"Supervision" means direct overseeing and inspection of the act of accomplishing a function or activity.~~
22. ~~"Visit" means a physician-patient encounter involving direct service to the patient excluding phone visits.~~

ARTICLE 2. ~~CRITERIA~~ ARIZONA MEDICALLY UNDERSERVED AREAS

~~**R9-24-201. Geographic Units**~~

~~**A.** Geographic units in this Section apply to R9-24-203, Base Criteria, and R9-24-204, Supplementary Criteria, for the purpose of designating medically underserved areas. The geographic units are the Fort Apache, Hopi, Navajo, Papago and San Carlos Indian reservations and each of the counties, with the following modifications:~~

~~1. County boundaries are modified to exclude areas within the five Indian reservations listed above.~~
~~2. Each of the Indian reservations listed above will be considered for designation in its entirety except the Navajo. The Navajo Reservation shall be divided along county lines, and each of the three resulting areas shall be considered individually for designation.~~
~~3. The Hopi-Navajo Joint Use Area is included in the Navajo Reservation and excluded from the Hopi Reservation.~~
~~4. The Gila Bend Indian Reservation in Maricopa County is included in the Papago Reservation and excluded from Maricopa County.~~
~~5. The Gila River Indian Reservation in Maricopa County, Census Tract 6232, is included with Pinal County and excluded from Maricopa County.~~

~~**B.** For counties other than Pima and Maricopa, the only areas to be considered for designation are entire counties, modified along Indian reservation lines as described above, minus each community or group of closely located communities which have civilian populations of 5,000 or more and which have 100 percent or more of their estimated demand met for primary care physicians.~~

~~**C.** The following groups of 1970 U.S. Census Tracts in Maricopa County are considered separately for designation:~~

~~1. Census Tracts 405, the Wickenburg Division.~~
~~2. Census Tracts 506 and 507, the Buckeye Division.~~
~~3. Census Tract 7233, the Gila Bend Division, less the Indian reservation areas allocated to the Papago.~~
~~4. Census Tracts 608-614, 715-719, 820-822 and 932-931, Sun City, Luke Air Force Base, Avondale, and vicinity.~~
~~5. Census Tracts 303, 1036-1047 and 1052-1063, north central Maricopa County, including portions of north Phoenix.~~
~~6. Census Tracts 101, 202, 304, 1032-1035, 1048-1051, 1079-1083, 1110-1113, 1137, 2168-2183 and 3184-3186, northeast Maricopa County, including Scottsdale and portions of northeast Phoenix.~~
~~7. Census Tracts 1068-1073, 1090-1103, 1120-1128 and 1144-1147, the west Phoenix and Glendale area.~~
~~8. Census Tracts 1064-1067, 1074-1078, 1084-1089, 1104-1109, 1114-1119, 1129-1136, 1138-1143 and 1148-1151, central Phoenix.~~
~~9. Census Tracts 1152-1167, south Phoenix and vicinity.~~
~~10. Census Tracts 3187-3200, Tempe and vicinity.~~
~~11. Census Tracts 4201-4226 and 5227-5231, southeast Maricopa County, including Mesa.~~

~~**D.** In addition to the Papago Reservation, the following groups of 1975 U.S. Census Tracts in Pima County are considered separately for designation:~~

~~1. Census Tracts 4403-4405, the Marana Division.~~
~~2. Census Tracts 4603-4606 and 4705-4707, the Catalina Division.~~
~~3. Census Tracts 4016-4019, the Tanque Verde Division.~~
~~4. Census Tract 4102, the Benson Highway Division.~~
~~5. Census Tracts 4302 and 4303, the Arivaca Division.~~
~~6. Census Tracts 4900 and 5000, western Pima County, including Ajo.~~
~~7. The balance of the county, representing the Tucson metropolitan area.~~

R9-24-201. Definitions

In this Article, unless otherwise specified:

1. "Ambulatory care sensitive conditions" means the illnesses listed as ambulatory care sensitive conditions in Ambulatory Care Access Project, United Hospital Fund of New York, Final Code Specifications for "Ambulatory Care Sensitive" Conditions, "Referral Sensitive" Surgical and Medical Conditions, "Marker" Conditions (July 30, 1991), which is incorporated by reference, on file with the Department and the Office of the Secretary of State, and available from United Hospital Fund, 350 5th Avenue, 23rd Floor, New York, NY 10118-2399. This incorporation by reference contains no future editions or amendments.
2. "Birth life expectancy" means the average life span at the time of birth as published in the most recent United States Life Tables by the National Center for Health Statistics.
3. "Family unit" means:
   a. A group of individuals residing together who are related by birth, marriage, or adoption; or
   b. An individual who does not reside with any individual to whom the individual is related by birth, marriage, or adoption.
4. "Full-time" means providing primary care services for at least 40 hours during the 7-day period between Sunday at 12:00 a.m. and Saturday at 11:59 p.m.
5. "Hospital" has the same meaning as in A.R.S. § 36-2351.

6. "HPSA" means health professional shortage area.
7. "Low-weight birth" means live birth of an infant weighing less than 2500 grams or 5 pounds, 8 ounces.
8. "Mobility limitation" means a physical or mental condition that:
   a. Has lasted for 6 or more months,
   b. Makes it difficult to go outside the home alone, and
   c. Is not a temporary health problem such as a broken bone that is expected to heal normally.
9. "Office of Vital Records" means the office of the Department that prepares, publishes, and disseminates vital records.
10. "Population" means the total of permanent residents, according to the most recent decennial census published by the United States Census Bureau or according to the most recent Population Estimates for Arizona's Counties and Incorporated Places published by the Arizona Department of Economic Security.
11. "Poverty level" means the annual income for a family unit of a particular size in the poverty guidelines updated annually in the Federal Register by the United States Department of Health and Human Services.
12. "Primary care index" means the document in which the Department designates primary care areas as medically underserved by using the methodology described in A.A.C. R9-24-203.
13. "Primary care provider" means a physician, physician assistant, or registered nurse practitioner providing direct patient care in general or family practice, general internal medicine, pediatrics, or obstetrics and gynecology.
14. "Primary care services" means health care provided by a primary care provider.
15. "Self-care limitation" means a physical or mental condition that:
   a. Has lasted for 6 or more months;
   b. Makes it difficult to take care of personal needs such as dressing, bathing, or moving around inside the home; and
   c. Is not a temporary health problem such as a broken bone that is expected to heal normally.
16. "Vital records" has the same meaning as in A.R.S. § 36-301.
17. "Work disability" means a physical or mental condition that:
   a. Has lasted for 6 or more months,
   b. Limits an individual's choice of jobs or makes an individual unable to work for 35 or more hours per week, and
   c. Is not a temporary health problem such as a broken bone that is expected to heal normally.

~~**R9-24-202. Out-of-state Resources**~~

~~In designating medically-underserved areas, the Department may take into account resources located outside the State which are accessible to Arizona residents and which fall within the limits established by individual criteria and standards described in R9-24-203 and R9-24-204.~~

R9-24-202. Arizona Medically Underserved Area Designation

The Department shall designate as Arizona medically underserved areas those primary care areas designated as HPSAs by the Secretary of the United States Department of Health and Human Services and those primary care areas identified as medically underserved by the primary care index described in A.A.C. R9-24-203.

~~**R9-24-203. Base Criteria**~~

~~**A.** All areas are considered for designation first on the basis of percent-demand-met for primary care physicians.~~

~~**B.** An area having 85 percent or less of its estimated demand met for primary care physicians shall be designated as medically-underserved by the Department.~~

~~**C.** The method utilized to determine percent-demand-met is as follows:~~

~~1. Data required.~~
   ~~a. Population subgroups - age by sex civilian population breakdown for each area to be considered.~~
   ~~b. Subgroup utilization rates - age by sex breakdown for average annual visits to all physicians.~~
   ~~c. Percent primary care visits - percent of total visits made to primary care physicians.~~
   ~~d. Primary care physician productivity - average annual number of visits per full time equivalent primary care physician.~~
   ~~e. Primary care physicians - total full time equivalents for each area to be considered. The Department may take into account local information regarding practices restricted to specific population subgroups, age and health status of physicians, stated intent of local physicians regarding expansion or reduction of practices, and other relevant factors when computing the full time equivalent primary care physician total for each area.~~
~~2. Computation of percent-demand-met.~~
   ~~a. Compute total visits for the area's population. Multiply each population subgroup in the area by the subgroup utilization rate. Add the age/sex specific products to obtain total visits for the area.~~
      ~~i. Total Visits = Sum of (Population Subgroup x Subgroup Utilization Rate).~~
   ~~b. Compute primary care visits for the area's population. Multiply total visits by percent primary care visits.~~
      ~~i. Primary Care Visits = Total Visits x Percent Primary Care Visits.~~
   ~~c. Compute demand for full time equivalent primary care physicians. Divide primary care visits by primary care physician productivity.~~

~~i. Demand Primary Care Visits/Primary Care Physician Productivity.~~

~~d. Compute percent-demand-met for primary care physicians. Divide total full-time equivalent primary care physicians for the area by demand, and multiply times 100.~~

~~i. Percent-Demand-Met = (Primary Care Physicians/Demand) x 100.~~

R9-24-203. Primary Care Index

A. Using the criteria in subsection (B), the Department shall generate a primary care index to designate primary care areas as Arizona medically underserved areas.

1. The Department shall calculate the value for each criterion as described in subsection (B).
   a. After calculating the value for each criterion, the Department shall determine the points to be assigned to each value using Table 1.
   b. The total score for each primary care area is the sum of:
      i. The points that the primary care area received for each criterion under subsections (B)(1) through (B)(11),
      ii. The supplementary criteria score under subsection (B)(12), and
      iii. The sole provider or no provider score under subsection (B)(13).
2. The Department shall designate as Arizona medically underserved areas those primary care areas that score within the top 25% on the primary care index or that have point totals greater than or equal to 55, whichever results in the designation of more Arizona medically underserved areas.

B. The primary care index shall include a score for each of the following criteria for each primary care area:

1. Population-to-primary-care-provider ratio, determined by dividing the population of the primary care area by the number of primary care providers in the primary care area, using primary care provider data from the Board of Medical Examiners, the Board of Osteopathic Examiners, the Arizona State Board of Nursing, and the Joint Board on the Regulation of Physician Assistants, and counting 1 full-time physician as 1.0 and 1 full-time physician assistant or registered nurse practitioner as .8;
2. Travel distance to the nearest primary care provider, determined by estimating the distance in miles from the center of the most densely populated area in the primary care area to the nearest primary care provider by the most direct street route;
3. Composite transportation score, determined by:
   a. Compiling data on the following 6 indicators using the most recent decennial census published by the United States Census Bureau:
      i. Percentage of population with annual income less than 100% of the poverty level;
      ii. Percentage of population older than 65 years of age;
      iii. Percentage of population younger than 14 years of age;
      iv. Percentage of population that has a work disability, mobility limitation, or self-care limitation;
      v. Percentage of population without a vehicle; and
      vi. The noncommercial-vehicle-to-population ratio;
   b. Calculating the statewide average value for each of the 6 indicators;
   c. Dividing the value of each indicator for each primary care area by the statewide average value for that indicator;
   d. Multiplying the figure calculated under subsection (B)(3)(c) for each indicator by 100; and
   e. Averaging the 6 indicator values for each primary care area;
4. Percentage of population with annual income less than 200% of the poverty level, as reported in the most recent decennial census published by the United States Census Bureau;
5. Percentage of population with annual income between 100% and 200% of the poverty level, as reported in the most recent decennial census published by the United States Census Bureau;
6. Percentage of uninsured births, determined from Office of Vital Records birth records reporting payment source as "self-pay" or "unknown;"
7. Ambulatory care sensitive condition hospital admissions, based on the number of hospital admissions for ambulatory care sensitive conditions per 1000 resident individuals aged 65 years or younger, determined from hospital discharge record data provided by the Bureau of Public Health Statistics;
8. Percentage of low-weight births, determined from data provided by the Office of Vital Records;
9. Sum of the following, determined from data provided by the Office of Vital Records:
   a. Percentage of births for which the mothers reported having no prenatal care,
   b. Percentage of births for which the mothers reported commencing prenatal care in the 2nd or 3rd trimester, and
   c. Percentage of births for which the mothers reported having 4 or fewer prenatal care visits;
10. Percentage of deaths at ages younger than the birth life expectancy, determined from the birth life expectancy and data provided by the Office of Vital Records;
11. Number of infant mortalities per 1000 live births, determined from data provided by the Office of Vital Records;
12. Supplementary criteria score, determined by assigning 2 points for each of the following indicators that exists in the primary care area:

a. Percentage of minority population greater than the statewide average for all counties, determined from data in the most recent decennial census published by the United States Census Bureau;
b. Percentage of elderly population greater than the statewide average for all counties, determined from data in the most recent Population Estimates for Arizona's Counties and Incorporated Places published by the Arizona Department of Economic Security and from data in the most recent decennial census published by the United States Census Bureau; and
c. Average annual unemployment rate greater than the average annual statewide rate, determined from data in the most recent annual report issued by the Arizona Department of Economic Security; and

13. Sole provider or no provider score, determined by assigning 5 points if the primary care area has only 1.0 or less than 1.0 primary care provider, counting 1 full-time physician as 1.0 and 1 full-time physician assistant or registered nurses .8.

C. The Department shall generate a primary care index every 12 months to determine Arizona medically underserved area designations. The Department shall withdraw designation, continue designation, or designate a new Arizona medically underserved area based on the criteria in subsections (A) and (B). The Department shall publish and keep on file a list of current Arizona medically underserved areas.

Table 1. Primary Care Index Scoring

CRITERIA	VALUE RANGE	POINTS
Population-to-primary-care-provider ratio	≤ 2000:1 2001:1 to 2500:1 2501:1 to 3000:1 3001:1 to 3500:1 3501:1 to 4000:1 > 4000:1 or no provider	0 2 4 6 8 10
Travel distance to nearest primary care provider	≤ 15.0 miles 15.1-25.0 miles 25.1-35.0 miles 35.1-45.0 miles 45.1-55.0 miles > 55.0 miles	0 2 4 6 8 10
Composite transportation score	50th highest score and below 41st-50th highest scores 31st-40th highest scores 21st-30th highest scores 11th-20th highest scores 10 highest scores	0 2 4 6 8 10
Percentage of population with annual income less than 200% of poverty level	≤ 15.0% 15.1-25.0% 25.1-35.0% 35.1-45.0% 45.1-55.0% >55.0%	0 2 4 6 8 10
Percentage of population with annual income between 100% and 200% of poverty level	≤ 10.0% 10.1-15.0% 15.1-20.0% 20.1-25.0% 25.1-30.0% > 30.0%	0 2 4 6 8 10
Percentage of uninsured births	≤ 6.0% 6.1-10.0% 10.1-14.0% 14.1-18.0% 18.1-22.0% >22.0%	0 2 4 6 8 10

Ambulatory care sensitive condition hospital admissions	≤ 8.0 8.1-12.0 12.1-16.0 16.1-20.0 20.1-24.0 > 24.0	0 2 4 6 8 10
Percentage of low-weight births	≤ 6.0% 6.1-8.0% 8.1-10.0% 10.1-12.0% 12.1-14.0% >14.0%	0 2 4 6 8 10
Sum of the following: a. Percentage of births with no prenatal care, b. Percentage of births with prenatal care begun in 2nd or 3rd trimester, and c. Percentage of births with prenatal care visits ≤ 4	≤ 15.0% 15.1-25.0% 25.1-35.0% 35.1-45.0% 45.1-55.0% >55.0%	0 2 4 6 8 10
Percentage of deaths at ages younger than birth life expectancy	≤ 40.0% 40.1-50.0% 50.1-60.0% 60.1-70.0% 70.1-80.0% >80.0%	0 2 4 6 8 10
Number of infant mortalities per 1000 live births	≤ 4.0 4.1-6.0 6.1-8.0 8.1-10.0 10.1-12.0 >12.0	0 2 4 6 8 10
Supplementary criteria score	1 Criterion 2 Criteria 3 Criteria	2 4 6
Sole provider or no provider score	primary care provider ≤ 1.0 primary care provider > 1.0	5 0

~~**R9-24-204. Supplementary Criteria**~~

~~**A.** Areas which do not meet the primary care physician percent-demand-met standard described in R9-24-123 but which obtain percent-demand-met scores from 86 percent through 99 percent shall be designated if they qualify according to the supplementary criteria described in this Section. Supplementary criteria are to be used solely for the purpose of designating medically-underserved areas; they do not constitute standards for evaluating the delivery of medical services.~~

B. An area eligible for consideration for designation according to the supplementary criteria shall be designated medically underserved by the Department if it obtains a score of 6 points or more. Scores are determined by assigning points to the area for qualifying according to specific criteria. Points to be assigned are listed below:

POINTS	CRITERIA
2	Infant Mortality Rate
2	Accidental Death Rate
2	Motor Vehicle Accident Rate (involving injury or death)
2	Emergency Services
2	Emergency Transportation
1	Premature Birth Rate
1	Availability of Pharmacists and/or Pharmacy Services
1	Availability of Nurses
1	Availability of Hospital Facilities
1	Availability of Clinical Laboratory Services
1	Scheduled, Routine Patient Transportation Services

C. Definitions, standards and method of determination for the eleven supplementary criteria follow:

1. "Infant mortality rate".
   a. An area having an infant mortality rate greater than the current state or national rate, whichever is less, shall receive two points toward designation.
   b. Computation of infant mortality rate.
      i. Infant mortality rate = (Infant deaths/live births) x 1000.
      ii. Infant deaths and live births in the above equation are composed of data from the most recent five years for which both infant death and live birth information are available by place of residence.
      iii. The infant mortality rate is computed to the nearest tenth.
      iv. Infant mortality rates shall be computed for each Indian reservation area to be considered for separate designation, and for counties modified by Indian reservation boundaries. Rates for subareas within Maricopa and Pima Counties shall be the county rates except when the numbers of infant deaths and live births in subareas are sufficiently large that the addition of five infant mortality rate no greater then 5 percent.
2. "Accidental death rate".
   a. An area having an accidental death rate greater than the current state or national rate, whichever is less, shall receive two points toward designation.
   b. Computation of accidental death rate.
      i. Accidental death rate = (Accidental deaths/total population) x 100,000.
      ii. Accidental deaths shall be aggregated by location of accident, not by residence of deceased.
      iii. The accidental death rate is computed to the nearest tenth.
      iv. Accidental deaths in the above equation are composed of data from the most recent five years for which both accidental death and total population data are available.
      v. Because of data availability, rates may be computed only for counties and counties minus any of the following twelve communities which may be in that county: Kingman, Glendale, Phoenix, Mesa, Scottsdale, Tempe, Tucson, Flagstaff, Yuma, Douglas, Prescott and Chandler.
      vi. Rates for counties modified by reservation boundaries shall be the county rate computed after removing data for any of the twelve communities which have 100 percent or more of their demand met for primary care physicians. Rates for Indian reservations shall be an aggregation of county rates minus all communities' rates for those counties in which the reservation is located. The county rates shall be aggregated by weighting each county rate by the proportion of the total reservation population which resides in the county.
3. "Rates for motor vehicle accidents involving injury or death".
   a. An area having a motor vehicle accident rate involving either injury or death greater than the current state or national rate, whichever is less, shall receive two points toward designation.
   b. Computation of motor vehicle accident rate.
      i. Using the following formula, two separate rates are computed: one for accidents involving injury, and the other for accidents involving death. Vehicle miles shall be identical for both computations.
      ii. Rate = (Motor vehicle accidents/vehicle miles) x 100 million.
      iii. Motor vehicle accidents in the above equation are composed of data from the most recent two years for which motor vehicle accidents involving injury, motor vehicle accidents involving death and vehicle mile data from each area are available.
      iv. The motor vehicle accident rate is computed to the nearest tenth.

~~v. Because motor vehicle mile data are currently available only for counties, rates for counties modified by reservation boundaries shall be the county rates. Rates for Indian reservations shall be computed by aggregating the county rates for those counties in which the reservation is located and weighting each county rate by the proportion of the reservation population residing in that county.~~

~~4. "Emergency services".~~
~~a. An area whose center of population is greater than 20 miles from the closest emergency services available on call shall receive two points towards designation.~~
~~b. For purposes of this criterion, emergency services include, but are not limited to, hospital emergency rooms, outpatient centers, police and fire rescue units, ambulances staffed by emergency personnel, and primary care physician, nurse practitioner or physician assistant offices, if these services are available on call and provided to the general public.~~
~~5. "Emergency transportation".~~
~~a. An area whose center of populations is greater then 35 miles from the closest source of emergency transportation available on a 24 hour per day basis shall receive two points towards designation.~~
~~b. For purposes of this criterion, emergency transportation includes, but is not limited to, ambulances staffed by trained emergency personnel, police and fire department rescue units and air evacuation services if available on a 24 hour per day basis and provided to the general public.~~
~~6. "Premature birth rate".~~
~~a. An area having a premature birth rate greater than the current state or national rate, whichever is less, shall receive one point towards designation.~~
~~b. Computation of premature birth rate.~~
~~i. Premature birth rate = (Premature births/live births) x 1000.~~
~~ii. Premature births in the above equation are composed of data from the most recent five years for which both premature birth and live birth data are available by mothers' place of residence.~~
~~iii. The premature birth rate is computed to the nearest tenth.~~
~~iv. Premature birth rates shall be computed for each major Indian reservation and county modified by an Indian reservation. Rates for subareas within Maricopa and Pima Counties shall be the county or reservation rates, except when the number of premature births and live births in the subarea are sufficiently large that the addition of five premature births to the sum of premature births produces a change in the premature birth rate no greater than 5 percent.~~
~~7. "Availability of pharmacists and/or pharmacy services".~~
~~a. For purposes of this criterion, an urban area shall be defined as any of those areas listed under R9-24-121, Subsection C. Paragraphs 4-11 and Subsection D. Paragraph 7, and a rural area shall be defined as any other geographic area listed under R9-24-121.~~
~~b. An urban area whose center of population is greater than five miles from the closest active pharmacist or pharmacy services provided to the general public during regular business hours shall receive one point towards designation.~~
~~c. A rural area containing any community of 5,000 or more population, which community's center of population is greater than five miles from the closest active pharmacist or pharmacy services provided to the general public during regular business hours, shall receive one point towards designation. For rural areas containing no community of 5,000 or more the five mile standard shall be applied to the largest community within the area.~~
~~8. "Availability of registered nurses". An area which contains any location currently listed as a "Shortage Area Designated for Repayment for Service as a Registered Nurse" by the Federal government (42 CFR Part 57, Subpart D, and revisions) shall receive one point towards designation.~~
~~9. "Availability of general hospitals". An area whose center of population is greater than 55 miles from the nearest general hospital which provides emergency services to the general public shall receive one point towards designation.~~
~~10. "Availability of clinical laboratories". An area whose center of population is greater than 75 miles from the nearest clinical laboratory shall receive one point towards designation.~~
~~11. "Scheduled, routine patient transportation services".~~
~~a. An area which does not have available to it scheduled, routine patient transportation services at least twice weekly shall receive one point towards designation.~~
~~b. For purposes of this criterion, scheduled, routine patient transportation services includes any public or private transportation except taxi service which the general public may use for nonemergency travel to and from health care facilities within a 16 hour period. Transportation services provided by volunteer groups are included if their services are provided to all members of the general public who have no other means of travel to health facilities available to them.~~

R9-24-204. Primary Care Area Designation

A. The Department shall designate primary care areas within the state that meet the following criteria:

1. Each primary care area is not smaller than the smallest unit of census geography used on the most recent decennial census published by the United States Census Bureau; and
2. The boundaries of each primary care area are consistent with the utilization patterns of its population for primary care services, determined by considering:
   a. Topography;
   b. Social, cultural, and geopolitical boundaries;
   c. Travel patterns for the geographic area; and
   d. Data from local planning personnel, government officials, health organizations, primary care providers, and residents of the geographic area about the type, amount, and location of primary care services used by the population.

B. The Department shall consider the following additional factors in determining the boundaries of each primary care area:
1. Boundaries of Indian reservations and
2. Boundaries of HPSAs.

C. Local planning personnel, government officials, health organizations, primary care providers, or residents of a primary care area may submit to the Department a request to change the boundaries of a primary care area.
1. The request shall be made in writing and shall include documentation to support the boundary change. The request shall be submitted by October 1 to be considered for inclusion in the designation process for the following calendar year.
2. The time-frames for the request for change of boundaries are in A.A.C. R9-24-102.

~~**R9-24-205. Excluded Areas**~~
~~Areas with a percent-demand-met score of 100 percent or greater and areas not qualifying according to the criteria described in R9-24-203 or R9-24-204 shall not be designated as medically-underserved by the Department.~~

ARTICLE 3. COORDINATING MEDICAL PROVIDERS

R9-24-301. Definitions
In this Article, unless otherwise specified:
1. "CMP" means coordinating medical provider, as defined in A.R.S. § 36-2351.
2. "Medical clinic" has the same meaning as in A.R.S. § 36-2351.
3. "Medical personnel" means physicians, physician assistants, registered nurse practitioners, and nurses of a medical clinic.
4. "Nurse" means an individual licensed as a graduate, professional, or registered nurse or as a practical nurse under A.R.S. Title 32, Chapter 15.
5. "Support services" means drug prescription services, social services, and provision of durable medical equipment.

~~**R9-24-301**~~ **R9-24-302. Functions**
A. ~~In addition to conforming to all other related Arizona statutory and regulatory requirements, the coordinating medical provider~~ A CMP shall:
1. Be ~~directly~~ involved in planning for the delivery of medical services within the Arizona medically underserved area ~~covered by the agreement.~~ ;
2. ~~Assure~~ Ensure access to medical and support services, either directly or by referral, for the residents of the ~~medically-underserved~~ Arizona medically underserved area~~.~~ ;
3. ~~In conjunction with the nurse practitioners and physician assistants under his direction, develop~~ Develop written protocols ~~which outline~~ that identify areas ~~for~~ in which registered nurse practitioners and physician assistants under the CMP's supervision may use independent judgment ~~on the part of the nurse practitioners and the physician assistants.~~ ;
4. Have final approval in the selection of registered nurse practitioners and physician assistants working under ~~his direction~~ the CMP's supervision~~.~~ ;
5. Have authority over and responsibility for the medical direction of all registered nurse practitioners and physician assistants under ~~his direction~~ the CMP's supervision~~.~~ ;
6. ~~Arrange to evaluate~~ Evaluate medical care provided by registered nurse practitioners and physician assistants under ~~his direction~~ the CMP's supervision through face-to-face contact at least ~~four times~~ once per ~~month~~ week ~~.~~ ;
7. Recommend specific areas of medical education, including instruction in referral sources, and ~~shall~~ schedule coverage to allow for the continuing medical education of ~~all nurse practitioners and physicians assistants under his direction~~ medical personnel at the medical clinic; and
8. Meet at least annually with the ~~governing board~~ organization that owns and operates the medical clinic to evaluate the program and ~~to devise methods to maximize the efficiency and improve the quality of~~ the medical care provided by the medical personnel of the medical clinic.

B. ~~Nothing in these requirements is intended to contradict the minimum requirements for nurse practitioners, physician assistants and physicians required by Arizona law and regulation.~~ These requirements ~~may supplement the basic ones but in no case are they~~ do not ~~intended to reduce or eliminate~~ replace other requirements of practice.

NOTICE OF FINAL RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 4. CORPORATION COMMISSION - SECURITIES

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R14-4-101	Amend
R14-4-102	Amend
R14-4-127	Amend
R14-4-133	Amend
R14-4-134	Amend
R14-4-141	Amend
R14-4-144	Amend

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

Authorizing statutes: A.R.S. §§ 44-1821, 44-1845, 44-1846, and 44-1902

Implementing statutes: A.R.S. §§ 44-1844, 44-1845, 44-1846, and 44-1902

Constitutional authority: Arizona Constitution Article XV §§ 4, 6, and 13

3. The effective dates of the rules:

January 17, 2001

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

Notice of Rulemaking Docket Opening: 4 A.A.R. 3995, November 27, 1998

Notice of Proposed Rulemaking: 5 A.A.R. 980, April 9, 1999

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

Name: Cheryl T. Farson
General Counsel

Address: Arizona Corporation Commission
Securities Division
1300 West Washington, Third Floor
Phoenix, AZ 85007-2996

Phone: (602) 542-4242

Fax: (602) 594-7470

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

The amendments to the rules primarily are technical. The changes include changes in format and text to comply with requirements of the office of the secretary of state, the addition of cross references to statutory fee requirements, the addition of text to clarify the intent of the rules, and the deletion of superfluous text.

A.A.C. R14-4-101 provides an exemption from registration of securities offered and sold exclusively to existing stockholders and employees. In addition to grammatical and format changes, the amended rule includes 4 revisions: (i) in subsection (A)(1), text added to clarify that the $500,000 maximum applies to an aggregate of all offerings made by an issuer under this exemption; (ii) in subsection (D)(4), the addition of a cross reference to R14-4-123, under which financial statements filed in connection with applications for this exemption must be prepared; (iii) in subsection (E)(3), the addition of a cross reference to the statutory fee requirement; and (iv) in subsection (F), the addition of the bases upon which the exemption may be denied or revoked.

A.A.C. R14-4-102 provides an exemption from registration of securities offered and sold within or from Arizona to 10 or fewer persons. In addition to grammatical and format changes, the amended rule includes 4 revisions: (i) in subsection (A)(1), text added to clarify that the $100,000 maximum applies to an aggregate of all offerings made in or from Arizona by an issuer under this exemption; (ii) in subsection (D)(4), the addition of a cross reference to R14-4-123, under which financial statements filed in connection with applications for this exemption must be prepared; (iii) in subsection (E)(3), the addition of a cross reference to the statutory fee requirement; and (iv) in subsection (F), the addition of the bases upon which the exemption may be denied or revoked.

A.A.C. R14-4-127 provides guidelines for a petition requesting an exemption from registration of securities filed under A.R.S. § 44-1846. In addition to grammatical and format changes, the amended rule includes 4 revisions: (i) in subsection (D), the deletion of the exception to R14-4-123 requirements imposed on offerings made under this exemption; (ii) in subsection (H), a revision of legend requirements so that the requirements do not conflict with plain English rules mandated by the United States Securities and Exchange Commission; (iii) in subsection (K), the deletion of exceptions to the limitation on the number of purchasers; and (iv) in subsection (L), the deletion of the maximum dollar amount to reflect the deletion of the dollar amount requirement from A.R.S. § 44-1846.

A.A.C. R14-4-133 defines "partners" and "executive officers" as those terms are used for the definition of salesman contained in A.R.S. § 44-1801. The cross reference to subsection (19) of A.R.S. § 44-1801 is deleted because the subsection number is not static.

A.A.C. R14-4-134 provides guidelines for an application for registration of securities filed under A.R.S. § 44-1902. In addition to grammatical and format changes, the amended rule includes 4 revisions: (i) in subsection (A), an amendment of the maximum allowed offering amount to reflect statutory changes to A.R.S. § 44-1902; (ii) in subsection (C), a deletion of the requirement that an issuer be a corporation, to reflect changes to A.R.S. § 44-1902; (iii) in subsection (I)(2), a revision to the referenced subsection of R14-4-105 to reflect an amendment to R14-4-105; and (iv) the deletion of the Division's discretion to reduce the R14-4-107 requirements with which an issuer must comply.

A.A.C. R14-4-141 provides an exemption from registration of securities for offers, but not sales, of securities for the sole purpose of soliciting an indication of interest. In subsection (B)(3), a cross reference to the statutory fee requirement is added.

A.A.C. R14-4-144 provides an issuer engaging in a transaction of a type specified in A.R.S. § 44-1845(B)(1) with a procedure to obtain a special registration, consisting of the imposition of suitability standards in lieu of standards prescribed by specific statutes. Language is added to subsection (A) to clarify the process through which to obtain such special registration.

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

The amendments are technical in nature and the amended Sections are materially the same as the current Sections. Thus, the amendments will not diminish a previous grant of authority of any political subdivision of this state.

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

Pursuant to A.R.S. § 41-1055(D)(3), the Commission is exempt from providing an economic, small business, and consumer impact statement.

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

The following subsections of the proposed rules have been revised in the final rules as marked below.

1. A.A.C. R14-4-101(B) and R14-4-102(B) revised as follows:

   This exemption shall not apply to an offering made in connection with or integrated with an offering otherwise subject to A.R.S. §§ 44-1841 and 44-1842. This Section is not available to any issuer for any transaction or any chain of transactions that, although in technical compliance with the Section, is part of a plan or scheme to evade the registration provisions of the Securities Act of Arizona.

2. A.A.C. R14-4-101(F) and R14-4-102(F) revised as follows:

   The Commission may~~, in its discretion, at any time~~ deny or revoke this exemption to any issuer for the reasons listed in A.R.S. §§ 44-1921(1) through (6). The Securities Division shall notify the issuer of such denial or revocation. Such notice shall be given by certified mail.

3. A.A.C. R14-4-101(D)(8) and R14-4-102(D)(8) revised as follows:

   "Receipt of the foregoing Notice of Intention to Sell Securities is acknowledged as of the date indicated. The Commission enters no objection to the offering described therein, and such offering may be commenced _____, ~~19~~20 ____.

   ARIZONA CORPORATION COMMISSION
   Securities Division
   _____"

4. A.A.C. R14-4-127(F) revised as follows:

   Final confidential report of the offering. The issuer shall make a final confidential report to the Commission within 30 calendar days after the conclusion of the offering. The final report shall be verified under oath by a company officer and shall include the following information:

5. A.A.C. R14-4-127(H) revised as follows.

   Legend on disclosure document. The outside front cover page of every disclosure document used in connection with the offer or sale of securities under A.R.S. § 44-1846 shall contain a prominent legend in plain and concise ~~English~~ language stating that the securities are exempt from registration under A.R.S. § 44-1846, but that such exemption is not a finding by the Commission that the disclosure document is true or accurate or that the Commission has passed upon the merits or approved the securities.

6. A.A.C. R14-4-127(I) revised as follows:

   Promotional securities and promoters' equity. The provisions of R14-4-105 and R14-4-107 shall be applied to this Section when~~, in the Commission's discretion,~~ the imposition of such restrictions is necessary because of the speculative nature of the offering~~s~~, as defined in R14-4-118(C).

7. A.A.C. R14-4-134(I)(2) revised as follows:

   R14-4-105 (promotional securities). ~~Unless otherwise determined by the Commission, for~~ For purposes of this Section the first sentence of R14-4-105(C) is revised as follows: securities that are issued to promoters for consideration valued at less than the following percentages of the proposed public offering price, in an amount that represents an ultimate right of participation in excess of 60% of the securities to be outstanding at the completion of the proposed public offering, shall be promotional securities.

8. A.A.C. R14-4-134(I)(4) revised as follows:

   R14-4-107 (promoters equity). ~~The amounts in rule 107 may be reduced by the Securities Division at the request of the issuer for good cause shown.~~

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

The Commission did not receive written comments to the rules.

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

None

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

R14-4-134(B)(1) The Small Corporate Offering Registration Form (Form U-7) as adopted by the North American Securities Administrators Association, Inc., on April 29, 1989

13. Whether the rule was previously adopted as an emergency rule and, if so, whether the text was changed between adoption as an emergency rule and the adoption of the final rule.

Not applicable

14. The full text of the rule follows:

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 4. CORPORATION COMMISSION - SECURITIES

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

R14-4-101. Exempt Transactions – Existing Stockholders and~~/or~~ Employees
R14-4-102. Exempt Transactions – Restricted Public Offering
R14-4-127. Guidelines for Securities Filings under ~~pursuant to~~ A.R.S. § 44-1846
R14-4-133. Definition of Partners and Executive Officers
R14-4-134. Guidelines for Securities Filings under ~~pursuant to~~ A.R.S. § 44-1902
R14-4-141. Solicitation of Interest Prior to the Filing of the Registration Statement
R14-4-144. Suitability Standards Pursuant to A.R.S. § 44-1845

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 4. CORPORATION COMMISSION - SECURITIES

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

R14-4-101. Exempt Transactions - Existing Stockholders and~~/or~~ Employees

A. An offering of securities within or from Arizona that ~~this state which~~ is exclusively to bona fide employees ~~and/~~or existing security holders of the issuer ~~and/~~or a subsidiary of the ~~such~~ issuer, or if the issuer is a subsidiary, is exclusively to the bona fide employees ~~and/~~or existing security holders of the issuer and/or its parent, is ~~shall be~~ added to the class of transactions exempt under A.R.S. § 44-1844.~~, provided that this exemption shall not be construed to apply to an offering to be made in connection with or integrated with an offering otherwise subject to A.R.S. §§ 44-1841 and 44-1842, and further provided that:~~ An issuer relying on this Section shall comply with all of the following conditions:

1. The aggregate amount of all offerings ~~the offering to be~~ made by an issuer under this exemption within or from Arizona ~~this state~~ shall not exceed $500,000.~~00; and~~
2. The issuer shall pay no ~~No~~ commission or remuneration of any kind, other than transfer agent's fees~~, shall be paid~~ directly or indirectly, ~~by the issuer~~ to any person in connection with the distribution or sale of such securities.~~; and~~
3. At least 10 business days before the offering is made, the issuer shall file with the Commission a ~~A~~ verified statement of the details and purposes of the offering and the financial condition of the issuer. ~~shall be filed with the Commission at least ten days before the offering is made, and no~~ The issuer shall not make any material change in the details of the offering ~~shall be effected thereafter~~ without the Commission's consent. ~~of the Commission; and~~
4. The issuer shall obtain Commission approval of any ~~Any~~ subscription contract calling for deferred payments. ~~shall be subject to the approval of the Commission; and~~
5. An ~~If the~~ issuer that is not domiciled in Arizona ~~this state~~ or is not incorporated ~~a corporation organized~~ under the laws of this ~~the~~ state~~,~~ shall file a consent to service (Uniform Form U-2) ~~shall be filed~~ with the verified statement ~~details of offering~~ prescribed in subsection (3) ~~Paragraph (2)~~ above.

B. This exemption shall not apply to an offering made in connection with or integrated with an offering otherwise subject to A.R.S. §§ 44-1841 and 44-1842. This Section is not available to any issuer for any transaction or any chain of transactions that, although in technical compliance with the Section, is part of a plan or scheme to evade the registration provisions of the Securities Act of Arizona.

C. ~~This exemption is not to be construed as providing "blanket" authority for an aggregate offering of $500,000.00, but is available in specified amounts for specific purposes not in excess of $500,000.00.~~ The same issuer may file successive ~~Successive~~ notices ~~may be filed~~ under this Section ~~rule by the same issuer~~ until the total amount encompassed in such filings equals $500,000. ~~the maximum amount permitted in this exemption.~~

D~~C.~~ ~~Form and contents of verified statement to be filed:~~

~~1.~~ The verified statement is not a prescribed form, but ~~No particular form of instrument is prescribed for the filing of the required information due to extreme variables in situations and conditions of offerings eligible for exemption under this rule.~~ shall be executed by an authorized officer of the issuer whose signature shall be verified under oath ~~The~~ and shall include all of the following:

1. The title, "Notice of Intention to Sell Securities Under A.A.C. R14-4-101."
2. ~~caption should, however, clearly indicate~~ In the caption, the issuer's full name, the issuer's type of organization, and the state in which the issuer was organized~~; and should be entitled a "Notice of Intention to Sell Securities Pursuant to R14-4-101".~~
3. ~~2~~The details and purposes of the offering, ~~to which reference is made in Subsection (A) Paragraph (3) above, must be fully set out,~~ including but not limited to a description of the securities to be sold, the number of units and selling price per unit, the method of offering, and the allocation of proceeds.
4. A ~~and~~ statement of financial condition prepared in accordance with R14-4-123 ~~generally accepted accounting principles.~~
5. ~~3~~A ~~The text of the instrument must contain a~~ recitation of the facts clearly indicating that all conditions affecting eligibility for this exemption exist.~~, and~~
6. A statement that the issuer has taken appropriate action to authorize the issuance of securities.

~~4. The instrument shall be executed by an authorized officer of the issuer whose signature shall be verified under oath.~~

7. ~~5~~The issuer's principal business address, and mailing address if different from the principal business address. ~~therefrom, must be shown.~~
8. ~~6~~Below the verification of signature, the following form for acknowledgment by the Commission ~~shall be provided~~:

"Receipt of the foregoing Notice of Intention to Sell Securities is acknowledged as of the date indicated. The Commission enters no objection to the offering described therein, and such offering may be commenced _____, 20 ~~19~~____.

ARIZONA CORPORATION COMMISSION

Securities Division

_____"

E~~D.~~ Filing of notice, ~~and~~ exhibits, and fee.

1. The issuer shall file 2 originally executed copies of the verified statement, ~~instrument is to be filed in duplicate (~~except that only 1 ~~one~~ copy of the financial statement is required if such statement is attached to, rather than included in, the verified statement ~~instrument)~~. The Commission shall acknowledge 1 ~~one~~ copy of the verified statement and return it ~~which shall be acknowledged and returned~~ to the issuer as evidence of filing.
2. The issuer shall file 1 ~~One~~ copy of any subscription form or written material describing, or to be used in connection with, the offering ~~must be filed with the notice~~.
3. The issuer shall file a nonrefundable fee as prescribed by A.R.S. § 44-1861(G).

F~~E.~~ ~~Exemptions subject to denial and revocation:~~ The Commission may ~~in its discretion at any time~~ deny or revoke this ~~the~~ exemption ~~herein provided as~~ to any issuer ~~or issuers~~ for the reasons listed in A.R.S. §§ 44-1921(1) through (6). The Securities Division shall notify the issuer ~~In the event~~ of such denial or revocation ~~the issuer or issuers affected thereby shall be notified of such action by the Director of the Securities Division of the Commission~~. Such notice shall be given by certified ~~registered~~ mail.

~~Address all communications to~~
~~Arizona Corporation Commission~~
~~Securities Division~~
~~1200 West Washington Street~~
~~Phoenix, Arizona 85007~~

G~~F.~~ This exemption shall be effective for 1 ~~one~~ year from the date the Director acknowledges the Notice of Intention to Sell Securities ~~is acknowledged by the Director of Securities~~.

R14-4-102. Exempt Transactions - Restricted Public Offering

A. An offering of securities within or from Arizona ~~this state which offering shall be~~ made to not more than 10 ~~ten~~ persons is ~~shall be~~ added to the class of transactions exempt under A.R.S. § 44-1844. An issuer relying on this Section shall comply with all of the following conditions.~~, provided that this exemption shall not be construed to apply to an offering to be made in connection with or integrated with an offering otherwise subject to A.R.S. §§ 44-1841 and 44-1842, and further provided that:~~

1. The aggregate amount of all offerings ~~the offering to be~~ made by an issuer under this exemption within or from Arizona ~~this state~~ shall not exceed $100,000.~~00; and~~
2. The issuer shall pay no ~~No~~ commission or remuneration of any kind, other than transfer agent's fees, ~~shall be paid~~ directly or indirectly, ~~by the issuer~~ to any person in connection with the distribution or sale of such securities.~~; and~~
3. At least 10 business days before the offering is made, the issuer shall file with the Commission a ~~A~~ verified statement of the details and purposes of the offering and the financial condition of the issuer. ~~shall be filed with the Commission at least ten days before the offering is made, and no~~ The issuer shall not make any material change in the details of the offering ~~shall be effected thereafter~~ without the Commission's consent. ~~of the Commission; and~~
4. The issuer shall obtain Commission approval of any ~~Any~~ subscription contract calling for deferred payments. ~~shall be subject to the approval of the Commission; and~~
5. An ~~If the~~ issuer that is not domiciled in Arizona ~~this state~~ or is not incorporated ~~a corporation organized~~ under the laws of this ~~the~~ state, shall file a consent to service (Uniform Form U-2) ~~shall be filed~~ with the verified statement ~~details of the offering~~ prescribed in subsection (3) ~~paragraph (2)~~ above.
6. The issuer and any person acting on its behalf shall reasonably believe prior to making any sale that the investment is suitable for the purchaser. For the limited purpose of this condition only, ~~it may be presumed that if~~ the investment is deemed suitable if it does not exceed 20% of the investor's net worth (excluding principal residence, furnishings therein, and personal automobiles). ~~it is suitable.~~

B. This exemption shall not apply to an offering made in connection with or integrated with an offering otherwise subject to A.R.S. §§ 44-1841 and 44-1842. This Section is not available to any issuer for any transaction or any chain of transactions that, although in technical compliance with the Section, is part of a plan or scheme to evade the registration provisions of the Securities Act of Arizona.

C. ~~This exemption is not to be construed as providing "blanket" authority for an aggregate offering of $100,000.00, but is available in specified amounts for specific purposes not in excess of $100,000.00.~~ The same issuer may file successive ~~Successive~~ notices ~~may be filed~~ under this Section ~~rule by the same issuer~~ until the total amount encompassed in such filings equals $100,000. ~~the maximum amount permitted in this exemption.~~

D~~C.~~ ~~Form and contents of verified statement to be filed:~~

~~1.~~ The verified statement is not a prescribed form, but ~~No particular form of instrument is prescribed for the filing of the required information due to extreme variables in situations and conditions of offerings eligible for exemption under this rule.~~ shall be executed by an authorized officer of the issuer whose signature shall be verified under oath and shall include all of the following:

1. The title, "Notice of Intention to Sell Securities Under A.A.C. R14-4-102."

2. In the ~~The~~ caption ~~should~~, ~~however, clearly indicate~~ the issuer's full name, the issuer's type of organization, and the state in which the issuer was organized~~; and should be entitled a "Notice of Intention to Sell Securities, pursuant to R14-4-102"~~.

3~~2~~. The details and purposes of the offering, ~~to which reference is made in subsection (A), paragraph (3) above, must be fully set out,~~ including but not limited to a description of the securities to be sold, the number of units and selling price per unit, the method of offering, and the allocation of proceeds.

4. A ~~and~~ statement of financial condition prepared in accordance with R14-4-123 ~~generally accepted accounting principles~~.

5~~3~~. A ~~The text of the instrument must contain a~~ recitation of the facts clearly indicating that all conditions affecting eligibility for exemption exist.~~, and~~

6. A statement that the issuer has taken appropriate action to authorize the issuance of securities.

~~4. The instrument shall be executed by an authorized officer of the issuer whose signature shall be verified under oath.~~

7~~5~~. The issuer's principal business address~~,~~ and mailing address if different from the principal business address. ~~therefrom, must be shown.~~

6~~8~~. Below the verification of signature, the following form for acknowledgment by the Commission ~~shall be provided~~:

"Receipt of the foregoing Notice of Intention to Sell Securities is acknowledged as of the date indicated. The Commission enters no objection to the offering described therein, and such offering may be commenced _____, 20 ~~19~~____.

ARIZONA CORPORATION COMMISSION

Securities Division

_____"

E~~D~~. Filing of notice, ~~and~~ exhibits, and fee:

1. The issuer shall file 2 originally executed copies of the verified statement, ~~instrument is to be filed in duplicate (~~except that only 1 ~~one~~ copy of the financial statement is required if such statement is attached to, rather than included in, the instrument.~~)~~ The Commission shall acknowledge 1 ~~one~~ copy of the verified statement and return it ~~which shall be acknowledged and returned~~ to the issuer as evidence of filing.
2. The issuer shall file 1 ~~One~~ copy of any subscription form or written material describing, or to be used in connection with, the offering ~~must be filed with the notice~~.
3. The issuer shall file a nonrefundable fee as prescribed by A.R.S. § 44-1861(G).

F~~E~~. ~~Exemptions subject to denial and revocation:~~ The Commission may ~~in its discretion at any time~~ deny or revoke this ~~the~~ exemption ~~herein provided as~~ to any issuer for the reasons listed in A.R.S. §§ 44-1921(1) through (6). ~~or issuers.~~ The Securities Division shall notify the issuer ~~In the event~~ of such denial or revocation ~~the issuer or issuers affected thereby shall be notified of such action by the Director of Securities Division of the Commission~~. Such notice shall be given by certified ~~registered~~ mail.

~~Address all communications to~~

~~Arizona Corporation Commission~~

~~Securities Division~~

~~1200 West Washington Street~~

~~Phoenix, Arizona 85007~~

G~~F~~. This exemption shall be effective for 1 ~~one~~ year from the date the Director acknowledges the Notice of Intention to Sell Securities ~~is acknowledged by the Director of Securities~~.

R14-4-127. Guidelines for Securities Filings under ~~pursuant to~~ A.R.S. § 44-1846

A. Petition for exemption. The issuer shall file a ~~A~~ petition for exemption from registration under ~~pursuant to~~ A.R.S. § 44-1846, which ~~shall be filed in writing by the proposed issuer and~~ shall contain specific facts demonstrating why registration is not essential to the public interest or the protection of the investors. The petition shall indicate and explain in detail which 1 ~~one~~ or more of the following reasons are relied upon for the exemption.

1. The special characteristics of the securities or transactions.
2. The limited character and duration of the offering.
3. The special characteristics or limited number of offerees or investors.

B. Offers, sales, exchanges, or distributions. No offer, sale, exchange, or distribution of the securities shall ~~may~~ be made under ~~pursuant to~~ A.R.S. § 44-1846 until the Commission has entered a written order granting the ~~said~~ exemption. ~~has been entered by the Commission.~~

C~~B~~. Disclosure document. The issuer shall file a ~~A~~ disclosure document ~~must be filed~~ with the petition for exemption in a form complying with the terms of this Section ~~rule~~. The disclosure document shall contain all material facts relating to the proposed issue ~~and shall not omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading,~~ including but not limited to ~~without limitation~~ the investment objectives, a description of the type of person who could benefit from the investment, the applicable suitability standards ~~to be applied as required~~ under subsection (E~~D~~), the legend required under subsection (H~~G~~), and the information required for a prospectus under ~~pursuant to~~ A.R.S. § 44-1894(A)(1)~~, paragraphs (1)~~ through (A)(5), (A)(7), and (A)(8). The issuer shall deliver and all offerees shall receive the

~~The~~ disclosure document ~~shall be delivered to all offerees and must be received by a purchaser~~ at least 72 hours prior to the sale of any securities. ~~pursuant to an order of exemption issued under A.R.S. § 44-1846.~~

D~~C~~. Financial statement. The disclosure document shall include the financial statements ~~as~~ required under ~~by~~ R14-4-123. ~~must be included in the disclosure document and all terms of R14-4-123 apply to financial statements under this rule except that such financial statements need not be certified. All financial statements must be prepared in accordance with generally accepted accounting principles.~~

E~~D~~. Investor suitability standards. Petitions ~~for exemption orders~~ under this Section ~~rule~~ shall include ~~prepared~~ minimum investor suitability standards for ~~concerning~~ the persons to whom the securities will be offered. The standards may consist of 1 ~~one~~ or more of the following criteria: minimum net worth, minimum income, and income tax bracket. Standards may be stated in the alternative. The Commission will review the ~~these~~ standards and may approve or modify the standards based on ~~them. The review will be based on the existence of~~ such factors as, without limitation, liquidity, risk, transferability, specific tax shelter orientation of the investment, leverage, compensation of promoter, cash flow, conflict of interest, unproven nature of the product or mineral or oil reserves, lack of business history, management experience, and financial stability.

F~~E~~. Final confidential report of the offering. The issuer shall make a ~~A~~ final confidential report to the Commission ~~must be made~~ within 30 calendar days after the conclusion of the offering. The final report shall be verified under oath by a company officer and shall include ~~which includes~~ the following information:

1. The names ~~Names~~ and addresses of purchasers, the number of shares purchased, the date and amount paid.~~;~~
2. The occupations ~~Occupations~~ of the purchasers.;
3. An affidavit by the issuer that the purchasers have affirmed in writing that they meet the suitability standards set forth in the Order of Exemption.

~~The final report will be in the nature of investigative material received by the Securities Division for purposes of ascertaining adherence to the suitability requirement.~~

G~~F~~. Sales completion. Sales made under Orders of Exemption under ~~pursuant to~~ A.R.S. § 44-1846 and this Section shall ~~rule must~~ be completed within 1 ~~on or before one~~ year from the Commission's grant of the ~~date~~ exemption. ~~is granted~~. In the event sales are not completed, the issuer shall submit a new petition ~~application must be submitted for approval~~, which shall be treated as ~~if it were~~ an original filing.

H~~G~~. Legend on disclosure document. The ~~There shall be set forth on the~~ outside front cover page of every disclosure document used in connection with the offer or sale of securities under ~~pursuant to~~ A.R.S. § 44-1846 shall contain a prominent legend in plain and concise language stating that the securities are exempt from registration under A.R.S. § 44-1846, but that such exemption is not a finding by the Commission that the disclosure document is true or accurate or that the Commission has passed upon the merits or approved the securities.~~, printed in capital letters in bold-face Roman type at least as large as a ten-point modern type and at least two points leaded the following statement: THESE SECURITIES HAVE BEEN EXEMPTED FROM REGISTRATION PURSUANT TO A.R.S. § 44-1846 BUT THE FACT OF THE GRANTING OF SUCH EXEMPTION IS NOT TO BE DEEMED A FINDING BY THE ARIZONA CORPORATION COMMISSION THAT THIS DISCLOSURE DOCUMENT IS TRUE OR ACCURATE, NOR DOES SUCH GRANT OR EXEMPTION MEAN THAT THE COMMISSION HAS PASSED UPON THE MERITS OF OR OTHERWISE APPROVED THE SECURITIES DESCRIBED THEREIN.~~

I~~H~~. Promotional securities and promoters' ~~promoters~~ equity. The provisions of ~~rules~~ R14-4-105 and R14-4-107 shall ~~of the Arizona Compilation of Administrative Rules and Regulations will~~ be applied to ~~exemptions under~~ this Section when ~~rule where in the opinion of the Commission~~ the imposition of such restrictions is necessary because of the speculative nature of the offerings, as defined in R14-4-118(C). ~~The Commission may approve filings under A.R.S. § 44-1846 where promotional securities exceed 15% of the securities to be outstanding at the completion of the proposed offering in exceptional circumstances and upon good cause shown. The Commission may in its discretion in exceptional circumstances only, approve applications under this rule where promoters equity is less than the percentages in R14-4-107.~~

J~~I~~. Prohibition against advertising and sales commission. The issuer shall not advertise in connection with ~~There shall be no public advertising by radio, television, newspaper, or printed literature for~~ any offering made under this Section ~~rule~~. The issuer shall not pay, directly or indirectly, any ~~There shall be no~~ remuneration for sales under this Section, other than transfer agent's fees, ~~paid directly or indirectly~~ to any salesman, underwriter, officer, director, or employee of the issuer ~~entity making the filing~~ or to any other person. ~~for sales under this rule.~~

K~~J~~. Limited number of purchasers. Under ~~Offerings under~~ this Section ~~rule~~, issuers may make sales to no more than ~~will be limited to~~ 35 purchasers. ~~except in highly unusual circumstances where the number of purchasers cannot in any event exceed 50, if in the opinion of the Commission the circumstances justify up to 50 purchasers. The number of offerees is not limited so long as each offeree is provided with a disclosure document as the exclusive written sales information.~~

L~~K~~. Integration with other offerings. The Commission shall grant exemptions ~~Exemptions~~ under this Section ~~rule will be granted~~ only once in a ~~six~~ 6-month period to ~~for~~ any corporation, limited liability company, subsidiary, affiliate, or partnership ~~using the rule~~. An issuer shall not use this exemption if an offering was made ~~Offerings made~~ under this Section ~~rule~~ by entities controlled by, controlling, or under common control with the issuer ~~entity seeking the exemption~~ within ~~a~~ the previous 6 months ~~six-month period prior to the filing of the exemption will preclude its use. Offerings under this rule will be prohibited where the maximum dollar amount allowed under the statute is exceeded by integration with other offerings within the prior six months under R14-4-101 and R14-4-102 and registration by description or qualification where~~ An issuer may not use this exemption if the securities sold under this Section ~~rule~~ are part of the same program of financing as securities sold under another exemption or a registered offering by virtue of identity of the use of the proceeds, similarity in the method of offering, identity of purchasers, and similarity of security offered.

M~~L~~. Impound account. The Commission may impound the proceeds ~~Proceeds~~ of offerings under this Section ~~rule may be impounded by order of the Commission~~ under the same guidelines and conditions set forth in A.R.S. § 44-1878 and may release the proceeds ~~be released~~ from impound back to investors after notice and opportunity for hearing is afforded to the issuer ~~entity which was granted the exemption~~.

N~~M~~. Revocation, suspension, or denial of exemption. The Commission may issue an ~~An~~ order denying a petition for exemption under A.R.S. § 44-1846 and this Section ~~rule~~, or suspending or revoking an exemption previously issued by the Commission under ~~pursuant to~~ A.R.S. § 44-1846 and this Section ~~rule, may be issued~~ after notice and opportunity for hearing in accordance with A.R.S. § 44-1972, for any grounds set forth in A.R.S. § 44-1921 or for any violation of the Securities Act of Arizona or the rules, regulations, or orders of the Commission issued or promulgated thereunder. ~~Failure to request a hearing within ten days of receipt of a notice and opportunity for hearing will result in the issuance of an order denying or suspending the exemption. The temporary suspension of an exemption previously granted will become final within ten days of service of petitioner unless a petition for a hearing to the Commission is filed by the petitioner within that time period. If such a petition is filed, the Commission may after a hearing or notice and opportunity for a hearing enter an order permanently revoking the exemption if it finds that any of the grounds for denial specified in A.R.S. § 44-1921 exist, or if it finds any violation of the terms of this rule, the Securities Act of Arizona, Title 44, Chapter 12, Arizona Revised Statutes, or the regulations or orders of the Commission promulgated or issued thereunder.~~

R14-4-133. Definition of Partners and Executive Officers

For purposes of the definition of "salesman" contained in A.R.S. § 44-1801~~(19)~~, the following definitions shall apply:

1. "Partner" means ~~Partners" shall mean~~ a general partner or any other partner with the equivalent rights, liabilities, and obligations of a general partner.
2. "Executive officer" means ~~officers" shall mean~~ the president, any vice president in charge of a principal business unit or division, the secretary, the treasurer, the chief executive officer, the chief financial officer, the chief operating officer, or an officer who performs a principal policy-making function for a principal business unit or division.

R14-4-134. Guidelines for Securities Filings under ~~pursuant to~~ A.R.S. § 44-1902

A. Uniform Limited Offering Registration ("ULOR"). An issuer may register securities ~~Securities may be registered~~ by qualification under A.R.S. § 44-1902 in an aggregate amount not exceeding $5 million ~~$1,000,000~~ in any 12-month period as provided in this Section ~~regulation~~.

B. Incorporation by reference of Form U-7.

1. Any reference in this Section ~~Rule~~ to Form U-7 means the Small Corporate Offering Registration Form (Form U-7) as adopted by the North American Securities Administrators Association, Inc., on April 29, 1989, which is incorporated ~~herein~~ by reference and on file with the Secretary of State.
2. Copies of Form U-7 are available from the Commission and from the North American Securities Administrators Association, Inc.
3. References to Form U-7 in this Section ~~Rule~~ do not include any amendments or editions to Form U-7 adopted subsequent to April 29, 1989.

C. Qualification. To be eligible for registration under A.R.S. § 44-1902, the issuer shall comply with the following conditions ~~apply~~:

~~1. The issuer must be a corporation.~~

~~2~~1. The offering shall ~~must~~ not be a blind pool offering ~~(~~as defined in A.R.S. § 44-1801~~)~~.

~~3~~2. The issuer shall ~~must~~ not be an investment company subject to the Investment Company Act of 1940.

~~4~~3. The issuer shall ~~must~~ not be subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934.

~~5~~4. The issuer and offering must meet the qualifications for use set forth in Part II ("Qualifications for Use of Form") in the Instructions For Use of Form U-7 ~~must be met~~.

~~6~~5. If the offering includes debt securities, the application for registration shall ~~must~~ include information that demonstrates the ability of the issuer to service its debt.

D. Disclosure Document. The issuer shall apply ~~Application~~ for registration of securities by qualification under A.R.S. § 44-1902 ~~shall be made by the issuer of the securities~~ by filing with the Commission ~~a disclosure document on~~ Form U-7, with exhibits ~~Exhibits~~ as required by Part V of the Instructions For Use of Form U-7, and such other documents as ~~are~~ required by Part III(A) of the Instructions For Use of Form U-7.

E. Financial Statements. The financial statements included in the application for registration shall be in the form provided in Part IV(K) of the Instructions For Use of Form U-7.

F. Registration Fee. An application for registration ~~under this regulation~~ shall be accompanied by a nonrefundable fee as provided in A.R.S. § 44-1861.

G. Issuer-Dealer Registration. An application ~~Application~~ for registration of securities ~~by qualification under this regulation shall, if accompanied by a duly completed Form BD, a brief description of the proposed method of sale, and other information required by A.R.S. § 44-1941, also be deemed to~~ also shall constitute an application for registration under A.R.S. § 44-1941 of the issuer as a dealer who deals exclusively in securities of which the dealer is the issuer ("issuer-dealer") ~~under A.R.S. § 44-1941~~ if accompanied by a duly completed Form BD, a brief description of the proposed method of sale, and other information required by A.R.S. § 44-1941. No bond shall be required for purposes of such issuer-dealer application. The Commission or the Director may require submission of additional information as to the issuer's ~~applicant's~~ previous history, record, or business experience as deemed necessary to determine whether the issuer ~~applicant~~ should be registered as a dealer, as provided under A.R.S. § 44-1942. Appropriate examinations may be required.

H. Reporting. After registration under A.R.S. § 44-1902, the issuer shall cause the following reports to be delivered to the Commission:

1. Within ~~A report stating the number of purchasers and the dollar amount of securities sold thereto shall be delivered within~~ 10 ~~ten~~ business days after every 90-calendar-day period following the effective date of the registration and on completion of the offering, a report stating the number of purchasers and the dollar amount of securities sold.
2. Within 10 business days after every 90-calendar-day period following the effective date of the registration and on completion of the offering, ~~A~~ a statement reflecting that the issuer has not made any ~~to the effect that no~~ changes in or amendments to the Form U-7 or sales and advertising materials provided to the Commission, ~~have been made (~~other than any ~~such~~ changes or amendments ~~as shall have been~~ filed with and declared effective or cleared by the Securities Division.~~) shall be delivered within ten days after every 90-day period following the effective date of the registration and on completion of the offering.~~
3. Within 10 business days after every 6-month period following the effective date of the registration and at such time as the proceeds have been completely used, a ~~A~~ report stating in reasonable detail the issuer's use ~~application~~ of the offering proceeds. ~~by the issuer shall be delivered within ten days after every six-month period following the effective date of the registration and at such time as the proceeds have been completely used.~~
4. The Commission may specify the forms necessary to fulfill the reporting requirements stated above in subsections ~~paragraphs (H)~~(1), (2), and (3).
5. As long as any securities sold in the offering are outstanding, the issuer ~~there~~ shall deliver to investors ~~be delivered~~ any reports required by Form U-7 or under the Securities Exchange Act of 1934, ~~to be furnished to investors,~~ unless there are 10 ~~ten~~ or fewer shareholders and all of such shareholders consent in writing to the cessation of such reporting. In addition, the issuer ~~there~~ shall deliver ~~be delivered~~ any other reports, brochures, letters, or such similar documents furnished, through any medium, to investors or such other materials as the Commission may determine.

I. Other Requirements. For each offer of securities, the issuer must deliver to each investor a copy of any literature mandated by the Commission, along with a Form U-7 that has been declared effective by the Commission and any supplements. In addition, the ~~The~~ following Sections ~~rules and regulations~~ shall apply to registration of securities by qualification under A.R.S. § 44-1902:

1. R14-4-103 (advertising and sales literature). The issuer shall not distribute~~, except, however, that all~~ advertising and sales materials prior to receipt of the Commission's notification that the issuer may use the materials. ~~must be cleared by the Division.~~
2. R14-4-105 (promotional securities). For purposes of this Section the first sentence of R14-4-105(C) is revised as follows: securities that are issued to promoters for consideration valued at less than the following percentages of the proposed public offering price, in an amount that represents an ultimate right of participation in excess of 60% of the securities to be outstanding at the completion of the proposed public offering, shall be promotional securities.~~, provided that, unless a lower number is set by the Commission on an individual case basis, "60%" shall be substituted for "15%" in paragraph (A)(2) thereof (pertaining to the amount of promotional securities subject to an escrow).~~
3. R14-4-106 (options, warrants, and rights to purchase).
4. R14-4-107 (promoters equity)~~, provided that the amounts set forth therein may be reduced by the Division at the request of the issuer for good cause shown~~.

5. R14-4-108 (sales commission and expenses). For purposes of this Section R14-4-108(A) is revised as follows: no issuer shall incur a liability that must be paid by the issuer as a selling expense in connection with the offering of greater than 20% of the amount of the offering actually sold to the public., ~~provided that "20%" shall be substituted for "15%" in subsection (A) thereof.~~
6. R14-4-110 (installment sales).
7. R14-4-111 (commissions to officers and directors).
8. R14-4-112 (impoundment of funds) and R14-4-113 (impound dates).
9. R14-4-118 (statement required in prospectus). ~~In addition, the issuer must deliver to each investor a copy of such literature mandated by the Commission, along with a Form U-7 which has been declared effective by the Commission and any supplements thereto for each offer of securities.~~

R14-4-141. Solicitation of Interest Prior to the Filing of the Registration Statement

A. No change.

B. An offer, but not a sale, of a security made by an issuer, or on behalf of an issuer by a dealer registered under Article 9 of the Securities Act, for the sole purpose of soliciting an indication of interest in receiving a prospectus, or its equivalent, for such security is exempt from A.R.S. § 44-1841, and the issuer and its employees are exempt from A.R.S. § 44-1842, if all of the following conditions are satisfied:

1. The issuer is, or will be, a business entity organized under the laws of 1 of the states or possessions of the United States or 1 of the provinces or territories of Canada or 1 of the states of Mexico, and is not conducting or intending to conduct a blind pool offering as defined in A.R.S. § 44-1801~~(1)~~.
2. The issuer intends to register the security in Arizona prior to sale or the securities will be sold under ~~pursuant to~~ a valid exemption in Arizona.
3. Ten business days prior to the initial solicitation of interest under this Section, the issuer files with the Commission a Solicitation of Interest Form along with any other items to be used, directly or indirectly, to conduct solicitations of interest, including, but not limited to, the script of any broadcast to be made and a copy of any notice or advertisement to be published, and a nonrefundable fee as prescribed by A.R.S. § 44-1861(G).
4. Five business days prior to usage, the issuer files with the Commission any material amendments to the foregoing items or additional items to be used to conduct solicitations of interest, except for items provided to a particular offeree pursuant to a request by that offeree.
5. The issuer does not use any Solicitation of Interest Form, script, advertisement or other item to solicit indications of interest, which the Securities Division has notified the issuer not to distribute.
6. During the solicitation of interest period, the issuer, or the dealer on behalf of the issuer, does not solicit or accept money or a commitment to purchase securities.
7. Any published notice, published advertisement or script for broadcast must contain at least the identity of the chief executive officer of the issuer, a brief general description of the issuer's business and products, and the 1st paragraph of the legend required in the Solicitation of Interest Form under ~~pursuant to~~ subsection (J)(2)(g).
8. All communications with prospective investors made in reliance on this Section must cease after a registration statement is filed in Arizona.

C. No change.
D. No change.
E. No change.
F. No change.
G. No change.
H. No change.
I. No change.
J. No change.

R14-4-144. Suitability Standards Pursuant to A.R.S. § 44-1845

A. Any issuer applying for registration under Article 7 of Chapter 12, Title 44, Arizona Revised Statutes, and engaging in a transaction of a type specified in A.R.S. § 44-1845(B)(1) may apply for a special registration. Pursuant to A.R.S. § 44-1845(C), the special registration will impose the suitability standards of subsections (B) or (C) on the transaction in lieu of the conditions and standards prescribed under A.R.S. §§ 44-1876, 44-1877, 44-1878, 44-1921(1), (3), and (4), and the rules under those Sections, except when the sale of securities works or would tend to work a fraud or deceit upon the investors.

B. No change.
C. No change.
D. No change.
E. No change.
F. No change.
G. No change.

H. No change.

I. No change.

NOTICE OF FINAL RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 6. CORPORATION COMMISSION - INVESTMENT MANAGEMENT

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R14-6-101	Repeal
R14-6-101	New Section
R14-6-102	Repeal
R14-6-102	New Section
R14-6-103	Repeal
R14-6-103	New Section
R14-6-104	Repeal
R14-6-104	New Section
R14-6-106	New Section
R14-6-201	Repeal
R14-6-201	New Section
R14-6-202	Repeal
R14-6-202	New Section
R14-6-203	Repeal
R14-6-203	New Section
R14-6-205	Repeal
R14-6-205	New Section
R14-6-206	Repeal
R14-6-206	New Section
R14-6-207	Repeal
R14-6-207	New Section
R14-6-208	Repeal
R14-6-208	New Section
R14-6-209	Repeal
R14-6-209	New Section
R14-6-210	New Section
R14-6-211	New Section
R14-6-212	New Section

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

Authorizing statute: A.R.S. § 44-3131

Implementing statutes: A.R.S. §§ 44-1801, 44-3101, 44-3132, 44-3133, 44-3153, 44-3156, 44-3201, 44-3212, 44-3213, 44-3241, 44-3292, and 44-3296

Constitutional authority: Arizona Constitution Article XV §§ 4, 6, and 13

3. The effective dates of the rules:

January 17, 2001

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

Notice of Rulemaking Docket Opening: 4 A.A.R. 1290, June 5, 1998

Notice of Rulemaking Docket Opening: 5 A.A.R. 623, February 26, 1999

Notice of Proposed Rulemaking: 5 A.A.R. 1204, April 30, 1999

Notice of Termination of Rulemaking regarding A.A.C. R14-6-204: 5 A.A.R. 2378, July 23, 1999

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

Name: Cheryl T. Farson
General Counsel

Address: Arizona Corporation Commission
Securities Division
1300 West Washington, Third Floor
Phoenix, AZ 85007-2996

Phone: (602) 542-4242

Fax: (602) 594-7470

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

The Arizona Corporation Commission (the "Commission") repeals and replaces Sections R14-6-101 through R14-6-104 and R14-6-201 through R14-6-209 and adds new Sections R14-6-106 and R14-6-210 through R14-6-212 (collectively the "IM Rules") in order to: (i) correct technical errors within the Sections; (ii) reflect amendments to the United States Securities and Exchange Commission rules regarding the regulation of investment advisers and investment adviser representatives; (iii) provide for the distribution of information regarding products and services on the Internet; (iv) clarify the statutory definition of investment adviser representative; (v) prescribe parameters to the term "solicit" as used in the Arizona Investment Management Act adopted in April 1994 (the "IM Act"); and (vi) clarify filing requirements for licensure and notice filings. A brief description of the Sections covered by this rulemaking follows:

R14-6-101. Definitions: defines various terms used through the Sections.

R14-6-102. Scope of Provisions: states the legal authority for the Sections, provides for the waiver of strict adherence to a provision, and provides that the Arizona Corporation Commission's rules of Practice and Procedure apply when not in conflict with the proposed Sections.

R14-6-103. Severability: establishes the severability of the Sections and the provisions thereof in case any Section or subsection is deemed to be invalid.

R14-6-104. Enforcement of the Arizona Investment Management Act: provides that the Sections relating to enforcement matters are Sections A.A.C. R14-4-301 through R14-4-308.

R14-6-106. General Dissemination of Information on the Internet: establishes the circumstances under which investment advisers and investment adviser representatives may distribute information regarding products and services on the Internet prior to licensure in Arizona.

R14-6-201. Books and Records of Investment Advisers: requires investment advisers to comply with the provisions of the SEC's books and records rule; also requires the maintenance of certain additional records in separate files.

R14-6-202. Supervision: provides a safe harbor for investment advisers regarding their supervisory responsibilities by prescribing procedures for investment advisers to follow.

R14-6-203. Dishonest and Unethical Practices: provides guidance regarding which actions by investment advisers and investment adviser representatives will be construed to fall within the term "dishonest or unethical" for purposes of A.R.S. § 44-3201(A)(13).

R14-6-205. Information to be Furnished to Clients ("Brochure Rule"): prescribes information that must be furnished to clients and the timing and method of such disclosure.

R14-6-206. Custody of Client Funds or Securities by Investment Advisers: provides that it is a fraudulent practice under the IM Act for an investment adviser to fail to comply with the procedures prescribed in the Section when maintaining custody of a client's funds or securities.

R14-6-207. Suitability of Investment Advisory Services: provides that it is a fraudulent practice under the IM Act for an investment adviser to fail to provide suitable investment advice based on a reasonable inquiry of the client's financial situation, investment experience, and investment objectives.

R14-6-208. Advertisements by Investment Advisers or Investment Adviser Representatives: provides that it is a fraudulent practice under the IM Act for an investment adviser or investment adviser representative to fail to comply with the limitations on advertising and the requirements prescribed in the Section.

R14-6-209. Financial and Disciplinary Information that Investment Advisers Shall Disclose to Clients: provides that it is a fraudulent practice for an investment adviser to fail to disclose to any client or prospective client all material facts with respect to (1) a financial condition that is reasonably likely to impair the adviser's ability to meet contractual commitments to clients where the adviser has discretionary authority, custody, or requires prepayments of fees, (2) a legal or disciplinary event that is material to the evaluation of the adviser's integrity or ability to meet contractual commitments to clients, or (3) a failure to comply with an arbitration award.

R14-6-210. Licensure of Investment Adviser Representatives: provides the circumstances under which investment adviser representatives who are employed by federally registered investment advisers must be licensed in Arizona. Also provides that a person employing investment adviser representatives who solicit on behalf of another investment adviser must license as an investment adviser.

R14-6-211. Solicitation: defines the activities that do not constitute solicitation for purposes of A.R.S. § 44-3101(3)(d).

R14-6-212. Filing Requirements: enumerates the specific filing requirements for licensure, notice filings, and renewal of licensure and notice filings.

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

Not applicable

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

The economic, small business, and consumer impact statement for the IM Rules analyzes the costs, savings, and benefits that accrue to the Commission, the office of the attorney general, the regulated public, and the general public. With the adoption of the proposed rules, the impact on established Commission procedures, Commission staff time, and other administrative costs is minimal. The estimated additional cost to the office of the attorney general is minimal. The benefits provided by the IM Rules are nonquantifiable. The IM Rules should benefit the Commission's relations with the regulated public because of increased uniformity with federal and other state laws, the addition of a provision for the distribution of information regarding products and services on the Internet, the clarification of the statutory definition of investment adviser representative, the inclusion of parameters to the term "solicit" as used in the Arizona Investment Management Act adopted in April 1994 (the "IM Act"), and the clarification of filing requirements for licensure and notice filings. The public will benefit from the continuation of the licensing of, and imposition of standards on, persons providing financial services and the continued exclusion of nonqualified persons from the industry. The Commission anticipates that the proposed rulemaking may decrease and will not increase monitoring, record keeping, or reporting burdens on businesses or persons. The costs of implementation or enforcement are not increased or are only marginally increased and such increase does not equal or exceed the reduction in burdens.

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

To comply with format rules of the secretary of state, the Division has reformatted the capitalization of Section headings. In response to written comments, the Division has proposed changes to the text of several Sections, which are not substantially different from the proposed rules. In addition, the Division has corrected typographical errors. These changes are set forth below and have been incorporated into the IM Rules attached to this Notice.

14-6-101(B)(5): "Form ADV" means the Uniform Application for Investment Adviser Registration, 17 CFR 279.1, as required by A.R.S. § 44-3153.

14-6-101(B)(10): "Investment-related" means pertaining to securities, commodities, banking, insurance, or real estate, including but not limited to acting as or being associated with a broker-dealer, investment company, investment adviser, government securities broker or dealer, municipal securities dealer, bank, savings and loan association, entity, or person required to be registered under the Commodity Exchange Act, or a fiduciary.

14-6-102: The following Sections are adopted by the Commission under the authority granted pursuant to A.R.S. Title 44, Chapter 13. Such Sections shall be generally applicable to the administration of the IM Act~~, but the Commission may at any time abrogate or waive strict adherence to any particular provision when the Commission deems it advisable for the equitable administration of the law~~. When not in conflict with these Sections, the applicable provisions of A.A.C. R14-3-101 through R14-3-113 also shall apply.

14-6-106(A)(1)(b): The investment adviser or investment adviser representative may only communicate with persons in Arizona individually about ~~effecting or attempting to effect transactions in services,~~ rendering investment advice for compensation~~,~~ or solicit or negotiate ~~soliciting or negotiating~~ for the sale of investment advisory services if first compliant with or exempt from licensure or notice filing requirements.

14-6-106(A)(4): The Internet communication does not involve either ~~effecting or attempting to effect transactions in securities,~~ the rendering of investment advice for compensation~~,~~ or individualized solicitation or negotiations for the sale of investment advisory services in Arizona.

14-6-106(B): Compliance with this Section relieves the investment adviser or investment adviser representative of licensure or notice filing requirements only. The investment adviser or investment adviser representative ~~are~~ is subject to Article 9 of the IM Act and related regulations.

14-6-203(A): ~~A. Except as otherwise provided in subsection (B), "dishonest"~~ "Dishonest and unethical practices," with respect to investment advisers and investment adviser representatives subject to ~~under~~ A.R.S. § 44-3201(A)(13), shall include but not be limited to the following:

14-6-203(B): ~~With respect to federal covered advisers, the provisions of this Section only apply to the extent the practice involves fraud or deceit and only to the extent permitted by Section 203A of the investment advisers act of 1940.~~

14-6-203(14): With respect to any client initially retained after July 19, 1996, entering into, extending, modifying, or renewing any investment advisory contract except a contract for impersonal advisory services unless such contract is in writing and discloses all the material terms of the contract including but not limited to the services to be provided, the investment advisory fee or the formula for computing the fee, the amount or the manner of calculation of the amount of the prepaid fee to be returned in the event of contract termination or nonperformance, and ~~that~~ the grant of any discretionary power to the investment adviser.

14-6-205(D): Without charge and to each of its clients, an investment adviser licensed or required to be licensed under the IM Act shall ~~deliver~~ annually deliver, or offer in writing to deliver within 7 business days upon receipt of a written request~~, or offer in writing to deliver~~ the statement required by this Section.

R14-6-206(B): With respect to federal covered advisers, the provisions of this Section only apply to the extent ~~the practice involves fraud or deceit and only to the extent~~ permitted by Section 203A of the Investment Advisers Act of 1940.

R14-6-207(B): With respect to federal covered advisers, the provisions of this Section only apply to the extent ~~the practice involves fraud or deceit and only to the extent~~ permitted by Section 203A of the Investment Advisers Act of 1940.

R14-6-208(D): With respect to federal covered advisers, the provisions of this Section only apply to the extent ~~the practice involves fraud or deceit and only to the extent~~ permitted by Section 203A of the Investment Advisers Act of 1940.

R14-6-209(F): With respect to federal covered advisers, the provisions of this Section only apply to the extent ~~the practice involves fraud or deceit and only to the extent~~ permitted by Section 203A of the Investment Advisers Act of 1940.

R14-6-210(A): The definition of investment adviser representative in A.R.S. § 44-~~1301~~ 3101 includes an individual employed by a federal covered adviser only if the individual has a place of business in Arizona and either:

14-6-210(B)(1): (a) Immediately after entering into the investment advisory contract with the investment adviser has at least ~~$500,000~~ $750,000 under management with the investment adviser, or

(b) The investment adviser reasonably believes, immediately prior to entering into the advisory contract, has a net worth, together with assets held jointly with a spouse, at the time the contract is entered into of more than ~~$1,000,000~~ $1,500,000.

14-6-210(C): A person that employees 1 or more investment adviser representatives who solicit, offer, or negotiate for the sale of or sell investment advisory services on behalf of an investment adviser shall ~~license as an investment adviser~~ comply with A.R.S. § 44-3151 unless each investment adviser representative is also employed by the investment adviser on whose behalf the activity is conducted.

14-6-211: Delete subsection (C).

R14-6-212: Application, Notice Filing, and Renewal ~~Filing~~ Requirements

A. ~~In addition to the items enumerated in A.R.S. § 44-3153(B), a~~An application for licensure as an investment adviser under A.R.S. § 44-3153(B) shall include the following:

1. Form ADV with all information and exhibits required by the form.
2. An audited balance sheet if the investment adviser will have custody of client funds or if the investment adviser requires the payment of advisory fees six months or more in advance and in excess of $500 for each client. The audited balance sheet shall be based on the investment adviser's fiscal year end, shall be prepared in accordance with generally accepted accounting principles, and shall be audited by an independent certified public accountant. The notes to the balance sheet shall state the principles used to prepare the balance sheet, the basis of included securities, and any other explanation required for clarity.
~~1~~3. A notarized affidavit of any officer, director, partner, member, trustee, or manager of the applicant stating:
    a. That a review of the records of the investment adviser has been conducted.
    b. Whether any investment adviser activity has been conducted with residents of Arizona prior to licensure as an investment adviser.
~~2~~4. If the applicant intends to have a branch office in Arizona, the address and name of a contact individual located at such branch.
5. If part II of the Form ADV is not used as a disclosure brochure, the applicant shall submit a copy of the disclosure brochure the applicant gives or will give to clients.
6. The documents and fees required for each investment adviser representative as described in subsection (C).
7. The annual licensure fee required by A.R.S. § 44-3181(A).

B. A notice filing under A.R.S. § 44-3153(D) shall include the following: ~~items enumerated in A.R.S. § 44-3153(D).~~

1. Form ADV, part 1.

2. The documents and fees required for each investment adviser representative as described in subsection (C).

3. The annual notice filing fee required by A.R.S. § 44-3181(A).

C. An application for an investment adviser representative licensure under A.R.S. § 44-3156 shall include the following:

1. A complete Form U-4.

2. Proof of successful completion of required examinations in accordance with A.A.C. R14-6-204.

3. The annual licensure fee required by A.R.S. § 44-3181(A).

~~C~~D. For purposes of A.R.S. § 44-3158(A), a license of an investment adviser or an investment adviser representative shall be renewed upon receipt of the nonrefundable license fee prescribed in A.R.S. § 44-3181.

~~D~~E. For purposes of A.R.S. § 44-3153(E), a notice filing shall be renewed upon receipt of the nonrefundable license fee prescribed in A.R.S. § 44-3181.

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

The agency received six comments letters following the Notice of Proposed Rulemaking from the following organizations: the Investment Counsel Association of America, Inc. ("ICAA"); the Certified Financial Planner Board of Standards ("CFP"); the Institute of Certified Financial Planners ("ICFP"); Benchmark Financial, Ltd. ("BFL"); a BFL follow-up letter; and a further BFL letter to which was attached a copy of the ICFP's comments. Comments addressed the following:

R14-6-106 ("rule 106") provides that the general dissemination of information on the internet by investment advisers and investment adviser representatives shall not be deemed transacting business in Arizona based solely on that activity if the conditions contained in rule 106 are observed. The ICFP recommended 3 changes as follows: that the Commission include the term "federal covered adviser" in Rule 106 to clarify that it applies to both state and federally registered investment advisers; that the Commission delete the prohibition from effecting transactions in securities contained in rule 106(A)(1)(b) and 106(A)(4) because an adviser cannot execute a securities transaction under the IMA; and that the Commission include in subsection (A)(4) the phrase "unless the investment adviser or investment adviser representative is compliant with or exempt from licensure or notice filing requirements" so that investment advisers are not precluded from relying on the de minimus exemption.

Regarding the ICFP's first recommendation, the Commission made no change because the use of the terms "investment advisers" and "investment adviser representatives" to refer to all persons that fall within the statutory definition, whether federally registered or state licensed, is consistent with the use throughout the IM Act and IM Rules.

Regarding ICFP's second recommendation, the Commission revised rule 106 in accordance with the recommendation.

Regarding ICFP's third recommendation, the Commission made no change because rule 106 does not precluded a person from relying on the de minimus exemption.

R14-6-201 identifies the books and record keeping requirements. ICAA recommended that the Commission use the model language of the North American Securities Administrators Association ("NASAA") because the model language was less ambiguous. The Commission did not agree and made no change.

R14-6-203 ("rule 203") enumerates practices that are dishonest and unethical under A.R.S. § 44-3201(A)(13), which provides for the denial, revocation, or suspension of the license of an investment adviser or investment adviser representative.

The ICAA recommended that investment adviser representatives of federal covered advisers be precluded from the application of rule 203. The Commission deleted subsection (B) from rule 203. The Commission did not preclude from the scope of the rule investment adviser representatives of federally registered investment advisers because the Securities and Exchange Commission ("SEC") does not register or regulate investment adviser representatives, allocating the regulation of investment adviser representatives to the states in which the representatives do business. The Investment Advisers Act of 1940, section 203A(b)(1)(A), explicitly states that "a State may license, register or otherwise qualify any investment adviser representative who has a place of business located within that State." All investment adviser representatives who are licensed in Arizona are and should be subject to statutory and rule provisions under which those licenses may be denied, suspended, or revoked.

R14-6-204 ("rule 204") prescribes examination requirements for individual investment advisers and investment adviser representatives for licensure in Arizona. The ICFP and the CFP supported the adoption by Arizona of a new series 65 examination being prepared, but not yet finalized at the time of the Notice of Proposed Rulemaking, by NASAA. On July 23, 1999, the Commission published a Notice of Termination of Rulemaking regarding rule 204 and initiated a separate rulemaking package.

R14-6-206 ("rule 206"), R14-6-207 ("rule 207"), R14-6-208 ("rule 208"), and R14-6-209 ("rule 209") enumerate activities that constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4), which states it is a fraudulent practice and unlawful to engage in any transaction, practice, or course of business that operates or would operate as a fraud or deceit.

The ICAA recommended that federally registered investment advisers and their investment adviser representatives be excluded from the application of rules 206 through 209. The Commission did not exclude investment adviser representatives of federally registered investment advisers from rules 206 through 209 because the SEC has allocated regulation of investment adviser representative to states.

The Commission did not exclude federally registered investment advisers from the rules because each proposed rule contains a provision that limits the application of the rule to the extent permitted by section 203A of the Investment Advisers Act of 1940. The Commission did simplify the provision, which is contained in subsections (B) of rules 206 and 207, subsection (D) of rule 208, and subsection (F) in rule 209.

The ICFP requested that the Commission include a safe harbor in rule 206 that would allow an investment adviser to accept third-party checks and endorsed stock certificates to forward to other persons as a service to its clients without being deemed to have custody of the checks and stock certificates. Rule 206 is modeled after federal rule 206(4)-2 promulgated under the Investment Advisers Act of 1940. The Commission understands that ICFP also has requested that the SEC include such a safe harbor in federal rule 206(4)-2 and that the SEC has taken the matter under advisement.

Because the Commission is not aware of any situation where interpretations of custody have caused investment advisers problems with regulators, the Commission has elected not to respond to the ICFP request prior to SEC action on the issue.

R14-6-210 ("rule 210") defines investment adviser representative based on the definition contained in federal rule 203A-3 and the NASAA model language. The ICFP and ICAA commented that federal rule 205-3, referenced in federal rule 203A-3, has been amended. The Commission revised rule 210 to reflect that amendment.

R14-6-212 ("rule 212") enumerates the filing requirements for licensure, notice filings, and renewals. ICAA requested that the filing requirements be listed with greater specificity and the Commission revised rule 212 as requested.

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

None

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

17 CFR 275.204.2 (1998) A.A.C. R14-6-101(B)(16)

13. Whether the rule was previously adopted as an emergency rule and, if so, whether the text was changed between adoption as an emergency rule and the adoption of the final rule?

Not applicable

14. The full text of the rule follows:

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 6. CORPORATION COMMISSION - INVESTMENT MANAGEMENT

ARTICLE 1. GENERAL PROVISIONS RELATING TO THE ARIZONA INVESTMENT MANAGEMENT ACT

~~R14-6-101.~~ ~~Definitions~~ Repealed
R14-6-101. Definitions
~~R14-6-102.~~ ~~Scope of Rules~~ Repealed
R14-6-102. Scope of Provisions
~~R14-6-103.~~ ~~Severability~~ Repealed
R14-6-103. Severability
~~R14-6-104.~~ ~~Enforcement of the Arizona Investment Management Act~~ Repealed
R14-6-104. Enforcement of the Arizona Investment Management Act

ARTICLE 2. DUTIES OF INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

ARTICLE 1. GENERAL PROVISIONS RELATING TO THE ARIZONA INVESTMENT MANAGEMENT ACT

~~R14-6-101.~~ ~~Definitions~~ Repealed

~~**A.** The definitions set forth in A.R.S. §§ 44-1801 and 44-3101 shall apply to the rules promulgated under Chapter 13.~~

~~**B.** The following definitions shall apply to all rules promulgated under Chapter 13 unless the context otherwise requires:~~

~~1. "IM Act" means the Arizona Investment Management Act, A.R.S. § 44-3101 *et seq.*~~

~~2. "Advertisement" means, except as set forth in subsections (d) and (e), any notice, circular, letter, or other written, oral, or electronically-generated communication addressed to or reasonably designed by the investment adviser or investment adviser representative to be accessed by more than 1 person, or any notice or other announcement in any publication or by radio or television, which directly or indirectly offers:~~

~~a. Any analysis, report, or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or~~

~~b. Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or~~

~~c. Any other investment advisory service with regard to securities; or~~

~~d. A communication over a computer on-line service including, but not limited to, an electronic bulletin board shall not be deemed to be an advertisement when an investment adviser or an investment adviser representative is either:~~

~~i. Engaged in a discussion regarding securities and does not receive compensation from any person for the discussion; or~~

~~ii. Responds to unsolicited inquiries regarding the provision of investment advisory services.~~

~~e. A communication by 1 or more investment advisers or investment adviser representatives shall not be deemed to be an advertisement when the communication is addressed solely to or is reasonably designed to be accessed solely by other investment advisers or investment adviser representatives.~~

~~3. "Certified public accountant" or "CPA" means an accountant who has been registered or licensed to practice public accounting and is permitted to use the title "certified public accountant" and use the initials "CPA" after the accountant's name.~~

~~4. "Chapter 13" means A.R.S. Title 44, Chapter 13.~~

~~5. "Commodity Exchange Act" means 7 U.S.C. 1 *et seq.* (1988 & Supp. V 1993), which is incorporated by reference, does not contain any later amendments or editions, and is on file in the Office of the Secretary of State. Copies of the Commodity Exchange Act are available from the Securities Division of the Corporation Commission and from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.~~

~~6. "Division" means the Securities Division of the Corporation Commission.~~

~~7. "Fixed fee basis" means an investment advisory fee which at any given time can be precisely established in dollar amount without regard to the investment performance or value of an account and which is not based on the purchase or sale of specific securities.~~
~~8. "Form ADV" means the Uniform Application for Investment Adviser Registration, 17 CFR 279.1 (1994) (Form amended at 59 FR 21657 (1994) and 59 FR 27659 (1994)), which is incorporated by reference, does not contain any later amendments or editions, and is on file in the Office of the Secretary of State. Copies of Form ADV are available from the Division and from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.~~
~~9. "Impersonal advisory services" means investment advisory services provided solely:~~
~~a. By means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts;~~
~~b. Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or~~
~~c. Any combination of the foregoing services.~~
~~10. "NASAA" means the North American Securities Administrators Association, Inc. or any successor organization.~~
~~11. "NASD" means the National Association of Securities Dealers, Inc. or any successor organization.~~
~~12. "Relative" means any relationship by blood, marriage, or adoption, not more remote than 1st cousin.~~
~~13. "Rule 204-2" means United States Securities and Exchange Commission Rule 204-2, 17 CFR 275.204.2 (1994), which is incorporated by reference, does not contain any later amendments or editions, and is on file in the Office of the Secretary of State. Copies of Rule 204-2 are available from the Division and from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.~~
~~14. "Rule 204-3" means United States Securities and Exchange Commission Rule 204-3, 59 FR 21661 (1994) (to be codified at 17 CFR 275.204.3), which is incorporated by reference, does not contain any later amendments or editions, and is on file in the Office of the Secretary of State. Copies of Rule 204-3 are available from the Division and from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.~~
~~15. "SEC" means United States Securities and Exchange Commission.~~
~~16. "Securities Act" means the Securities Act of Arizona, A.R.S. § 44-1801 *et seq*.~~
~~17. "Unincorporated organization" includes a limited liability company for purposes of the definition of "person," as defined in A.R.S. § 44-1801(13).~~

R14-6-101. Definitions

A. The definitions set forth in A.R.S. §§ 44-1801 and 44-3101 shall apply to the rules promulgated under A.R.S. Title 44, Chapter 13.

B. The following definitions shall apply to all rules promulgated under A.R.S. Title 44, Chapter 13, unless the context otherwise requires:

1. "Advertisement" means, except as set forth in subsections (d) and (e), any notice, circular, letter, or other written, oral, or electronically generated communication addressed to or reasonably designed by the investment adviser or investment adviser representative to be accessed by more than 1 person, or any notice or other announcement in any publication or by radio or television, that directly or indirectly offers:
   a. Any analysis, report, or publication that either concerns securities, or is to be used in making any determination as to when to buy or sell any security or which security to buy or sell; or
   b. Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or
   c. Any other investment advisory service with regard to securities.
   d. A communication over a computer on-line service including but not limited to an electronic bulletin board shall not be deemed to be an advertisement when an investment adviser or an investment adviser representative is either:
      i. Engaged in a discussion regarding securities and does not receive compensation from any person for the discussion; or
      ii. Responds to unsolicited inquiries regarding the provision of investment advisory services.
   e. A communication by 1 or more investment advisers or investment adviser representatives shall not be deemed to be an advertisement when the communication is addressed solely to or is reasonably designed to be accessed solely by other investment advisers or investment adviser representatives.
2. "Certified public accountant" or "CPA" means an accountant who has been registered or licensed to practice public accounting and is permitted to use the title "certified public accountant" and to use the initials "CPA" after the accountant's name.
3. "Federal covered adviser" means an investment adviser registered under the Investment Advisers Act of 1940.
4. "Fixed fee basis" means an investment advisory fee that at any given time can be precisely established in a dollar amount without regard to the investment performance or value of an account and that is not based on the purchase or sale of specific securities.

5. "Form ADV" means the Uniform Application for Investment Adviser Registration, 17 CFR 279.1, as required by A.R.S. § 44-3153.
6. "IM Act" means the Arizona Investment Management Act, A.R.S. § 44-3101 *et seq.*
7. "Impersonal advisory services" means investment advisory services provided solely:
   a. By means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts;
   b. Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or
   c. Any combination of the foregoing services.
8. "Internet" means all proprietary or common carrier electronic systems, or similar media.
9. "Internet communication" means the distribution of information on the Internet.
10. "Investment-related" means pertaining to securities, commodities, banking, insurance, or real estate, including but not limited to acting as or being associated with a broker-dealer, investment company, investment adviser, government securities broker or dealer, municipal securities dealer, bank, savings and loan association, entity, or person required to be registered under the Commodity Exchange Act, or a fiduciary.
11. "Involved" means acting or aiding, abetting, causing, counseling, commanding, inducing, conspiring with, or failing reasonably to supervise another in doing an act.
12. "Management person" means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an investment adviser that is a company or to determine the general investment advice given to clients.
13. "NASAA" means the North American Securities Administrators Association, Inc., or any successor organization.
14. "NASD" means the National Association of Securities Dealers, Inc., or any successor or subsidiary organization.
15. "Relative" means any relationship by blood, marriage, or adoption, not more remote than 1st cousin.
16. "Rule 204-2" means United States securities and exchange commission rule 204-2, 17 CFR 275.204-2 (1998), which is incorporated by reference, does not contain any later amendments or editions, and is on file in the office of the secretary of state. Copies of Rule 204-2 are available from the Division and from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.
17. "SEC" means United States Securities and Exchange Commission.
18. "Securities Act" means the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.*
19. "Self-regulatory organization" or "SRO" means any national securities or commodities exchange, registered association, or registered clearing agency.
20. "Unincorporated organization" includes a limited liability company for purposes of the definition of "person," as defined in A.R.S. § 44-1801.
21. "Wrap fee program" means a program under which any client is charged a specified fee or fees not based directly upon transactions in a client's account for investment advisory services, which may include portfolio management or advice concerning the selection of other investment advisers, and execution of client transactions.

~~R14-6-102.~~ ~~Scope of this Article~~ Repealed

~~The following rules are adopted by the Commission under the authority granted pursuant to Chapter 13. All rules shall be generally applicable to the administration of the IM Act but the Commission may at any time abrogate or waive strict adherence to any particular rule in any specific instance where the Commission may deem it advisable for the equitable administration of the law. When not in conflict with these rules, the applicable provisions of A.A.C. R14-3-101 through R14-3-113 also shall apply.~~

R14-6-102. Scope of Provisions

The following Sections are adopted by the Commission under the authority granted pursuant to A.R.S. Title 44, Chapter 13. Such Sections shall be generally applicable to the administration of the IM Act. When not in conflict with these Sections, the applicable provisions of A.A.C. R14-3-101 through R14-3-113 also shall apply.

~~R14-6-103.~~ ~~Severability~~ Repealed

~~The provisions of the rules promulgated under Chapter 13 are severable. If any provision of a rule is held to be invalid, such invalidity shall not affect other provisions which can be given effect without the invalid provision.~~

R14-6-103. Severability

The provisions of the Sections promulgated under A.R.S. Title 44, Chapter 13, are severable. If any provision of a Section is held to be invalid, such invalidity shall not affect other provisions that can be given effect without the invalid provision.

~~R14-6-104.~~ ~~Enforcement of the Arizona Investment Management Act~~ Repealed

~~The rules relating to investigations and examinations conducted pursuant to and orders issued under the IM Act are contained at A.A.C. R14-4-301 through R14-4-308.~~

R14-6-104. Enforcement of the Arizona Investment Management Act

The provisions relating to investigations and examinations conducted pursuant to and orders issued under the IM Act are contained at A.A.C. R14-4-301 through R14-4-308.

R14-6-106. General Dissemination of Information on the Internet

A. Investment advisers and investment adviser representatives who use the Internet to distribute information on products and services directed generally to anyone having access to the Internet shall not be deemed to be transacting business in Arizona for purposes of Article 4 of the IM Act based solely on that activity if the following conditions are observed:

1. The Internet communication includes clear and prominent statements that:
   a. The investment adviser or investment adviser representative may only transact business in Arizona if first compliant with or exempt from licensure or notice filing requirements.
   b. The investment adviser or investment adviser representative may only communicate with persons in Arizona individually about rendering investment advice for compensation or solicit or negotiate for the sale of investment advisory services if first compliant with or exempt from licensure or notice filing requirements.
2. The investment adviser or investment adviser representative complies with the statements contained in the Internet communication under subsection (A)(1).
3. The Internet communication is subject to a mechanism, policy, or procedure reasonably designed to ensure that, prior to any subsequent, direct communication with prospective customers or clients in Arizona, the investment adviser or investment adviser representative is first compliant with or exempt from the licensure or notice filing requirements of the IM Act.
4. The Internet communication does not involve either the rendering of investment advice for compensation or individualized solicitation or negotiations for the sale of investment advisory services in Arizona.
5. In the case of an investment adviser representative:
   a. The affiliation with an investment adviser is prominently disclosed in the Internet communication.
   b. The investment adviser with whom the investment adviser representative is associated first authorizes the Internet communication.
   c. The investment adviser with whom the investment adviser representative is associated retains responsibility for reviewing and approving the content of any Internet communication.
   d. In distributing information through the Internet, the investment adviser representative acts within the scope of the authority granted by the investment adviser.

B. Compliance with this Section relieves the investment adviser or investment adviser representative of licensure or notice filing requirements only. The investment adviser or investment adviser representative is subject to Article 9 of the IM Act and related regulations.

ARTICLE 2. DUTIES OF INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

~~**R14-6-201. Books and Records of Investment Advisers**~~ **Repealed**

~~**A.** Each investment adviser shall make, maintain, and preserve books and records in compliance with Rule 204-2. The investment adviser shall concurrently file with the Commission a copy of any notices or written undertakings required to be filed with the SEC under Rule 204-2.~~

~~**B.** To the extent that the SEC amends Rule 204-2, investment advisers in compliance with Rule 204-2 as amended shall not be deemed to be in violation of this Section and shall not be subject to enforcement action by the Commission for violation of this Section to the extent that the violation results solely from the investment adviser's compliance with the amended Rule 204-2.~~

~~**C.** As of the effective date of this Section, each investment adviser shall make, maintain, and preserve for at least 5 years the following additional books and records:~~

~~1. A file containing each customer complaint received relating to advisory activities conducted by the investment adviser, its investment advisory representatives, or its employees, and all correspondence relating to such complaint;~~
~~2. A file containing all advertisements used by the investment adviser or any investment adviser representative, including any radio or television transcripts and advertisements placed on computer or electronic bulletin boards;~~
~~3. In each client file, all correspondence received or sent by the investment adviser, any investment adviser representative, or any employee, that relates to any client account, securities, or funds.~~

~~**D.** Books and records that are required to be maintained pursuant to subsection (A) shall be available for inspection by the Commission in accordance with the provisions of Rule 204-2. Books and records that are required to be maintained pursuant to subsection (C) shall be readily accessible and may be preserved in accordance with Rule 204-2(g).~~

R14-6-201. Books and Records of Investment Advisers

A. Except as provided in subsection (G), each investment adviser licensed or required to be licensed under the IM Act shall make, maintain, and preserve books and records in accordance with the requirements imposed on federal covered advisers under rule 204-2. The investment adviser shall file with the Commission a copy of any notices or written undertakings required to be filed by federal covered advisers with the SEC under rule 204-2.

B. To the extent that the SEC amends rule 204-2, investment advisers in compliance with the requirements contained in rule 204-2 as amended shall not be deemed to be in violation of this Section and shall not be subject to enforcement action by the Commission for violation of this Section to the extent that the violation results solely from the investment adviser's compliance with the requirements contained in the amended rule 204-2.

C. Except as provided in subsection (G), each investment adviser licensed or required to be licensed under the IM Act shall make, maintain, and preserve for at least 5 years the following additional books and records:

1. A file containing each customer complaint received relating to advisory activities conducted by the investment adviser, its investment advisory representatives, or its employees, and all correspondence relating to such complaint.
2. A file containing all advertisements used by the investment adviser or any investment adviser representative, including any radio or television transcripts and advertisements placed on computer or electronic bulletin boards.
3. In each client file, all correspondence received or sent by the investment adviser, any investment adviser representative, or any employee, that related to any client account, securities, or funds.

D. Books and records that are required to be maintained pursuant to subsection (A) shall be available for inspection by the Commission in accordance with the provisions of rule 204-2. Books and records that are required to be maintained pursuant to subsection (C) shall be readily accessible and may be preserved in accordance with rule 204-2(g). Notwithstanding other record preservation requirements of this Section, the following records or copies shall be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:

1. Records required to be preserved under rule 204-2(a)(3), (a)(7) through (10), (a) (14) through (15), (b), and (c).
2. Records required to be preserved under subsection (C) of this Section.

E. A record made and kept under a provision of subsections (A) or (C) that contains all of the information required under any other provision of subsections (A) or (C) in a readily accessible format need not be maintained in duplicate in order to meet the requirements of the other provision.

F. Any book or other record made, kept, maintained, and preserved in compliance with A.A.C. R14-4-132 that is substantially the same as the book or other record required to be made, kept, maintained, and preserved under this Section shall be deemed to be made, kept, maintained, and preserved in compliance with this Section.

G. Every investment adviser licensed or required to be licensed in Arizona that has its principal place of business in a state other than Arizona shall be exempt from the requirements of this Section, provided the investment adviser is licensed in such other state and is in compliance with that state's recordkeeping requirements.

~~**R14-6-202. Supervision**~~ **Repealed**

~~For purposes of A.R.S. § 44-3201(A)(12), no investment adviser shall be deemed to have failed to reasonably supervise its investment adviser representatives or employees if:~~

~~1. There have been established and maintained written procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any violation by such investment adviser representatives or employees of the IM Act, or any rule adopted thereunder; and~~

~~2. Such investment adviser has reasonably discharged the duties and obligations incumbent upon it by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with.~~

R14-6-202. Supervision

For purposes of A.R.S. § 44-3201(A)(12), no investment adviser shall be deemed to have failed to reasonably supervise its investment adviser representatives or employees if:

1. The investment adviser has established and maintained written procedures, and a system for applying such procedures, that reasonably may be expected to prevent and detect, insofar as practicable, any violation of the IM Act or any rule adopted thereunder by such investment adviser representatives or employees; and
2. Such investment adviser has discharged reasonably the duties and obligations incumbent upon it by reason of such procedures and system without reasonable cause to believe that the investment adviser representatives or employees are not complying with such procedures and system.

~~**R14-6-203. Dishonest and Unethical Practices**~~ **Repealed**

~~"Dishonest and unethical practices", with respect to investment advisers and investment adviser representatives under A.R.S. § 44-3201(A)(13) shall include, but not be limited to, the following:~~

~~1. Refusing to allow or otherwise impeding designees of the Commission from conducting an investigation or examination under the IM Act or any rule adopted thereunder;~~

~~2. Placing an order to purchase or sell a security for the account of a client without authority to do so;~~

3. Placing an order to purchase or sell a security for the account of a client upon instruction of a 3rd party without first obtaining a written 3rd-party trading authorization from the client;
4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without first obtaining written discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of specified securities shall be executed, or both;
5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account;
6. Borrowing money or securities from a client or client's account unless the client is a dealer, an affiliate, or relative of the investment adviser or investment adviser representative, or a financial institution or other entity engaged in the business of loaning funds or securities;
7. Loaning money to a client unless the investment adviser or investment adviser representative is a financial institution or other entity engaged in the business of loaning funds or the client is an affiliate or relative of the investment adviser or investment adviser representative;
8. Misrepresenting to any client, or prospective client, the qualifications of the investment adviser, the investment adviser representative, or an employee, or misrepresenting the nature of the investment advisory services being offered or fees to be charged for such services, or omitting to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they were made, not misleading;
9. Providing a report or recommendation to any client prepared by someone other than the investment adviser or investment adviser representative without disclosing that fact. This prohibition does not apply to a situation where the investment adviser or investment adviser representative uses published research reports or statistical analyses to render investment advice or where the investment adviser or investment adviser representative orders such a report in the ordinary course of providing service;
10. Charging a client an investment advisory fee that is unreasonable in light of the type of services to be provided, the experience and expertise of the investment adviser or the investment adviser representative, the sophistication and bargaining power of the client, and whether the investment adviser has disclosed that lower fees for comparable services may be available from other sources;
11. Failing to disclose to a client in writing before entering into or renewing an investment advisory agreement with that client, or before any investment advice is rendered, any material conflict of interest relating to the investment adviser, the investment adviser representative, or an employee which could reasonably be expected to impair the rendering of unbiased and objective advice including, but not limited to:
    a. Compensation arrangements connected with investment advisory services to clients which are in addition to compensation from such clients for those services; and
    b. Charging a client an investment advisory fee for rendering investment advice without disclosing that compensation for executing securities transactions pursuant to such investment advice will be received by the investment adviser, the investment adviser representative, or an employee;
12. Promising or guaranteeing a client that a gain, loss, or other outcome will be achieved as a result of the investment advice;
13. Disclosing the identity, affairs, or investments of a client to any 3rd party unless required by law to do so, or unless consented to by the client;
14. With respect to any client initially retained after the effective date of this rule, entering into, extending, modifying, or renewing any investment advisory contract except a contract for impersonal advisory services unless such contract is in writing and discloses all the material terms of the contract including but not limited to the services to be provided, the investment advisory fee or the formula for computing the fee, the amount or the manner of calculation of the amount of the prepaid fee to be returned in the event of contract termination or non-performance, and of any grant of discretionary power to the investment adviser;
15. With respect to any client initially retained after the effective date of this rule, entering into, extending, modifying, or renewing any investment advisory contract without disclosing, in writing to the client, any affirmative answers to disciplinary questions numbered 11A and 11K in Part I of the Form ADV;
16. Entering into, extending, modifying, or renewing any investment advisory contract which allows the assignment of such contract by the investment adviser without the prior written consent of the client;
17. Committing any act that results in denial, revocation, or suspension of a license or registration relating to securities by an agency of any state, where such denial, revocation or suspension arises out of any scheme, act, practice or course of business that operates or would operate as a fraud or deceit, or arises out of a violation of Article 13 of the Securities Act or the rules promulgated thereunder; and
18. For any investment adviser to, in any manner, request, or require, in any contract, agreement, or otherwise, any condition, stipulation, or provision binding on any person to waive compliance with any provision of the IM Act or the rules thereunder. Any such waiver shall be void.

R14-6-203. Dishonest and Unethical Practices

"Dishonest and unethical practices," with respect to investment advisers and investment adviser representatives subject to A.R.S. § 44-3201(A)(13), shall include but not be limited to the following:

1. Refusing to allow or otherwise impeding the Commission from conducting an investigation or examination under the IM Act or any rule adopted thereunder.
2. Placing an order to purchase or sell a security for the account of a client without authority to do so.
3. Placing an order to purchase or sell a security for the account of a client upon instruction of a 3rd party without first obtaining a written 3rd-party trading authorization from the client.
4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without first obtaining written discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of specified securities shall be executed, or both.
5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account.
6. Borrowing money or securities from a client or client's account unless the client has authorized the borrowing in writing and is a dealer, an affiliate, or relative of the investment adviser or investment adviser representative, or a financial institution or other entity engaged in the business of loaning funds or securities.
7. Loaning money to a client unless the investment adviser or investment adviser representative is a financial institution or other entity engaged in the business of loaning funds or the client is an affiliate or relative of the investment adviser or investment adviser representative.
8. Misrepresenting to any client, or prospective client, the qualifications of the investment adviser, the investment adviser representative, or an employee, or misrepresenting the nature of the investment advisory services being offered or fees to be charged for such services, or omitting to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they were made, not misleading.
9. Providing a report or recommendation to any client prepared by someone other than the investment adviser or investment adviser representative without disclosing that fact. This prohibition does not apply to a situation where the investment adviser or investment adviser representative uses published research reports or statistical analyses to render investment advice or where the investment adviser or investment adviser representative orders such a report in the ordinary course of providing service.
10. Charging a client an investment advisory fee that is unreasonable in light of the type of services to be provided, the experience and expertise of the investment adviser or the investment adviser representative, and the sophistication and bargaining power of the client.
11. Failing to disclose to a client in writing before entering into or renewing an investment advisory agreement with that client, or before any investment advice is rendered, any material conflict of interest relating to the investment adviser, the investment adviser representative, or an employee that could reasonably be expected to impair the rendering of unbiased and objective advice including but not limited to:
    a. Compensation arrangements connected with investment advisory services to clients that are in addition to compensation from such clients for those services; and
    b. Charging a client an investment advisory fee for rendering investment advice without disclosing that compensation for executing securities transactions pursuant to such investment advice will be received by the investment adviser, the investment adviser representative, or an employee.
12. Guaranteeing a client that a gain, loss, or other outcome will be achieved as a result of the investment advice.
13. Disclosing the identity, affairs, or investments of a client to any 3rd party unless required by law to do so or consented to by the client.
14. With respect to any client initially retained after July 19, 1996, entering into, extending, modifying, or renewing any investment advisory contract except a contract for impersonal advisory services unless such contract is in writing and discloses all the material terms of the contract including but not limited to the services to be provided, the investment advisory fee or the formula for computing the fee, the amount or the manner of calculation of the amount of the prepaid fee to be returned in the event of contract termination or nonperformance, and the grant of any discretionary power to the investment adviser.
15. With respect to any client initially retained after July 19, 1996, entering into, extending, modifying, or renewing any investment advisory contract without disclosing, in writing to the client, any affirmative answers to disciplinary questions numbered 11A and 11K in Part I of the Form ADV.
16. Entering into, extending, modifying, or renewing any investment advisory contract that allows the assignment of such contract by the investment adviser without the prior written consent of the client.
17. Committing any act that results in denial, revocation, or suspension by an agency of any state of a license or registration relating to securities, where such denial, revocation, or suspension arises out of any scheme, act, practice, or course of business that operates or would operate as fraud or deceit, or arises out of a violation of Article 13 of the Securities Act or the rules promulgated thereunder.

18. Failing to comply with any arbitration award issued in connection with doing business as an investment adviser or investment adviser representative or as a dealer or salesman as defined in A.R.S. Title 44, Chapter 12.
19. Requesting or requiring any person to waive compliance with any provision of the IM Act or the rules thereunder. Any such waiver shall be void.

~~**R14-6-205. Information to be Furnished to Clients ("Brochure Rule")**~~ **Repealed**

~~**A.** Each investment adviser shall comply with the provisions of Rule 204-3.~~

~~**B.** To the extent that the SEC amends Rule 204-3, investment advisers in compliance with Rule 204-3 as amended shall not be deemed to be in violation of this Section and shall not be subject to enforcement action by the Commission for violation of this Section to the extent that the violation results solely from the investment adviser's compliance with the amended Rule 204-3.~~

R14-6-205. Information to be Furnished to Clients ("Brochure Rule")

A. Each investment adviser licensed or required to be licensed under the IM Act shall furnish each client and prospective client with a written disclosure statement that may be either a copy of Part II of its Form ADV or a written document containing at least the information required by Part II of Form ADV.

B. The information required to be disclosed by subsection (A) shall be disclosed to clients not less than 48 hours prior to entering into any written or oral investment advisory contract, or no later than the time of entering into such contract if the client has the right to terminate the contract without penalty within 5 business days after entering into the contract.

C. An investment adviser need not deliver the statement required by subsection (A) in connection with entering into an investment company contract or a contract for impersonal advisory services. The investment adviser shall, however, offer in writing to deliver the statement within 7 business days upon receipt of a written request.

D. Without charge and to each of its clients, an investment adviser licensed or required to be licensed under the IM Act shall annually deliver, or offer in writing to deliver within 7 business days upon receipt of a written request, the statement required by this Section.

E. If an investment adviser licensed or required to be licensed under the IM Act renders substantially different types of investment advisory services to different clients, any information required by Part II of Form ADV may be omitted from the statement furnished to the client or prospective client if such information is applicable only to a type of investment advisory service or fee that is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

F. Nothing in this Section shall relieve any investment adviser from any obligation pursuant to any provision of the IM Act or the rules and regulations thereunder or other federal or state law to disclose any information to its clients or prospective clients not specifically required by this Section.

G. An investment adviser licensed or required to be licensed under the IM Act that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of, other investment advisers in the programs, shall, in lieu of the written disclosure statement required by subsection (A) and in accordance with the other subsections of this Section, furnish each client and prospective client of the wrap fee program with a written disclosure statement containing at least the information required by Schedule H of Form ADV. Any additional information included in such disclosure shall be limited to information concerning wrap fee programs sponsored by the investment adviser.

H. If the investment adviser is required under subsection (G) to furnish disclosure statements to clients or prospective clients of more than 1 wrap fee program, the investment adviser may omit from the disclosure statement furnished to clients and prospective clients of a wrap fee program or programs any information required by Schedule H that is not applicable to clients or prospective clients of that wrap fee program or programs.

I. An investment adviser need not furnish the written disclosure statement required by subsection (G) to clients and prospective clients of a wrap fee program if another investment adviser is required to furnish and does furnish the written disclosure statement to all clients and prospective clients of the wrap fee program.

~~**R14-6-206. Custody of Client Funds or Securities by Investment Advisers**~~ **Repealed**

~~It shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any investment adviser to take or have custody of any securities or funds of any client unless:~~

~~1. The investment adviser notifies the Commission in writing that the investment adviser has or may have custody of client funds or securities. Such notification may be given on Form ADV;~~
~~2. The securities of each client are segregated, marked to identify the particular client having the beneficial interest therein, and held in safekeeping in some place reasonably free from risk of destruction or other loss;~~
~~3. All client funds are deposited in 1 or more bank or similar accounts containing only clients' funds, such accounts are maintained in the name of the investment adviser as agent or trustee for such clients, and the investment adviser maintains a separate record for each such account showing the name and address of the bank or similar institution where the account is maintained, the dates and amounts of deposits into and withdrawals from the account, and the exact amount of each client's beneficial interest in the account;~~

~~4. Immediately after accepting custody or possession of funds or securities from any client, the investment adviser notifies the client in writing of the place where and the manner in which the funds and securities will be maintained and, subsequently, if and when there is a change in the place where or the manner in which the funds or securities are maintained, the investment adviser gives prompt (but in no event more than 10 business days) written notice thereof to the client;~~

~~5. At least once every 3 months, the investment adviser sends each client an itemized statement showing the client's funds and securities in the investment adviser's custody at the end of such period and all debits, credits, and transactions in the client's account during such period; and~~

~~6. At least once every calendar year, an independent CPA or public accountant verifies all client funds and securities by actual examination at a time chosen by the independent CPA or public accountant without prior notice to the investment adviser. The independent CPA's or public accountant's report stating that such CPA or public accountant has made an examination of such funds and securities, and describing the nature and extent of the examination, shall be filed with the Commission promptly (but in no event more than 30 days) after each such examination.~~

R14-6-206. Custody of Client Funds or Securities by Investment Advisers

A. Except as otherwise provided in subsection (B), it shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any investment adviser to take or have custody of any securities or funds of any client unless:

1. The investment adviser notifies the Commission in writing that the investment adviser has or may have custody of client funds or securities. Such notification may be given on Form ADV.
2. The securities of each client are segregated, marked to identify the particular client having the beneficial interest therein, and held in safekeeping in some place reasonably free from risk of destruction or other loss.
3. All client funds are deposited in 1 or more bank or similar accounts containing only clients' funds, such accounts are maintained in the name of the investment adviser as agent or trustee for such clients, and the investment adviser maintains a separate record for each such account showing the name and address of the bank or similar institution where the account is maintained, the dates and amounts of deposits into and withdrawals from the account, and the exact amount of each client's beneficial interest in the account.
4. Immediately after accepting custody or possession of funds or securities from any client, the investment adviser notifies the client in writing of the place where and the manner in which the funds and securities will be maintained and, subsequently, if and when there is a change in the place where or the manner in which the funds or securities are maintained, the investment adviser gives written notice to the client within 10 business days.
5. At least once every 3 months, the investment adviser sends each client an itemized statement showing the client's funds and securities in the investment adviser's custody at the end of such period and all debits, credits, and transactions in the client's account during such period.
6. At least once every calendar year, an independent CPA or public accountant verifies all client funds and securities by actual examination at a time chosen by the independent CPA or public accountant without prior notice to the investment adviser. The independent CPA's or public accountant's report stating that such CPA or public accountant has made an examination of such funds and securities, and describing the nature and extent of the examination, shall be filed with the Commission within 30 calendar days after the examination.

B. With respect to federal covered advisers, the provisions of this Section only apply to the extent permitted by Section 203A of the Investment Advisers Act of 1940.

~~**R14-6-207. Suitability of Investment Advisory Services**~~ **Repealed**

~~It shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any person providing investment advisory services to provide investment advisory services to any client, other than in connection with impersonal advisory services, unless the person:~~

~~1. Before providing any investment advisory services, and as appropriate thereafter, makes a reasonable inquiry of the client as to the financial situation, investment experience, and investment objectives of the client; and~~

~~2. Reasonably determines that the investment advisory services are suitable for the client based upon the information obtained from the client in accordance with subsection (1) above.~~

R14-6-207. Suitability of Investment Advisory Services

A. Except as otherwise provided in subsection (B), it shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any person to provide investment advisory services to any client, other than in connection with impersonal advisory services, unless the person:

1. Before providing any investment advisory services, and as appropriate thereafter, makes a reasonable inquiry of the client as to the financial situation, investment experience, and investment objectives of the client; and
2. Reasonably determines that the investment advisory services are suitable for the client based upon the information obtained from the client in accordance with subsection (A)(1) above.

B. With respect to federal covered advisers, the provisions of this Section only apply to the extent permitted by Section 203A of the Investment Advisers Act of 1940.

~~**R14-6-208. Advertisements by Investment Advisers or Investment Adviser Representatives**~~ **Repealed**

~~**A.** It shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any investment adviser or investment adviser representative, directly or indirectly, to use any advertisement:~~

~~1. Which refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or investment adviser representative or concerning any advice, analysis, report, or other service rendered by such investment adviser; or~~

~~2. Which refers, directly or indirectly, to past specific recommendations of such investment adviser or investment adviser representative which were or would have been profitable to any person; provided, however, that this shall not prohibit an advertisement which sets out or offers to furnish a list of all recommendations made by such investment adviser or investment adviser representative within the immediately preceding period of not less than 1 year if such advertisement, and such list if it is furnished separately:~~

~~a. States the name of each such security recommended, the date and nature of each such recommendation (for example, whether to buy, sell, or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date; and~~

~~b. Contains the following cautionary legend on the 1st page thereof in print or type as large as the largest print or type used in the body or text thereof: "It should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list;" or~~

~~3. Which represents, directly or indirectly, that any graph, chart, formula, or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making his or her own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use; or~~

~~4. Which contains any statement to the effect that any report, analysis, or other service will be furnished free or without charge, unless such report, analysis or other service actually is or will be furnished entirely free and without any condition or obligation, directly or indirectly; or~~

~~5. Which states that the Commission has approved any advertisement.~~

~~**B.** When requested by the Commission, any advertisement used directly or indirectly in connection with the provision of investment advisory services shall be filed with the Commission at least 10 business days prior to its proposed use.~~

~~**C.** Any advertisement that has been requested by the Commission pursuant to the provisions of subsection (B) but that has not been filed with the Commission shall not be used.~~

R14-6-208. Advertisements by Investment Advisers or Investment Adviser Representatives

A. Except as otherwise provided in subsection (D), it shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any investment adviser or investment adviser representative, directly or indirectly, to use any advertisement:

1. Which refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or investment adviser representative or concerning any advice, analysis, report, or other service rendered by such investment adviser or investment adviser representative.
2. Which refers, directly or indirectly, to past specific recommendations of the investment adviser or investment adviser representative that were or would have been profitable to any person; except that an investment adviser or investment adviser representative may furnish or offer to furnish a list of all recommendations made by the investment adviser or investment adviser representative within the immediately preceding period of not less than 1 year if the investment adviser or investment adviser representative also furnishes:
   a. The name of each security recommended, the date and nature of each recommendation (for example, whether to buy, sell, or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each such security; and
   b. The following legend on the 1st page in prominent print or type: "It should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list."
3. Which represents, directly or indirectly, that any graph, chart, formula, or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use.
4. Which represents, directly or indirectly, that any report, analysis, or other service will be furnished for free or without charge, unless such report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation.
5. Which states that the Commission has approved any advertisement.

B. When requested by the Commission, any advertisement used directly or indirectly in connection with the provision of investment advisory services shall be filed with the Commission at least 10 business days prior to its proposed use.

C. Any advertisement that has been requested by the Commission pursuant to the provisions of subsection (B) but that has not been filed with the Commission shall not be used.

D. With respect to federal covered advisers, the provisions of this Section only apply to the extent permitted by Section 203A of the Investment Advisers Act of 1940.

~~R14-6-209. Financial and Disciplinary Information that Investment Advisers Must Disclose to Clients~~ Repealed

~~**A.** The following definitions shall apply to this Section:~~

~~1. "Investment-related" means pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, investment company, investment adviser, government securities broker or dealer, municipal securities dealer, bank, savings and loan association, entity, or person required to be registered under the Commodity Exchange Act, or fiduciary).~~

~~2. "Involved" means acting or aiding, abetting, causing, counseling, commanding, inducing, conspiring with, or failing reasonably to supervise another in doing an act.~~

~~3. "Management person" means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an investment adviser which is a company or to determine the general investment advice given to clients.~~

~~4. "Self-regulatory Organization" or "SRO" means any national securities or commodities exchange, registered association, or registered clearing agency.~~

~~**B.** It shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any investment adviser to fail to disclose to any client or prospective client all material facts with respect to:~~

~~1. A financial condition of the investment adviser that is reasonably likely to impair the ability of the investment adviser to meet contractual commitments to clients, if the investment adviser has discretionary authority (express or implied) or custody over such client's funds or securities, or requires prepayment of advisory fees of more than $500 from such client, 6 months or more in advance; or~~

~~2. A legal or disciplinary event that is material to an evaluation of the investment adviser's integrity or ability to meet contractual commitments to clients.~~

~~**C.** It shall constitute a rebuttable presumption that the following legal or disciplinary events involving the investment adviser or a management person of the investment adviser (any of the foregoing being referred to hereafter as a "person") that were not resolved in the person's favor or subsequently reversed, suspended, or vacated are material within the meaning of subsection (B)(2) for a period of 10 years from the time of the event. No affirmative or negative presumption of materiality shall be created under subsection (B)(2) for events not specifically set forth in this subsection.~~

~~1. A criminal or civil action in a court of competent jurisdiction in which the person:~~

~~a. Was convicted, pleaded guilty or nolo contendere ("no contest") to a felony or misdemeanor, or is the named subject of a pending criminal proceeding (any of the foregoing referred to hereafter as "action"), and such action involved: an investment-related business; fraud, false statements, or omissions; wrongful taking of property; or bribery, forgery, counterfeiting, or extortion;~~

~~b. Was found to have been involved in a violation of an investment-related statute or rule; or~~

~~c. Was the subject of any order, judgment, or decree permanently or temporarily enjoining the person from, or otherwise limiting the person from, engaging in any investment-related activity.~~

~~2. Administrative proceeding before the Securities and Exchange Commission, the Commission, or any federal regulatory agency or any state agency (any of the foregoing being referred to hereafter as "agency") in which the person:~~

~~a. Was found to have caused an investment-related business to lose its authorization to do business; or~~

~~b. Was found to have been involved in a violation of an investment-related statute or rule, and was the subject of an order by the agency denying, suspending, or revoking the authorization of the person to act in, or barring or suspending the person's association with, an investment-related business; or otherwise significantly limiting the person's investment-related activities.~~

~~3. Self-regulatory Organization ("SRO") proceedings in which the person:~~

~~a. Was found to have caused an investment-related business to lose its authorization to do business; or~~

~~b. Was found to have been involved in a violation of the SRO's rules and was the subject of an order by the SRO barring or suspending the person from membership or from association with other members, or expelling the person from membership; fining the person more than $2,500; or otherwise significantly limiting the person's investment-related activities.~~

~~**D.** The information required to be disclosed by subsection (B) shall be disclosed to clients promptly but in no event later than 30 days after the occurrence of the event requiring disclosure, and to prospective clients not less than 48 hours prior to entering into any written or oral investment advisory contract, or no later than the time of entering into such contract if the client has the right to terminate the contract without penalty within 5 business days after entering into the contract.~~

~~**E.** For purposes of calculating the 10-year period during which events are presumed to be material under subsection (C), the date of the reportable event shall be the date on which the final order, judgment, or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees lapsed.~~

~~**F.** Compliance with subsection (C) shall not relieve any investment adviser from the disclosure obligations of subsection (B); compliance with subsection (B) shall not relieve any investment adviser from any other disclosure requirement under the Act, the rules thereunder, or under any other state or federal law. Note: Investment advisers may disclose this information to clients and prospective clients in their "brochure," the written disclosure statement to clients under R14-6-205, provided, that the delivery of the brochure satisfies the timing of disclosure requirements described in subsection (D).~~

R14-6-209. Financial and Disciplinary Information that Investment Advisers Shall Disclose to Clients

A. Except as otherwise provided in subsection (F), it shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any investment adviser to fail to disclose to any client or prospective client all material facts with respect to:

1. A financial condition of the investment adviser that is reasonably likely to impair the ability of the investment adviser to meet contractual commitments to clients, if the investment adviser has discretionary authority (express or implied) or custody over the client's funds or securities, or requires prepayment of advisory fees of more than $500 from such client, 6 months or more in advance.
2. A legal or disciplinary event that is material to an evaluation of the investment adviser's or an investment adviser representative's integrity or ability to meet contractual commitments to clients.
3. A failure to comply with any arbitration award issued in connection with doing business as an investment adviser or investment adviser representative or as a dealer or salesman as defined in A.R.S. Title 44, Chapter 12.

B. It shall constitute a rebuttable presumption that the following legal or disciplinary events involving the investment adviser, an investment adviser representative, or a management person of the investment adviser (any of the foregoing being referred to hereafter as a "person") that were not resolved in the person's favor or subsequently reversed, suspended, or vacated are material within the meaning of subsection (A)(2) for a period of 10 years from the time of the event. No affirmative or negative presumption of materiality shall be created under subsection (A)(2) for events not specifically set forth in this subsection.

1. A criminal or civil action in a court of competent jurisdiction in which the person:
   a. Was convicted or pleaded guilty or nolo contendere ("no contest") to a felony or misdemeanor, or is the named subject of a pending criminal proceeding (any of the foregoing referred to hereafter as "action"), and such action involved: an investment-related business; fraud, false statements, or omissions; wrongful taking of property; or bribery, forgery, counterfeiting, or extortion;
   b. Was found to have been involved in a violation of an investment-related statute or rule; or
   c. Was the subject of any order, judgment, or decree permanently or temporarily enjoining the person or otherwise limiting the person from engaging in any investment-related activity.
2. An administrative proceeding before the SEC, the Commission, or any federal or state agency (any of the foregoing being referred to hereafter as "agency") in which the person:
   a. Was found to have caused an investment-related business to lose its authorization to do business; or
   b. Was found to have been involved in a violation of an investment-related statute or rule, and was the subject of an order by the agency denying, suspending, or revoking the authorization of the person to act in, or barring or suspending the person's association with, an investment-related business; or otherwise significantly limiting the person's investment-related activities.
3. SRO proceedings in which the person:
   a. Was found to have caused an investment-related business to lose its authorization to do business; or
   b. Was found to have been involved in a violation of the SRO's rules and was the subject of an order by the SRO barring or suspending the person from membership or from association with other members, or expelling the person from membership; fining the person more than $2,500; or otherwise significantly limiting the person's investment-related activities.

C. The information required to be disclosed by subsection (A) shall be disclosed to clients within 30 calendar days after the occurrence of the event requiring disclosure, and to prospective clients not less than 48 hours prior to entering into any written or oral investment advisory contract, or no later than the time of entering into such contract if the client has the right to terminate the contract without penalty within 5 business days after entering into the contract.

D. For purposes of calculating the 10-year period during which events are presumed to be material under subsection (B), the date of the reportable event shall be the date on which the final order, judgment, or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees lapsed.

E. Compliance with subsection (B) shall not relieve any investment adviser from the disclosure obligations of subsection (A); compliance with subsection (A) shall not relieve any investment adviser from any other disclosure requirement under the IM Act, the rules thereunder, or under any other state or federal law. Investment advisers may disclose this information to clients and prospective clients in their "brochure," the written disclosure statement to clients under R14-6-205, provided, that the delivery of the brochure satisfies the timing of disclosure requirements described in subsection (C).

F. With respect to federal covered advisers, the provisions of this Section only apply to the extent permitted by Section 203A of the Investment Advisers Act of 1940.

R14-6-210. Licensure of Investment Adviser Representatives

A. The definition of investment adviser representative in A.R.S. § 44-3101 includes an individual employed by a federal covered adviser only if the individual has a place of business in Arizona and either:
1. Is a supervised person and meets all of the following conditions:
   a. Has more than 5 clients who are natural persons, other than excepted persons.
   b. Has clients more than 10% of whom are natural persons, other than excepted persons.
   c. On a regular basis, solicits, meets with, or otherwise communicates with clients of the investment adviser or provides other than impersonal advisory services.
2. Is not a supervised person.

B. For purposes of this Section:
1. "Excepted person" means a natural person who:
   a. Immediately after entering into the investment advisory contract with the investment adviser has at least $750,000 under management with the investment adviser, or
   b. The investment adviser reasonably believes, immediately prior to entering into the advisory contract, has a net worth, together with assets held jointly with a spouse, at the time the contract is entered into of more than $1,500,000.
2. "Supervised person" means any partner, officer, director, or other person occupying a similar status or performing similar functions, or employees of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.
3. "Place of business" means:
   a. An office at which the investment adviser representative regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients, or
   b. Any other location that is held out to the general public as a location at which the investment adviser representative provides investment advisory services, solicits, meets with, or otherwise communicates with clients.

C. A person that employees 1 or more investment adviser representatives who solicit, offer, or negotiate for the sale of or sell investment advisory services on behalf of an investment adviser shall comply with A.R.S. § 44-3151 unless each investment adviser representative is also employed by the investment adviser on whose behalf the activity is conducted.

R14-6-211. Solicitation

A. An individual shall not be included in the definition of investment adviser representative under A.R.S. § 44-3101(3)(d) if that individual meets both of the following conditions:
1. The individual does not on a regular basis give advice regarding, or recommend the services of, an investment adviser or an investment adviser representative.
2. The individual does not accept or receive directly or indirectly any commission, fee, or other remuneration in connection with a referral to or recommendation of the services of an investment adviser or an investment adviser representative.

B. The term "remuneration" shall be broadly construed, but shall not include the exchange of client referrals between professionals without an exchange of additional compensation.

R14-6-212. Application, Notice Filing, and Renewal Requirements

A. An application for licensure as an investment adviser under A.R.S. § 44-3153(B) shall include the following:
1. Form ADV with all information and exhibits required by the form.
2. An audited balance sheet if the investment adviser will have custody of client funds or if the investment adviser requires the payment of advisory fees six months or more in advance and in excess of $500 for each client. The audited balance sheet shall be based on the investment adviser's fiscal year end, shall be prepared in accordance with generally accepted accounting principles, and shall be audited by an independent certified public accountant. The notes to the balance sheet shall state the principles used to prepare the balance sheet, the basis of included securities, and any other explanation required for clarity.
3. A notarized affidavit of any officer, director, partner, member, trustee, or manager of the applicant stating:
   a. That a review of the records of the investment adviser has been conducted.
   b. Whether any investment adviser activity has been conducted with residents of Arizona prior to licensure as an investment adviser.
4. If the applicant intends to have a branch office in Arizona, the address and name of a contact individual located at such branch.
5. If part II of the Form ADV is not used as a disclosure brochure, the applicant shall submit a copy of the disclosure brochure the applicant gives or will give to clients.
6. The documents and fees required for each investment adviser representative as described in subsection (C).
7. The annual licensure fee required by A.R.S. § 44-3181(A).

B. A notice filing under A.R.S. § 44-3153(D) shall include the following:
1. Form ADV, part 1.

2. The documents and fees required for each investment adviser representative as described in subsection (C).
3. The annual notice filing fee required by A.R.S. § 44-3181(A).

C. An application for an investment adviser representative licensure under A.R.S. § 44-3156 shall include the following:

1. A complete Form U-4.
2. Proof of successful completion of required examinations in accordance with A.A.C. R14-6-204.
3. The annual licensure fee required by A.R.S. § 44-3181(A).

D. For purposes of A.R.S. § 44-3158(A), a license of an investment adviser or an investment adviser representative shall be renewed upon receipt of the nonrefundable license fee prescribed in A.R.S. § 44-3181.

E. For purposes of A.R.S. § 44-3153(E), a notice filing shall be renewed upon receipt of the nonrefundable license fee prescribed in A.R.S. § 44-3181.

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER POLLUTION CONTROL

PREAMBLE

1. Sections Affected — **Rulemaking Action**

Article 6	New Article
R18-9-601	New Section
R18-9-602	New Section
R18-9-603	New Section
Article 7	Amend
R18-9-701	Amend
R18-9-702	Repeal
R18-9-702	New Section
R18-9-703	Repeal
R18-9-703	New Section
R18-9-704	Repeal
R18-9-704	New Section
R18-9-705	Repeal
R18-9-705	New Section
R18-9-706	Repeal
R18-9-706	New Section
R18-9-707	Repeal
R18-9-707	New Section
R18-9-708	New Section
R18-9-709	New Section
R18-9-710	New Section
R18-9-711	New Section
R18-9-712	New Section
R18-9-713	New Section
R18-9-714	New Section
R18-9-715	New Section
R18-9-716	New Section
R18-9-717	New Section
R18-9-718	New Section
R18-9-719	New Section
R18-9-720	New Section

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

Authorizing statute: A.R.S. § 49-203(A)(6)
Implementing statute: A.R.S. § 49-203

3. The effective date of the rules:

January 16, 2001

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

Notice of Rulemaking Docket Opening: 3 A.A.R. 2178, August 15, 1997

Notice of Rulemaking Docket Opening: 5 A.A.R. 2112, July 2, 1999

Notice of Rulemaking Docket Opening: 6 A.A.R. 1674, May 5, 2000

Notice of Proposed Rulemaking: 6 A.A.R. 1614, May 5, 2000

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

Name: Michele Robertson

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

Telephone: (602) 207-4827

Fax: (602) 207-4674

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

In July, 1997 the Department formed a Unified Water Quality Permit Rewrite Steering Committee composed of 22 members representing a cross-section of stakeholder organizations that included private businesses, large and small municipalities, county governments, and other agencies. The Department requested that the committee review existing water permitting processes and develop recommendations for process improvements through the consolidation and streamlining of current requirements.

The Steering Committee first met in August, 1997, and members agreed on a consensus model of decision-making with an option for "grudging consent" and submittal of minority opinions. Because of the complexity of technical issues, the necessity for detailed evaluation of existing processes, and the plan to develop strategies for improvement, the Steering Committee established sub-committees of stakeholders with expertise in specific areas (industrial discharge, wetlands, reclaimed water, mines, and wastewater treatment plants).

All Steering Committee meetings were open to the public and attendees were allowed to participate in the discussions. Participation in the sub-committees was open to anyone expressing an interest in becoming involved. The Steering Committee and sub-committees spent approximately a year evaluating existing Department Water Quality Division permitting procedures. Volunteer sub-committee members spent a tremendous amount of time developing recommendations that would streamline and enhance the effectiveness of the permitting process for both the Department and regulated entities. Sub-committees submitted their recommendations to the Steering Committee for discussion, revision, and approval. The Steering Committee wrote its Final Report (Unified Water Quality Permit Rewrite Project, Final Report of the Steering Committee) and transmitted it to the Department in August 1998. The Final Report provided a basis for Senate Bill 1379, which became law in August 1999.

Senate Bill 1379 provided statutory changes to pave the way for rule revisions. After passage of the bill, the Department reconvened the Steering Committee and the various sub-committees. A particular focus of the subcommittees has been development of numerous general permits to be issued by rule. The work products of the Reuse Subcommittee provide the basis for this rulemaking.

The Department expects these rules to simplify the permitting process for reuse of reclaimed water thereby encouraging its use and conserving potable resources for human consumption and domestic purposes. The current reuse permitting program is unwieldy, duplicative, and costly to the permittee. The end users are required to monitor and report to the Department and assure the quality of the reclaimed water. This rulemaking places the burden of assuring reclaimed water quality where it belongs – at the place where wastewater is treated. Monitoring and reporting requirements are conditions of the individual Aquifer Protection Permit for the sewage treatment facility or alternative source. During the Aquifer Protection Permit engineering review, the sewage treatment facility may be classified regarding the quality of reclaimed water produced. End users will be able to apply for a general permit that relies on site controls in the application and use of reclaimed water to ensure protection of human health and the environment. General permits match site and water management requirements with the particular quality of reclaimed water. Although individual permits are available under this rulemaking, it is believed that most end users of reclaimed water will opt for the general permit approach if they can meet the conditions of the general permit.

A companion rule adopting Reclaimed Water Quality Standards establishes five classes of reclaimed water expressed as a combination of minimum treatment requirements and a limited set of numeric reclaimed water quality criteria. Class A reclaimed water is required for reuse applications where there is a relatively high risk of human exposure to potential pathogens in the reclaimed water. For uses where the potential for human exposure is lower, Classes B and C are acceptable.

The proposed Reclaimed Water Quality Standards rulemaking includes two "+" categories of reclaimed water, Class A+ and Class B+. Both categories require treatment to produce reclaimed water with a total nitrogen concentration of less than 10 mg/l. These categories of reclaimed water will minimize concerns over nitrate contamination of groundwater beneath sites where reclaimed water is applied. As a result, the general permits for the direct reuse of Class A+ and Class B+ reclaimed water do not include nitrogen management as a condition of the reuse.

The Department recognizes that reclaimed water may change hands more than once between the place of treatment and the final end user. Therefore, this rulemaking provides permitting options for reclaimed water blending facilities and reclaimed water agents. A reclaimed water blending facility receives reclaimed water of a certain class and improves the quality by blending the reclaimed water with water from one or more additional sources. The improved quality of the resultant reclaimed water allows more or different reuse applications than the original quality would have allowed. The rule also provides an option for a person or entity to act as a reclaimed water agent for multiple end users. The reclaimed water agent operates under a general or individual reclaimed water permit and allows end users to receive reclaimed water for appropriate reuse applications without having to notify the Department to obtain permit coverage.

Type 1 General Permits do not require any notice to the Department. Type 2 and Type 3 General Permits require an applicant to file a notice with the Department, but only Type 3 General Permits require an applicant to receive a written verification from the Department before operating. Type 2 and Type 3 General Permits and individual permits are valid for five years. A Type 1 General Permit does not expire if the general permit conditions are continually met.

If a person does not meet the requirements for a Reclaimed Water Individual Permit, a Reclaimed Water General Permit may be issued. This rulemaking also includes a Reclaimed Water Individual Permit for the reuse of industrial wastewater that contains a component of reclaimed water from a sewage treatment facility. This permit also applies when industrial wastewater is treated and used in the production and processing of any crop or substance that may be used as human or animal food.

The rulemaking continues the requirement that an individual permit is needed for the reuse of industrial wastewater that contains a component of sewage or is used in processing any crop or substance that may be used as human or animal food. The Department does not intend this requirement to apply to industrial wastewater that is recycled or used in industrial processes. Rather, this permit applies where the industrial wastewater is provided for a reuse application beyond the normal industrial process. Furthermore, the rulemaking makes clear that use of reclaimed water in an industrial workplace is not governed by these rules if Occupational Safety and Health Administration or Mine Safety and Health Administration requirements apply.

The current reuse rules provide an individual permit for the use of gray water. However, the Department has never issued a permit for gray water use under the rules. A year-long study was undertaken in Tucson to assess the risks involved in the residential reuse of gray water. The results of the study indicate that risk can be minimized by prohibiting the use of gray water from kitchen sinks and washing machines where diapers are likely to be washed. The study also determined that gray water reuse is a common practice in the Tucson area with approximately 13% of households using collection and irrigation systems that range from fairly primitive to sophisticated engineered systems. In recognition of the widespread use of gray water for residential irrigation, this rulemaking establishes a general permit with limitations on the sources of the gray water, amount reused, and application methods that will minimize the risk to humans while encouraging educated use of the gray water. A Type 1 General Permit is available for gray water systems less than 400 gallons per day. For larger systems up to 3000 gallons per day a Type 3 General Permit is provided.

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

None

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

Not applicable

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

A. INTRODUCTION

Rule Identification

The Department anticipates increased efficiency and cost-saving benefits to accrue to permittees as a result of implementing this rulemaking along with program and procedural changes. Thus, the implementation of this rulemaking is expected to generate cost-savings. In addition, the direct reuse of reclaimed water generates resource savings of thousands of acre feet per year of potable water (comprised of groundwater and surface water).

The Department expects this rulemaking to streamline the permitting process and create economic savings by making a variety of changes that include the following:

- Offering general permits in addition to individual permits (expands permittee's options),
- Shifting the monitoring burden for assuring water quality from end users to Aquifer Protection Permit holders (sewage treatment facilities), and
- Improving the clarity of rule provisions.

These changes translate into economic benefits for applicants and the Department. Applicants for Reclaimed Water General Permits generally are expected to experience significant decreased costs for permit preparation and monitoring and reporting in addition to an overall reduction in application review time. However, the more complex Reclaimed Water Individual Permits may show a slight to moderate increase in application review costs. As a result of these changes, potential cost-saving benefits for this rulemaking for changes in application requirements and post permit monitoring and reporting requirements could range from $460,800 to $915,200 over a five-year period. Additionally, this rulemaking is expected to save permittees at least 1,524 hours in overall processing time charged by the Department.

Even though Reclaimed Water Individual Permits will be available for the various permitted activities under this rulemaking, the Department expects as many as 80% of permittees to operate under Reclaimed Water General Permits. Table 1 in this Section shows nine types of Reclaimed Water General Permits available under this rulemaking. Reclaimed Water General Permits are comprised of Types 1-3. Table 2 in this Section shows five categories of active reclaimed water reuses and how permits are distributed in Arizona.

In addition to providing cost-saving benefits to Arizona businesses, the Department expects this rulemaking to encourage the use of reclaimed water, at considerable cost savings per gallon, and thereby conserving potable resources for human consumption and other purposes. For example, the use of one million gallons per day of reclaimed water during a summer month could represent a potential savings of more than $37,000 over the cost of using potable water.[1]

Recent legislative changes to A.R.S. § 49-262 that state "[f]rom and after December 31, 2000, a person who violates any rule adopted or a condition of a permit issued pursuant to § 49-203, subsection A, paragraph 6 is subject to a civil penalty of not to exceed five thousand dollars per day per violation," provides the Department with necessary authority to enforce compliance with regulations governing the direct reuse of reclaimed water.

B. BENEFIT-COST ANALYSIS

1. The Baseline for Economic Impacts

Economic impacts are created under the current rule and the program permitting procedures of the Department's Water Quality Division. For permittees, this impact is known as the compliance burden; for the Department, it is known as the regulatory burden. The potential impact under this rule (post-regulatory scenario), compared to the current rule impact (baseline scenario), is known as the "incremental impact." Stated in other terms, the incremental impact is the probable costs and benefits anticipated to occur compared to likely costs and benefits in absence of this rulemaking, including program and procedural changes.

Because the monitoring burden for assuring water quality has shifted to Aquifer Protection Permit holders (sewage treatment facilities) and the basics of the program essentially remain the same, the major portion of the "incremental impact" represents cost-saving benefits due to decreased application and monitoring costs for permittees. There is little or no impact anticipated for APP holders because the monitoring and reporting requirements are already required by their permit.

In May 2000, the Department had 139 active reclaimed water reuse permits. More than 1/3 of these permits were issued to cities/towns. In addition, there were 27 new applications in process, 15 applications for renewal, and 17 permit modifications.

During the next five calendar years (2001-2006), as Reclaimed Water Individual Permits expire, permittees will apply for another Reclaimed Water Individual Permit or decide, upon qualification, to operate under a Reclaimed Water General Permit. Also, the Department may have to process reclaimed water permit modifications. Furthermore, there may be new applicants who will apply for Reclaimed Water Individual Permits or who may decide, upon qualification, to operate under a Reclaimed Water General Permit.

For this evaluation, a total of 400 permits (comprised of 80% general and 20% individual) were allocated under this rulemaking compared to 243 individual permits under the current rules (157 fewer permits). Furthermore, Types 2 and three Reclaimed Water General Permits were allocated at 70% (224) and 30% (96), respectively. Refer to "Assumptions for Calculating Cost-Saving Benefits (B.4.)."

2. Rule Provisions: General Impacts

The Department expects the most significant cost-saving benefits to occur from fewer application review hours and faster processing times when permittees operate under a Reclaimed Water General Permit and in reduced application preparation costs. Under the current rules and based on four years of data, the average time to process an individual general permit is 36 hours. The Department estimates that processing times for Type 2 and Type 3 Reclaimed Water General Permits may reduce to about five hours and 25 hours, respectively. Therefore, the reduction in the average processing time from individual permits under the current permit program potentially could be reduced 30% to 86% for Reclaimed Water General Permits under this rulemaking. An additional costs savings would apply towards the application preparation costs.

Monitoring, reporting, and recordkeeping costs also could be reduced significantly and contribute to the benefits derived under this rulemaking. Depending on the specific general permits, an applicant may have paid annual monitoring, reporting, and recordkeeping costs of $1,900. Under the new Type 2 general permits, only minimal on-site recordkeeping is required. However, not all applicants may save this much.

In addition to potential cost-saving benefits for permittees, the Department expects savings to accrue in the form of increased efficiency due to reduced time to process permit applications. The Department expects overall processing times to significantly decrease with the introduction of general permits. The Department also expects that increased efficiency under this rulemaking should reduce the average time to process individual permits for those who choose not to, or cannot qualify to, operate under a Reclaimed Water General Permit.

3. Caveat

Although this analysis contains hypothetical examples, based on a set of assumptions, the examples are realistic for demonstrating potential cost-saving benefits. These benefits represent the incremental benefits, comprised mainly of savings to permittees. Most savings are a direct result of the Department offering Reclaimed Water General Permits, permitting options, and shifting the responsibility of assuring water quality to Aquifer Protection Permit holders. Actual savings to permittees potentially could vary considerably, but overall the Department predicts that cost-saving benefits to the universe of permittees could be in the hundreds of thousands of dollars over a five-year period.

The impact of this rulemaking is on the potential reduction in hours for the Department to process permits and the reduction in time and costs associated with permittees and new applicants preparing permit applications, as well as the potential reduction in compliance costs for monitoring, record-keeping, and reporting. Actual incremental savings will result from a shift from Reclaimed Water Individual Permits to Reclaimed Water General Permits and an incremental cost savings from reduced application costs as well as reduced annual compliance costs ($460,800-915,200).

4. Benefit-Cost Approach and Predicted Incremental Savings

Even though the cost-saving examples are conjectures, they should help to demonstrate the potential savings to permittees under this rulemaking. The forecasted cost-savings, representing the undiscounted incremental savings possible, is merely the difference between what permittees would have paid under the previous permit program compared to costs under the new permit program (post-regulatory scenario) during the time period t-1 to t and the assumptions identified.

The Water Quality Division estimates that from the 139 active permits issued as of May 2000, 58% (81) blend reclaimed water with groundwater and/or surface water so that they represent potential reclaimed water blending facilities, and 27% (38) potentially could qualify as reclaimed water agents. Additionally, 73% (101) could be considered end users of reclaimed water and some unknown proportion may qualify for general permits. Existing permittees may fall into one or more of these categories under the final rule.

Based on the assumptions outlined in this EIS, this rulemaking is expected to save 1,524 hours in Department review time.[2] This is based on 400 permits under this rulemaking compared to 243 permits under the current rules during the time period t-1 to t (calendar years 2001 to 2006). This example limited the permits to 243 individual permits under the current rules because it does not allow for general permits (see assumption #9). However, if one compares an equivalent number of permits (400) for each scenario, and without a time consideration, the savings could be as much as 7,116 hours.[3]

In addition to time saved for Department processing, this rulemaking is expected to provide cost-saving benefits from not only reduced application costs, but reduced annual reporting costs. Although an unknown proportion of both Reclaimed Water Individual Permits and Reclaimed Water General Permits (Type 3) permittees potentially could experience reduced application preparation costs, only the 224 potential Reclaimed Water General Permits, Type 2 (Pz_2), were considered the most probable category to capture this potential for reduced costs.

Based on the assumptions outlined in this EIS, projected savings for reduced application preparation costs among these 224 Type 2 permittees ($\Sigma Pz_{2\ t-1\ to\ t}$), could range as high as $268,800 to $403,200 over five-year period. This cost-savings benefit was calculated from a hypothetical scenario in which savings are assumed to be normally distributed with an arithmetic mean (sample average) of $1,500 ($\overline{X}$) and a sample standard deviation (s) of $150.00. This means that the hypothetical savings from reduced application preparation costs would lie between $1,200 - $1,800 for this example.[4]

Reduced annual compliance costs (monitoring, reporting, and recordkeeping) were calculated in the same fashion as the reduction in application costs example. Again, presuming that annual compliance costs under this rulemaking can reduce previous costs for the majority of all general permit holders (ΣP_z) by an arithmetic mean (sample average) of $1,100 ($\overline{X}$), over a five-year period, projected savings could reach the range of $192,000 to $512,000.[5] This cost-savings benefit was calculated from a hypothetical scenario in which savings are normally distributed, with an arithmetic mean of $1,100 ($\overline{X}$), and a sample standard deviation (s) of $250.00. This means that the hypothetical savings from reduced application preparation costs would fall between $600 -$1,600.[6]

Therefore, potential cost-saving benefits for this rulemaking could range from $460,800 to $915,200 over a five-year period (undiscounted), not including the value of reduced permit fees from the projected savings of 1,524 hours.[7] The potential, monetized value of reduced permit costs does not represent an incremental savings under this rulemaking, but it does represent a savings in reduced hours, as noted above. As a result of potential permit savings, the Department expects probable benefits to outweigh probable costs. These hypothetical examples illustrate the incremental savings possible under this rulemaking.

Incremental benefits accruing to human health and the environment would represent the increase in the level of protection or the improvement in water quality. Human health and environmental benefits are considered to remain at the current level (unmonetized) or even increase as a result of not only an improved and more cost-effective permitting program, but because of changes in standards and new classes of reclaimed water under another rulemaking (Chapter 11, Article 3).

The Department does not expect this rulemaking to impact long-run employment, production, or industrial growth; however, it may negatively affect short-run employment due to the option of Reclaimed Water General Permits. A permittee operating under a Reclaimed Water General Permit, and perhaps some individual permittees as well, potentially could reduce or eliminate the need for consulting and laboratory expenditures. Reductions in consulting or laboratory compliance costs would represent decreased costs for permittees, but lost revenues for consultants and laboratories. This is expected to be a de minimus impact to employment; any losses should be easily offset. For in-house declines in employee time for application and other compliance activities (private and public permittees), priorities can be shifted to other tasks which generate other foregone benefits (opportunity costs).

The Department recognizes that the impact to the Department may be greater initially than later as the new program is implemented. But this permitting program should be effectively handled by its current personnel without any additional staffing requirements. Finally, the Department expects that this rulemaking will not have an impact on state revenues.

C. RULE IMPACT REDUCTION ON SMALL BUSINESSES

State law requires agencies to reduce the impact of a rule on small businesses by using certain methods when they are legal and feasible in meeting the statutory objectives for the rulemaking. The Department considered each of the methods prescribed in A.R.S. §§ 41-1035 and 41-1055(B)(5)(c) for reducing the impact on small businesses.

Methods that may be used include the following: (1) exempt them from any or all rule requirements, (2) establish performance standards which would replace any design or operational standards, or (3) institute reduced compliance or reporting requirements. An agency may accomplish the 3rd method by establishing less stringent requirements, consolidating or simplifying them, or setting less stringent schedules or deadlines.

Although small businesses represent a portion of the regulated community expected to benefit from this rulemaking, the Department expects most businesses to benefit from the new permit process. Other than simplifying the permit process, providing general permits, and potentially improving the efficiency of the program, the Department has been unable to incorporate other specific methods to reduce the impact on small businesses. In fact, this rulemaking does not increase the compliance burden on applicants, small businesses, political subdivisions, or members of the public. As stated earlier, this rulemaking is expected not only to reduce the average time to process a permit application, but to reduce the application and monitoring costs as well. In addition, this rulemaking is expected to provide potential cost savings for using reclaimed water instead of potable water.

The Department could not find any less costly or less intrusive rule provisions and still achieve the goals and objectives of this rulemaking, as approved by the participants of the stakeholder process.

Table 1 Types of Reclaimed Water General Permits

General Permit Type	Permitted Activity	General Provisions
Type 1	Direct reuse of gray water	Private, residential reuse and flow is less than 400 gallons per day
Type 2	Direct reuse of Class A+	Any uses specified in Appendix A
Type 2	Direct reuse of Class A	Any uses specified in Appendix A
Type 2	Direct reuse of Class B+	Any use in Appendix A (B and C only)
Type 2	Direct reuse of Class B	Any use in Appendix A, (B and C only)
Type 2	Direct reuse of Class C	Any use in Appendix A (C only)
Type 3	Reclaimed water blending facility	Report monitoring results annually
Type 3	Reclaimed water agent	Report volume of reclaimed water distributed annually
Type 3	Direct reuse of gray water	Does not qualify for a Type 1 permit; flow is not more than 3,000 gallons per day

Source: Derived from rule.

Table 2 Active Reclaimed Water Reuse Permits

Use Category	Permits Issued
Agricultural Irrigation	19
Golf Course Irrigation	40
Landscape Irrigation	43
Multiple Uses	36
Dust Control/Construction	1
Total Permits	139

Source: Water Quality Division database, 5-09-00. The database also shows 66 retired reuse permits.

ASSUMPTIONS FOR CALCULATING COST-SAVING BENEFITS (B.4.)

1. Projected number of permits ($P_{(y+z)}$), during the time period t-1 to t (calendar years 2001 through 2005), under this rulemaking was arbitrarily determined annually, based on past trends and assumed allocations for the future ($P_{(y+z)\ t\text{-}1\ to\ t}$ = 50, 80, 100, 90, 80). Under this rulemaking, the Department expects the number of permits to increase over the current level, to peak, and then to decline somewhat.

2. Total permits projected under this rulemaking ($\Sigma P_{(y+z)}$) account for renewals and modifications, but modifications were treated as new permits. ($\Sigma P_{(y+z)\ t\text{-}1\ to\ t}$ = 400). This total also includes any pending permits as of January 1, 2001. Although it is unlikely this number of permits could be issued under the previous program, the savings in review time (hours) by the Department (based on a total of 400 permits) also was computed.

3. Individual permits (Py) were projected under this rulemaking at $.2P_{(y+z)}$ in succession ($Py_{\ t\text{-}1\ to\ t}$ = 10, 16, 20, 18, 16; where, $\Sigma Py_{\ t\text{-}1\ to\ t}$ = 80).

4. General permits (Pz) under this rulemaking represent the difference between $P_{(y+z)}$ and the subtrahend Py in succession ($Pz_{\ t\text{-}1\ to\ t}$ = 40, 64, 80, 72, 64; where, $\Sigma Pz_{\ t\text{-}1\ to\ t}$ = 320). The Department expects that the general permit option will result in a significant increase in the number of applicants.

5. Type 2 General Permits (Pz_2) under this rulemaking were projected at .7Pz in succession ($Pz_{2\ t\text{-}1\ to\ t}$ = 28, 45, 56, 50, 45; where, $\Sigma Pz_{2\ \ t\text{-}1\ to\ t}$ = 224).

6. Type 3 General Permits (Pz_3) under this rulemaking represent the difference between Pz and the subtrahend Pz_2 ($Pz_{3\ t\text{-}1\ to\ t}$ = 12, 19, 24, 22, 19; where, $\Sigma Pz_{3\ t\text{-}1\ to\ t}$ = 96).

7. The incremental impact for Department permit fees is the decrease in the processing time. It can be translated into a cost-savings benefit by multiplying potential hours saved times an hourly rate. For general permits (Pz), estimated hours of 5.0 and 25.0 were used for Type 2 (Pz_2) and Type 3 (Pz_3) General Permits, respectively.

8. Permit hours under this rulemaking were allocated as follows:

   $0.1\Sigma Py(85.0 \text{ hrs}); 0.4\Sigma Py(60.0 \text{ hrs}); 0.4\Sigma Py(30.0 \text{ hrs}); 0.1\Sigma Py(15.0 \text{ hrs}); \Sigma P\, z_2(G_2)$; and $\Sigma P z_3(G_3)$

   where,

   ΣPy=sum of individual permits issued,

   $\Sigma P z_2$=general permits Type 2,

   $\Sigma P z_3$=general permit Type 3,

   G_2 = five hrs,

   G_3 = 25 hrs, and

   hrs in parentheses = the average number of hours for the Department to issue permits (based on four hypothetical averages, as indicated in the formula above, that result in an average time of about 46.0 hours per permit).

9. In absence of this rulemaking, in which no general permits (Pz) would be issued, the number of projected permits (P) was arbitrarily determined based upon a 10% increase each year between t-1 and t ($P_{t\text{-}1 \text{ to } t}$ = 40, 44, 48, 53, 58; where, $\Sigma P_{t\text{-}1 \text{ to } t}$ = 243). Note that this example predicts that there would be 157 fewer permits (60%) under the current rules compared to this rulemaking. This projection could contribute to underestimated cost-saving benefits.

10. Permit hours under the current rules were allocated as follows:

    $(0.22\ \Sigma P)(66.0 \text{ hrs}); (0.33\Sigma P)(34.0 \text{ hrs}); (0.37\Sigma P)(25.0 \text{ hrs})$; and $(0.08\Sigma P)(10.0 \text{ hrs})$

    where,

    ΣP=sum of individual permits issued, and

    hrs in parentheses = the average number of hours for the Department to issue permits (based on four time ranges: > 40 hrs, 30-40 hrs, 20-30 hrs, and < 20 hrs, with an overall mean (average) of 36.7 hrs and a range of 11.0 to 114.0, from the Department's Water Quality Division data showing permits issued for FYs-98 and -99, where observations, or n = 48).

11. The Department is capable of issuing all permits projected during each calendar year.

12. The following are not included: Aquifer Protection Permit (APP) modifications; Type 1 general permits (gray water); Type 3 General Permits for gray water, and nonbillable permits (state agency applicants) that currently represent about 6% of total permits issued.

13. Reduced application preparation costs under this rulemaking were estimated to average as much as $1,500. Using this average as the mean ($\overline{X}$) and computing a range (solving for z) between two standard deviations from an assigned standard deviation (s) of $150.00 for this example, generated a cost-savings benefit of $268,800 to $403,200. This range represents the potential savings to 95% of the projected 224 applicants of Type 2 ($\Sigma Pz_{2\ t\text{-}1 \text{ to } t}$) general permits. Refer to endnote #14). It was presumed that the average applicant of a Type 2 General Permit potentially could save about three hours in preparation time, which translates into a value of $1,505 at an hourly rate of $43.00. The mean ($\overline{X}$) of $1,500.00 was derived from an example from the City of Tempe (letter dated May 11, 2000) that calculated savings for a Type 2 General Permit to be as high as $1,995. This estimate presumed that basic information for a permit under this rulemaking will take as few as four hours compared to 51 hours for a similar reclaimed water activity requiring an individual permit under the current rules. The decrease in hours for a general permit under this rulemaking is attributable to the following items assumed to be no longer required for the permit: irrigation site plan, GIS base map with facility location, process-flow chart for the sewage treatment facility, effluent quality data, plot plans, water balance, meetings, and administrative oversight.

14. Reduced annual compliance costs under this rulemaking were estimated to average as much as $1,100 per permittee. Using this average as the mean ($\overline{X}$) and computing a range (solving for z) between two standard deviations from an assigned standard deviation (s) of $250.00 for this example, generated a cost-savings benefit of $192,000 to $512,000. This range represents the potential savings to 95% of the projected 320 applicants of general permits (Type 2 and Type 3). Refer to endnote #4. For this example, it was presumed that the average applicant of a general permit potentially could save $1,100 even though an example cited from the City of Tempe (letter dated May 11, 2000) showed savings for a Type 2 General Permit to be as high as nearly $1,750. This decrease in compliance costs is based on an permittee no longer being required to pay for monitoring and lab analysis. Additionally, savings also can accrue from less extensive recordkeeping and reporting requirements.

ENDNOTES

[1] Le Templar, "Irrigation a sewer thing," *East Valley Tribune,* 7-13-00. Follow-up telephone conversations with Le Templar on 7-18-00 and 7-31-00. Chandler's reclaimed water program is set to be the largest program in the East Valley for irrigating golf courses, parks, and landscaped areas. Reclaimed water rates are $.04 per 1,000 gallons in the winter and $.071 per 1,000 gallons in the summer, which are competitive with irrigation water costs. Compared to Chandler's current potable water rates, its winter and summer rates are nearly 30 times and 18 times, less expensive, respectively. The projected $37,000 savings for using reclaimed water is based on 31 days at a cost-savings benefit of $1.199 per 1,000 gallons.

[2] This savings is based on the difference between 8,724 hours and 7,200 hours, calculated from the assumptions.

[3] This savings is based on the difference between 14,316 hours and 7,200 hours, calculated from the assumptions.

[4] The hypothetical savings from reduced application preparation costs would lie between $1,200 - $1,800 at two standard deviations ($\mu \pm 2s$), representing approximately 95% of all contrived values for this example. Similarly, at one standard deviation (1s), approximately 68% of the observations will lie within $\pm$ 1s of the mean ($\mu \pm 1s$), or $1,350 to $1,650. The sample standard deviation (s) represents the square root of the arithmetic mean of the squared deviations from the mean of all observations in a sample, where $\Sigma(x - \overline{X}) = 0$; Σ (sigma) is the sum of, $\overline{X}$ (x-bar) is the sample mean and x is an observation. A standard normal curve, with a normal probability distribution, is bell-shaped, symmetrical, and asymptotic, where the mean, median, and mode are equal. Although there are an infinite number of normal curves (comprised of different population means (μ) and population standard deviations (σ)), a single member of these distributions can be used to represent all normal curves. This is the standard normal distribution with a mean of 0 and a population standard deviation (σ) of one. Such a distribution is standardized by using a "z" value (also called: normal deviate or z-statistic). The z-value is calculated by the formula $z = (x- \mu)/\sigma$. It measures the distance from a certain value of x, such as $1,350 in this example, and the arithmetic mean ($\overline{X}$) of $1,500 in this example, standardized in terms of the standard deviation(s) or $150 in this example. Thus, the z-value for this hypothetical example was calculated as 2.00, representing an area or probability under the normal curve between μ and x as 0 .4772 (the value of $P_{(0 - z)}$ from a table showing areas under a normal curve). Hence, in this example, $\pm$ 2s captures 95.44% (2 times the z-value) of the observations containing the cost savings of $1,200 to $1,800 ($\mu$+2s and μ-2s).

[5] The $\Sigma Pz_{t\text{-}1 \text{ to } t} = \Sigma Pz_{2 (t\text{-}1 \text{ to } t)} + \Sigma Pz_{3 (t\text{-}1 \text{ to } t)}$). This example presumes that both types of general permittees (Types 2 and Type 3) will experience the same amount of savings. This hypothetical example is based on information provided from the City of Tempe (see Assumptions).

[6] Hypothetical savings from reduced application preparation costs would lie between $600 - $1,600 at two standard deviations ($\mu \pm 2s$), representing approximately 95% of all contrived values for this example. At one standard deviation (1s), approximately 68% of the observations will lie within $\pm$ 1s of the mean ($\mu \pm 1s$), or $850 to $1,350. The sample standard deviation (s) represents the square root of the arithmetic mean of the squared deviations from the mean of all observations in a sample, where $\Sigma(x - \overline{X}) = 0$; Σ (sigma) is the sum of, $\overline{X}$ (x-bar) is the sample mean and x is an observation. In this example, $\pm$ 2s captures 95.44% (2 times the z-value) of the observations containing the cost savings of $600 to $1,600 ($\mu$+2s and μ-2s).

[7] The cost-saving benefits were not discounted because they are based on hypothetical examples that produced the range of incremental savings shown. It could very well be that these ranges represent upper limits of cost-saving benefits and actual benefits may be somewhat lower; hence, discounting a hypothetically derived savings of approximately $.5 to $1 million to represent a present-value savings may have little meaning.

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

Rulemaking changes made as a result of responses to comments are described in question #11, a summary of the principal comments and the agency response to them.

ARTICLE 6. RECLAIMED WATER CONVEYANCES

The Article name has been modified for clarification.

R18-9-601. Definitions. In most cases, the term "conveyance" was specifically identified throughout the rulemaking by using the terms "open water conveyance" or "pipeline conveyance." Whenever the term did not specify the particular conveyance, the rule was edited for clarification. Thus, negating the necessity for the overall term. The term "conveyance" has been deleted from this Section. The Section has been amended as follows to clarify that "waters of the United States" are exception to an open water conveyance.

"Open water conveyance" means any constructed open waterway, including canals and laterals that transports reclaimed water from a sewage treatment facility to a reclaimed water blending facility or from a sewage treatment facility or reclaimed water blending facility to the point of land application or end use. An open water conveyance does not include waters of the United States.

R18-9-602. Technical Standards for a Pipeline Conveyance. The language in R18-9-603 has been moved to this Section and the applicability information proposed in R18-9-602 has been retained in this Section. This Section has been reformatted and edited for clarity.

R18-9-603. Technical Standards for an Open Water Conveyance. The language in R18-9-604 and the applicability information proposed in R18-9-602 have been moved to this Section. The requirement to maintain an open water conveyance to prevent the release of reclaimed water has been amended to provide for any exception allowed under federal and state regulations. This Section has been reformatted and edited for clarity.

ARTICLE 7. DIRECT REUSE OF RECLAIMED WATER

The Article name has been modified for clarification.

The requirement to provide the owner's social security number, if the owner is an individual has been included in the application requirements in R18-9-705, R18-9-708, R18-9-717, R18-9-718, and R18-9-719 as required under A.R.S. §§ 25-320(K) and 25-502(E). This requirement allows the Department of Economic Security (DES) to "locate" a parent who is not paying ordered child support. Recent interpretation by DES indicates that the law does not require a licensing agency to record the federal tax identification number of a corporation or limited liability company, or the social security number of a partnership that is licensed; that doing so would go beyond the intent of the legislation. Thus, this rulemaking requires that all applicants who are individuals submit their social security numbers. Federal tax identification numbers are not required of licensed entities.

R18-9-701. Definitions. The introduction paragraph in this Section has been edited to include the terms provided under A.R.S. § 49-201, R18-9-101, and R18-9-601, and R18-11-301, therefore negating the necessity for the terms "APP," "Department," "Director," and "sewage treatment facility."

It should be understood that only a person who obtains a permit can be a permittee. The term "permittee" is unnecessary and has been deleted.

The proposed rulemaking cited the meaning under A.R.S. § 49-201(31) for the term "reclaimed water." The definition now repeats the statute definition in italics, (listing the specific citation).

The term "food crop" appeared only in the proposed Appendix A of this rulemaking. The same Appendix A is also included in the Reclaimed Water Quality Standards rulemaking. Two appearances of this Appendix are unnecessary and it has been deleted from this rulemaking.

Although the term "person" includes additional criteria, all of which fall under the defined term in A.R.S. § 49-201(31), these additional criteria make the term "person" cumbersome particularly when all of the criteria are not meant every time the term is used. Also, the proposed rulemaking specifies these same criteria individually throughout this Article, thus making this second sentence addition unnecessary. The term has been deleted from this rulemaking.

The term "sanitary wastewater" has the same meaning as the term "sewage" defined in R18-9-101 and has been deleted from this rulemaking. The appropriate correction has been made throughout the rules.

R18-9-702. Applicability and Standards for Reclaimed Water Classes. This Section has been reformatted and edited for clarity. Subsection (B) has been added to specify that reclaimed water classes used in Article 7 must meet standards established in 18 A.A.C. 11, Article 3.

R18-9-703. Transition of Permits. This Section and the proposed R18-9-704, Sewage Treatment Facilities Generating Reclaimed Water have been merged, reformatted, and edited for clarity. A commenter requested that a reclaimed water agent should be responsible for providing water quality and volume data only to end users with whom they contract and who request the information. The Department agrees and subsection (C)(2)(c) has been amended as follows:

> *Requirements for reporting the following data on a regular basis to the Department, any reclaimed water agent who has contracted for delivery of reclaimed water from the facility, and any end user who has not waived interest in receiving this information:*

R18-9-704. General Requirements. This Section combines proposed R18-9-705 and R18-9-706 and has been reformatted and edited for clarity.

R18-9-705. Reclaimed Water Individual Permit Application. This Section combines proposed R18-9-707 and R18-9-708 and has been reformatted and edited for clarity. The Department accepts written comments before a permit is issued or denied under the Aquifer Protection Permit rules. This requirement was added in subsection (F)(1)(c) to provide uniformity between the Aquifer Protection Permit rules and the Reclaimed Water rules.

R18-9-706. Reusing Reclaimed Water Under an Individual Permit. This Section was proposed as R18-9-709 and has been reformatted and edited for clarity.

R18-9-707. Reclaimed Water Individual Permit for the Direct Reuse of Industrial Wastewater. This Section was proposed as R18-9-710 and has been reformatted and edited for clarity.

R18-9-708. Reusing Reclaimed Water Under a General Permit. This Section was proposed as R18-9-711 and has been reformatted and edited for clarity. The time-frame information has been removed from this Section and the appropriate citation dealing with the Department's licensing time-frame has been added. The Department is opening a docket to include these time-frames in the general licensing time-frame tables.

R18-9-709. Reclaimed Water General Permit Renewals and Transfers. This Section was proposed as R18–9-712 and has been reformatted and edited for clarity.

R18-9-710. Reclaimed Water General Permit Revocation. This Section was proposed as R18-9-713 and has been reformatted and edited for clarity. The following subsections, (A)(1) and (A)(2), have been added to inform the public of the processes implemented by the Department before a permit is revoked:

1. *Before revoking a general permit under subsection (A)(1), the Department shall provide notice to the permittee by certified mail of the Department's intent to revoke the Reclaimed Water General Permit. The notice of intent to revoke the general permit shall provide the permittee a reasonable opportunity to correct any noncompliance and specify a time-frame within which the permittee shall achieve compliance.*

2. *If the permittee fails to correct the noncompliance within the specified time-frame, the Department shall notify the permittee, by certified mail, of the Director's decision to revoke the Reclaimed Water General Permit.*

R18-9-711. Type 1 Reclaimed Water General Permit for Gray Water. This Section was proposed as R18-9-714 and has been reformatted and edited for clarity.

R18-9-712. Type 2 Reclaimed Water General Permit for Direct Reuse of Class A+ Reclaimed Water. This Section was proposed as R18-9-715 and has been reformatted and edited for clarity.

R18-9-713. Type 2 Reclaimed Water General Permit for Direct Reuse of Class A Reclaimed Water. This Section was proposed as R18–9-916 and has been reformatted and edited for clarity.

R18-9-714. Type 2 Reclaimed Water General Permit for Direct Reuse of Class B+ Reclaimed Water. This Section was proposed as R18-9-717 and has been reformatted and edited for clarity.

R18-9-715. Type 2 Reclaimed Water General Permit for Direct Reuse of Class B Reclaimed Water. This Section was proposed as R18-9-718 and has been reformatted and edited for clarity.

R18-9-716. Type 2 Reclaimed Water General Permit for Direct Reuse of Class C Reclaimed Water. This Section was proposed as R18-9-719 and has been reformatted and edited for clarity.

R18-9-717. Type 3 Reclaimed Water General Permit for a Reclaimed Water Blending Facility. This Section was proposed as R18-9-720 and has been reformatted and edited for clarity.

R18-9-718. Type 3 Reclaimed Water General Permit for a Reclaimed Water Agent. This Section was proposed as R18-9-721 and has been reformatted and edited for clarity.

R18-9-719. Type 3 Reclaimed Water General Permit for Gray Water. This Section was proposed as R18-9-722.and has been reformatted and edited for clarity. The Department deleted references to the Arizona Uniform Plumbing Code, Appendix G, in this Section. Instead, the Department referenced substantially similar technical requirements contained in the Department's proposed Aquifer Protection Permit rules for on-site wastewater treatment facilities. These changes to R18-9-719 ensure that design requirements will be consistent, where appropriate, in both the Reclaimed Water Permit and Aquifer Protection Permit programs. For the record, these modifications also allow more flexibility to a designer of a gray water system covered by this general permit to achieve an appropriate design.

R18-9-720. Enforcement and Penalties. This Section was proposed as R18-9-723.

Other grammatical and clarification rule changes throughout the rule package were made at the request of G.R.R.C. staff.

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

GENERAL COMMENTS

Comment: APP status of sewage treatment facilities: Delete or modify all language in the proposed rules that imply sewage treatment facilities are automatically subject to APP requirements.

Response: These rules do not require a facility that would otherwise be exempt from the requirements of A.R.S. § 49-241 *et. seq*. to obtain an Aquifer Protection Permit to operate. The Department cannot find any provision in the rules that compels an exempt sewage treatment facility to be covered by an Aquifer Protection Permit for its discharge. However, these rules do require all sewage treatment facilities that supply reclaimed wastewater for direct reuse to hold an Aquifer Protection Permit. The reason for this requirement is that the reuse program is converted by these rules to a system of predominantly general permits. The classification and monitoring of the quality of reclaimed water supplied to permittees can only be accomplished by the Department in the context of an Aquifer Protection Permit. Thus, if a sewage treatment facility is exempt from Aquifer Protection Permit requirements and the owner wishes to supply reclaimed water for direct reuse, the owner will have to apply for an Aquifer Protection Permit. The Aquifer Protection Permit will include the designation determined by Department engineers of the classification of the reclaimed water that the facility is capable of producing. The Aquifer Protection Permit will also include appropriate monitoring and reporting requirements to assure that the facility continues to meet the water quality requirements for that classification.

The Department's statutory authority for using Aquifer Protection Permit monitoring to assure the quality of effluent supplied to direct reuse permittees lies in A.R.S. § 49-203(A)(7), effective January 1, 2001. The Department believes that it is reasonable to conduct the necessary technical review and to establish the necessary monitoring provisions through Aquifer Protection Permits to carry out a successful permit program for direct reuse of reclaimed water. This approach does not preclude any exempt sewage treatment facility from continuing to operate with an exemption. However, to change the mode of operation to supply reclaimed water to permittees participating in the direct reuse program the facility must undergo the same technical scrutiny as all other sewage treatment plants.

The Department is unaware of any exempt sewage treatment facility currently supplying reclaimed water to direct reuse. Under this rulemaking, pipelines maintain their exemption from Aquifer Protection Permit requirements and are regarded as conveyances if they transport reclaimed water as described in R18-9-601. Tanks that are designed solely for containment as described in A.R.S. § 49-201(36) and conform to A.R.S. § 49-250(B)(22) also continue to be exempt from an Aquifer Protection Permit. Neither of these two types of facilities becomes a sewage treatment facility under this rulemaking.

Comment: Request clarification: Are individual contracts required between a reclaimed water agent and end users?

Response: The proposed rule, R18-9-718(C)(6), requires evidence of a contractual arrangement between the reclaimed water agent and end users to be submitted as part of the Notice of Intent. The Department agrees, however, that this provision is an indirect way of stating this requirement. Subsection R18-9-718 has been revised as follows:

B. A person holding a Type 3 Reclaimed Water Permit for a Reclaimed Water Agent:

1. Assumes responsibility for the direct reuse of reclaimed water by more than one end user in lieu of direct reuse by the end users under separate Type 2 Reclaimed Water General Permits, and

2. Shall maintain a contractual agreement with each end user stipulating any end user responsibilities for the requirements specified under subsection (A).

PREAMBLE (Question #5)

Comment: Supports clarifying language that the Department does not intend for the reclaimed water permit requirement to apply to industrial wastewater containing a component of sewage or reclaimed water when such wastewater or water is recycled or used in industrial processes.

Response: The Department appreciates your comment.

Comment: Preamble #5, 5th paragraph, 4th sentence: Review this issue in more depth and make adjustments to the rules to accommodate cases where the "place of origin" is not necessarily the appropriate location to place the burden of assurance for the reclaimed water quality.

Disagree that the place of origin is the appropriate location to place the burden of assurance for the reclaimed water quality when the originator of the water is not the distributor of the water.

Response: The Department will clarify in the Preamble that the "place of origin" is the treatment facility regulated under the Aquifer Protection Permit program. This is where the responsibility to meet standards is assigned. Compliance with the individual Aquifer Protection Permit is determined at the discharge monitoring point prior to delivery to a distribution system or end user. A distributor of the reclaimed water will not be held responsible for the reclaimed water quality it serves unless, under an individual or Type 3 Reclaimed Water General Permit, the distributor is improving the water quality through treatment or purposeful blending. The preamble has been revised to clarify the Department's intent.

Comment: Modify the following sentence. "Monitoring and reporting requirements will be conditions of the individual aquifer protection permit for the sewage treatment facility or alternative source." Modify to only apply to facilities which are delivering non-facility use reclaimed water.

5th paragraph, 5th sentence: Modify the language which states that "Monitoring and reporting requirements will be conditions of the individual Aquifer Protection Permit for the sewage treatment facility or alternative source" so that it only is applicable to facilities which are delivering reclaimed water for use off-site from the facility.

Response: The Department intends that a sewage treatment facility that provides reclaimed water for direct reuse have monitoring and reporting requirements in their individual Aquifer Protection Permit to ensure the class of reclaimed water being served for a specific use. If on-site application of the treated wastewater is not open access and is specifically allowed by the Aquifer Protection Permit, these reuse permitting requirements will not apply. No change has been made to the rule.

R18-9-601. Definitions

Comment: Pipeline conveyance - at end of definition, replace, "to the point of delivery to an end user, with "to the point of land application or end use."

Response: The Department agrees to make this change to the definition.

Comment: Add a statement that the conveyance rule does not apply to conveyances that are waters of the United States.

Response: The Department agrees to include the exception for conveyances that are waters of the United States. The presumption here is that all discharges of reclaimed water into these waters are subject to the National Pollutant Discharge Elimination System (NPDES) requirements. The R18-9-601 definition for "open water conveyance" has been revised as follows;

> *"Open water conveyance" means any constructed open waterway, including canals and laterals that transports reclaimed water from a sewage treatment facility to a reclaimed water blending facility or from a sewage treatment facility or reclaimed water blending facility to the point of land application or end use.*

R18-9-602. Pipeline Conveyances of Reclaimed Water

Comment: Add #3 [Applicability Section]: Reclaimed water end use sites that previously were served by potable water or other waters shall at a minimum comply with R18-603.1, 2.c, 3, 4, 5, and 7.

Change second sentence [Applicability Section] to read: A pipeline conveyance constructed before the effective date of this Article, at a minimum shall comply with R18-9-603.1.a, b, and c.

Response: Conversion of a system that served potable water into a "pipeline conveyance" as defined in R18-9-601 is considered new construction for the purposes of R18-9-602(A)(1). In converting the system to a new pipeline conveyance the owner will have to upgrade the pipeline to meet all the requirements of R18-9-602. Pipeline Conveyances of Reclaimed Water. The proposed rule may not have made this point entirely clear because it used the term "pipeline" instead of the term "pipeline conveyance" in several instances. To clarify this important distinction between "pipeline conveyances" as defined in the rule and pipelines constructed for other purposes, the Department has changed all occurrences of the term "pipeline" in R18-9-602 to specify "pipeline conveyance."

The requirements of R18-9-602(A)(1) are new construction requirements and do not apply to an existing, operating pipeline conveyance. Replacements of existing systems have to meet the new requirements, and, over time, many of the existing systems will be upgraded to the new requirements.

Comment: Delete R18-9-603.1.

Response: The performance standards specified in this portion of the rule were developed by our stakeholder group. The items address system leakage, structural integrity, maintenance, and inspection. Under routine operation of a pipeline conveyance, all of the items are under the direct control of the owner or operator of the pipeline. No change has been made to the rule.

Comment: [R18-9-603(1)(a)] Replace "a potable water system" with "potable water supplies."

Response: The suggested change is too broad and could be taken to mean aquifers that serve as potable water supply. This provision is not meant to prohibit discharge. It is only directed at preventing "cross-connections" that can occur at the surface or shallow subsurface. No change has been made to the rule.

Comment: [R18-9-603(1)(c)] Clarify or define what the Department would consider "adequate" for inspection, maintenance and testing (of buried pipelines, for example).

Response: The Department agrees that the term "adequate" is vague. This term has been removed from this rule.

Comment: [R18-9-603(1)] Add the following:

(d) No connection shall exist between potable water and non-potable water.

(e) When reclaimed water system is supplemented with water from a potable water system, the potable water system shall be separated from the reclaimed water system by an air gap.

(f) Any end use site shall have testable backflow protection on the potable water system piping entering the site acceptable to the potable water system provider.

(g) Any new system installed, or retrofit, at a site that also contains potable water system piping shall be tested for cross connections prior to introduction of reclaimed water into the reclaimed water piping.

Response: The commentors proposed language for a new subsection (d) has the same effect as already stated in subsection (C)(1). No change has been made to the rule.

The commentor's proposal for a new subsection (e) fits better under the subsection regarding minimum separation distance. A new subsection (F)(4) has been added as follows:

4. Where a reclaimed water system is supplemented with water from a potable water system, the potable water system shall be separated from the pipeline conveyance by an air gap.

The commentor's proposal for a new subsection (f) does not pertain to reclaimed water systems. Backflow prevention on potable water systems is regulated by the rules for drinking water systems.

The commenter's proposal for a new subsection (g) to use testing as a means to prevent cross-connection is already embodied in R18-9-602(C)(1), which prohibits cross-connection in a more general sense. No change has been made to the rule.

Comment: [R18-9-603(2)] Change to read:

a. A pipeline, greater than 8 inches in diameter, shall be traced, at a minimum, with durable purple tape that is marked on each side in English: Caution: Reclaimed Water, Do Not Drink.

b. A pipeline, 8 inches in diameter or less, that is designed for or used to transport reclaimed water, shall be purple in color or wrapped with durable purple tape, and marked on opposite sides in English: Caution: Reclaimed Water, Do Not Drink in intervals of 3 feet or less.

c. Any above ground piping or surface appurtenances of a reclaimed pipeline, regardless of size, shall be purple in color, locked to prevent public access, and labeled in English: Caution: Reclaimed Water, Do Not Drink.

Response: The rule is only intended to regulate pipelines that are 8 inches and smaller. The Department does not see an advantage to more stringent regulation of above-ground pipelines. If weather degrades the marking of pipelines then they are simply no longer in compliance with the marking requirement and must be marked again. No change has been made to the rule.

Comment: [R18-9-603(4)(c)] Add language allowing the Department to review and approve the use of other types of pipe material that have demonstrated performance such as high density polyethylene pipe.

Response: The Department agrees with the commenter that other materials need to be addressed. Subsection (F)(3) has been revised as follows:

A pipeline conveyance that does not meet the minimum separation distances specified in subsections (F)(1) and (F)(2) shall be constructed by encasing the pipeline in at least 6 inches of concrete or using mechanical joint ductile iron pipe <u>or other materials of equivalent or greater tensile and compressive strength</u> at least 10 feet beyond any point on the reclaimed water pipeline within the specified minimum separation distance.

Comment: [R18-9-603(7)] Replace "using good engineering judgment following engineering standard practice" with, "in accordance with plans and specifications developed by a professional engineer registered in the state of Arizona.

Replace ". . . good engineering judgment following . . .", with " . . . generally accepted . . ." or change sentence to read, "..using professional engineering standards and practices."

Response: The Department agrees that the word "good" is inadequate and has revised subsection (B) as follows:

A pipeline conveyance system shall be designed and constructed using accepted engineering standards and practices.

The Department did not specify the requirement for design by a professional engineer because licensing requirements governing design of this type of facility are addressed by the Arizona Board of Technical Registration statutes.

<u>R18-9-603. Open Water Conveyances of Reclaimed Water</u>

Comment: [R18-9-604(1)] Confirm that since there are no lining requirements for open water conveyance systems, any seepage from open water conveyances (incidental seepage) such as canals would not be considered an "unpermitted" release.

Also, clarify whether "unpermitted release" addresses flow impediments that could cause water to overflow the banks of the conveyance.

Response: The term "unpermitted" is used here to mean releases not allowed under federal or state regulation. Subsection (B) has been revised to clarify the meaning of "unpermitted:"

An open water conveyance shall be maintained to prevent release of reclaimed water except as allowed under federal and state regulations.

Comment: [R18-9-604(2)(a)] Add the following: Caution: Reclaimed Water. Do not Drink and No Swimming" with an appropriate international symbol for both prohibitions.

Response: The Department believes that the drinking water warning provides sufficient notice of the use of reclaimed water. The Department believes that operators of open channel conveyances already prohibit swimming and patrol the conveyances accordingly. No change has been made to the rule.

Comment: [R18-9-604(2)(b)] Replace, "if conveyance is operated under open access status" with "if conveyance contains the equivalent of Class A or B disinfected reclaimed water."

Response: The Department's stakeholder group carefully considered this language before arriving at the wording in the rule. The commentor's proposal for change would cause signage requirements to apply to class A water, and that is not the Department's intent. No change has been made to the rule.

Comment: [R18-9-604(2)(b)] Replace, "at least every 1/4 mile" with "at least every 50 feet if any residence is within 1/4 mile."

[R18-9-705(F)] Table I: Replace "On premises or at reasonable spaced intervals not more than 1/4 mile, as applicable to the use" with "On premises or at least every 50 feet if any residence is within 1/4 mile."

Response: The Department and the stakeholder group have determined that 1/4 mile posting is adequate. No change has been made to the rule.

Comment: [R18-9-604(2)(b)] Review and reconsider requirement to space signs at intervals not more than 1/4 mile for irrigation canals that convey reclaimed water.

Response: The commenter's concern over the Department requiring conveyance operators to police human behavior is unfounded. The Department does not expect operators to physically keep the public out of the canal right-of-way. The rule simply requires the operators to post and maintain signage. The Department views this posting requirement as a minimal control that can effectively make the public aware of potential exposure. No change has been made to the rule.

Comment: [R18-9-604] Add #3: An open water conveyance shall maintain equivalent separation from drinking water wells and potable water pipelines as specified for pipeline conveyances in Rl8-9-603.4.

Response: The intent of this Section is not to achieve equivalent specifications for open water and pipeline conveyances. Pipeline separation tends to be more problematic because the pipes are typically buried and under pressure. No change has been made to the rule.

R18-9-701. Definitions.

Comment: Direct Reuse - Maintain exemptions (as in current rule) for industrial reuse except when the industrial wastewater contains a component of sanitary waste and is used for the production or processing of any crop or substance used as human or animal food.

Response: The commentor is correct in stating that the present rules exempt industrial wastewater under two distinct scenarios. However, those two scenarios are independent and do not combine to offer the narrow category of coverage that the commentor indicates the "industrial community has understood" it to mean. The proposed rule clearly maintains the Department's current regulatory framework that reuse of industrial wastewater requires a permit whenever it contains an element of sanitary wastewater. As in the past, industrial wastewater is also subject to the rule when it is used in the "production of any crop or substance that may be used as human or animal food." Production in this context includes irrigation of a crop. The definition of "reclaimed water" has been revised in the final rule.

Comment: Two commenters stated support for the definition of "direct reuse."

Response: The Department appreciates these comments.

Comment: Food crops - Change to read: "means crops that are produced for consumption by humans after processing. This includes tree crops such as citrus, fruits, and nuts not exposed to treated sewage effluent but does NOT include food crops consumed raw such as vegetables."

Response: The Department disagrees with the proposed changes to the definition of "food crops." The rule allows direct reuse for irrigation of food crops whether or not they are consumed raw, provided the reclaimed water meets Class A standards. During stakeholder discussions on this topic, the Department consulted with the Arizona Department of Health Services (ADHS). Consistent with the ADHS opinion, it was determined that because Class A reclaimed water is essentially pathogen-free there is no need to limit the types of food crops that can be irrigated. The term "food crop" appeared in the proposed rulemaking in Appendix A. The same Appendix A is included in the Reclaimed Water Quality Standards rulemaking. Duplicating appearances of this Appendix is unnecessary and it has been deleted from this rulemaking. Thus, the term "food crop" is no longer used in this rulemaking and the definition has been deleted. However, the response still applies.

Comment: Gray water - Change to read: "means disinfected sanitary wastewater from a single family residence that does not include wastewater from toilets, kitchen sinks, dishwashers, clothes washers used to wash diapers or other similarly soiled or infectious garments, or any sinks which can or will drain mixtures of chemicals other than biodegradable soaps or surfactants."

Response: The Department disagrees with the proposed revision of the gray water definition. Although the Type 1 Reclaimed Water General Permit refers to flows associated with a single family residence, the Type 3 Reclaimed Water General Permit envisions larger flows that may result, at a minimum, from multi-family systems. In addition, separation of gray water precludes the need to disinfect. No change has been made to the rule.

Comment: Irrigation - Change to read: "means the beneficial use of reclaimed water for growing food crops, non-food crops, turf, trees, and shrubs."

Response: The Department does not believe that the changes proposed by the commenter provide any further clarification of the defined term. No change has been made to the rule.

Comment: Open access - change to read, "access to the direct reuse site by the general public is uncontrolled."

Response: The intent of the rule and the purpose of the definition is to provide limitations on the use of reclaimed water to ensure protection of human health and the environment. In this case, access to the reclaimed water to prevent potential exposures is what is or isn't being restricted. No change has been made to the rule.

Comment: Include a Class between A and B for the open access use.

Response: The standards defining the classes of reclaimed water have been developed in a separate rulemaking. This rulemaking only addresses the permitting requirements associated with the direct reuse of reclaimed water. No change has been made to the rule.

Comment: Reclaimed Water - One commenter questioned whether the Department has the authority to regulate the direct reuse of gray water or industrial wastewater with a component of sanitary wastewater under the statutory grant of authority relating to the direct use of reclaimed water.

Another commenter suggested deleting the following language from the definition: "and includes gray water and industrial wastewater with a component of sanitary wastewater."

Response: The Department agrees that there is no need to include "gray water and industrial wastewater with a component of sanitary wastewater" in the definition of "reclaimed wastewater." The statutory definition for "reclaimed wastewater" is sufficient, and the Department believes that the statutory definition under A.R.S. § 49-201(31) does cover the two types of water that the Department intended to address with this provision.

Gray water, when handled in the manner described in either of the two general permits pertaining to gray water, is water that has been treated by an alternative on-site wastewater system. The Department regards the siting, design, construction, operation and maintenance, and best management practice requirements for gray water to constitute an alternative wastewater treatment system. Once gray water has been handled in the manner prescribed, it qualifies as reclaimed water by the statutory definition. Thus, no change to the statutory definition is necessary to include gray water.

The Department agrees that neither industrial wastewater that has not been treated nor sanitary wastewater that has not been treated can qualify as reclaimed water by the statutory definition. The Department's intent in originally including these categories in the proposed definition for reclaimed water was to clarify that the proposed rule extended beyond regulating only reclaimed water produced from conventional municipal and domestic sewage. However, the statutory definition of reclaimed water is already broad enough to extend to industrial wastewater since reclaimed water can be water that has been treated in any type of wastewater treatment facility. In the statutory definition the term "wastewater treatment facility" is not limited to a conventional treatment plant used to treat municipal and domestic wastewater. Virtually any type of treatment applied to industrial wastewater would qualify it to be regarded as reclaimed wastewater. To make it clear in the rule that reclaimed water from an industrial wastewater facility is regulated when used to process a crop or substance that may be used as human or animal food R18-9-702 has been modified.

The Department also intends the rule to apply to blended water where reclaimed water is a component. If reclaimed water is combined with any other type of water, including industrial wastewater, the reclaimed water is still subject to regulation. This position is clear because the rule provides for a reclaimed water blending facility for instances where another type of water is added to reclaimed water to change its quality to a higher class. Similarly, the rule requires a permit when reclaimed water is combined with industrial wastewater for the purposes of direct reuse.

R18-9-701(1) has been revised as follows:

"Direct reuse" means the beneficial use of reclaimed water for a purpose allowed by this Article~~, including industrial wastewater used for the production or processing of a crop used as human or animal food~~. The following is not a direct reuse of reclaimed water:

R18-9-701(3) has been revised as follows:

End user" means a person who directly reuses reclaimed water meeting the standards for Classes A+, A, B+, B, and C, established under 18 A.A.C. 11, Article 3

R18-9-701(8) has been revised as follows:

"Reclaimed water" means water that has been treated or processed by a wastewater treatment plant or an on-site wastewater treatment facility ~~and includes gray water and industrial wastewater with a component of sanitary wastewater" from the definition for reclaimed wastewater~~. A.R.S. § 49-201(31).

R18-9-702(A)(6) has been revised as follows:

A person who directly reuses ~~industrial wastewater containing sanitary wastewater~~ reclaimed water from a sewage treatment facility combined with industrial wastewater or combined with reclaimed water from an industrial wastewater treatment facility, and

R18-9-702(A)(7) has been revised as follows:

A person who directly reuses ~~industrial wastewater~~ reclaimed water from an industrial wastewater treatment facility in the production or processing of a crop or substance that may be used as human or animal food.

R18-9-704(C) has been revised as follows:

Blending facility. An owner or operator of a reclaimed water blending facility shall not conduct blending operations without obtaining a Reclaimed Water Individual Permit or Reclaimed Water General Permit for the blending of reclaimed water from a sewage treatment facility or blending facility*.*

R18-9-704(G)(1 has been revised as follows:

Irrigating with untreated ~~wastewater~~ sewage;

The title of R18-9-707 has been revised as follows:

~~Direct Reuse of Industrial Wastewater~~ Reclaimed Water Individual Permit Where Industrial Wastewater Influences the Characteristics of Reclaimed Water

R18-9-707(A) has been revised as follows:

A. The following activities are prohibited unless a Reclaimed Water Individual Permit is obtained under R18-9-708:

1. Direct reuse of reclaimed water from a sewage treatment facility that has been combined with industrial wastewater or reclaimed water from an industrial wastewater treatment facility.

2. Direct reuse of reclaimed water from an industrial wastewater treatment facility for production or processing of a crop or substance that may be used as human or animal food.

R18-9-707(B)(3) has been revised as follows:

If ~~industrial wastewater is to~~ reclaimed water will be used in the processing of any crop or substance that may be used as human or animal food, the information regarding food safety and any potential adverse health effects of this direct reuse.

R18-9-717 has been revised as follows:

A. Permit conditions.

1. A Type 3 Reclaimed Water General Permit for a Reclaimed Water Blending Facility allows the blending of reclaimed water with other water, provided the conditions of Article 7 of this Chapter are met.

2. Blending reclaimed water with industrial wastewater or with reclaimed water from an industrial wastewater treatment plant is not authorized by this general permit.

Comment: Numerous comments were submitted regarding the term "Reclaimed Water Agent." Several suggested replacing the term "agent" with "provider" or "supplier" and replacing "person" with "operator." Another suggested eliminating the term "agent" because of legal ramifications of the use of this term. Additional comments regarding the responsibility for direct reuse of reclaimed water follow:

- Delete the reference to distributing reclaimed water from the definition of "reclaimed water agent" because the distribution of water may be done by someone other than the reclaimed water agent.
- Delete " . . . and assumes responsibility for the direct reuse of reclaimed water by the end user" or replace the phrase with " . . . pursuant to R18-9-721." or clarify in the definition or in R18-9-721 that a reclaimed water agent may assign, by contract with an end user, the responsibilities of direct reuse on the end user's site.
- Retain existing language in current rule A.A.C. R18-9-702(I), "treatment plant owner shall not be liable for misapplication of reclaimed water by the reusers."
- Confirm if a homeowner's association, irrigation district, or other group would be considered a "Supplier" if they distribute (but do not produce) reclaimed water, and what, if any, their responsibilities and/or liabilities would be.
- Place the responsibility on the on-site irrigation system, on the end user.

Response: The Department agrees that the act of transporting reclaimed water from one point to another does not require that the transporter be a reclaimed water agent as defined in the rule. In fact, the reclaimed water may be conveyed to a reclaimed water agent as well as end users. The conveyance structure would be regulated under Article 6 of this rulemaking. However, the Department believes that the definition of agent is clear in that the agent distributes and accepts responsibility for the direct reuse.

Comment: If the agent is required to " . . . assume responsibility for the direct reuse of reclaimed water by the end user" as proposed, this will limit the utility of the water agent concept. Just as the preamble assigns the burden of assuring that reclaimed water meets designated reclaimed water quality criteria ("at the place of origin" . . . "where it belongs"), so should the burden of assuring that reclaimed water is applied as required and that the requirements incident to that use be assigned " . . . at the place of origin" . . . "where it belongs . . ." (namely with the entity applying the reclaimed water). Please further note the proposed definition is at odds with the draft "Outline of Proposed ADEQ Permitting Structure for Reuse of Reclaimed Water" which states that Reclaimed Water Agents are NOT responsible" . . . for the misapplication of reclaimed water by and end user". The utility of the concept of a reclaimed water agent is to consolidate what would otherwise be several small general permit notice and reporting requirements under one master notice and report consistent with the statement in the preamble that "the Department expects these rules to simplify the permitting process for reuse of reclaimed water thereby encouraging its use and conserving potable resources for human consumption . . ." The goals set forth for this rule are not satisfied by letting the entity actually responsible for the application of reclaimed water avoid liability for the negligent, or even reckless or intentional, application of reclaimed water and assigning that liability to an entity that has satisfied its" . . . burden of assuring reclaimed water quality . . ." and has little direct control over the actual application of that reclaimed water. Very few prudent reclaimed water producers would opt to utilize the reclaimed water agent scenario if that meant assuming all civil and criminal liability for actions over which it has little direct control. The result would be that potential small end users might not take advantage of the availability of reclaimed water because of ADEQ bureaucracy relating to general permits. If they do still take advantage of the availability of reclaimed water, the administrative efficiencies that otherwise could have been available to the end user and the Department through the reclaimed water agent concept will have been lost.

[R18-9-721] We object to placing all liability on the agent for the misuse or misapplication of reclaimed water by an end user and/or for the end use's failure to comply with the regulatory provisions incident to the reuse of reclaimed water. This is particularly true in light of the civil ($5000 per day violation) and criminal sanctions that are applicable (see proposed R18-9-723). We would suggest that the term "agent" be changed to "administrator", in order to be clear about the relationship between the user and the permittee.

Response: Under the Department's current reuse permitting program, reuse permits have been issued to persons acting as "agents" for multiple end users. Delivery of reclaimed water by the permittee (agent) to end users is governed by a contractual arrangement between the permittee and each end user, as required by the rule. The permittee is, in fact, taking responsibility to ensure that the end users comply with the requirements of the permit. The reclaimed water general permit proposed by the Department retains this principle.

This original approach proposed in the concept paper left all responsibility for misapplication of reclaimed water in the hands of the end user. This concept generated considerable feedback and, during subsequent discussions, stakeholders could not reach agreement on this issue. The Department's proposed approach in this rule addresses many stakeholder concerns, but does not satisfy all. Under the Department's proposed approach, the Department has considerable discretion and latitude in ensuring compliance in cases of misapplication of reclaimed water. The Department may directly interact with the end user because the prohibition against misapplication of reclaimed water is a general provision of the rule in addition to being a permit condition. In cases of egregious misapplication of reclaimed water by an end user, this may be the most appropriate way for the Department to ensure a return to compliance. In other cases, the Department's capacity to initiate a compliance action against the permittee (the reclaimed water agent) may be the biggest impetus for the permittee to exercise its responsibility to ensure that terms of the end user contractual agreements are met. One can very easily conceive of cases where the reclaimed water agent causes the misapplication by the end user by oversupplying reclaimed water. In these cases, Department action against the reclaimed water agent would probably be the most appropriate approach.

It should be noted that there is no requirement in rule that forces an entity to become a reclaimed water agent. As mentioned, however, the Department has issued numerous reuse permits under its current program for this type of situation. In these cases, the permittee has assumed responsibility for end user compliance. The Department is not aware of significant problems that a permittee has had in ensuring end user compliance in these instances. The final rule greatly streamlines the old approach, for example, by removing the need to file contracts with the Department, but continues the approach that the permittee be responsible for compliance with the permit conditions. The Department believes that the alternative approach proposed by commenters would remove the justification for the program simplifications in the final rulemaking. With the compliance discretion the Department has in this final rule, the Department believes that problems with misapplication of reclaimed water can be handled in a fair and efficient manner. No change has been made to the rule.

Comment: [R18-9-705 and R18-9-706] Add a clause in the appropriate place in the rule stating that "a violation of the reclaimed water requirements by an end user does not necessitate enforcement action against a reclaimed water agent provided that the reclaimed water agent can show a good faith effort to ensure the compliance of end users."

Response: The Department cannot release the agent from responsibility, however, in applying its enforcement discretion, the Department will consider the agent's good faith effort to ensure compliance.

Comment: Restricted access - change to: "access to the direct reuse site by the general public is uncontrolled."

Response: The intent of the rule and the purpose of the definition is to provide limitations on the use of reclaimed water to ensure protection of human health and the environment. In this case, access to the reclaimed water to prevent potential exposures is what is being restricted or not. No change has been made to the rule.

Comment: Sanitary Wastewater - change to "sewage." Also, replace the term "sanitary wastewater" with "sewage" wherever it is used in the permits rule (including the Standards rule).

Sewage should be defined as follows: Untreated wastes originating from toilets, baths, sinks, lavatories, laundries, and other plumbing fixtures in places of human habitation, employment, or recreation.

Response: The term "sewage" in the Aquifer Protection Permit rules has the same meaning as the term "sanitary wastewater" in this rulemaking. To ensure consistency, the Department has revised this rule to use the term "sewage" wherever sanitary wastewater was used and deleted the term from the list of definitions.

Comment: Sewage Treatment Facility - Change to: "a plant or system for sewage treatment."

Response: This term is defined in the unified rulemaking and cited in R18-9-701. Therefore, the term has been deleted from this rulemaking.

R18-9-702. Applicability and Standards for Reclaimed Water Classes

Comment: Supports the Department's proposed clarification of the scope of the reclaimed water permit rule in the proposed definition of "direct reuse."

Supports language that excludes from the definition of "direct use" (and therefore from the reclaimed water permit requirements) the use of industrial wastewater or reclaimed water in a workplace that is subject to a federal program.

Response: The Department appreciates the comments.

Comment: The Article should be revised to apply to owners or operators.

Response: The Department agrees. In the final editing process, this rulemaking was revised to meet the clear, concise, and understandable requirements under A.R.S. § 41-1052(C)(4). This addition was included during that final editing.

Comment: Delete, "applies to an owner of a sewage treatment facility that generates reclaimed water for direct reuse."

Response: This provision cannot be deleted because the rule applies to owners or operators of sewage treatment facilities treating wastewater that becomes available for one or more beneficial uses under the permitting process covered by this rule. No change has been made to the rule.

R18-9-703. Transition of Permits (proposed R18-9-703 and R18-9-704)

Comment: Include an exemption for conveyances (as included in prior draft rules sessions).

Add: "An exempt 'person' who conveys reclaimed water but does not generate or directly use reclaimed water and is not the owner or operator of a reclaimed water blending facility, is not required to obtain a reclaimed water individual permit or to operate under a reclaimed water general permit. That person is subject to technical standards established in Article 6."

Response: The Department has revised the language of this Section to clarify the list of persons regulated by this Article and does not believe the requested exemptions are necessary. In addition, R18-9-702(A) clearly states the persons to which this Article applies, which does not include a person who conveys reclaimed water. No change has been made to the rule.

Comment: R18-9-704.B has provisions for modifying an existing APP to assure/designate a reclaimed water classification of the reclaimed water produced. R18-9-705.A provides that an owner of a sewage treatment facility shall provide reclaimed water for direct reuse only under an individual APP that includes the requirements of R18-9-704. These provisions seem to undercut the provisions at R18-9-703.A that existing APP's and reuse permits will be continued according to the terms of the permit until the expiration of that permit. We believe that the provisions of R18-9-703.A should control but this should be clarified.

Further, there is no provision for transition to the new rules and for upgrades if needed to meet Class A criteria. Does the Department expect to shut down existing open-access reuses when their current permits expire?

[R18-9-705(F)] Provide a transition period of several years (or grandfathering) that will allow new projects to become end users before wastewater treatment facilities can accomplish upgrades.

Response: The proposed subsection (A) continues coverage for reuse activities under their current permit status. The provisions of subsection (A) require sewage treatment facilities generating reclaimed water for direct reuse to hold an Aquifer Protection Permit. The generation of reclaimed water by a sewage treatment facility is not a "direct reuse" and is not covered by the permits for direct reuse of reclaimed wastewater. To make it clear that facilities providing reclaimed water under current permits may continue to do so the Department has changed subsection (A) to allow that existing permit conditions governing supply of reclaimed water to direct reuse sites shall also be continued. The Department intends that the transition to the new rule be accomplished smoothly with existing permitted reuse activities continuing as currently regulated until expiration of the permit. If the reuse activities do not comply with the requirements of the new rule, the permittee must comply with the new requirements when the permit is reissued. A person that has an individual reuse permit under the current rules can continue the permitted reuse activities until the expiration of the permit, even if those activities are inconsistent with the new rule. However, upon expiration of that permit, the permittee will be required to comply with the conditions of the new rule. The transition period will occur over a period of up to 5-years permit duration for previously permitted reuse activities.

Existing reuse permits identify the reclaimed water supplier as a permit condition, so that the source of reclaimed water is also continued by the permit as well as any monitoring provisions. When an existing reuse permit expires and a new permit under the proposed rule is required, the permittee will have to link up with a supplier that has an Aquifer Protection Permit that has been amended under R18-9-703(B). If the Aquifer Protection Permit of the sewage treatment facility that is the source of reclaimed water has not been amended, the supply arrangement cannot continue under the new rule. Upgrades to sewage treatment plants to meet Class A criteria can be accomplished by applying for an amendment to the Aquifer Protection Permit as described under R18-9-703(B). An owner or operator of a wastewater treatment plant may apply for this review and classification at any time. A process for amendments to Aquifer Protection Permits exists in the Aquifer Protection Permit rules (18 A.A.C. 9, Articles 1, 2, and 3). If, at the time of existing reuse permit expiration, a supplier has not acquired an amendment to their Aquifer Protection Permit that recognizes the classification of the facility with regard to reclaimed water quality, then the direct reuse activity must cease. Alternatively, the reuser could find a different source of reclaimed water that has met the Aquifer Protection Permit criteria under R18-9-703(B). R18-9-704(A) has been revised as follows:

> *Sewage treatment facility. <u>Except for permits continued under R18-9-703(A),</u> a sewage treatment facility owner or operator shall provide reclaimed water for direct reuse only under an individual Aquifer Protection Permit specifying the amendments listed in R18-9-703(C)(2).*

Comment: Delete, "an individual APP or" because APP permits do not have an expiration date.

Response: Aquifer Protection Permits may not have a designated expiration date but permits for the Reuse of Reclaimed Wastewater do. The rule provision has been revised to make it clear that direct reuse <u>may</u> continue under existing permits. However, the option is available for a person to apply for a new permit under the final rule by following the stated procedure. No change has been made to the rule.

Comment: [R18-9-703(B)] In the third sentence, delete "the individual APP" and add a new sentence after the 2nd sentence to read as follows: "Any direct reuse activity covered by an individual APP shall submit an application for the reuse activity 120 days after the effective date of this Article." APPs do not have an expiration date. Reuse that constitutes disposal can continue indefinitely under this proposed rule.

Response: The Department does not believe it is necessary to require permittees to change to the new permits under this final rule as long as they comply with their existing permit conditions. Additionally, disposal is allowed under a valid individual Aquifer Protection Permit. It should be noted that direct reuse does not include disposal (see definition of "direct reuse site" and R18-9-702(B)). No change has been made to the rule.

Comment: [R18-9-703(B) R18-9-704(C)(2)] Replace "and flow on a regular basis" with "and flow, sampling methodology that includes a sampling frequency no less than daily for fecal coliform or e-coli as required by the applicable Reclaimed Water Quality Standards of Chapter 11, Article 3."

Define what is meant by "a regular basis" (e.g., hourly, daily, weekly, monthly, etc), and identify how the Department will handle information derived from additional monitoring is accomplished by a plant (e.g., the Department's "a regular basis" requirement is monthly, however plant monitoring is performed weekly).

[R18-9-704(C)(3)] Define, for this context, what is meant by "a regular basis" (e.g.- weekly, monthly, quarterly, semi-annually, annually, bi-annually, etc.)

Response: The Department cannot specify here the exact frequency of monitoring that will be required because this rule provision covers a wide range of facilities from Class C to Class A+ as well as industrial facilities for which standards are not established. The Department can state in the rule that the frequency of monitoring will be set appropriate to the Reclaimed Water Quality Standards under Title 18, Chapter 11, Article 3 that apply to any facility. Also, the Department will set frequencies for monitoring and reporting that coincide as best as possible with monitoring and reporting requirements for the Aquifer Protection Permit program. Subsections (C)(2)(b) and (C)(2)(c) have been revised as follows:

2. An amended individual Aquifer Protection Permit shall contain:

a. Identification of the class of reclaimed water generated by the plant;

b. Requirements for monitoring reclaimed water quality and flow ~~on a regular basis~~ at a frequency appropriate to demonstrate compliance with this Article and A.A.C. Title 18, Chapter 11, Article 3;

c. Requirements for reporting the following data on a regular basis to the Department, any reclaimed water agent who has contracted for delivery of reclaimed water from the facility, and any end user who has not waived interest in receiving this information:

A plant or facility may monitor more frequently than the rule requires. In that case, the plant or facility should maintain those records as required by the rule although only the monitoring results required by the rule must be submitted to the Department. For instance, if a plant or facility collects samples daily but the rule only requires weekly samples, the Department expects that the facility will designate a specific day of the week and the data for that day every week will be reported to the Department. These provisions of the rule have been revised based on other comments and to clarify the Department's intent.

Comment: [R18-9-704(C)(3)] Change the wording to reflect that the information for water quality test results and total volumes of reclaimed water generated for direct reuse to end users should simply be made available to end users upon request. Indicates the burdensome administrative task of sending information to all end users. Also, clarify that the reclaimed water agent is responsible for providing water quality and volume data only to end users with whom they contract.

Response: The Department has added language that stipulates that only end users who have contracted for delivery are eligible for receipt of the water quality and quantity information. Also added is a provision for end users to waive their interest in receiving the data so that only those parties who wish to receive this information must be contacted. The Department does not intend that this requirement result in mailing extensive, detailed water quality data to end users. A summary report prepared in an informative, yet non-technical, format is acceptable. The Department believes that making this information available to the end user is important because the end user is a permittee. Subsection (C)(2)(c) has been revised as follows:

c. Requirements for reporting the following data on a regular basis to the Department, any reclaimed water agent who has contracted for delivery of reclaimed water from the facility, and any end user who has not waived interest in receiving this information.

Comment: [R18-9-704(C)(3)(a)] Specify that the water quality tests are to be taken at the point of discharge into the reclaimed water distribution system. Also, add a provision for reclaimed water quality samples to be taken from the point of discharge into a reclaimed water distribution system, when there is a transfer of custody between entities from the producer to the facility which accepts the reclaimed water.

Response: The Department agrees that, in most cases, this testing should occur at the point of discharge into the reclaimed water system. However, one major reason for putting the monitoring provision in the Aquifer Protection Permit is to avoid redundant monitoring requirements. The Department intends that operators perform reclaimed water testing at the same point that discharge monitoring occurs for the Aquifer Protection Permit. The Department changed the term "all reclaimed water" to read "reclaimed water produced by the facility" to make it clear that the tests will be directed at the water coming out of the treatment plant rather than throughout the delivery system. The Department does not intend to regulate the quality of the water after it has passed beyond the point of monitoring for the treatment facility. Once a volume of reclaimed water has attained a particular class as indicated by its water quality compared to the standards, it retains that classification unless blended or further treated. The Department does not intend to require monitoring whenever reclaimed water changes ownership. Subsection (C)(2)(c)(i) has been revised as follows:

i. Water quality test results demonstrating that reclaimed water produced by the facility meets the applicable standards for the class of water identified in subsection (B)(3)(a), and

Comment: [R18-9-704(C)(4)] Revise first sentence to read, "Provisions for storage or disposal when reclaimed water cannot be delivered for direct reuse resulting from ground saturation due to precipitation events.

Response: Ground saturation due to precipitation events is only one possible reason that an operator would not be able to deliver the reclaimed water. The broader language of the rule can cover many other instances, such as facility maintenance, canal outages, and even cropping patterns. No change has been made to the rulemaking.

Comment: [R18-9-704(C)] Add #6 [#5?] - Provisions that specify the actions to be taken when sampling results show non-compliance with the Class of reclaimed water permitted for the facility. These actions shall include at a minimum the cessation of the distribution of reclaimed water and reporting to appropriate agencies.

Add #7 [#6?] - Provisions for disposal when reclaimed water cannot meet it's quality classification as specified for the end users of the effluent.

Response: Contingency plan measures are already a part of the Aquifer Protection Permit requirements and do not need to be specified here. It is implicit in R18-9-703(C)(2)(d) that when reclaimed water cannot be delivered it must be stored or disposed of according to the Aquifer Protection Permit provisions. When a treatment plant cannot meet the designated class of reclaimed water it cannot be delivered. To clarify this point subsection (C)(2)(d) has been revised as follows:

d. Provisions for cessation of delivery, if necessary, and storage or disposal when reclaimed water cannot be delivered for direct reuse.

R18-9-704. General Requirements (proposed R18-9-705 and R18-9-706.)

Comment: [R18-9-705] Add new subsection between 'C' and 'D' - Type 3 General Permits shall be subject to the same public notice procedures as an individual reclaimed water permit.

Response: The Department is not aware of any statutory provision that requires a Type 3 Reclaimed Water General Permit to be subject to the same public notice requirements as a Reclaimed Water Individual Permit. The reason that the Reclaimed Water Individual Permit process contains a public notice provision is that the Department cannot anticipate the type of facility that would be reviewed and approved under a Reclaimed Water Individual Permit. Each facility that the Department reviews could be considerably different from the others in terms of design, site conditions, quality of water, and permit conditions. In contrast, for each of the Reclaimed Water General Permit categories facility specifications and permit conditions can easily be stipulated in rule so that the public knows exactly what to expect of these activities. The activity of being a reclaimed water agent is substantially similar from one case to another so that it doesn't warrant separate treatment for public notice. Also, the practice of blending reclaimed water with other water to improve its quality is substantially similar from one case to another so that special public notice requirements are unnecessary. Since the terms and conditions of the Reclaimed Water General Permits are provided in detail in the rule, public perception issues and the right of the public to know are addressed by the public process of rule development and publication of the rule. No change has been made to the rule.

Comment: [R18-9-705(A), (B) and (C)] The "General Requirements" should apply to owners or operators, not just owners.

Response: The Department agrees that operators should be included with owners.

The term "owner" has been amended to "owner or operator" throughout the rulemaking.

Comment: [R18-9-705(B)] Review and modify to take into account the transfer of reclaimed water when additional treatment is not provided.

Response: The Department does not intend to regulate the simple transfer of ownership of reclaimed water. See response to comment #9 under R18-9-703.

Comment: [R18-9-705(E)] Allow dispensation from these prohibitions in cases of a sudden storm or other natural event that allowed runoff of reclaimed water or any such event that was caused by the actions of a third party.

Response: The Department cannot allow dispensation for runoff caused by a storm because that is exactly the condition this rule provision is intended to prohibit. The rule requirements and terms of the permits address the appropriate application of reclaimed water at a particular direct reuse site. Runoff from that site, even if caused by a natural event, could pose a risk to public health. The Department will consider the class of reclaimed water and the volume and circumstances of the release in exercising its enforcement discretion. No change has been made to the rule.

Comment: [Rl8-9-705(E)(1)] Replace the term "wastewater" with the term "sewage."

[R18-9-705(E)(1)] Revise to read, "Irrigating with untreated sanitary wastewater."

Response: The Department agrees that the term "wastewater" should be replaced with the term "sewage." To ensure consistency, this rulemaking has been revised to use the term "sewage" wherever sanitary wastewater was used and the definition of "sanitary wastewater" has been deleted.

Comment: [R18-9-705(E)(3)(c)] Add, "This prohibition does not apply to agriculture return flows."

Response: The Department agrees that the practice of addressing irrigation return flows by directing them onto another field or returning them to the distribution system is acceptable. Subsection (G)(3)(c) has been revised as follows to include these exceptions to the general requirement under proposed R18-9-705(E)(3)(c):

3. Misapplying reclaimed water for any of the following reasons:

a. Application of a stated class of reclaimed water that is of lesser quality than allowed by this Article for the type of direct reuse application,

b. Application of reclaimed water to any area other than a direct reuse site, or

c. Allowing runoff of reclaimed water or reclaimed water mixed with stormwater from a direct reuse site, except for agricultural return flow that is directed onto an adjacent field or returned to an open conveyance.

Comment: [R18-9-705(E)] Add #4: Irrigation of food crops consumed raw. Not prohibited are food crops that are produced for consumption by humans after processing. This includes trees crops such as citrus, fruits, and nuts not exposed to treated sewage effluent but does NOT include food crops consumed raw such as vegetables.

Response: Current reuse regulations do not prohibit irrigation of food crops of any sort, and the Department sees no necessity for change. The new approach will allow unrestricted irrigation of food crops with classes A and A+ reclaimed water. Class B or B+ reclaimed water may be used on food crops if they are orchards or vineyards or if the food is to be processed before consumption. No change has been made to the rule.

Comment: [R18-9-705(E)] Add #5: Use of impoundments of treated sewage effluent for the commercial raising of fish intended for human consumption or where fishing is not restricted by posting to notify the public that fishing is allowed only if fish are caught and released.

Response: The Department recognizes fishing as a component of use of recreational impoundments (see definitions in R18-11-301.) Recreational impoundments are permitted using class A reclaimed water only. Thus, fishing use is allowed only at recreational impoundments. The Department has little data regarding aquaculture uses of reclaimed water and water quality requirements. For this reason aquaculture is not currently a recognized use under the standards. However, the Department does not wish to place an outright prohibition on this activity since future data may show that it can be safely pursued. No change has been made to the rule.

Comment: [R18-9-705(E)] Add #6: Use of treated sewage effluent in pressurized fire protection systems.

Response: Appendix A currently promulgated in the Reclaimed Water Quality Standards under Title 18, Chapter, 11, Article 3, specifically allows Class A or Class A+ reclaimed water. Prohibiting it for use in pressurized fire protection systems in R18-9-704(G) will conflict with that authority. Furthermore, the Department believes that because Class A water is essentially pathogen-free it is appropriate for this use.

Comment: [R18-9-705(E)] Add #7: Fountains or water features from which an airborne mist may come into contact with eating areas, or directly result in human inhalation or exposure.

Response: This prohibition would essentially eliminate all spray irrigation in open access areas. However, there is no need to do so since class A reclaimed water is essentially pathogen-free. Fountains and other water features with airborne mist that are in open access areas will receive class A water. Uses of class B or C reclaimed water are only allowed in areas with restricted access – areas where human inhalation exposure is low or non-existent. No change has been made to the rule.

Comment: [R18-9-705(E)] Add #8: Where Class C water is used at any end use site, public access to the site shall be restricted by a fence or barrier at least 3 feet in height.

Response: The class C uses are all agricultural. Some of them by their very nature will be fenced, such as livestock enclosures. All of them are judged to be remote, low traffic sites where public access is naturally very limited. In these areas a 3-foot fence adds little in deterring access. No change has been made to the rule.

Comment: [R18-9-705(F)] Please note that under the proposal B+ class water (the classification we currently can consistently meet) would not be eligible for residential irrigation and open access irrigation end uses. This use limitation would therefore effectively eliminate the existing uses for Chandler's reclaimed water in and around Ocotillo. This seems harsh given that residential and open access irrigation has been ongoing in the Ocotillo area for several years without incident. We question the technical merits of this proposal. The disinfecting criteria for Class B water (see preamble p. 1645) is based on surface water criteria that is protective of full body contact uses (i.e., swimming). Disinfecting criteria that is protective of full body contact uses should be more than adequate for landscape irrigation uses. We believe that the Class B water should be allowed for open access irrigation

Response: The Class A requirement for open access landscape irrigation and open access impoundments is consistent with the EPA Guidelines for Water Reuse. The minimum treatment requirements and disinfection requirements for Class A reclaimed water also are consistent with the requirements for most states that regulate the reuse of reclaimed water for open access landscape irrigation. Arizona has many facilities that can successfully achieve this class of treatment.

The Department disagrees that Class B reclaimed water should be allowed for open access landscape irrigation. The Department believes that an essentially pathogen-free reclaimed water should be required for open access landscape irrigation, such as irrigation of residential yards, schoolyards, and playgrounds. It is because of the lack of epidemiological evidence or definitive health risk assessment information that the Department takes an admittedly conservative position regarding wastewater reclamation that errs on the side of the protection of public health. While the history of wastewater reuse in the community of Ocotillo may provide anecdotal evidence that supports the use of less stringent fecal coliform criteria or lower minimum treatment levels than Class A, the Department is not aware of any epidemiological studies or quantitative risk assessments that have been done at Ocotillo or any other Arizona community that support continuation of the status quo or that can be relied upon to support less stringent Class A reclaimed water quality standards. Moreover, the Department believes that there is enough flexibility built into the Class A reclaimed water quality standards to allow the use of alternative methods of treatment provided the disinfection criteria are met. The Department believes it is prudent public health policy to require a reclaimed water that is essentially free of pathogenic viruses, bacteria, and parasites in urban wastewater reuse applications. The Department has confidence that the Class A reclaimed water quality standards, as adopted, meet that requirement. The Department has less confidence that the existing criteria for open access landscape irrigation, without minimum treatment requirements, are essentially pathogen-free. No change has been made to the rule.

Comment: [R18-9-705(F)] Further, the proposal would require signage in the front yard of all residences irrigated with reclaimed water. The requirement is burdensome for users, many of whom have been using reclaimed water for years without incident. ADEQ has not demonstrated any hard data to support the requirement. It could undermine our efforts to encourage this use and falsely raise fears as to the health effects of using quality reclaimed water for this purpose. Residential users should not be required to post signs in their front yards. We suggest that notification methods include options other than signage, such as homeowner association newsletters, home buyer information, etc.

Several commenters requested that the signage requirements for residential irrigation with classes A and A+ reclaimed water be deleted. One commenter made the same request during the transition period from B+ to A+. Another suggested that if signage for classes A and A+ was absolutely necessary for residences, it should be required only at the subdivision entry versus at every house.

Response: The Department believes that signage is important to make the public aware of the potential for exposure to reclaimed water. The Department agrees that posting at all subdivision entrances along with yearly written notification from the homeowner's association can substitute for posting a sign in each yard of a subdivision that is served by Class A reclaimed water. The term "front yard" specified in Table 1 has been revised as follows:

** Or at all entrances to a subdivision if the signage is supplemented by written yearly notification to individual homeowners by the homeowner's association.*

Comment: [R18-9-705(F)] Revise signage requirements to indicate what the signs should say.

Response: The Department agrees. While the Department believes that reusers should be able to design their own appropriate signage, we have placed in the rule some description of what that signage should achieve. Subsection (H) has been revised as follows:

H. A permittee shall place and maintain signage at locations specified in Table 1 so that it informs the public that reclaimed water is in use and that no one should drink from the system.

Comment: [R18-9-705(F)] Reconsider if hose bibbs should be allowed on Class C reclaimed water distribution systems.

Response: The Department is not aware of any problems resulting from use of hose bibbs at Class C reuse sites. These sites are in agricultural areas, and labeling of the bibbs is sufficient to protect against misuse. No change has been made to the rule.

Comment: [R18-9-705(F)] Add signage requirements for all reclaimed water sites (at a minimum, signage for A+ and A water should also be required at parks).

Response: The Department's stakeholder group did not believe that posting signs in parks for this highest quality of reclaimed water was necessary. Of course, the water features in parks will be posted in accord with the note at the bottom of Table 1. No change has been made to the rule.

Comment: [R18-9-706] Add the modifying term "reasonably" before the term "prevent" in Sections 2, 3, and 4. Again, setting up a strict liability provision seems overly harsh and does not lead to encouraging use of reclaimed water.

[Rl8-9-706(1)] Confirm their understanding that the term "reasonably preclude human contact" recognizes that contact occurs during agriculture irrigation.

[R18-9-706(1)] Delete "reasonably."

[R18-9-706(1)] Confirm that the Department recognizes that some contact with reclaimed water is mandatory in the case of landscape irrigation and maintenance.

Response: The use of the term "reasonably" before "preclude human contact" in R18-9-704(E)(1) is defined by the rest of the rule provision as "limiting the time of application to avoid normal periods of use." The term also recognizes that complete control of human activity may not be possible but appropriate measures should be taken to avoid human contact as much as possible. Incidental human contact may occur even when those measures are taken. The term "reasonably" is not used in the R18-9-704(E)(2) and (3) because these are activities that are under the control of the permittee and must be avoided. No change has been made to the rule.

R18-9-705. Reclaimed Water Individual Permit Application (proposed R18-9-707 and R18-9-708)

Comment: [R18-9-707(B)] Replace "person" with "operator."

Response: The term "person" is broadly defined in statute and includes a host of entities that could also be operators. The Department believes this is the appropriate term to be used in the rule. No change has been made to the rule.

Comment: [R18-9-707(E)] Clarify "earliest convenience" and define "earliest opportunity." Clarify how this relates to the time period for publishing notice of the Department's preliminary decision to issue or deny. Make draft available to the applicant within a specified number of days after the determination of administrative and substantive completeness.

Response: The Department will make every attempt to provide the applicant with a draft copy of the permit as soon as it is available. In the final editing process, this rulemaking was revised to meet the clear, concise, and understandable requirements under A.R.S. § 41-1052(C)(4). The phrase "earliest opportunity" was clarified to mean that the applicant would have a draft copy of the permit before the Department published a notice of the preliminary decision to issue or deny the permit. Subsection (E) has been revised as follows:

E. *Draft permit. The Department shall provide the applicant a copy of the draft of the Reclaimed Water Individual Permit before the notice specified in subsection (F) is published.*

Comment: [R18-9-707(F)] Request criteria to be used by the Department for approval or denial.

List criteria for permit approval or denial.

Response: The Department agrees that the criteria for denial should be listed in the rule. Subsection (G)(2) has been revised as follows:

2. The Department may deny an individual Reclaimed Water Permit if the Department determines upon completion of the application process that the applicant has:

a. Failed or refused to correct a deficiency in the permit application;

b. Failed to demonstrate that the facility and the operation shall protect public health and water quality. This determination shall be based on:

i. The information submitted in the permit application,

ii. Any information submitted to the Department following a public hearing, or

iii. Any relevant information that is developed or acquired by the Department.

c. Provided false or misleading information.

Comment: [R18-9-707(G)] R18-9-709(A) Reference should be that an individual permit may include authorization to operate as a reclaimed water agent and to operate a blending facility.

Response: The Department agrees with the commenter's suggestion. R18-9-704(C) and (D) now clarify that each of these entities may operate if they obtain a reclaimed water permit.

C. Blending facility. An owner or operator of a reclaimed water blending facility shall not conduct blending operations without obtaining a Reclaimed Water Individual Permit or Reclaimed Water General Permit for the blending of reclaimed water from a sewage treatment facility or blending facility.

D. Reclaimed water agent. A person shall not operate as a reclaimed water agent without obtaining a Reclaimed Water Individual Permit or a Reclaimed Water General Permit.

R18-9-706. Reusing Reclaimed Water Under an Individual Permit (proposed R18-9-709)

Comment: [R18-9-709(B)] Change "shall" to "may" in the first sentence, to indicate the Department may include the requirements in the individual permit if there is reason to do so but is not required to impose duplicative requirements.

Response: The Department uses the word "shall" because each one of these requirements must be addressed within the Reclaimed Water Individual Permit. If it is determined within the permit development process that a requirement is not applicable, this would be specified in the permit. It is important that each one of these requirements are evaluated in the permit. The language has been edited for clarity and understandability, eliminating the word "requirements."

Comment: [R18-9-709(B)(2)] Define "regular basis."

[R18-9-709(B)(3)] Define "regular basis."

Response: The Department agrees to clarify this term. The phrase "regular basis" has been replaced with "at a frequency appropriate to demonstrate compliance with this Article and 18 A.A.C. 11, Article 3."

Comment: [R18-9-709(B)(3) and (B)(3)(a)] Specify that the water quality tests are to be taken at the point of discharge into the reclaimed water distribution system.

Response: The Department agrees that, in most cases, this testing should occur at the point of discharge into the reclaimed water system. However, one major reason for putting the monitoring provision in the Aquifer Protection Permit is to avoid redundant monitoring requirements. The Department intends that operators perform reclaimed water testing at the same point that discharge monitoring occurs for the Aquifer Protection Permit. The Department changed the term "all reclaimed water" in R18-9-703(C)(2)(c)(i) to read "reclaimed water produced by the facility" to make it clear that the tests will be directed at the water coming out of the treatment plant rather than throughout the delivery system.

Comment: [R18-9-709(B)(4)(a) and (B)(5)(b)] The provisions regarding assurance of reclaimed water quality should be eliminated as "the burden of assuring reclaimed water quality (is placed on the producer of that reclaimed water and is governed by the APP of the producer)". Assuming that these provisions will be eliminated here and "placed where it belongs, at the place of origin: (i.e., in the APP of the supplying WWTP), the word "exact" should be eliminated before the word "place" at what is now R18-9-709.B.4.a (this is an ill-defined term not used elsewhere in the regulations) and some standards must be set forth with respect to a request from the Director at R18-9-709.B.5.b.

Response: Reclaimed Water Individual Permits are developed in response to individual, unique needs and circumstances. Many of them may be industrial wastewater application or blending facilities. It cannot be assured that any water quality limits placed in the permit will be identical to those of the Aquifer Protection Permit. Where a sewage treatment facility is supplying the reclaimed water for reuse under an Aquifer Protection Permit the Department will defer to the monitoring of the Aquifer Protection Permit. The Department will address any monitoring and reporting duplication within the development of the permit itself. The term "exact" has been removed from the rule and subsection (B)(4)(a) has been revised as follows:

4. Requirements for maintaining records of all monitoring information and monitoring activities that include:

a. The date, description of sampling location, and time of sampling or measurement;

b. The name of the person who performed the sampling or measurements;

c. The date the analyses were performed;

d. The name of the person who performed the analyses;

e. The analytical techniques or methods used;

f. The results of the analyses; and

g. Documentation of sampling technique, sample preservation, and transportation, including chain-of-custody forms.

The conditions with which the 5-year retention period needs to be extended cannot be foreseen. Therefore, it is not possible to establish standards in rule with respect to a request from the Director to extend the 5-year retention period.

Comment: [R18-9-709(B)(5)(a)] Replace "automatically" with "as requested in writing by the Director."

Response: In the final editing process, this rulemaking was revised to meet the clear, concise, and understandable requirements under A.R.S. § 41-1052(C)(4). The term "automatically" was unnecessary to the meaning of the subsection and has been deleted. The preceding sentence "The 5-year retention period shall be extended under either of these circumstances:" establishes that either of the two circumstances specified extends the retention period.

R18-9-707. Reclaimed Water Individual Permit for the Direct Reuse of Industrial Wastewater (proposed R18-9-710)

Comment: [R18-9-710(A)] It is unclear what the "processing of any crop" means and further comment is difficult. Is this meant to refer to the "processed food" use currently designated in Table 1 of R18-9-703?

Response: The term does not have the same meaning as in the current Table 1 to which the commenter refers. The term was intended to mean whatever processing activities a crop would undergo after it is harvested to prepare it for human consumption.

R18-9-710. Reclaimed Water General Permit Revocation (proposed R18-9-713)

Comment: [R18-9-713(D)] Reclaimed water systems, agents, and end users see the issuance of a permit as assurance that it is safe to make plans and expend funds to maintain and improve their systems. Once a permit is issued, the Director should not be able to revoke it as a result of other permits being subsequently issued that cumulatively cause violations of water quality standards. If there are areas in which ADEQ feels there may be long-term problems as a result of the use of reclaimed water, the State should undertake studies to identify and quantify the problems so they can be addressed prior to the issuance of reuse permits.

Response: The Department agrees that it is important to assess existing conditions and predict potential impacts of the permitted action before issuing permits. However, there is always the possibility that unforseen conditions or circumstances could cause environmental problems that were not anticipated. Therefore, the Department believes it is important to retain this option in the rule. No change has been made to the rule.

R18-9-711. Type 1 Reclaimed Water General Permit for Gray Water (proposed R18-9-714)

Comment: Supports the new rules, especially for use of gray water.

Response: The Department appreciates the comment.

Comment: [R18-9-714(A)(6)] Replace "managed to minimize" with "designed and managed to eliminate."

Response: With storm events that are common to Arizona on a seasonal basis one can only hope to minimize standing water, not eliminate it. Also, you cannot effectively irrigate by flood irrigation without having standing water at some times. The purpose of this requirement is to avoid nuisance conditions, such as mosquitos, that may occur when standing water is left for a long period. No change has been made to the rule.

Comment: [R18-9-714(A)(7)] Include a statement regarding redirection of water from a washing machine that is used to wash diapers or similarly soiled or infectious garments.

[R18-9-714(A)(13)] Revise to address redirection.

Response: The Department agrees that "redirection" of water from washing of diapers or other like garments is acceptable. R18-9-714(A)(13) is not meant to preclude redirecting the washwater from these loads into the sewage collection system. This practice is the primary means that a reuser will use to achieve compliance with the rule, although some systems might be set up for disinfection. The Department removed the phrase "from a washing machine" to clarify that the subject of exclusion is the water used to wash diapers and not all water from a washing machine. Subsection (A)(12) has been revised as follows:

Gray water applied by surface irrigation does not contain water used ~~from a washing machine~~ to wash diapers or similarly soiled or infectious garments unless the gray water is disinfected before irrigation; and

Comment: [R18-9-714(A)(12)] Delete, "that might be susceptible to cross connection with a potable water system."

Response: The Department believes that pressure piping need only be marked if it is in close proximity to potable system piping. There is no need to mark this piping everywhere it is used. No change has been made to the rule.

Comment: [R18-9-714(A)(12)] Add to the end of the sentence, "and if drinking water for the residence is provided by a public or semi-public water system the drinking water piping before entering the residence shall have a testable backflow device installed that is acceptable to the water system provider."

Response: Backflow prevention falls in the jurisdiction of drinking water system regulation, not gray water reuse.

Comment: [R18-9-714(A)] Add #15 - No connection between a gray water system and a potable water system is allowed by this permit.

Response: The Department agrees that gray water should not be connected to a potable water system. This provision is contained in R18-9-704(G)(2)(a).

R18-9-712. Type 2 Reclaimed Water General Permit for Direct Reuse of Class A+ Reclaimed Water (proposed R18-9-715)

Comment: [R18-9-715(C)] Replace "for each category of direct reuse activity listed in Appendix A" with "for the permitted direct reuse activities."

Response: The Department agrees. Subsection (B) has been revised as follows:

B. Record maintenance. The permittee shall maintain records for five years that describe the direct reuse site and the total amount of reclaimed water used annually for the permitted direct reuse activity.

Comment: [R18-9-715(D)] No water balance is required as it is for classes that require nitrogen management, which is good. Given that A+ water is of better quality than untreated canal water and other water sources not requiring signage, we believe the degree of signage required for A+ is unjustified and will impede public acceptance of irrigation with reclaimed water.

Response: The Department agrees that A+ reclaimed water is of very good quality. It is often better quality than untreated canal water and other water sources not requiring signage. However, the public has the right to know the origin of reclaimed water, regardless of the class. Largely due to the efforts of the major reuse entities in our state, the public is growing more educated and accepting of the use of reclaimed water for many common uses. The Department does not agree that signage for A+ reclaimed water will impede public acceptance of irrigation with reclaimed water. No change has been made to the rule.

R18-9-713. Type 2 Reclaimed Water General Permit for Class A Reclaimed Water. (proposed R18-9-716)

Comment: [R18-9-716(C)] Add the following language at the beginning of R18-9-716.C.1: "Except for impoundments that are exempt from APP requirements pursuant to A.R.S. § 49-250." Imposing liner requirements for impoundments storing Class A water is inappropriate where they are otherwise exempt from Aquifer Protection Permit requirements, such as stock ponds (see A.R.S. § 49-250.B.4).

Add the following language to the beginning of the sentence: "Except for impoundments that are exempt from Aquifer Protection Permit requirements pursuant to A.R.S. § 49-250."

Response: Stock ponds and the other impoundments are exempt from Aquifer Protection Permits either because the leakage is minimal or the contents are relatively benign. However, the use of the impoundments for holding non-denitrified reclaimed water may pose a risk to groundwater quality. Therefore, liner requirements may be appropriate. If the stock pond or impoundment is designed to hold water, the Department expects that these facilities could meet the site-specific liner provision in the rule.

Comment: [R18-9-716(C)(1)] Include a phase-in period or grandfather provision for unlined impoundments storing Class A water.

Limit to impoundments built after the effective date of the rules.

Response: Unlined impoundments storing Class A, B, or C reclaimed water currently operating under an existing Reclaimed Wastewater Reuse Permit may continue to operate until the permit expiration date. After that date, they will be expected to comply with the lining requirements in this Section.

Comments: [R18-9-716(D)] Clarify the intent of this Section especially what is meant by subsection (B)(2).

The reference in R18-9-716(D) to subsection (B)(2) should actually refer to subsection (C)(2).

Response: This is a typographical error and has been changed in the final editing.

R18-9-715. Type 2 Reclaimed Water General Permit for Class B Reclaimed Water. (proposed R18-9-718)

Comment: [R18-9-718] Request clarification of the following scenario: A reclaimed water agent distributes Class B reclaimed water to lakes which are considered Waters of the U.S. The water is then distributed to other, smaller lakes. According to the proposed rules, do these smaller lakes need to be lined?

Response: Whenever reclaimed water is placed into waters of the United States, the reuse program ceases to have any jurisdiction over that water. The water is then regulated under the NPDES program, and the Aquifer Protection Permit program for potential concerns regarding contamination of the aquifer. The question of lining the other, smaller lakes need to be addressed under the Aquifer Protection Permit program and the NPDES program if the smaller lakes are considered waters of the United States.

Comment: [R18-9-718(D) and R18-9-719(D)] Clarify what is meant by subsection (B)(2) and change the reference from subsection "(B)(2)" to "(C)(2)."

Response: In the final editing process, this rulemaking was revised to meet the clear, concise, and understandable requirements under A.R.S. § 41-1052(C)(4). This correction was made as a result of that editing.

R18-9-717. Type 3 Reclaimed Water General Permit for a Reclaimed Water Blending Facility (proposed R18-9-720)

Comment: [R18-9-720 and 705(C)] Delete requirement for blending facilities in cases where the reclaimed water quality provided before blending is consistent with an intended end use and such blending is merely being done on a voluntary basis to further improve the quality or the perceived quality of the reclaimed water to be reused.

Response: There is no rule requirement for a blending facility to be permitted as a Reclaimed Water Blending Facility unless the facility intentionally blends the reclaimed water with other water to achieve a higher class of reclaimed water. The Department believes the definition of Reclaimed Water Blending Facility is clear on this point. No change has been made to the rule.

Comment: [R18-9-720(C)] Identify or explain how the Department will handle information should more frequent monitoring be accomplished by a plant or a facility.

Response: A plant or facility may monitor more frequently than the rule requires. In that case, the plant or facility should maintain those records as required by the rule although only the monitoring results required by the rule must be submitted to the Department. For instance, if a plant or facility collects samples daily but the rule only requires weekly samples, the Department expects that the facility will designate a specific day of the week and the data for that day every week will be reported to the Department. These provisions of the rule have been revised based on other comments and to clarify the Department's intent. See the following responses.

Comment: [R18-9-720(C)] Revise to: "The permittee shall monitor the blended water quality at least monthly for total nitrogen and daily for fecal coliform."

[R18-9-720(C)(1)] In the first sentence, delete "or fecal coliform" and in the second sentence, add "for nitrogen" after ...double the monitoring frequency...

[R18-9-720(C)] Add #3 - "If the concentration of either fecal coliform or e-coli, as applicable, exceeds the limits for the reclaimed water class established in A.A.C. R18-11-301 et. seq., the permittee shall cease application of the effluent to any end use and the permittee shall submit a report to the Department within 30 days with a proposal to change the blending process. Application to any end use shall not continue until approval of the change is granted by the Department."

Response: The Department disagrees with the proposed revisions to R18-9-717(D)(1). Based on the dilution ratio needed, it is virtually impossible that class B reclaimed water could be blended with cleaner water to obtain class A reclaimed water meeting the microbial standard. It is somewhat more likely that class C reclaimed water could be blended with clean water to obtain class B reclaimed water (a blending ratio of 1:5 would be needed, at the barest minimum). In the latter case, to be confident in meeting the class B reclaimed water standard, a blending facility would probably have to double the amount of clean water used to blend (operating closer to a 1:10 or better ratio) to avoid potential reclaimed water quality standards violations. In its review of the information submitted with the Notice of Intent to Operate, the Department intends to critically analyze the information regarding the blended ratio. If the blending ratio or any other aspect of the operation invites doubt whether the microbial standard can be met consistently, the Department will not issue the Verification of General Permit Conformance. The Department is confident that, based on its review of the submitted information and its analysis of the blending plan, the blending will meet standards, and the contingency provisions proposed in the rule are appropriate for the situation and protection of public health. If for some reason, the blending facility does not comply with the permit requirements such that it poses a risk to public health and safety, the Department can revoke the general permit under R18-9-410.

The Department has revised the rule to reference the Reclaimed Water Quality Standards rule, which makes clear that the sampling requirements, including the monitoring frequency, will be those necessary to demonstrate that the blended water quality meets the standards for the desired class of reclaimed water. To demonstrate attainment of classes A+, A, B+, and B reclaimed water, the Reclaimed Water Quality Standards rule requires daily fecal coliform sampling. Monitoring for nitrogen is not specified beyond the requirement for a five-sample geometric mean. To be consistent with R18-9-B204, the Department anticipates that sampling at least monthly frequency is necessary. The rule has been revised as follows:

D. The permittee shall monitor:

1. The blended water quality for total nitrogen and fecal coliform at frequencies specified by the class of reclaimed water in 18 A.A.C. 11, Article 3.

Comment: [R18-9-720] Add "F" - The blending of reclaimed water of undisinfected Class C quality as specified in R18-11-307 is prohibited.

Response: Class C reclaimed water is not "undisinfected" but has, in fact, undergone significant bacterial reduction through treatment (see Reclaimed Water Quality Standards rule). The definition of Reclaimed Water Blending Facility makes it clear that reclaimed water of Class C or better can be blended with other water to improve its quality under this general permit. (See the above comment.) No change has been made to the rule.

R18-9-718. Type 3 Reclaimed Water General Permit for a Reclaimed Water Agent (proposed R18-9-721)

Comment: [R18-9-721(A)(3)] Add (f), which would state, "If deliveries to the end users are made by a homeowner's association, irrigation district or similar group, the notification need only contain general information related to the homeowner's association, irrigation district or similar group and not for each individual end user."

Reconsider requiring this information for each end user under a reclaimed water agent. Suggest having the information available to the Department upon request.

Add the following language to the end of R18-9-721.A.3: "Notwithstanding the foregoing, if deliveries to the end user are to be made by an irrigation or similar district or a homeowner's association or similar entity, the notification information need only contain information related to the district as a whole, and not to individual users served by the district."

Response: The Department does not agree with the suggested simplifications and additions. If a person transports reclaimed water to another entity, such as a homeowner's association, who then has responsibility for direct reuse by multiple end users, the person transporting the reclaimed water is merely operating a conveyance, which is not subject to a permit as specified under Article 6. In this case, either the homeowner's association could assume responsibility for the direct reuse by availing itself of the Type 3 Reclaimed Water General Permit for a Reclaimed Water Agent, or each end user will have to operate under a Type 2 Reclaimed Water General Permit. In both instances, the Department believes that the required submittal information is necessary to appropriately identify the nature and location of each direct reuse site. It should be noted, however, that after the sites of direct reuse are identified to the Department in the Notice of Intent, annual reporting requirements are greatly simplified for Class A+ and Class B+ reclaimed water because only the total amount of reclaimed water delivered each year must be reported. No change has been made to the rule.

Comment: [R18-9-721(A)(5)] Add "if any" to the end of the sentence or delete this subsection, or modify it to read either: "General description of contractual arrangements between the reclaimed water agent and the end user." or "Description of contractual arrangement between the reclaimed water supplier and end user, if any."

Response: The Department believes that a contractual arrangement between the Reclaimed Water Agent and each end user is essential to ensure that the conditions of this Article are understood and complied with by both entities. Under the Department's current reuse permitting program, a person issued a reuse permit covering multiple end users is required to maintain a contractual arrangement with each end user. This has generally proven to be a very workable arrangement. As mentioned previously, the Department has added the following subsection to R18-9-718 to clarify this point:

B. A person holding a Type 3 Reclaimed Water Permit for a Reclaimed Water Agent:

1. Assumes responsibility for the direct reuse of reclaimed water by more than one end user in lieu of direct reuse by the end users under separate Type 2 Reclaimed Water General Permits, and

2. Shall maintain a contractual agreement with each end user stipulating any end user responsibilities for the requirements specified under subsection (A).

In addition, the Department modified subsection (C), which specifies the Notice of Intent requirements, as follows:

6. A description of the contractual arrangement between the reclaimed water agent and each end user, including any end user responsibilities for the requirements specified under subsection (A).

Comments: [R18-9-721(C), (D), and (E)] Use either "permittee" or "supplier" throughout this subsection for consistency.

Response: In the final edit, the Department uses the term "reclaimed water agent" for consistency and to eliminate confusion about responsibilities under the permit.

Comment: [R18-9-721(D)] Replace this requirement for Class A and A+ reclaimed water, (and Class B+ if the wastewater treatment facility is in transition period of upgrading to produce a higher quality reclaimed water) with what we propose to be R18-9-721(F).

Add "F." If deliveries of Class A reclaimed water to the end user are made by an irrigation or similar district or a homeowner's association or similar entity, the monitoring and reporting required by R18-9-721(D) and (E) may report acreage and type of vegetation in general terms for the district as a whole." or "If deliveries of Class A reclaimed water to end users are made by a homeowner's association, irrigation district or similar group, the monitoring, reporting and information changes required by R18-9-721(D) and (E) may be reported (when requested by the Department) in general terms, for the homeowner's association, irrigation district or similar group as a whole for the irrigated acreage and type of vegetation."

Response: The Department established, with general stakeholder agreement, a system that greatly simplifies reporting requirements for Class A+ and Class B+ reclaimed water because of the reduced nitrogen content of the reclaimed water. The reduced nitrogen content of the reclaimed water eliminates the need for prescribed nitrogen management requirements. Thus, for these classes of reclaimed water, only the total amount of reclaimed water delivered by the reclaimed water agent must be reported annually. However, Class A, Class B, and Class C reclaimed water must be applied in accordance with nitrogen management requirements to protect groundwater quality. The Department believes that the streamlined general permit approach proposed in this rule can work only with corresponding reporting of volumes delivered on an end user by end user basis. The Department believes this reporting is necessary to provide assurance that groundwater quality will be protected for these classes of reclaimed water. On the whole, the Department believes that the reporting requirements for the different classes of reclaimed water quality are commensurate with respective potential threats to groundwater quality. Therefore, no change has been made to the rule.

Comment: [R18-9-721(E)] Reconsider requiring this information for each end user under a reclaimed water agent. Suggest having the information available to the Department upon request.

Response: The Department believes that for the purposes of tracking and potential compliance, current information should be retained in its files, updated once a year, identifying the location and key characteristics of the end use sites. The Department does not intend that this become a burdensome reporting requirement. Instead, the Department envisions the original Notice of Intent submittal as a relatively simple spreadsheet providing identifying information for each end user. This spreadsheet could be modified on a yearly basis with updated information. Similar simplified approaches are used by the Department of Water Resources in annual AMA water use filings for service area and other similar changes. To ensure that all reporting requirements for this Type 3 Reclaimed Water Permit are all due at the same time, and to clarify the more detailed information required if Class A, Class B, or Class C reclaimed water is delivered, this subsection has been modified as follows:

E. The reclaimed water agent shall record and annually report the following to the Department, on or before each anniversary date of the verification approval:

1. The total volume of reclaimed water delivered by the reclaimed water agent;

2. The volume of reclaimed water delivered to each end user for Class A, Class B, and Class C reclaimed water; and

3. Any change to the information submitted under subsection (C).

R18-9-719. Reclaimed Water General Permit for Gray Water (proposed R18-9-722)

Comment: Modify the definition of gray water so that it can include water from kitchen sinks if this water does not contain food waste. This would include water from kitchen sinks which, 1) do not contain garbage disposals, and 2) contain a means of separating food waste from the water that is drained from the sink.

Response: The Department disagrees. The Department consulted with Dr. Charles Gerba of the University of Arizona regarding the best management practices for gray water management. Dr. Gerba advised the Department that kitchen sinks are a major source of microbiologic contamination. The contamination is not eliminated by separating food waste from the sink because simply washing food at this location introduces contaminants, such as Salmonella, from meats.

Comment: [R18-9-722(1)] Clarify reference to subsection A.

[R18-9-722(2)] Clarify reference to subsection (A)(1).

Response: This Section was renumbered in the final editing process to eliminate the referencing errors. In addition, the Department dropped references to Appendix G or the Arizona Uniform Plumbing Code and now cites the technical requirements contained in the Department's proposed Aquifer Protection Permit rules for on-site wastewater treatment facilities. These changes ensure that design requirements will be consistent, where appropriate, in both the Aquifer Protection Permit and Reclaimed Water Permit programs. The requirements specified under R18-7-719 are not more stringent than those proposed originally by the Department and, in fact, allow somewhat more flexibility in achieving an appropriate design.

Appendix A

Comment: Limit Appendix A to only one location in the rules.

Response: The Department agrees that Appendix A need only appear in one rulemaking and has deleted it from this rulemaking. All comments received regarding Appendix A will be answered in the Reclaimed Water Quality Standards rulemaking.

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

None

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

None

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

No

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER POLLUTION CONTROL

ARTICLE 6. RECLAIMED WATER CONVEYANCES

R18-9-601. Definitions
R18-9-602. Pipeline Conveyances of Reclaimed Water
R18-9-603. Open Water Conveyances of Reclaimed Water

ARTICLE 7. ~~REGULATIONS FOR THE REUSE OF WASTEWATER~~ DIRECT REUSE OF RECLAIMED WATER

R18-9-701. Definitions
~~R18-9-702. General Requirements for reuse of wastewater~~
R18-9-702. Applicability and Standards for Reclaimed Water Classes
~~R18-9-703. Specific standards and permit monitoring requirements for the reuse of wastewater~~
R18-9-703. Transition of Permits
~~R18-9-704. Irrigation as part of the wastewater treatment process~~
R18-9-704. General Requirements
~~R18-9-705. Permit for reuse of reclaimed wastewater~~
R18-9-705. Reclaimed Water Individual Permit Application
~~R18-9-706. Enforcement and Penalties~~
R18-9-706. Reclaimed Water Individual Permit General Provisions
~~R18-9-707. Severability~~

ARTICLE 6. RECLAIMED WATER CONVEYANCES

R18-9-601. Definitions

In addition to the definitions provided in R18-9-701, the following terms apply to this Article:

1. "Open water conveyance" means any constructed open waterway, including canals and laterals that transports reclaimed water from a sewage treatment facility to a reclaimed water blending facility or from a sewage treatment facility or reclaimed water blending facility to the point of land application or end use. An open water conveyance does not include waters of the United States.
2. "Pipeline conveyance" means any system of pipelines that transports reclaimed water from a sewage treatment facility to a reclaimed water blending facility or from a sewage treatment facility or reclaimed water blending facility to the point of land application or end use.

R18-9-602. Pipeline Conveyances of Reclaimed Water

A. Applicability.
1. Any person constructing a pipeline conveyance on or after January 1, 2001, whether new or a replacement of an existing pipeline shall meet the requirements of this Article.
2. Any person who has constructed a pipeline conveyance before January 1, 2001, is considered to be in compliance with this Article.

B. A person shall design and construct a pipeline conveyance system using good engineering judgement following standards of practice.

C. A person shall construct a pipeline conveyance so that:
1. Reclaimed water does not find its way into, or otherwise contaminate, a potable water system;
2. System structural integrity is maintained; and
3. The capability for inspection, maintenance, and testing is maintained.

D. A person shall construct a pipeline conveyance and all appurtenances conducting reclaimed water to withstand a static pressure of at least 50 pounds per square inch greater than the design working pressure without leakage as determined in A.A.C. R18-9-E301(D)(2)(j).

E. A person shall provide a pipeline conveyance with thrust blocks or restrained joints where needed to prevent excessive movement of the pipeline.

F. The following requirements for minimum separation distance apply. A person shall:
1. Locate a pipeline conveyance no closer than 50 feet from a drinking water well unless the pipeline conveyance is constructed as specified under subsection (F)(3);
2. Locate a pipeline conveyance no closer than 2 feet vertically nor 6 feet horizontally from a potable water pipeline unless the pipeline conveyance is constructed as specified under subsection (F)(3);
3. Construct a pipeline conveyance that does not meet the minimum separation distances specified in subsections (F)(1) and (F)(2) by encasing the pipeline conveyance in at least 6 inches of concrete or using mechanical joint ductile iron pipe or other materials of equivalent or greater tensile and compressive strength at least 10 feet beyond any point on the pipeline conveyance within the specified minimum separation distance; and
4. If a reclaimed water system is supplemented with water from a potable water system, separate the potable water system from the pipeline conveyance by an air gap.

G. A person shall:
1. For a pipeline conveyance, 8 inches in diameter or less, use pipe marked on opposite sides in English: "CAUTION: RECLAIMED WATER, DO NOT DRINK" in intervals of 3 feet or less and colored purple or wrapped with durable purple tape.

2. For a mechanical appurtenance to a pipeline conveyance, ensure that the mechanical appurtenance is colored purple or legibly marked to identify it as part of the reclaimed water distribution system and distinguish it from systems for potable water distribution and sewage collection.

R18-9-603. Open Water Conveyances of Reclaimed Water

A. This Article applies to an open water conveyance, regardless of the date of construction.

B. A person shall maintain an open water conveyance to prevent release of reclaimed water except as allowed under federal and state regulations. The maintenance program shall include periodic inspections and follow-up corrective measures to ensure the integrity of conveyance banks and capacity of the conveyance to safely carry operational flows.

C. Signage for Class B+, B, and C Reclaimed Water. A person shall:

1. Ensure that signs state: "CAUTION: RECLAIMED WATER, DO NOT DRINK," and display the international "do not drink" symbol;
2. Place signs at all points of ingress and, if the open water conveyance is operated with open access, at least every 1/4-mile along the length of the open water conveyance; and
3. Ensure that signs are visible and legible from both sides of the open water conveyance.

ARTICLE 7. ~~REGULATIONS FOR THE REUSE OF WASTEWATER~~ DIRECT REUSE OF RECLAIMED WATER

R18-9-701. Definitions

~~Definitions given in R18-9-802, R9-20-203, and applicable state statutes will apply to those words and phrases when used in this Article. In addition, the following apply:~~ Unless provided otherwise, the definitions provided in A.R.S. § 49-201, A.A.C. R18-9-101, A.A.C. R18-9-601, A.A.C. R18-11-301, and the following terms apply to this Article:

~~1. "Reuse of reclaimed wastewater" means the use of reclaimed wastewater transported from the point of treatment to the point of use without an intervening discharge to the surface waters of the state for which water quality standards have been established.~~

1. "Direct reuse" means the beneficial use of reclaimed water for a purpose allowed by this Article. The following is not a direct reuse of reclaimed water:
   a. The use of water subsequent to its discharge under the conditions of a National Pollutant Discharge Elimination System permit;
   b. The use of water subsequent to discharge under the conditions of an Aquifer Protection Permit issued under 18 A.A.C. 9, Articles 1 through 3; or
   c. The use of industrial wastewater or reclaimed water, or both, in a workplace subject to a federal program that protects workers from workplace exposures.
2. "Direct reuse site" means an area permitted for the application or impoundment of reclaimed water. An impoundment operated for disposal under an Aquifer Protection Permit is not a direct reuse site.
~~2. "Effluent" means a wastewater that has completed its passage through a wastewater treatment plant~~.
3. "End user" means a person who directly reuses reclaimed water meeting the standards for Classes A+, A, B+, B, and C, established under 18 A.A.C. 11, Article 3.
~~3.~~4. "Gray water" means wastewater collected separately from a sewage flow that originates from a clothes ~~washers, dishwashers, bathtubs, showers, and sinks, except kitchen sinks and/ or toilets~~ washer, bathtub, shower, and sink, but does not include wastewater from a kitchen sink, dishwasher, or toilet.
~~4.~~5. "Industrial wastewater" means ~~all wastes that enter a collection, treatment or disposal system~~ wastewater generated from an industrial process.
~~5.~~6. "Irrigation" means the ~~application~~ beneficial use of water or ~~wastewater~~ reclaimed water, or both, for growing ~~agricultural~~ crops, turf, or silviculture, or for landscaping ~~purposes~~.
~~6. "NPDES permit" means a permit issued by the United States Environmental Protection Agency for discharge to the waters of the United States as required by the Clean Water Act, as amended.~~
~~7. "On-site wastewater treatment plant" encompasses all of the processes, devices, structures, and earthworks used for treating wastewater for disposal and reuse other than septic tanks with a hydraulic capacity less than two thousand (2,000) gallons per day that possess a N.S.F. Class I rating.~~
~~8.~~7. "Open access" means that access to ~~the reuse site~~ reclaimed water by the general public is uncontrolled.
~~9. "Partially treated wastewater" means wastewater which has received a minimum of primary treatment but does not meet the allowable limits contained in R18-9-703 for release to a reuse, or for discharge into the waters of the United States.~~
~~10. "Primary treatment" is a treatment process which accomplishes removal of sewage solids by physical means so that the effluent contains no more than 1.0 milligram of settleable solids per liter of wastewater.~~
~~11. "Reclaimed wastewater" is effluent which meets the standards for the specific reuses contained in R18-9-703.~~
8. *"Reclaimed water" means water that has been treated or processed by a wastewater treatment plant or an on-site wastewater treatment facility.* A.R.S. § 49-201(31).
9. "Reclaimed water agent" means a person who holds a permit to distribute reclaimed water to more than one end user.

10. "Reclaimed water blending facility" means an installation or method of operation that receives reclaimed water from a sewage treatment facility or other reclaimed water blending facility classified to produce Class C or better reclaimed water and blends it with other water so that the produced water may be used for a higher-class purpose listed in 18 A.A.C. 11, Article 3, Appendix A.

~~12.~~11. "Restricted access" means that ~~the~~ access to ~~the reuse site~~ reclaimed water by the general public is controlled.

~~13. "Reuse" means the use of reclaimed wastewaters.~~

~~14. "Reuse site" means that area where reclaimed wastewater is applied to and/or impounded upon.~~

~~15. "Secondary treatment" is a treatment process that produces treated wastewater containing no more than 30 milligrams per liter of five -day biochemical oxygen demand, 30 milligrams per liter of suspended solids, a pH between the limits of 6.0 to 9.0 and a fecal coliform standard based on the uses of the wastewater. Aerobic stabilization ponds shall be considered as providing secondary treatment if the effluent contains no more than 30 milligrams per liter of five-day biochemical oxygen demand, 90 milligrams per liter of suspended solids for pond systems treating less than or equal to two million gallons per day, plus the same pH and fecal coliform standards given above. Pond systems with a design capacity of greater than two million gallons per day must meet the 30 milligram per liter standard for suspended solids.~~

~~16. "Wastewater" means sanitary wastes of human origin, sewage, gray water, and industrial wastes that contain sanitary wastes or are used in the production or processing of any crop or substance which may be used as human or animal food.~~

~~17. "Wastewater reclamation system" means the wastewater treatment plant and the entire reuse and distribution system for the reclaimed wastewater.~~

~~18. "Wastewater treatment plant" encompasses all of the processes, devices, structures, and earth-works which are used for treating wastewater for disposal and reuse, but does not include septic tanks, wastewater treatment plants serving singly family residences, industrial unit processes, or industrial impoundments for process waters within the industrial property.~~

~~R18-9-702. General Requirements for Reuse of Wastewater~~

~~A.~~ ~~The application of reclaimed wastewater shall be consistent with the goals and policies of the Council.~~

~~B.~~ ~~Irrigation with untreated wastewater is prohibited.~~

~~C.~~ ~~No wastewater treatment plant owner shall release reclaimed wastewater for reuse without a permit issued by the Department.~~

~~D.~~ ~~Food crops which may be consumed raw by humans that are irrigated with reclaimed wastewater shall be considered adulterated foods in accordance with A.R.S. § 36-904(A)(5), unless the reclaimed wastewater conforms with the limits and conditions of R18-9-703. The production, sale or delivery of such adulterated food crops is prohibited and the Director may detain, remove, or destroy such adulterated food crops pursuant to A.R.S. § 36-910.~~

~~E.~~ ~~A reuser may accept reclaimed wastewater and provide additional treatment for a more restrictive reuse. Under such conditions, the plant providing the additional treatment is subject to the same requirements as other wastewater treatment plants and will be permitted separately.~~

~~F.~~ ~~When no means of reuse, discharge, or disposal of reclaimed wastewater are available other than surface irrigation, a minimum of five days storage shall be provided to prevent the necessity of irrigation when the soil is saturated or during a period when the reclaimed wastewater does not meet the minimum water quality standards for the specific reuse. The irrigation site shall be designed to contain the runoff from a 10-year, 24-hour precipitation event unless the reclaimed wastewater meets the standards and conditions of a valid NPDES permit for discharge into waters of the United States. These provisions shall not apply to agricultural irrigation return flows, and runoff from highway landscaping or golf courses when the Department determines that such a flow does not present a danger to the health of the public.~~

~~G.~~ ~~Discharges of effluent into waters of the United States require a NPDES permit and are not regulated by this Article.~~

~~H.~~ ~~In determining allowable uses of reclaimed wastewater, the Department will consider the effects of blending secondary effluent with waters of higher quality or the effects of additional treatment prior to reuse if requested by the applicant. In cases where blending or additional treatment of secondary effluent is provided, the user shall submit to the Department, as a minimum, a plan of operation, a description of any additional treatment process, blending volumes, and an estimation of final quality at the point of reuse.~~

~~I.~~ ~~The wastewater treatment plant owner or the reclaimed wastewater owner shall be responsible and liable for meeting the conditions of the wastewater reuse permit. The treatment plant owner will not be liable for misapplication of reclaimed wastewater by reusers. To identify the responsibilities of the wastewater treatment plant owner and the reclaimed wastewater owner there shall be a legally enforceable contract which sets forth as a minimum:~~

~~1. The quality and maximum quantity of wastewater to be released for reuse by the wastewater treatment plant.~~

~~2. The specific reuse(s) for which the reclaimed wastewater will be used by the reuser.~~

~~3. The method of disposal of any reclaimed wastewater left over from the reuse activity by the reuser.~~

~~4. The responsibility for compliance with additional requirements for specific reuses as contained in R18-9-703(C) by the reuser.~~

~~**J.** In those cases where the reclaimed wastewater is owned by someone other than the wastewater treatment plant owner, the reclaimed wastewater owner may apply for the reuse permit pursuant to R18-9-705(A) and perform any of the other functions required by this Article so long as the reclaimed wastewater owner, in a form acceptable to the Director, commits to perform any or all of the duties required in this Article and/or produces a legally enforceable contract with the wastewater treatment plant owner which commits performance to any or all of the duties required in this Article. The intent of this policy is that the wastewater treatment plant owner and the reclaimed wastewater owner, either together or separately, agree to commit to all of the requirements of this Article, as shown in a legally enforceable contract.~~

~~**K.** In cases where someone other than the wastewater treatment plant owner makes an actual reuse of the reclaimed wastewater, each succession of ownership shall be governed by a legally enforceable contract, filed with the Department, which notifies the succeeding reclaimed wastewater owner of the requirements of this Article and which requires the succeeding owner to so contract with any additional succeeding reclaimed wastewater owners.~~

~~**L.** Nothing in this Article is intended to exempt disposal of reclaimed wastewater from the requirements of A.A.C. Title 9, Chapter 20, Article 2.~~

~~**M.** The use of reclaimed wastewater for direct human consumption is prohibited.~~

R18-9-702. Applicability and Standards for Reclaimed Water Classes

A. This Article applies to:

1. An owner or operator of a sewage treatment facility that generates reclaimed water for direct reuse,
2. An owner or operator of a reclaimed water blending facility,
3. A reclaimed water agent,
4. An end user,
5. A person who uses gray water,
6. A person who directly reuses reclaimed water from a sewage treatment facility combined with industrial wastewater or combined with reclaimed water from an industrial wastewater treatment facility, and
7. A person who directly reuses reclaimed water from an industrial wastewater treatment facility in the production or processing of a crop or substance that may be used as human or animal food.

B. Reclaimed water classes A+, A, B+, B, and C specified in this Article shall meet the standards established in 18 A.A.C. 11, Article 3.

C. Nothing in this Article exempts the disposal of reclaimed water from the Aquifer Protection Permit requirements under A.R.S. Title 49, Chapter 2, Articles 1, 2, and 3.

~~**R18-9-703. Specific Standards and Permit Monitoring Requirements for the Reuse of Wastewater~~

~~**A.** Numerical parameter limits pertaining to specific reuse categories are contained in Table I of this Article and A.A.C. Title 18, Chapter 11, Article 2.Concentrations of trace substances, organic chemicals, toxic substances, and radiochemicals in waters used for agricultural irrigation, livestock watering, and recreation must meet the allowable limits contained in the state surface water quality standards, A.A.C. Title 18, Chapter 11, Article 2. Permit monitoring requirements for specific reuses are given in Table II of this Article. The regulations in this part apply to effluent flow at a point in the wastewater reclamation system just prior to release for reuse.~~

~~**B.** Permittees are not required to monitor routinely for enteric viruses, entamoeba histolytica, giardia lamblia, ascaris lumbricoides, common large tapeworm, trace substances, organic chemicals, toxic substances, or radiochemicals for which no sampling frequency is specified. However, should the Department find or have reason to believe such contaminants are present in excess of the allowable limits given in Table I of this Article and A.A.C. Title 18, Chapter 11, Article 2, corrective action including monitoring will be required to eliminate or reduce the contaminants to meet these limits.~~

~~TABLE I -- ALLOWABLE PERMIT LIMITS FOR SPECIFIC REUSES~~

~~TABLE II -- MINIMUM PERMIT MONITORING REQUIREMENTS FOR SPECIFIC REUSES~~

~~**C.** Additional requirements for specific uses.~~

~~1. Irrigation of orchard crops and crops not subject to rotation (Table I, Column A). Irrigation shall be by a method which minimizes contact of the reclaimed wastewater with the fruit or foliage.~~

~~2. Irrigation of pastures (Table I, Column C). Pastures must be maintained to prevent incidental ponding or standing water except where local farming conditions and the use of accepted irrigation delivery systems and cropping patterns are such that, as an unavoidable consequence of such conditions, systems, and patterns, there will be standing water.~~

~~3. Irrigation of landscaped areas, cemeteries, highway medians, golf courses, and other areas where public access is restricted (Table I, Column F). Golf courses in residential areas which are separated by a fence or barrier of at least four feet in height will be included in this category. Golf courses contiguous with a residential area primarily restricted to adults or which strictly enforce nonaccess for anyone other than players will be included in this category.~~

~~a. Spray irrigation of fairways shall be limited to such times of the day as to reasonably preclude direct contact of the spray with golfers.~~

~~b. Irrigation spray shall not reach any privately-owned premises or public drinking fountains.~~

c. Hose bibbs discharging reclaimed wastewater shall be posted with signs reading "Reclaimed Water, Do Not Drink", or similar warnings, or be secured to prevent access by the public.
d. Signs reading "Irrigation with reclaimed wastewater" or similar warning shall be prominently displayed on the premises. Score cards shall include the same warning.
e. Irrigation pipe shall be color coded, buried with colored tape, or otherwise suitably marked to indicate nonpotable water.

4. Irrigation of landscaped areas including playgrounds, lawns, parks, golf courses not covered by paragraph (3) above, and other areas where public access is not restricted (Table I, Column G).
   a. Hose bibbs discharging reclaimed wastewater shall be secured to prevent any use by the public.
   b. Irrigation pipe shall be color coded, buried with colored tape, or otherwise suitably marked to indicate nonpotable water.
   c. These areas shall be irrigated only at such time as to minimize contact with the public and be reasonably dry and free from standing water during normal usage periods.
   d. Signs reading "Irrigated with reclaimed wastewater" or similar warnings shall be prominently displayed on the premises.
5. On-site wastewater treatment plants.
   a. For surface irrigation, on-site wastewater treatment plant effluent must meet the allowable limits listed in Table III of this Article. Surface irrigation sites shall be designed to contain a 10-year, 24-hour rainfall event. On-site wastewater treatment plants which use reclaimed wastewater within common areas or discharge to areas off the reuse site are subject to quality, monitoring, management, and operation requirements which pertain to all other wastewater treatment plants.
   b. This Section does not apply to on-site wastewater treatment plants that dispose effluent through the following means:
      i. Conventional leach trenches designed in accordance with Department engineering bulletins.
      ii. Mound disposal systems.
      iii. Evapotranspiration beds designed in accordance with Department engineering bulletins.
6. Gray water from single and multi-family residences may be used for surface irrigation under the following conditions:
   a. The design and construction of the system are approved by the Department in accordance with A.A.C. Title 18, Chapter 9, Article 8. Design guidelines and information on suitable plantings and irrigation methods are available from the Department.
   b. Such irrigation sites shall be designed to contain a 10-year, 24-hour rainfall event.
   c. The gray water must meet the allowable limits for surface irrigation in Table III.

TABLE III

ALLOWABLE LIMITS AND MONITORING REQUIREMENTS FOR SURFACE IRRIGATION WITH ON-SITE WASTEWATER TREATMENT PLANT EFFLUENT AND GRAY WATER

7. Wetlands marsh.
   a. Formation of a wetlands marsh is an allowable reuse of reclaimed wastewater under conditions and design criteria outlined in Engineering Bulletin No. 11, available from the Department.
   b. Table IV of this Article contains minimum effluent standards and monitoring requirements for formation of a wetlands marsh or addition of reclaimed wastewater to an existing man-made wetlands marsh.

TABLE IV

ALLOWABLE LIMITS AND MONITORING REQUIREMENTS FOR RECLAIMED WASTEWATER RELEASED TO WETLANDS MARSHES

8. Industrial reuse.
   a. All wastewater reclamation systems that contain industrial wastewater will be subject to these rules, if they either:
      i. Totally or partially consist of or originated as a sanitary waste of human origin; or,
      ii. Are used for the production and processing of any crops or substance which may be used as human or animal food.
   b. Reuse of reclaimed wastewater for industrial purposes is exempt from these rules under the following circumstances:
      i. The industrial wastewater did not originally contain sanitary wastes of human origin; or,
      ii. The wastewater is not used for the production or processing of any crop or substance which may be used as human or animal food.
   c. If not exempt, each industrial reuse will be considered on an individual basis to determine applicable quality criteria. The variety of industrial reuses is so extensive that establishing specific criteria governing all industrial reuses is not practicable. In fixing such treatment requirements and quality criteria the Department shall give consideration to:

~~i. The degree of potential contact with the reclaimed wastewater by the general public.~~
~~ii. The degree of potential contamination of the products or byproducts being produced or handled in the industrial process.~~
~~d. The use of secondary treated reclaimed wastewater for use in industrial cooling processes shall be allowed.~~

R18-9-703. Transition of Permits

A. A person may directly reuse reclaimed water under an individual Aquifer Protection Permit or a Permit for the Reuse of Reclaimed Wastewater issued by the Department before January 1, 2001 if the person meets the conditions of the permit and the permit does not expire.

B. A person meeting the requirements of subsection (A) may apply for a new reclaimed water permit under this Article.
1. To obtain a reclaimed water permit, a person shall submit a Reclaimed Water Individual Permit application, required under R18-9-705(B), a Notice of Intent for Direct Reuse of Reclaimed Water, required under R18-9-708(B)(2), or a Notice of Intent to Operate, required under R18-9-708(C)(1) to the Department at least 120 days before the current permit expires.
2. The Department shall continue the terms of the individual Aquifer Protection Permit or the Permit for the Reuse of Reclaimed Wastewater beyond the stated date of expiration if:
   a. The permitted direct reuse is of a continuing nature; and
   b. The permittee submits a timely and complete application for a new permit.

C. Sewage treatment facility generating reclaimed water.
1. At the request of a permittee, the Department shall amend an individual Aquifer Protection Permit issued before January 1, 2001 if the permittee adequately demonstrates that the applicable quality of reclaimed water produced for direct reuse is achieved. The Department shall review:
   a. The information in the individual Aquifer Protection Permit application and the water quality test results from the previous two years to determine the classification of reclaimed water generated by the sewage treatment facility; and
   b. The available water quality data if the sewage treatment facility has operated for less than two years.
2. The Department shall ensure that an amended individual Aquifer Protection Permit contains:
   a. Identification of the class of reclaimed water generated by the facility;
   b. Requirements for monitoring reclaimed water quality and flow at a frequency appropriate to demonstrate compliance with this Article and 18 A.A.C. 11, Article 3;
   c. Requirements for quarterly reporting of the following data to the Department, any reclaimed water agent who has contracted for delivery of reclaimed water from the facility, and any end user who has not waived interest in receiving this information:
      i. Water quality test results demonstrating that reclaimed water produced by the facility meets the applicable standards for the class of water identified in subsection (C)(2)(a), and
      ii. The total volume of reclaimed water generated for direct reuse.
   d. Provision for cessation of delivery, if necessary, and storage or disposal if reclaimed water cannot be delivered for direct reuse.

~~**R18-9-704. Irrigation as Part of the Wastewater Treatment Process**~~

~~Irrigation with partially treated wastewater is considered a part of the treatment process and is subject to the same Department controls as other wastewater treatment processes. Such irrigation is allowable only under all of the following conditions:~~
~~1. The person having administrative control over the wastewater treatment plant or the reclaimed wastewater owner has direct physical and administrative control over the irrigation site and process.~~
~~2. The entire treatment process, including irrigation and harvesting, is under the direct supervision of a wastewater treatment plant operator certified by the Department under A.A.C. Title 18, Chapter 4, Article 1.~~
~~3. The irrigation site, cropping, application rates, irrigation practices, harvesting, and a plan of operation shall have been approved by the Department.~~
~~4. Land to which partially treated wastewater is applied shall not be used for crops requiring higher quality irrigation water until such land use is approved in writing by the Department.~~
~~5. Any discharge of partially treated wastewater from the irrigation site shall be from a designated discharge point or points and shall meet the limits and conditions of NPDES permit or a groundwater permit issued under A.A.C. Title 9, Chapter 20, Article 2.~~

R18-9-704. General Requirements

A. Sewage treatment facility. Except for permits continued under R18-9-703(A), a sewage treatment facility owner or operator shall provide reclaimed water for direct reuse only under an individual Aquifer Protection Permit amended under R18-9-703(C)(2).

B. Additional treatment. If an owner or operator of a facility accepts reclaimed water and provides additional treatment for a higher quality direct reuse, the facility is considered a sewage treatment facility and shall operate under the requirements of an individual Aquifer Protection Permit amended under R18-9-703(C)(2).

C. Reclaimed water blending facility. An owner or operator of a reclaimed water blending facility shall not conduct blending operations without obtaining a Reclaimed Water Individual Permit or Reclaimed Water General Permit.

D. Reclaimed water agent. A person shall not operate as a reclaimed water agent without obtaining a Reclaimed Water Individual Permit or a Reclaimed Water General Permit.

E. End user. A person shall not directly reuse reclaimed water unless permitted under this Article.

F. Irrigating with reclaimed water. A permittee irrigating with reclaimed water shall:

1. Use application methods that reasonably preclude human contact with reclaimed water;
2. Prevent reclaimed water from standing on open access areas during normal periods of use;
3. Prevent reclaimed water from coming into contact with drinking fountains, water coolers, or eating areas; and
4. Secure hose bibbs discharging reclaimed water to prevent use by the public.

G. Prohibited activities.

1. Irrigating with untreated sewage;
2. Providing or using reclaimed water for any of the following activities:
   a. Direct reuse for human consumption;
   b. Direct reuse for swimming, wind surfing, water skiing, or other full-immersion water activity with a potential of ingestion; or
   c. Direct reuse for evaporative cooling or misting.
3. Misapplying reclaimed water for any of the following reasons:
   a. Application of a stated class of reclaimed water that is of lesser quality than allowed by this Article for the type of direct reuse application;
   b. Application of reclaimed water to any area other than a direct reuse site; or
   c. Allowing runoff of reclaimed water or reclaimed water mixed with stormwater from a direct reuse site, except for agricultural return flow that is directed onto an adjacent field or returned to an open water conveyance.

H. A permittee shall place and maintain signage at locations specified in Table 1 so the public is informed that reclaimed water is in use and that no one should drink from the system.

TABLE 1. SIGNAGE REQUIREMENTS FOR DIRECT REUSE SITES

Reclaimed Water Class	Hose Bibbs	Residential Irrigation	School-ground Irrigation	Other Open Access Irrigation	Restricted Access Irrigation	Mobile Reclaimed Water Dispersal
A+	Each bibb	Front yard, or all entrances to a subdivision if the signage is supplemented by written yearly notification to individual homeowners by the homeowner's association.	On premises visible to staff and students	None	None	Back of truck or on tank
A	Each bibb	Front yard, or all entrances to a subdivision if the signage is supplemented by written yearly notification to individual homeowners by the homeowner's association.	On premises visible to staff and students	None	None	Back of truck or on tank
B+	Each bibb	Direct Reuse Not Allowed	Direct Reuse Not Allowed	Direct Reuse Not Allowed	1. Ingress points 2. On premises or at reasonably spaced intervals not more than 1/4 mile, as applicable to the use 3. Notice on golf score cards, if applicable	Back of truck or on tank
B	Each bibb	Direct Reuse Not Allowed	Direct Reuse Not Allowed	Direct Reuse Not Allowed	1. Ingress points 2. On premises or at reasonably spaced intervals not more than 1/4 mile, as applicable to the use 3. Notice on golf score cards, if applicable	Back of truck or on tank
C	Each bibb	Direct Reuse Not Allowed	Direct Reuse Not Allowed	Direct Reuse Not Allowed	1. Ingress points 2. On premises or at reasonably spaced intervals not more than 1/4 mile, as applicable to the use	Back of truck or on tank

NOTE: All impoundments with open access including lakes, ponds, ornamental fountains, waterfalls, and other water features shall be posted with signs regardless of the class of reclaimed water.

~~**R18-9-705. Permit for Reuse of Reclaimed Wastewater**~~

~~**A.** To effectuate R18-9-702(C), above, the following shall apply:~~

~~1. Application for a permit and signatories.~~

~~a. The owner or operator of any wastewater treatment plant or reclaimed wastewater owner who proposes to allow the reclaimed wastewater to be reused for any of the purposes authorized by these rules shall complete, sign and submit to the Director information requested in an application form provided by the Department.~~

~~b. All permit applications shall be signed by either a principal executive officer or ranking elected official.~~

~~2. Time allowed for application submittal. A person proposing a reuse facility shall submit an application not less than 120 days before the date on which the reuse is to commence, unless permission for a lesser period has been granted by the Director.~~

~~3. Reissuance of permit: time allowed for application submittal. A person who expects to continue to release reclaimed wastewater for reuse after expiration of the permit shall apply for reissuance not less than 120 days before the expiration date of the present permit.~~

~~4. Duration of permits and continuation of expiring permits.~~

~~a. All permits shall be issued for fixed terms not to exceed five years. Permits may be modified, transferred, reissued, or revoked by the Director.~~

~~b. The term and conditions of an expired permit are automatically continued under the provisions of A.R.S. § 41-1012(B) pending issuance of a new permit if:~~

~~i. The permitted activity is of a continuing nature.~~

~~ii. The permittee has submitted a timely and sufficient application for a new permit.~~

~~iii. The Department is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit.~~

~~5. Public comment and hearings, public notice regarding permits and permit hearings.~~

~~a. Notices shall be circulated in a manner designed to inform interested persons of a hearing or determination dealing with permit denial or issuance. Notice of draft permit shall allow at least 30 days for public comments and notice of hearing shall be given 30 days before the hearing.~~

~~b. Notice of the formulation of any draft permit and notice of all hearings shall be given by the Department:~~

~~i. By mailing a copy to the applicant, to interested state and county agencies, and to any person on request.~~

~~ii. By any of the following methods:~~

~~(1) By publication of a notice in a daily or weekly newspaper within the area affected by the wastewater reuse activity or discharge; or,~~

~~(2) By posting a copy of the information required at the principal office of the municipality or political subdivision affected by the wastewater reuse activity or discharge, and by posting a copy at the United States Post Office serving those premises.~~

~~(3) In any other manner constituting legal notice under state law.~~

~~**B.** Public notices issued under this Section will contain the following information:~~

~~1. Name and address of the office processing the application or conducting the hearing.~~

~~2. Name and address of the applicant and the wastewater treatment plant owner (if different from the applicant) and a general description of the location of each existing or proposed reuse facility.~~

~~3. Name of person, and an address and telephone number where interested persons may obtain further information, including copies of the draft permit.~~

~~**C.** Transfer of permits. A permit may be transferred to another person by a permittee if:~~

~~1. The permittee notifies the Director of the proposed transfer.~~

~~2. A written agreement containing a specific date for transfer of permit responsibility and coverage between the current and new permittees (including acknowledgment that the existing permittee is liable for violations up to that date, and that the new permittee is liable for violations from that date on) is submitted to the Director.~~

~~3. The Director, within 30 days of receiving a transfer notice, does not notify the current permittee and the new permittee of the intent to modify revoke and reissue, or terminate the permit and to require that a new application be filed rather than agreeing to the transfer of the permit.~~

~~**D.** Permit compliance. To assure compliance with permit terms and conditions, the permittee shall monitor:~~

~~1. The amount, concentration, or other measurement for each contaminant from Table II of this article and A.A.C. Title 18, Chapter 11, Article 2 specified in the permit.~~

~~2. The volume of reclaimed wastewater released for reuse.~~

~~3. Other parameters specifically required in the permit.~~

~~4. The Director will specify the following monitoring requirements in the permit:~~

~~a. Requirements concerning proper installation, use and maintenance of monitoring equipment or methods (including biological monitoring methods where appropriate).~~

~~b. Monitoring frequency, type and intervals sufficient to yield continuing data representative of the volume of reclaimed wastewater flow and the quantity of contaminant discharged.~~

~~c. Test procedures for the analysis of contaminant meeting the requirements of this Section.~~

~~5. Test procedures identified in 40 CFR Part 136 shall be utilized for contaminants or parameters listed in the permit unless an alternative test procedure has been approved by the Director.~~

~~**E.** Recording of monitoring results.~~

~~1. Any permittee required to monitor shall maintain records of all monitoring information and monitoring activities, including:~~

~~a. The date, exact place and time of sampling or measurements;~~

~~b. The person who performed the sampling or measurements;~~

~~c. The date analyses were performed;~~

~~d. The person who performed the analyses;~~

~~e. The analytical techniques or methods used;~~

~~f. The results of such analyses.~~

~~2. All records of monitoring activities and results (including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records shall be retained by the permittee for three years. The three-year period shall be extended:~~

~~a. Automatically during the course of any unresolved litigation regarding the discharge of contaminants by the permittee;~~

~~b. As requested in writing by the Director.~~

~~**F.** Access to records. The manager of the wastewater treatment plant shall allow any and all of the reusers to have access to the records of physical, chemical and biological quality of the reclaimed wastewater.~~

~~**G.** Availability of records. Water quality records of the wastewater facility will be available for public inspection at the Department.~~

~~**H.** Reuses requiring lower quality reclaimed wastewater than that allowed by permit. It is expressly allowed that a reuser of reclaimed wastewater may use the water for any purpose included in these rules which requires a lower quality than that set forth in the permit.~~

R18-9-705. Reclaimed Water Individual Permit Application

A. Pre-application conference. Upon request of an applicant, the Department shall schedule and hold a pre-application conference with the applicant to discuss any requirements in this Article.

B. To apply for a Reclaimed Water Individual Permit, a person shall provide the Department with:

1. The following information on a form provided by the Department:
   a. The name and mailing address of the owner or operator of the facility or the reclaimed water agent;
   b. The social security number of the applicant, if the applicant is an individual;
   c. The legal description of the direct reuse site, including latitude and longitude coordinates;
   d. Any other federal or state environmental permits issued to the applicant;
   e. Source of reclaimed water to be directly reused;
   f. Volume of reclaimed water to be directly reused on an annual basis;
   g. Class of reclaimed water to be directly reused;
   h. Description of the direct reuse activity; and
   i. The applicant's signature certifying that the information submitted in the application is true and accurate to the best of the applicant's knowledge.
2. A copy of the certificate of disclosure of violations required under A.R.S. § 49-109; and
3. The applicable permit fee specified under 18 A.A.C. 14.

C. Administrative completeness review. Upon receipt, the Department shall review the Reclaimed Water Individual Permit application to determine its administrative completeness under A.R.S. § 41-1074 and A.A.C. R18-1-503.

D. Substantive review. Upon receipt of a complete Reclaimed Water Individual Permit application, the Department shall review the application to determine its substantive adequacy under A.R.S. § 41-1075 and A.A.C. R18-1-504.

E. Draft permit. The Department shall provide the applicant a copy of a draft of the Reclaimed Water Individual Permit before the notice specified in subsection (F) is published.

F. Public participation.

1. Notice of Preliminary Decision.
   a. The Department shall publish a Notice of Preliminary Decision to issue or deny a Reclaimed Water Individual Permit within a period of time that allows the Department to meet the licensing time-frame requirements under 18 A.A.C. 5.
   b. The Department shall publish the Notice of Preliminary Decision regarding the issuance or denial of a final permit determination in one or more newspapers of general circulation where the facility is located.
   c. The Department shall accept written comments from the public before a Reclaimed Water Individual Permit is issued or denied.
   d. The written public comment period begins on the publication date of the Notice of Preliminary Decision and extends for 30 calendar days.

2. After publishing the notice specified in subsection (F)(1)(a), the Department shall hold a public hearing to address the Notice of Preliminary Decision if the Department determines that:
   a. Public interest in a public hearing exists, or
   b. Issues or information have been brought to the attention of the Department that are relevant to the permitting decision and have not been considered previously in the permitting process.
3. If the Department determines that a public hearing is necessary and a public hearing has not already been noticed under subsection (F)(1)(a), the Department shall schedule a public hearing and republish the Notice of Preliminary Decision as a legal notice at least once, in one or more newspapers of general circulation where the facility is located.
4. The Department shall accept written public comment until the close of the hearing record as specified by the person presiding at the public hearing.

G. Final permit issuance or denial.
1. The Department shall give the applicant written notification of its final decision to issue or deny the permit application within the overall licensing time-frame requirements in 18 A.A.C. 5.
2. The Department may deny a Reclaimed Water Individual Permit if the Department determines upon completion of the application process that the applicant has:
   a. Failed or refused to correct a deficiency in the permit application;
   b. Failed to demonstrate that the facility and the operation will protect public health and water quality. This determination shall be based on:
      i. The information submitted in the permit application,
      ii. Any information submitted to the Department as written public comment or following a public hearing; or
      iii. Any information relevant to the demonstration that is developed or acquired by the Department, or
   c. Provided false or misleading information.
3. If the Department denies a Reclaimed Water Individual Permit the Department shall provide the applicant with written notification that explains the following:
   a. The reasons for the denial with references to the statutes or rules on which the denial is based.
   b. The applicant's right to appeal the denial, including the number of days the applicant has to file a notice of appeal, and the name and telephone number of the Department contact person who can answer questions regarding the appeals process.
   c. The applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.

~~**R18-9-706. Enforcement and penalties**~~
~~Any person who releases reclaimed wastewater for reuse without a permit or contrary to provisions of a permit or this Article, falsifies data or information submitted to the Department as a result of the requirements of this Article, or otherwise violates the provisions of this Article, shall be subject to enforcement and penalties pursuant to A.R.S. §§ 49-262 and 49-263 and any other applicable and appropriate provisions of the Arizona Revised Statutes~~.

R18-9-706. Reclaimed Water Individual Permit General Provisions

A. A Reclaimed Water Individual Permit obtained under R18-9-705:
1. Is valid for five years;
2. May be amended, transferred, reissued, or revoked by the Director based on whether the permittee meets the terms of the individual permit and the requirements of this Article; and
3. Continues, pending the issuance of a new permit, with the same terms following its expiration if the following are met:
   a. The permittee submits an application for a new permit at least 120 days before the expiration of the existing permit; and
   b. The permitted activity is of a continuing nature.

B. A Reclaimed Water Individual Permit shall contain, if applicable:
1. The class of reclaimed water to be applied for direct reuse;
2. Specific reuse applications or limitations on reuse;
3. Requirements for monitoring reclaimed water quality and flow to demonstrate compliance with this Article and A.A.C. Title 18, Chapter 11, Article 3;
4. Requirements for reporting the following data to demonstrate compliance with this Article and A.A.C. Title 18, Chapter 11, Article 3:
   a. Water quality test results demonstrating that the reclaimed water meets the applicable standards for the class of water identified in subsection (B)(1), and
   b. The total volume of reclaimed water generated for direct reuse.
5. Requirements for maintaining records of all monitoring information and monitoring activities that include:
   a. The date, description of sampling location, and time of sampling or measurement;
   b. The name of the person who performed the sampling or measurement;

c. The date the analyses were performed;
d. The name of the person who performed the analyses;
e. The analytical techniques or methods used;
f. The results of the analyses; and
g. Documentation of sampling technique, sample preservation, and transportation, including chain-of-custody forms.

6. Requirements to retain all monitoring activity records and results, including all original strip chart recordings for continuous monitoring instrumentation, and calibration and maintenance records for five years from the date of sampling or analysis. The Director shall extend the five-year retention period:
   a. During the course of an unresolved litigation regarding compliance with the permit conditions, or
   b. For any other justifiable cause.
7. A requirement to allow all end users access to the records of physical, chemical, and biological quality of the reclaimed water.

C. Permit transfer. A permittee may transfer a Reclaimed Water Individual Permit to another person if the following conditions are met:
1. The permittee notifies the Director of the proposed transfer.
2. The permittee submits a written agreement containing a specific date for the transfer of permit responsibility and coverage between the current permittee and the proposed new permittee, including an acknowledgment that the existing permittee is liable for violations up to the date of transfer and that the proposed new permittee will be liable for violations from that date forward.
3. The notice specified in subsection (C)(1) contains any information for the proposed new permittee that is changed from the information submitted under R18-9-705(B).
4. The Director, within 30 days of receiving a transfer notice from the permittee, does not notify both the current permittee and proposed new permittee of the intent to amend, revoke, or reissue the permit or require the proposed new permittee to file an application for a new permit rather than agreeing to transfer the current permit.

~~**R18-9-707. Severability**~~
~~If any provision of this Article is finally adjudicated invalid, the remaining provisions of this Article shall not be affected thereby~~.

R18-9-707. Reclaimed Water Individual Permit Where Industrial Wastewater Influences the Characteristics of Reclaimed Water

A. The following activities are prohibited unless a Reclaimed Water Individual Permit is obtained under R18-9-705:
1. Direct reuse of reclaimed water from a sewage treatment facility that is combined with industrial wastewater or that is combined with reclaimed water from an industrial wastewater treatment facility.
2. Direct reuse of reclaimed water from an industrial wastewater treatment facility for production or processing of a crop or substance that may be used as human or animal food.

B. In addition to the requirements in R18-9-705(B), an application for a Reclaimed Water Individual Permit shall include:
1. Each source of the industrial wastewater with Standard Industrial Code, and the projected rates and volumes from each source;
2. The chemical, biological, and physical characteristics of the industrial wastewater from each source; and
3. If reclaimed water will be used in the processing of any crop or substance that may be used as human or animal food, the information regarding food safety and any potential adverse health effects of this direct reuse.

R18-9-708. Reusing Reclaimed Water Under a General Permit

A. Type 1 Reclaimed Water General Permit. A person may directly reuse reclaimed water without notice to the Department if:
1. The direct reuse is specifically authorized by and meets the requirements of this Article, and
2. Complies with the requirements of the Type 1 Reclaimed Water General Permit under R18-9-711.

B. Type 2 Reclaimed Water General Permit.
1. A person may directly reuse reclaimed water under a Type 2 Reclaimed Water General Permit if:
   a. The direct reuse is authorized by and meets the requirements of this Article;
   b. The direct reuse meets all the conditions of the applicable Type 2 Reclaimed Water General Permit under R18-9-712 through R18-9-716;
   c. The person files a Notice of Intent for Direct Reuse of Reclaimed Water under subsection (B)(2); and
   d. The person submits the applicable fee established in 18 A.A.C. 14.
2. Notice of Intent for Direct Reuse of Reclaimed Water.
   a. A person shall submit, by certified mail, in person, or by another method approved by the Department, the Notice of Intent for Direct Reuse of Reclaimed Water on a form provided by the Department.
   b. The Notice of Intent for Direct Reuse of Reclaimed Water shall include;
      i. The name, address, and telephone number of the applicant;

ii. The social security number of the applicant, if the applicant is an individual;
iii. The name, address, and telephone number of the contact person;
iv. The source, volume, and class of reclaimed water to be directly reused;
v. A legal description of the direct reuse site, including latitude and longitude coordinates;
vi. The description of the direct reuse activity, including a description of acreage and the type of vegetation to be irrigated, if applicable to the type of direct reuse activity; and
vii. The permittee's signature certifying that the permittee agrees to comply with all requirements of this Article, including specific terms of the applicable Reclaimed Water General Permit.

C. Type 3 Reclaimed Water General Permit. A person may operate under a Type 3 Reclaimed Water General Permit after filing an applicable Notice of Intent to Operate with the Department and receiving a written Verification of General Permit Conformance for the operation.

1. Application submittal. The applicant shall submit, either by certified mail, in person at the Department, or by another method approved by the Department:
   a. The Notice of Intent to Operate on a form provided by the Department containing the information specified in the applicable Type 3 Reclaimed Water General Permit under R18-9-717(B), R18-9-718(C), or R18-9-719(B), and
   b. The applicable fee established in 18 A.A.C. 14.
2. Verification issuance. If, after reviewing the Notice of Intent to Operate, the Department determines that the direct reuse conforms with the conditions of a Type 3 Reclaimed Water General Permit and all other applicable requirements of this Article, the Department shall issue the Verification of General Permit Conformance.
3. Verification denial.
   a. If the Department determines on the basis of its review or an inspection that the direct reuse does not conform to the conditions of the applicable Type 3 Reclaimed Water General Permit or other applicable requirements of this Article, the Department shall notify the applicant of its decision not to issue the Verification of General Permit Conformance.
   b. If an application is denied, the applicant shall not operate under a Type 3 Reclaimed Water General Permit.
   c. The applicant may appeal the decision not to issue a Verification of General Permit Conformance under A.R.S. §§ 41-1092 through 41-1092.12.
4. Automatic issuance. If the Department does not issue the Verification of General Permit Conformance within the time-frame specified under 18 A.A.C. 1, Article 5, and does not notify the applicant that it will not issue the verification, the verification automatically becomes effective upon expiration of the overall time-frame.

R18-9-709. Reclaimed Water General Permit Renewal and Transfer

A. General permit renewal. A permittee shall renew a Reclaimed Water General Permit at least 90 days before the permit expires by following the procedure described in either R18-9-708(B) or (C) and include the applicable fee established in 18 A.A.C. 14.

1. A Type 1 Reclaimed Water General Permit is valid as long as the conditions of the general permit and the requirements of this Article are met. No renewal is required;
2. A Type 2 Reclaimed Water General Permit is valid for five years from the date the Department receives the Notice of Intent for Direct Reuse of Reclaimed Water;
3. A Type 3 Reclaimed Water General Permit is valid for five years from the date the Verification of General Permit Conformance becomes effective.

B. General permit transfer. A permittee shall provide notice to the Department by certified mail within 15 days following the transfer of a Type 2 or Type 3 Reclaimed Water General Permit. The Notice of Transfer shall:

1. Contain any information that has changed from the original Notice of Intent for Direct Reuse of Reclaimed Water or the Notice of Intent to Operate, including all information on the proposed new permittee, and
2. Include the applicable fee established in 18 A.A.C. 14.

R18-9-710. Reclaimed Water General Permit Revocation

A. The Director may revoke a Reclaimed Water General Permit if the permittee fails to comply with any requirement in this Article, including a condition specified in the applicable Reclaimed Water General Permit. The Director shall make the determination based on the risk to public health and safety or a threat to waters of the state.

1. Before revoking a general permit, the Department shall provide notice to the permittee by certified mail of the Department's intent to revoke the Reclaimed Water General Permit. The notice of intent to revoke the general permit shall provide the permittee a reasonable opportunity to correct any noncompliance and specify a time-frame within which the permittee shall achieve compliance.
2. If the permittee fails to correct the noncompliance within the specified time-frame, the Department shall notify the permittee, by certified mail, of the Director's decision to revoke the Reclaimed Water General Permit.

B. The Director shall revoke a Reclaimed Water General Permit for any or all facilities located within a specific geographic area, if, due to a geologic or hydrologic condition, the cumulative effect of the facilities subject to the Reclaimed Water General Permit has violated or will violate a Water Quality Standard established under A.R.S. §§ 49-221 and 49-223.

R18-9-711. Type 1 Reclaimed Water General Permit for Gray Water

A. A Type 1 Reclaimed Water General Permit allows private residential direct reuse of gray water for a flow of less than 400 gallons per day if all the following conditions are met:
1. Human contact with gray water and soil irrigated by gray water is avoided;
2. Gray water originating from the residence is used and contained within the property boundary for household gardening, composting, lawn watering, or landscape irrigation;
3. Surface application of gray water is not used for irrigation of food plants, except for citrus and nut trees;
4. The gray water does not contain hazardous chemicals derived from activities such as cleaning car parts, washing greasy or oily rags, or disposing of waste solutions from home photo labs or similar hobbyist or home occupational activities;
5. The application of gray water is managed to minimize standing water on the surface;
6. The gray water system is constructed so that if blockage, plugging, or backup of the system occurs, gray water can be directed into the sewage collection system or on-site wastewater treatment and disposal system, as applicable. The gray water system may include a means of filtration to reduce plugging and extend system lifetime;
7. Any gray water storage tank is covered to restrict access and to eliminate habitat for mosquitoes or other vectors;
8. The gray water system is sited outside of a floodway;
9. The gray water system is operated to maintain a minimum vertical separation distance of at least 5 feet from the point of gray water application to the top of the seasonally high groundwater table;
10. For residences using an on-site wastewater treatment facility for black water treatment and disposal, the use of a gray water system does not change the design, capacity, or reserve area requirements for the on-site wastewater treatment facility at the residence, and ensures that the facility can handle the combined black water and gray water flow if the gray water system fails or is not fully used;
11. Any pressure piping used in a gray water system that may be susceptible to cross connection with a potable water system clearly indicates that the piping does not carry potable water;
12. Gray water applied by surface irrigation does not contain water used to wash diapers or similarly soiled or infectious garments unless the gray water is disinfected before irrigation; and
13. Surface irrigation by gray water is only by flood or drip irrigation.

B. Prohibitions. The following are prohibited:
1. Gray water use for purposes other than irrigation, and
2. Spray irrigation.

C. Towns, cities, or counties may further limit the use of gray water described in this Section by rule or ordinance.

R18-9-712. Type 2 Reclaimed Water General Permit for Direct Reuse of Class A+ Reclaimed Water

A. A Type 2 Reclaimed Water General Permit for Direct Reuse of Class A+ Reclaimed Water allows any direct reuse application of reclaimed water listed in 18 A.A.C. 11, Article 3, Appendix A, if the conditions in this Article are met.

B. Record maintenance. A permittee shall maintain records for five years that describe the direct reuse site and the total amount of reclaimed water used annually for the permitted direct reuse activity. The records shall be made available to the Department upon request.

C. A permittee shall post signs as specified in R18-9-704(H).

D. No lining is required for an impoundment storing Class A+ reclaimed water.

R18-9-713. Type 2 Reclaimed Water General Permit for Direct Reuse of Class A Reclaimed Water

A. A Type 2 Reclaimed Water General Permit for the Direct Reuse of Class A Reclaimed Water allows any direct reuse application of reclaimed water listed in 18 A.A.C. 11, Article 3, Appendix A, if the conditions in this Article are met.

B. Records and reporting. A permittee shall:
1. Maintain records containing the following information for five years, and make them available to the Department upon request:
   a. The direct reuse site,
   b. The volume of reclaimed water applied monthly for each category of direct reuse activity listed in 18 A.A.C. 11, Article 3, Appendix A,
   c. The total nitrogen concentration of the reclaimed water applied, and
   d. The acreage and type of vegetation to which the reclaimed water is applied.
2. Report annually to the Department on or before the anniversary date of the Notice of Intent:
   a. The volume of reclaimed water received,
   b. The type of reclaimed water application, and
   c. If used for irrigation, the vegetation and acreage irrigated.

C. Nitrogen management. A permittee shall ensure that:

1. Impoundments storing reclaimed water allowed by the general permit are lined using a low- hydraulic conductivity artificial or site-specific liner material achieving a calculated discharge rate less than 550 gallons per acre per day; and
2. The application rates of the reclaimed water are based on one of the following:
   i. The water allotment assigned by the Arizona Department of Water Resources;
   ii. A water balance that considers consumptive use of water by the crop, turf, or landscape vegetation; or
   iii. An alternative method approved by the Department.

D. In addition to the Notice of Intent for Direct Reuse of Reclaimed Water specified in R18-9-708(B)(2), the applicant shall provide a list of impoundments and the liner characteristics and the method chosen from the list in subsection (C)(2).

E. The permittee shall post signs as specified in R18-9-704(H).

R18-9-714. Type 2 Reclaimed Water General Permit for Direct Reuse of Class B+ Reclaimed Water

A. A Type 2 Reclaimed Water General Permit for Direct Reuse of Class B+ Reclaimed Water allows any direct reuse application of Class B and Class C reclaimed water listed in 18 A.A.C. 11, Article 3, Appendix A, if the conditions in this Article are met.

B. A permittee shall comply with the record maintenance and posting requirements established under R18-9-712 and make records available to the Department upon request.

C. No lining is required for an impoundment storing Class B+ reclaimed water.

R18-9-715. Type 2 Reclaimed Water General Permit for Direct Reuse of Class B Reclaimed Water

A. A Type 2 Reclaimed Water General Permit for the Direct Reuse of Class B Reclaimed Water allows the direct reuse application of Class B and Class C reclaimed water listed in 18 A.A.C. 11, Article 3, Appendix A, if conditions in this Article are met.

B. A permittee shall comply with the requirements established under R18-9-713(B), (C), (D), and (E).

R18-9-716. Type 2 Reclaimed Water General Permit for Direct Reuse of Class C Reclaimed Water

A. A Type 2 Reclaimed Water General Permit for the Direct Reuse of Class C Reclaimed Water allows the direct reuse application of Class C reclaimed water listed in 18 A.A.C. 11, Article 3, Appendix A, if conditions in this Article are met.

B. A permittee shall comply with the requirements established under R18-9-713(B), (C), (D), and (E).

R18-9-717. Type 3 Reclaimed Water General Permit for a Reclaimed Water Blending Facility

A. Permit conditions.
1. A Type 3 Reclaimed Water General Permit for a Reclaimed Water Blending Facility allows the blending of reclaimed water with other water, if the conditions in this Article are met.
2. Blending reclaimed water with industrial wastewater or with reclaimed water from an industrial wastewater treatment plant is not authorized by this general permit.

B. A person shall file with the Department a Notice of Intent to Operate a reclaimed water blending facility at least 90 days before the date the proposed activity will start. The Notice of Intent to Operate shall include:
1. The name, address, and telephone number of the applicant;
2. The social security number of the applicant, if the applicant is an individual;
3. The name, address, and telephone number of a contact person;
4. The source and volume of reclaimed water to be blended;
5. The class of reclaimed water to be blended;
6. The source, volume, and quality of other water to be blended;
7. A legal description of the reclaimed water blending facility, including latitude and longitude coordinates;
8. A description of the reclaimed water blending facility, including a demonstration that the proposed blending methodology will meet the standards established in 18 A.A.C. 11, Article 3 for the class of reclaimed water the facility will produce;
9. A signature on the notice of intent certifying that the applicant agrees to comply with the requirements of this Article, 18 A.A.C. 11, Article 3, and the terms of this reclaimed water general permit; and
10. The applicable permit fee specified under 18 A.A.C. 14.

C. A person shall not operate a reclaimed water blending facility until the Department issues a written Verification of General Permit Conformance under R18-9-708(C).

D. A permittee shall monitor:
1. The blended water quality for total nitrogen and fecal coliform at frequencies specified by the class of reclaimed water in 18 A.A.C. 11, Article 3.
   a. If the concentration of either total nitrogen or fecal coliform, as applicable, exceeds the limits for the reclaimed water class established in 18 A.A.C. 11, Article 3, the permittee shall submit a report to the Department within 30 days with a proposal to change the blending process. The permittee shall also double the monitoring frequency for the next two months.

b. If another exceedance occurs within the interval of increased monitoring, the permittee shall submit an application within 45 days for a Reclaimed Water Individual Permit.

2. The volume of reclaimed water, the volume of the other water, and the total volume of blended water delivered for direct reuse on a monthly basis.

E. The permittee shall report the results of the monitoring under subsection (D) to the Department on or before the anniversary date of the verification approval and shall make this information available to the end users.

R18-9-718. Type 3 Reclaimed Water General Permit for a Reclaimed Water Agent

A. A Type 3 Reclaimed Water General Permit allows a person to operate as a Reclaimed Water Agent if that the conditions of this Article are met, and the following conditions are met for the class of reclaimed water delivered by the Reclaimed Water Agent:

1. Signage requirements specified under R18-9-704(H), as applicable;
2. Impoundment liner requirements specified under R18-9-712(D), R18-9-713(C), R18-9-714(C), R18-9-715(B), or R18-9-716(B), as applicable; and
3. Nitrogen management requirements specified under R18-9-713(C), R18-9-715(B), and R18-9-716(B), as applicable.

B. A person holding a Type 3 Reclaimed Water Permit for a Reclaimed Water Agent:

1. Is responsible for the direct reuse of reclaimed water by more than one end user instead of direct reuse by the end users under separate Type 2 Reclaimed Water General Permits, and
2. Shall maintain a contractual agreement with each end user stipulating any end user responsibilities for the requirements specified under subsection (A).

C. A person shall file with the Department a Notice of Intent to Operate as a reclaimed water agent at least 90 days before the date the proposed activity will start. The Notice of Intent to Operate shall include:

1. The name, address, and telephone number of the applicant;
2. The social security number of the applicant, if the applicant is an individual;
3. The name, address, and telephone number of a contact person;
4. The following information for each end user to be supplied reclaimed water by the applicant:
   a. The name, address and telephone number of the end user;
   b. A legal description of each direct reuse site, including latitude and longitude coordinates; and
   c. A description of each direct reuse activity, including the type of vegetation, acreage, and annual volume of reclaimed water to be used, unless Class A+ or Class B+ reclaimed water is delivered.
5. The source, class, and annual volume of reclaimed water to be delivered by the applicant;
6. A description of the contractual arrangement between the applicant and each end user, including any end user responsibilities for the requirements specified under subsection (A); and
7. The applicable permit fee specified under 18 A.A.C. 14.

D. A proposed reclaimed water agent shall not distribute reclaimed water to end users until the Department issues a written Verification of General Permit Conformance issued under R18-9-708(C).

E. A reclaimed water agent shall record and annually report the following information to the Department, on or before each anniversary date of the verification approval:

1. The total volume of reclaimed water delivered by the reclaimed water agent;
2. The volume of reclaimed water delivered to each end user for Class A, Class B, and Class C reclaimed water; and
3. Any change in the information submitted under subsection (C).

F. The reclaimed water agent shall notify the Department before the end of each calendar year of any changes in the information submitted under subsection (C).

R18-9-719. Type 3 Reclaimed Water General Permit for Gray Water

A. A Type 3 Reclaimed Water General Permit allows a gray water irrigation system if:

1. The general permit described in R18-9-711 does not apply,
2. The flow is not more than 3000 gallons per day, and
3. The gray water system satisfies the notification, design, and installation requirements specified in subsection (C).

B. A person shall file a Notice of Intent to Operate a Gray Water Irrigation System with the Department at least 90 days before the date the proposed activity will start. The Notice of Intent to Operate shall include:

1. The name, address and telephone number of the applicant;
2. The social security number of the applicant, if the applicant is an individual;
3. A legal description of the direct reuse site, including latitude and longitude coordinates;
4. The design plans for the gray water irrigation system;
5. A signature on the Notice of Intent to Operate certifying that the applicant agrees to comply with the requirements of this Article and the terms of this Reclaimed Water General Permit; and
6. The applicable permit fee specified under 18 A.A.C. 14.

C. The following technical requirements apply to the design and installation of a gray water irrigation system allowed under this Reclaimed Water General Permit:

1. Design of the gray water irrigation system shall meet the on-site wastewater treatment facility requirements under R18-9-A312(C), (D)(1), (D)(2), (E)(1), (G), and R18-9-E302(C)(1), except the septic tank specified in R18-9-E302(C)(1) is not required if pretreatment of gray water is not necessary for the intended application;
2. Design of the dispersal trenches for the gray water irrigation system shall meet the on-site wastewater treatment facility requirements for shallow trenches specified in R18-9-E302(C)(2);
3. The depth of the gray water dispersal trenches shall be appropriate for the intended irrigation use but not more than 5 feet below the finished grade of the native soil; and
4. The void space volume of the aggregate fill in the gray water dispersal trench below the bottom of the distribution pipe shall have enough capacity to contain two days of gray water at the design flow.

D. The Department may review design plans and details and accept a gray water irrigation system that differs from the requirements specified in subsection (C) if the system provides equivalent performance and protection of human health and water quality.

R18-9-720. Enforcement and Penalties

Any person who violates a condition specified in a permit issued under this Article, falsifies data or information submitted to the Department as required under Articles 6 or 7 of this Chapter, or violates a provision of Article 6 or 7 of this Chapter, is subject to the enforcement actions prescribed under A.R.S. §§ 49-261 and 49-262.

NOTICE OF FINAL RULEMAKING

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 2. ARIZONA RACING COMMISSION

PREAMBLE

1. Sections Affected — **Rulemaking Action**

Article 6	Amend
R19-2-601	Amend
R19-2-602	Amend
R19-2-603	Amend
R19-2-604	Repeal
R19-2-604	Renumber
R19-2-604	Amend
R19-2-605	Repeal
R19-2-605	Renumber
R19-2-605	Amend
R19-2-606	Repeal
R19-2-606	Renumber
R19-2-606	Amend
R19-2-607	Repeal
R19-2-608	Renumber
R19-2-609	Renumber
R19-2-610	Renumber

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

Authorizing statute: A.R.S. § 5-104(R)

Implementing statutes: A.R.S. § 5-104(R), 5-104.02, 5-229, and 5-230

3. The effective date of the rules:

January 18, 2001

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

Notice of Rulemaking Docket Opening: 5 A.A.R. 1125, April 16, 1999

Notice of Recodification: 5 A.A.R. 1175, April 23, 1999

Notice of Proposed Rulemaking: 6 A.A.R. 2178, June 16, 2000

Notice of Rulemaking Docket Opening: 6 A.A.R. 3480, September 8, 2000

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

Name: Rita Fresquez
Acting Director

Address: Department of Racing
3877 North 7th Street, Suite 201
Phoenix, Arizona 85014

Telephone: (602) 277-1704

Fax: (602) 277-1165

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

The 1997 5-year review of Title 4, Chapter 3, State Boxing Commission, acknowledged that the rules needed to be updated for clarity and conciseness. Under a 1993 exemption, the Department adopted rules dealing with the collection and accounting of revenues for the State Boxing Commission. These rules were placed within the State Boxing Commission's Article 4. Although this placement did not create confusion with either the Commission or the stakeholders, the Department recodified the appropriate rules into a separate Article within the Racing Department's rulemaking Code.

This rulemaking updates Article 6 for clarity and understanding, consolidates like information, and follows the structure and grammar requirements of the Governor's Regulatory Review Council and the Style Manual of the Office of the Secretary of State.

R19-2-601. Definitions. The terms "ticket agent" and "ticket vendor" have been defined to distinguish between someone who sells tickets and someone who prints tickets.

This Section makes the distinction between and defines the 2 different types of bonds (event bond and annual bond).

R19-2-602. Notice to the Department. This Section clarifies the responsibilities of the State Boxing Commission to the Department.

R19-2-603. Ticket Manifest, Collection, Accounting. This Section clarifies what is required of the promoter when dealing with a ticket manifest. The Section consolidates the information from R19-2-604, Reduced Price Tickets; R19-2-605, Complimentary Tickets; R19-2-606, Accounting for Tickets; and R19-2-607, Payment of Fees by specifying the procedure required if tickets are sold through a computerized system; stating that tickets may be sold only through a ticket vendor; specifying how reduced price tickets and complimentary tickets must be handled; and the describing procedure used to account for all tickets sold.

R19-2-604. Annual Bond, Event Bond, Claims. This Section clarifies that there are 2 separate bonds mentioned in R4-3-406(C), Payment of Contestants, which may be required of the promoter and explains the different conditions of each bond. The Section also specifies the course of action taken by the Department if the promoter fails to pay the gross receipts required by the State Boxing Commission.

R19-2-605, License Fees. This Section clarifies that the Commission must forward the license fees to the Department and lists specific information required for each license.

R19-2-606, Fines. This Section explains the responsibilities of the Commission for notifying the Department when fines are issued.

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

None

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

Not applicable

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

A. *Estimated Costs and Benefits to the Department of Racing.*

The Department will incur minimal costs to promulgate this rulemaking. No benefits are apparent other than to provide clarity and understanding to the requirements of the Article.

During FY99 - 00 the Department received $35,000 in annual bonds from seven promoters ($5,000 each). These annual bonds are actually insurance policies obtained by each promoter and which are generally renewed each year a promoter is licensed. The policies are taken out through various private insurance brokers as proof of financial responsibility and a copy of the policy is kept by the Department, which has the authority to cash in the bond if the promoter fails to pay fight expenses.

For the first time since taking over state boxing administrative duties, the Department cashed a surety bond in FY99 - 00 to pay the expenses for one promoter.

The Boxing Commission has the authority to require a event bond in addition to the annual bond that the promoter is required to post. However, the Department has no record of the Commission issuing a request for a performance bond from a promoter in FY99 - 00.

B. ***Estimated Costs and Benefits to Political Subdivisions.***

Political subdivisions of this state are not directly affected by the implementation and enforcement of this rulemaking.

C. ***Businesses Directly Affected By the Rulemaking. (State Boxing Commission, Promoter)***

A.R.S. § 5-104(R), gives the Department of Racing responsibility for *"the collection and accounting of revenues for the state boxing commission including, but not limited to, licensing fees required by section 5-230, the levy of the tax on gross receipts imposed by section 5-104.02 and cash deposited pursuant to section 5-229. All revenues collected pursuant to this subsection, from whatever source, shall be reported and deposited pursuant to section 5-104.02, subsection C. The director shall adopt rules as necessary to accomplish the purposes of this subsection and chapter 2, article 2 of this title."*

The Department's administrative rules were originally adopted under an exemption from A.R.S. Title 41, Chapter 6 as specified in Laws 1992, Ch. 337, § 12. These rules, regulating the State Boxing Commission, were promulgated within the State Boxing Commission's Administrative Code. The April 23, 1999 recodification of these rules clarifies that it is the Department that has clear statutory authority to promulgate rules relating to the State Boxing Commission as outlined above. The State Boxing Commission will not be economically impacted by this rulemaking, nor does this rulemaking change the way a promoter does business.

D. ***Estimated Costs and Benefits to Private and Public Employment.***

Private and public employment are not directly affected by the implementation and enforcement of this rulemaking.

E. ***Estimated Costs and Benefits to Consumers and the Public.***

Consumers and the public are not directly affected by the implementation and enforcement of this rulemaking.

F. ***Estimated Costs and Benefits to State Revenues.***

This rulemaking will have no impact on state revenues.

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

R19-2-601. Definitions. In the proposed rulemaking, the definition for "gross receipts" was slightly different from the definition in A.R.S. § 5-104.02. Because there was no appreciable difference, the statute definition has been substituted.

The statutory authorities for "annual bond" and "event bond" have been added to the definitions. These authorities state specifically what the bonds are designed to guarantee and provide the authority to execute the bond.

The term "tickets issued" was added because of the following language in A.R.S. § 5-104.02(D): "A promoter may issue complimentary tickets that are exempt from taxation pursuant to this title. If a promoter issues complimentary tickets, the exemption from taxation applies to two per cent of the total number of tickets issued for the event or seventy-five tickets, whichever is greater."

R19-2-603. General Requirements. Subsection (A) has been renumbered and edited to delete the requirement for a promoter to submit a "notarized ticket manifest" or "notarized statement." Instead, the Department will provide a form on which the information must be completed. This form will remove the promoter's responsibility to obtain witness by a notary. The form will give the promoter a convenient way to provide this information and will not reduce the accuracy of the manifests.

Because the Department does not generally ask the Commission to provide the names and contract information for all ticket agents and vendors, subsection (A)(4) has been amended to indicate that the Commission need comply only if the Department requests the information.

The word "available" has been deleted from subsection (A)(1)(b) specifying *"an accounting from each ticket agent of the total number of* ~~available~~ *tickets in each price category."* The word "available" was deleted because it did not specify whether the designation was being used for tickets "available" for sale, "available" for free, or "available for the seating capacity of the venue. The Department believes that this confusion is resolved by removing this term.

Subsection (D)(1)(c) in the proposed rule, requiring "the gross receipts from the sale, lease or other exploitation of broadcasting, television, or motion picture rights of a boxing contest less the amount paid for contestants' purses" goes beyond the authority of the Department and has been deleted from the rule.

The Department currently does not require a promoter to provide tickets to the Commission or the Department, or certify that all tickets are being sold for the ticket price. After further review and because tickets are mainly sold through a computerized system that prints them as they are purchased, the Department is deleting this provision from the rulemaking.

R19-2-604. Annual Bonds, Event Bonds, Claims. The number of days established in subsection (B)(3) requiring the Commission to notify the Department has been changed from 35 calendar days to 22 business days to maintain conformance in the type days used throughout the rulemaking.

Other grammatical and clarification rule changes throughout the rule package were made at the request of G.R.R.C. staff.

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

No comments were received in the formal rulemaking period.

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

None

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

None

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

No

15. The full text of the rules follows:

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 2. ARIZONA RACING COMMISSION

ARTICLE 6. STATE BOXING ~~COMMISSION~~ ADMINISTRATION

R19-2-601. Definitions
R19-2-602. Notice to the Department
R19-2-603. Ticket Manifest, Collection, Accounting
~~R19-2-604. Reduced Price Tickets~~
~~R19-2-608.~~ R19-2-604. ~~Promoters; Licenses; Bond; Proof of Financial Responsibility~~ Annual Bond, Event Bond, Claims
~~R19-2-605. Complimentary Tickets~~
~~R19-2-609.~~ R19-2-605. License Fees
~~R19-2-606. Accounting for Tickets~~
~~R19-2-610.~~ R19-2-606. Fines
~~R19-2-607. Payment of Fees~~ Repealed

ARTICLE 6. STATE BOXING ~~COMMISSION~~ ADMINISTRATION

R19-2-601. Definitions

~~In these rules, unless the context otherwise requires:~~ The following terms apply to this Article:

1. "Annual bond" means the cash or surety bond, required under A.R.S. § 5-228(E), to be deposited with the Department by a promoter as a prerequisite for a promoter's license.
~~1. "Boxing" includes kick boxing.~~
2. "Commission" means the Arizona State Boxing Commission.
~~3. "Contest" means any boxing contest, match or exhibition.~~
~~4.~~3. "Department" means the Arizona Department of Racing.
~~5. "Director" means the Director of the Arizona Department of Racing.~~
4. "Event bond" means the cash or surety bond, authorized under A.R.S. § 5-229(B), which the Commission may require a promoter to deposit with the Department before each contest.
5. *"Gross receipts" means all receipts from the face value of tickets sold.* A.R.S. § 5-104.02(E)
6. "Ticket agent" means a person authorized by a promoter to print tickets.
7. "Ticket vendor" means a person authorized by a promoter to sell tickets.
8. "Tickets issued" means all tickets printed for an event.

R19-2-602. Notice to the Department

A. ~~Upon Commission approval of the date of a contest requested by a promoter, the Commission shall notify the Department within 24 hours in writing. The Commission shall also notify the Department immediately should there be any change in the scheduled contest.~~ The Commission shall notify the Department in writing not more than 2 business days after approving the date of a event. The Commission shall also notify the Department immediately if any change in the scheduled event occurs.

B. ~~Copies of all contracts including, but not limited to, promoters and contestants, associates, television networks, broadcasting stations, and motion picture companies, shall be filed by the promoter with the Department no later than weigh-in.~~ The Commission shall provide copies of all contracts to the Department, if requested.

~~**C.** Each contract filed with the Department pursuant to this Section is confidential and not public record.~~

R19-2-603. Ticket Manifest, Collection, Accounting

A. General requirements.

1. A promoter shall provide the Department with:
   a. ~~The promoter shall provide to the Department a notarized~~ A ticket manifest from ~~the printer of the tickets~~ each ticket agent no later than weigh-in. The manifest shall be accompanied by a signed affidavit from the ticket agent or the ticket agent's designee, certifying that the manifest is accurate and complete.

~~**B.**~~ The manifest shall list the total number of tickets ~~printed~~ issued and the number of tickets in each price category.

   b. If tickets issued are sold through a computerized system that does not lend itself to a manifest, an accounting from each ticket agent of the total number of tickets in each price category. The accounting shall be accompanied by a signed affidavit from the ticket agent or the ticket agent's designee, certifying that the accounting is accurate and complete.

2. The ticket price shall be clearly printed on each ticket and ticket stub.
3. A promoter shall ensure that tickets are distributed only through ticket vendors specified by the promoter.
4. The Commission shall, upon request, provide the Department with the names and contract information for all ticket agents and vendors.

B. Reduced price tickets. A promoter shall ensure that tickets sold for less than the printed price are plainly overstamped with the actual price charged on the printed face of the ticket and ticket stub.

C. Complimentary tickets. A promoter shall ensure that:

1. The total number of complimentary tickets does not exceed 2% of the total number of tickets issued for the event or 75 whichever is greater, as specified under A.R.S. § 5-104.02(D).
2. Complimentary tickets in excess of the greater value of 2% or 75 are treated as noncomplimentary.
3. Complimentary tickets and ticket stubs are punched or stamped "complimentary."

D. Ticket accounting and fee payment. Representatives of the promoter and Department shall meet within 10 days of an event to account for all tickets sold and pay the required tax. If required by the Department, the promoter shall provide an accounting by each ticket vendor.

1. The promoter shall provide the Department with the following information on a Department form:
   a. The number of tickets sold and unsold in each price category;
   b. The amount of the gross receipts calculated using the printed price on each ticket sold;
   c. The signature of the promoter, certifying that the information is true and correct.
2. The Department shall consider as sold any tickets listed on a manifest as issued and not physically presented to the Department by the promoter as unsold.
3. The promoter shall pay the Department 4% of the gross receipts after the deduction of city, state, and federal taxes, of the match or exhibition.

~~**R19-2-604. Reduced Price Tickets**~~

~~Tickets sold for less than the printed price shall be plainly overstamped with the actual price charged on the printed face of the ticket, including the stub that is retained by the ticket holder.~~

~~**R19-2-608.**~~ **R19-2-604.** ~~**Promoters; Licenses; Bond; Proof of Financial Responsibility**~~ **Annual Bond, Event Bond, Claims**

~~**A.** The Director may direct the Commission to require the promoter to deposit with the Department a cash bond or surety bond in an amount set by the Department as a guarantee for the fulfillment of the promoter's contract obligations, the payment of licenses, salaries for officials, and taxes on gross receipts and reimbursement to ticket purchasers if the contest is not held as advertised.~~

~~**B.** The bond will be returned to the promoter after the Department has received written verification from the Commission that the promoter has complied with the requirements. Failure to comply shall result in forfeiture of bonds.~~

A. Annual bond.

1. A promoter shall deposit the annual bond with the Department no later than weigh-in for the first event promoted.
2. Upon receipt of written notice from the Commission that a promoter's obligations for all events during the calendar year are satisfied, the Department shall release the promoter from the annual bond responsibility for that year.

B. Event bond.
1. The Commission shall notify the Department in writing of the amount of an event bond and deposit the bond with the Department no later than the weigh-in for the event. The Department shall retain the event bond until notice is received from the Commission that the promoter has satisfied all obligations concerning the bond guarantee.
2. Upon receipt of written notice from the Commission that the promoter's obligations for an event are satisfied, the Department shall return the bond to the promoter.
3. If an event is not held, the Commission shall notify the Department, not later than 22 business days after the scheduled event, whether the promoter's obligations for the event have been satisfied and whether the promoter's event bond can be returned.

C. Department claim. The Department shall notify:
1. A promoter by registered or certified mail, return receipt requested, that:
   a. The unpaid tax on gross receipts shall be paid within 10 business days from receipt of the notice; and
   b. If the payment is not received within the 10 business days, forfeiture proceedings against the bond may be initiated based on the Department's determination of whether a promoter's obligations have been faithfully performed.
2. The Commission if a promoter fails to pay the required tax on gross receipts.

D. The Department shall not release any bond for which a claim is pending.

~~**R19-2-605. Complimentary Tickets**~~
~~**A.** The total number of complimentary tickets, excluding press tickets, may not exceed 75.~~
~~**B.** An issue of complimentary tickets in excess of 75 shall be considered cash tickets.~~
~~**C.** Complimentary tickets shall be stamped "complimentary" or punched.~~

~~**R19-2-609.**~~ **R19-2-605. License Fees**
~~**A.** License applications received at the weigh-in prior to a scheduled contest shall be accepted by a Commission representative and the fees submitted to a Department representative.~~
~~**B.**~~**A.** ~~License fees for annual licenses mailed in to the Commission shall be promptly forwarded to the Department with documentation listing the type of license issued, the name of the licensee, date of birth, license number, and the date and amount of payment received.~~ The Commission shall forward license fees to the Department within 5 business days of receipt with the following information:
1. The type of license issued;
2. The name and date of birth of the licensee;
3. The license number; and
4. The date and amount of payment received.

~~**C.**~~**B.** The Commission shall retain a current list of the licenses issued ~~with~~ and the additional applicable licensing information ~~on an on-going basis~~ and make the information ~~readily~~ available to the Department.

~~**R19-2-606. Accounting for Tickets**~~
~~Representatives of the promoters, ticket agent, and Department shall meet within 3 working days to account for all tickets sold for the contest.~~

~~**R19-2-610.**~~ **R19-2-606. Fines**
A. ~~Notification of~~ The Commission shall notify the Department in writing if a licensee is ~~being~~ issued a fine ~~shall be sent to the Department~~.
B. ~~The fine shall be paid directly to the Department by the licensee within 10 days of official notification.~~ The Commission shall immediately forward the fine payment to the Department.
~~**B.** The Department will notify the Commission of payment in writing. If the licensee fails to pay the fine, the Department will send written notification to the Commission.~~

~~**R19-2-607. Payment of Fees**~~ **Repealed**
~~**A.** Any person who promotes a boxing contest in this state shall, within 10 days after the contest, pay to the Department 4% of the gross receipts, after the deduction of city, state and federal taxes, of such match or exhibition.~~
~~1. "Adjusted gross price" means the price charged for the sale, lease or other exploitation of broadcasting, television or motion picture rights of a boxing contest less the amount paid for contestants' purses, but without any deductions for commissions, brokerage fees, distribution fees, advertising, or other expenses.~~
~~2. "Gross receipts" means all receipts from all sources, including the face value of tickets sold without any deductions for commissions, brokerage fees, distribution fees, advertising or other expenses, and the adjusted gross price charged for the sale, lease or other exploitation of broadcasting, television, or motion picture rights of a boxing contest.~~
~~**B.** Any person who promotes a boxing contest in this state shall, within 10 days after the contest, furnish to the Department a verified written statement showing:~~
~~1. The number of tickets sold and issued or sold or issued for the contest.~~
~~2. The amount of:~~

~~a. Gross receipts from admission fees; and~~

~~b. Gross receipts derived from the sale, lease or other exploitation of broadcasting, television, or motion picture rights of a boxing contest less the amount paid for contestants' purses.~~

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

PREAMBLE

1. Sections Affected **Rulemaking Action**

R20-4-201	Amend
R20-4-202	Amend

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

Authorizing statute: A.R.S. § 6-123 (2)

Implementing statutes: A.R.S. §§ 6-123 (1), and 6-123 (3)

3. The effective date of the rules:

January 10, 2001

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

Notice of Rulemaking Docket Opening, 6 A.A.R. 1675, May 5, 2000

Notice of Proposed Rulemaking, 6 A.A.R. 3645, September 22, 2000

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

Name:	John P. Hudock
Address:	2910 North 44th Street, Suite 310 Phoenix, AZ 85018
Telephone:	602-255-4421, Ext. 167
Fax:	602-381-1225
E-mail:	jhudock@azbanking.com

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

These rules require prompt submission to the Superintendent of copies of the current text of bank licensees' Articles of Incorporation and Bylaws. The revisions proposed in this rulemaking are not intended to make any substantive change in the rules' requirements. Rather, in fulfillment of a promise made in a recent 5-Year-Rule Review, the Department is revising the rules to modernize the writing style, to conform them to modern rule writing standards, and to improve their clarity and conciseness.

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

The Department did not rely on any study as an evaluator or justification for the rule.

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

Not applicable

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

A. The Banking Department

The Department's income and expenses as a result of this rulemaking are negligible, and it does not expect to experience any adverse economic impact. It will bear the administrative and human resources cost of this rule-making. The revision of these Sections may result in some marginal cost savings for the Department because the modernized rules will promote easier communication with licensees. State Banking will continue to bear the costs of enforcement.

B. Other Public Agencies

The state will incur normal publishing costs incident to rulemaking.

C. Private Persons and Businesses Directly Affected

Costs of services will not increase to any measurable degree. Nor should these revisions increase any licensee's cost of doing business in compliance with these rules.

D. Consumers

No measurable effect on consumers is expected.

E. Private and Public Employment

There is no measurable effect on private or public employment

F. State Revenues

This rulemaking will not change state revenues.

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

The Council's staff has recommended editorial and stylistic changes to the originally proposed text of the Rule. The changes improved the precision and clarity of the text and have been implemented. With two exceptions, there have been no substantive changes in the text of the rule. In response to staff suggestions, the Department revised both Sections to clarify the matters to be certified by an officer of the licensee before submitting copies to the Department as required by the rules.

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

The public was invited to comment in the Notice of Proposed Rulemaking. That invitation contained an agency contact name, address, telephone number, and fax number. However, no comments were received and no arguments against adoption have been raised.

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

Not applicable

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

None

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

No

15. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

ARTICLE 2. BANK ORGANIZATION AND REGULATION

R20-4-201. Articles of Incorporation ~~– A.R.S. § 6-123~~
R20-4-202. Bylaws ~~– A.R.S. § 6-123~~

TITLE 20. COMMERCE, BANKING AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

ARTICLE 2. BANK ORGANIZATION AND REGULATION

R20-4-201. Articles of Incorporation ~~– A.R.S. § 6-123~~

A licensee ~~Every bank~~ shall ~~promptly~~ deliver to ~~file with~~ the Superintendent a ~~one~~ copy ~~certified by an officer of the bank~~ of each amendment to the licensee's articles of incorporation ~~of the bank~~ within 30 days after the amendment is filed with the Arizona Corporation Commission. Before delivery to the Superintendent, an officer of the licensee shall:

1. Certify the copy delivered in compliance with this Section, in writing, signed by the certifying officer, attesting to the completeness, accuracy, and authenticity of the certified copy; and
2. Ensure the copy bears a stamp affixed by the Arizona Corporation Commission to evidence filing with the Commission.

R20-4-202. Bylaws ~~— A.R.S. § 6-123~~

A licensee ~~Every bank~~ shall deliver to ~~file with~~ the Superintendent a ~~one~~ copy ~~certified by an officer of the bank~~ of each amendment to the licensee's bylaws ~~of the bank~~ within 30 days after the amendment is ~~has been~~ adopted. An officer of the licensee shall certify the copy delivered in compliance with this Section, in writing, attesting to the completeness, accuracy, and authenticity of the certified copy.