

40 CFR 145.22(a)(5) – Copies of all applicable State Statutes
and Regulations, including those governing
State Administrative Procedures

Arizona Underground Injection Control (UIC) Program Primacy Package - Legal References

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18-106. Electronic and digital signatures; exemptions; definitions

A. The department, in consultation with the state treasurer, shall adopt policies or rules pursuant to title 41, chapter 6 establishing policies and procedures for the use of electronic and digital signatures by all state agencies, boards and commissions for documents filed with and by all state agencies, boards and commissions.

B. Unless otherwise provided by law, an electronic signature that complies with this section may be used to sign a writing on a document that is filed with or by a state agency, board or commission, and the electronic signature has the same force and effect as a written signature.

C. An electronic signature shall be unique to the person using it, shall be capable of reliable verification and shall be linked to a record in a manner so that if the record is changed the electronic signature is invalidated.

D. Except for returns, statements or other documents filed pursuant to titles 42 and 43, a document that contains an electronic signature that is a digital signature shall comply with the policies or rules adopted pursuant to subsection A of this section.

E. The following records are not public records and are exempt from public inspection and reproduction pursuant to title 39, chapter 1, article 2:

1. Records containing information that would disclose or may reasonably lead to the disclosure of any component in the process used to execute or adopt an electronic or digital signature if the disclosure would or may reasonably cause the loss of sole control over the electronic or digital signature from the person using it.

2. Records that if disclosed would jeopardize or may reasonably lead to jeopardizing the security of a certificate issued in conjunction with a digital signature.

F. For the purposes of this section:

1. "Certificate" means a computer-based record that is contained in a document with a digital signature and that identifies the subscriber, contains the subscriber's public key and is digitally signed by the entity issuing the certificate.

2. "Digital signature" means a type of electronic signature.

3. "Electronic signature" either:

(a) Means an electronic or digital method of identification that complies with the requirements of this section and that is executed or adopted by a person with the intent to be bound by or to authenticate a record.

(b) Includes a digital signature.

4. "Entity issuing the certificate" means a person that creates and issues a certificate and notifies the subscriber listed in the certificate of the contents of the certificate.

5. "Person" means a human being or an organization capable of signing a document, either legally or as a matter of fact.

6. "Private key" means the key of a key pair that is used to create a digital signature.

7. "Public key" means the key of a key pair that is used to verify a digital signature.

8. "Record" means information that is inscribed in a tangible medium or that is stored in an electronic or other medium and that is retrievable in a physically perceivable form. Record includes electronic records and printed, typewritten and tangible records.

9. "Subscriber" means a person that is the subject listed in a certificate, accepts that certificate and holds a private key that corresponds to a public key listed in that certificate.

41-1001. Definitions

In this chapter, unless the context otherwise requires:

1. "Agency" means any board, commission, department, officer or other administrative unit of this state, including the agency head and one or more members of the agency head or agency employees or other persons directly or indirectly purporting to act on behalf or under the authority of the agency head, whether created under the Constitution of Arizona or by enactment of the legislature. Agency does not include the legislature, the courts or the governor. Agency does not include a political subdivision of this state or any of the administrative units of a political subdivision, but does include any board, commission, department, officer or other administrative unit created or appointed by joint or concerted action of an agency and one or more political subdivisions of this state or any of their units. To the extent an administrative unit purports to exercise authority subject to this chapter, an administrative unit otherwise qualifying as an agency must be treated as a separate agency even if the administrative unit is located within or subordinate to another agency.
2. "Appealable agency action" has the same meaning prescribed in section 41-1092.
3. "Audit" means an audit, investigation or inspection pursuant to title 23, chapter 2 or 4.
4. "Code" means the Arizona administrative code, which is published pursuant to section 41-1011.
5. "Committee" means the administrative rules oversight committee.
6. "Contested case" means any proceeding, including rate making, except rate making pursuant to article XV, Constitution of Arizona, price fixing and licensing, in which the legal rights, duties or privileges of a party are required or permitted by law, other than this chapter, to be determined by an agency after an opportunity for an administrative hearing.
7. "Council" means the governor's regulatory review council.
8. "Delegation agreement" means an agreement between an agency and a political subdivision that authorizes the political subdivision to exercise functions, powers or duties conferred on the delegating agency by a provision of law. Delegation agreement does not include intergovernmental agreements entered into pursuant to title 11, chapter 7, article 3.
9. "Emergency rule" means a rule that is made pursuant to section 41-1026.
10. "Fee" means a charge prescribed by an agency for an inspection or for obtaining a license.
11. "Final rule" means any rule filed with the secretary of state and made pursuant to an exemption from this chapter in section 41-1005, made pursuant to section 41-1026, approved by the council pursuant to section 41-1052 or 41-1053 or approved by the attorney general pursuant to section 41-1044. For purposes of judicial review, final rule includes expedited rules pursuant to section 41-1027.
12. "General permit" means a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing.
13. "License" includes the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but does not include a license required solely for revenue purposes.
14. "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, change, reduction, modification or amendment of a license, including an existing permit,

certificate, approval, registration, charter or similar form of permission, approval or authorization obtained from an agency by the holder of a license.

15. "Licensing decision" means any action by an agency to grant or deny any request for permission, approval or authorization issued in response to any request from an applicant for a license or to the holder of a license to exercise authority within the scope of the license.

16. "Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

17. "Person" means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character or another agency.

18. "Preamble" means:

(a) For any rulemaking subject to this chapter, a statement accompanying the rule that includes:

(i) Reference to the specific statutory authority for the rule.

(ii) The name and address of agency personnel with whom persons may communicate regarding the rule.

(iii) An explanation of the rule, including the agency's reasons for initiating the rulemaking.

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

(v) The economic, small business and consumer impact summary, or in the case of a proposed rule, a preliminary summary and a solicitation of input on the accuracy of the summary.

(vi) 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.

(vii) Such other matters as are prescribed by statute and that are applicable to the specific agency or to any specific rule or class of rules.

(b) In addition to the information set forth in subdivision (a) of this paragraph, for a proposed rule, the preamble also shall include a list of all previous notices appearing in the register addressing the proposed rule, a statement of the time, place and nature of the proceedings for the making, amendment or repeal of the rule and where, when and how persons may request an oral proceeding on the proposed rule if the notice does not provide for one.

(c) In addition to the information set forth in subdivision (a) of this paragraph, for an expedited rule, the preamble also shall include a statement of the time, place and nature of the proceedings for the making, amendment or repeal of the rule and an explanation of why expedited proceedings are justified.

(d) For a final rule, except an emergency rule, the preamble also shall include, in addition to the information set forth in subdivision (a), the following information:

(i) A list of all previous notices appearing in the register addressing the final rule.

(ii) A description of the changes between the proposed rules, including supplemental notices and final rules.

(iii) A summary of the comments made regarding the rule and the agency response to them.

(iv) A summary of the council's action on the rule.

(v) A statement of the rule's effective date.

(e) In addition to the information set forth in subdivision (a) of this paragraph, for an emergency rule, the preamble also shall include an explanation of the situation justifying the rule being made as an emergency rule, the date of the attorney general's approval of the rule and a statement of the emergency rule's effective date.

19. "Provision of law" means the whole or a part of the federal or state constitution, or of any federal or state statute, rule of court, executive order or rule of an administrative agency.

20. "Register" means the Arizona administrative register, which is:

(a) This state's official publication of rulemaking notices that are filed with the office of secretary of state.

(b) Published pursuant to section 41-1011.

21. "Rule" means an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency. Rule includes prescribing fees or the amendment or repeal of a prior rule but does not include intraagency memoranda that are not delegation agreements.

22. "Rulemaking" means the process to make a new rule or amend, repeal or renumber a rule.

23. "Small business" means a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year. For purposes of a specific rule, an agency may define small business to include more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small businesses and organizations.

24. "Substantive policy statement" means a written expression which informs the general public of an agency's current approach to, or opinion of, the requirements of the federal or state constitution, federal or state statute, administrative rule or regulation, or final judgment of a court of competent jurisdiction, including, where appropriate, the agency's current practice, procedure or method of action based upon that approach or opinion. A substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents which only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties, confidential information or rules made in accordance with this chapter.

41-1001.02. Clarification of interpretation or application; exemption

A. Before submitting an application for a license a person may request from the agency issuing the license a clarification of its interpretation or application of a statute, rule, delegation agreement or substantive policy statement affecting the person's preparation of the application for a license by providing the agency with a written request that states:

1. The name and address of the person requesting the clarification.
2. The statute, rule, delegation agreement or substantive policy statement or part of the statute, rule, delegation agreement or substantive policy statement that the person is requesting be clarified.
3. Any facts relevant to the requested clarification.
4. The person's proposed interpretation of the applicable statute, rule, delegation agreement or substantive policy statement or part of the statute, rule, delegation agreement or substantive policy statement.
5. Whether, to the best knowledge of the person, the issues or related issues are being considered by the agency in connection with an existing license or license application.

B. On receipt of a request that complies with subsection A of this section:

1. The agency may meet with the person to discuss the written request and shall respond within thirty days of the receipt of the written request with a written clarification of its interpretation or application as raised in the written request.
2. The agency shall provide the requestor with an opportunity to meet and discuss the agency's written clarification.

C. Notwithstanding any other law, an agency's written clarification pursuant to this section does not constitute an appealable action as defined in section 41-1092 or an action against the party pursuant to section 41-1092.12.

D. Notwithstanding any other law, this section does not apply to the Arizona peace officer standards and training board.

41-1002. Applicability and relation to other law; preapplication authorization; definitions

- A. This article and articles 2 through 5 of this chapter apply to all agencies and all proceedings not expressly exempted.
- B. This chapter creates only procedural rights and imposes only procedural duties. They are in addition to those created and imposed by other statutes. To the extent that any other statute would diminish a right created or duty imposed by this chapter, the other statute is superseded by this chapter, unless the other statute expressly provides otherwise.
- C. An agency may grant procedural rights to persons in addition to those conferred by this chapter so long as rights conferred on other persons by any provision of law are not substantially prejudiced.
- D. Unless specifically authorized by statute, an agency shall avoid duplication of other laws that do not enhance regulatory clarity and shall avoid dual permitting to the extent practicable.
- E. Unless specifically authorized by statute, an agency may not require preapplication authorization or require preapplication conferences as a requirement to filing an application that is otherwise allowed by statute. If preapplication procedures are required by statute, an agency shall consider the preapplication requirements or procedures as the beginning of the licensing time frame for the purposes of article 7.1 of this chapter. An agency may offer voluntary preapplication procedures without specific statutory authority if the agency communicates to an applicant that the preapplication procedures are not mandatory. If preapplication procedures are offered by an agency, the agency shall consider the costs and delays that may be imposed on an applicant and shall seek to minimize those impacts.
- F. Unless authorized by federal or state law, an agency may not take any action that materially increases the regulatory burdens on a business unless there is a threat to the health, safety and welfare of the public that has not been addressed by legislation or industry regulation within the proposed regulated field.
- G. Unless authorized by federal or state law, an agency may not apply a regulation to a qualified marketplace platform if the purpose of that regulation is to regulate a business that provides goods or services directly to the customer.
- H. For the purposes of this section:
1. "Qualified marketplace contractor" means any person or organization, including an individual, corporation, limited liability company, partnership, sole proprietor or other entity, that enters into an agreement with a qualified marketplace platform to use the qualified marketplace platform's digital platform to provide goods or services to third-party individuals or entities seeking those services.
 2. "Qualified marketplace platform" means an organization, including a corporation, limited liability company, partnership, sole proprietor or any other entity, that operates a digital platform that facilitates the provision of goods or services by qualified marketplace contractors to third-party individuals or entities seeking those goods or services.

41-1003. Required rule making

Each agency shall make rules of practice setting forth the nature and requirements of all formal procedures available to the public.

41-1004. [Waiver](#)

Except to the extent precluded by another provision of law, a person may waive any right conferred on that person by this chapter.

41-1005. Exemptions

A. This chapter does not apply to any:

1. Rule that relates to the use of public works, including streets and highways, under the jurisdiction of an agency if the effect of the order is indicated to the public by means of signs or signals.
2. Order or rule of the Arizona game and fish commission that does the following:
 - (a) Opens, closes or alters seasons or establishes bag or possession limits for wildlife.
 - (b) Establishes a fee pursuant to section 5-321, 5-322 or 5-327.
 - (c) Establishes a license classification, fee or application fee pursuant to title 17, chapter 3, article 2.
 - (d) Limits the number or use of licenses or permits that are issued to nonresidents pursuant to section 17-332.
3. Rule relating to section 28-641 or to any rule regulating motor vehicle operation that relates to speed, parking, standing, stopping or passing enacted pursuant to title 28, chapter 3.
4. Rule concerning only the internal management of an agency that does not directly and substantially affect the procedural or substantive rights or duties of any segment of the public.
5. Rule that only establishes specific prices to be charged for particular goods or services sold by an agency.
6. Rule concerning only the physical servicing, maintenance or care of agency owned or operated facilities or property.
7. Rule or substantive policy statement concerning inmates or committed youths of a correctional or detention facility in secure custody or patients admitted to a hospital if made by the state department of corrections, the department of juvenile corrections, the board of executive clemency or the department of health services or a facility or hospital under the jurisdiction of the state department of corrections, the department of juvenile corrections or the department of health services.
8. Form whose contents or substantive requirements are prescribed by rule or statute and instructions for the execution or use of the form.
9. Capped fee-for-service schedule adopted by the Arizona health care cost containment system administration pursuant to title 36, chapter 29.
10. Fees prescribed by section 6-125.
11. Order of the director of water resources adopting or modifying a management plan pursuant to title 45, chapter 2, article 9.
12. Fees established under section 3-1086.
13. Fees established under sections 41-4010 and 41-4042.
14. Rule or other matter relating to agency contracts.
15. Fees established under section 32-2067 or 32-2132.
16. Rules made pursuant to section 5-111, subsection A.

17. Rules made by the Arizona state parks board concerning the operation of the Tonto natural bridge state park, the facilities located in the Tonto natural bridge state park and the entrance fees to the Tonto natural bridge state park.
18. Fees or charges established under section 41-511.05.
19. Emergency medical services protocols except as provided in section 36-2205, subsection B.
20. Fee schedules established pursuant to section 36-3409.
21. Procedures of the state transportation board as prescribed in section 28-7048.
22. Rules made by the state department of corrections.
23. Fees prescribed pursuant to section 32-1527.
24. Rules made by the department of economic security pursuant to section 46-805.
25. Schedule of fees prescribed by section 23-908.
26. Procedure that is established pursuant to title 23, chapter 6, article 6.
27. Rules, administrative policies, procedures and guidelines adopted for any purpose by the Arizona commerce authority pursuant to chapter 10 of this title if the authority provides, as appropriate under the circumstances, for notice of an opportunity for comment on the proposed rules, administrative policies, procedures and guidelines.
28. Rules made by a marketing commission or marketing committee pursuant to section 3-414.
29. Administration of public assistance program monies authorized for liabilities that are incurred for disasters declared pursuant to sections 26-303 and 35-192.
30. User charges, tolls, fares, rents, advertising and sponsorship charges, services charges or similar charges established pursuant to section 28-7705.
31. Administration and implementation of the hospital assessment pursuant to section 36-2901.08, except that the Arizona health care cost containment system administration must provide notice and an opportunity for public comment at least thirty days before establishing or implementing the administration of the assessment.
32. Rules made by the Arizona department of agriculture to adopt and implement the provisions of the federal milk ordinance as prescribed by section 3-605.
33. Rules made by the Arizona department of agriculture to adopt, implement and administer the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252) as provided by title 3, chapter 3, article 4.1.
34. Calculations that are performed by the department of economic security and that are associated with the adjustment of the sliding fee scale and formula for determining child care assistance pursuant to section 46-805.
35. Rules made by the Arizona department of agriculture to implement and administer the livestock operator fire and flood assistance grant program established by section 3-109.03.

B. Notwithstanding subsection A, paragraph 21 of this section, if the federal highway administration authorizes the privatization of rest areas, the state transportation board shall make rules governing the lease or license by the department of transportation to a private entity for the purposes of privatization of a rest area.

C. Coincident with the making of a final rule pursuant to an exemption from the applicability of this chapter under this section, another statute or session law, the agency shall:

1. Prepare a notice and follow formatting guidelines prescribed by the secretary of state.
2. Prepare the rulemaking exemption notices pursuant to chapter 6.2 of this title.
3. File a copy of the rule with the secretary of state for publication pursuant to section 41-1012 and provide a copy to the council.

D. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the Arizona board of regents and the institutions under its jurisdiction, except that the Arizona board of regents shall make policies or rules for the board and the institutions under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed.

E. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the Arizona state schools for the deaf and the blind, except that the board of directors of all the state schools for the deaf and the blind shall adopt policies for the board and the schools under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies proposed for adoption.

F. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the state board of education, except that the state board of education shall adopt policies or rules for the board and the institutions under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed for adoption. In order to implement or change any rule, the state board of education shall provide at least two opportunities for public comment. The state board of education shall consider the fiscal impact of any proposed rule pursuant to this subsection.

G. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the state board for charter schools, except that the board shall adopt policies or rules for the board and the charter schools sponsored by the board that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed for adoption. In order to implement or change any policy or rule, the board shall provide at least two opportunities for public comment. The state board for charter schools shall consider the fiscal impact of any proposed rule pursuant to this subsection.

41-1006. Employees providing agency assistance; identification and publication

A. Each state agency shall publish annually in the register, in the state directory and in a telephone directory for Maricopa county the name or names of those employees who are designated by the agency to assist members of the public or regulated community in seeking information or assistance from the agency.

B. In any written communication between a state agency and a person, the state agency shall provide the name, telephone number and email address of the employee who is authorized and able to provide information about the communication if the communication does any of the following:

1. Demands payment of a tax, fee, penalty, fine or assessment.
2. Denies an application for a permit or license that is issued by the state agency.
3. Requests corrections, revisions or additional information or materials needed for approval of any application for a permit, license or other authorization that is issued by the state agency.

C. An employee who is authorized and able to provide information about any communication that is described in subsection B of this section shall reply within five business days after the state agency receives that communication.

41-1007. Award of costs and fees against a department in administrative hearings; exceptions; definitions

A. Except as provided in section 32-3632 and section 42-2064, subsection F, a hearing officer or administrative law judge shall award fees and other costs to any prevailing party in a contested case or an appealable agency action brought pursuant to any state administrative hearing authority. For purposes of this subsection, a person is considered to be a prevailing party only if both:

1. The agency's position was not substantially justified.
2. The person prevails as to the most significant issue or set of issues unless the reason that the person prevailed is due to an intervening change in the law.

B. Reimbursement under this section may be denied if during the course of the proceeding the party unduly and unreasonably protracted the final resolution of the matter.

C. A party that seeks an award of fees or other costs shall apply to the hearing officer or administrative law judge, within thirty days after the final decision or order, providing:

1. Evidence of the party's eligibility for the award.
2. The amount sought.
3. An itemized statement from the attorneys and experts stating:
 - (a) The actual time spent representing the party.
 - (b) The rate at which the fees were computed.

D. The award of reasonable attorney fees pursuant to subsection A of this section need not equal or relate to the attorney fees actually paid or contracted, but an award may not exceed the amount paid or agreed to be paid.

E. A decision of a hearing officer or administrative law judge under this section is subject to judicial review. If fees and other costs were denied by the hearing officer or administrative law judge because the party was not the prevailing party but the party prevails on appeal, the court may award fees and other costs for the proceedings before the hearing officer or administrative law judge if the court finds that fees and other costs should have been awarded under subsection A of this section.

F. The department shall pay the fees and costs awarded pursuant to this section from any monies appropriated to the department and available for that purpose, or from other operating costs of the department. If the department fails or refuses to pay the award within thirty days after the demand, and if no further review or appeals of the award are pending, the person may file a claim for the award with the department of administration which shall pay the claim within thirty days in the same manner as an uninsured property loss under chapter 3.1, article 1 of this title, except that the department shall be responsible for the total amount awarded and shall pay it from operating monies. If the department had appropriated monies available for paying the award at the time it failed or refused to pay, the legislature shall reduce the department's operating appropriation for the following fiscal year by the amount of the award and appropriate that amount to the department of administration as reimbursement for the loss.

G. This section does not apply to:

1. Any grievance and appeal procedure pursuant to title 36, chapter 29.
2. Any appeal procedure pursuant to chapter 4, article 6 of this title.
3. Any administrative appeal filed by an inmate in an Arizona state prison.

H. For the purposes of this section:

1. "Department" includes a state agency, department, board or commission, and the universities.
2. "Party" includes an individual, partnership, corporation, limited liability company, limited liability partnership, association and public or private organization.

41-1008. Fees; specific statutory authority

A. Except as provided in subsection C of this section, an agency shall not:

1. Charge or receive a fee or make a rule establishing a fee unless the fee for the specific activity is expressly authorized by statute or tribal state gaming compact.
 2. Make a rule establishing a fee that is solely based on a statute that generally authorizes an agency to recover its costs or to accept gifts or donations.
 3. Increase a fee in an amount that exceeds the percentage of change in the average consumer price index as published by the United States department of labor, bureau of labor statistics between that figure for the latest calendar year and the calendar year in which the last fee increase occurred. An agency may increase a fee in an amount that exceeds the percentage of change in the average consumer price index if either of the following applies:
 - (a) The agency submits the fee increase to the joint legislative budget committee for review before the fee is increased.
 - (b) The agency is required to submit an annual report that includes information about the fee to members of the legislature.
- B. An agency shall identify the statute or tribal state gaming compact that authorizes the fee on documents relating to collection of the fee.
- C. An agency authorized by statute or tribal state gaming compact to conduct background checks may charge a fingerprint fee without a statute expressly authorizing the fee.
- D. Unless the legislature grants an express exemption through statute or session law from all requirements of this chapter for establishing or increasing a fee, an agency shall comply with all applicable rule making provisions to establish or increase the fee. The agency shall not charge or receive the fee until the rule establishing or increasing the fee is effective under the applicable law of this state.
- E. A fee that is established or increased by exempt rule making from and after September 30, 2012 is effective for two years unless an extension is granted by the council.
- F. After the expiration of the applicable period under subsection E of this section, the agency shall not charge or receive the fee unless the agency has complied with the rule making requirements of this chapter to establish or increase the fee.

G. A person regulated by the rule may petition the council to establish a date that is different than the date under subsection E of this section but no earlier than two years after the exempt rule is made. The agency shall respond to the petition within two weeks after the council notifies the agency that the petition has been filed. Within sixty days the council shall grant or deny the petition after considering whether the public interest requires a different date.

41-1009. Inspections and audits; applicability; exceptions

A. An agency inspector, auditor or regulator who enters any premises of a regulated person for the purpose of conducting an inspection or audit shall, unless otherwise provided by law:

1. Present photo identification on entry of the premises.
2. On initiation of the inspection or audit, state the purpose of the inspection or audit and the legal authority for conducting the inspection or audit.
3. Disclose any applicable inspection or audit fees. Notwithstanding any other law, a regulated person being inspected or audited is responsible for only the direct and reasonable costs of the inspection or audit and is entitled to receive a detailed billing statement as described in paragraph 5, subdivision (e) of this subsection.
4. Afford an opportunity to have an authorized on-site representative of the regulated person accompany the agency inspector, auditor or regulator on the premises, except during confidential interviews.
5. Provide notice of the right to have on request:
 - (a) Copies of any original documents taken by the agency during the inspection or audit if the agency is allowed by law to take original documents.
 - (b) A split of any samples taken during the inspection if the split of any samples would not prohibit an analysis from being conducted or render an analysis inconclusive.
 - (c) Copies of any analysis performed on samples taken during the inspection.
 - (d) Copies of any documents to be relied on to determine compliance with licensure or regulatory requirements if the agency is otherwise allowed by law to do so.
 - (e) A detailed billing statement that provides reasonable specificity of the inspection or audit fees imposed pursuant to paragraph 3 of this subsection and that cites the statute or rule that authorizes the fees being charged.
6. Inform each person whose conversation with the agency inspector, auditor or regulator during the inspection or audit is tape recorded that the conversation is being tape recorded.
7. Inform each person who is interviewed during the inspection or audit that:
 - (a) Statements made by the person may be included in the inspection or audit report.
 - (b) Participation in an interview is voluntary, unless the person is legally compelled to participate in the interview.
 - (c) The person is allowed at least twenty-four hours to review and revise any written witness statement that is drafted by the agency inspector, auditor or regulator and on which the agency inspector, auditor or regulator requests the person's signature.
 - (d) The agency inspector, auditor or regulator may not prohibit the regulated person from having an attorney or any other experts in their field present during the interview to represent or advise the regulated person.
8. At the end of the inspection, offer to review, with an authorized representative of the regulated person, the findings of the inspection and what agency actions the regulated person can expect.

B. On initiation of an audit or an inspection of any premises of a regulated person, an agency inspector, auditor or regulator shall provide the following in writing:

1. The rights described in subsection A of this section and section 41-1001.01, subsection C.
2. The name and telephone number of a contact person who is available to answer questions regarding the inspection or audit.
3. The due process rights relating to an appeal of a final decision of an agency based on the results of the inspection or audit, including the name and telephone number of a person to contact within the agency and any appropriate state government ombudsman.
4. A statement that the agency inspector, auditor or regulator may not take any adverse action, treat the regulated person less favorably or draw any inference as a result of the regulated person's decision to be represented by an attorney or advised by any other experts in their field.
5. A notice that if the information and documents provided to the agency inspector, auditor or regulator become a public record, the regulated person may redact trade secrets and proprietary and confidential information unless the information and documents are confidential pursuant to statute.
6. The time limit or statute of limitations applicable to the right of the agency inspector, auditor or regulator to file a compliance action against the regulated person arising from the inspection or audit, which applies to both new and amended compliance actions.

C. An agency inspector, auditor or regulator shall obtain the signature of the regulated person or on-site representative of the regulated person on the writing prescribed in subsection B of this section and section 41-1001.01, subsection C, if applicable, indicating that the regulated person or on-site representative of the regulated person has read the writing prescribed in subsection B of this section and section 41-1001.01, subsection C, if applicable, and is notified of the regulated person's or on-site representative of the regulated person's inspection or audit and due process rights. The agency inspector, auditor or regulator may provide an electronic document of the writing prescribed in subsection B of this section and section 41-1001.01, subsection C and, at the request of the regulated person or on-site representative, obtain a receipt in the form of an electronic signature. The agency shall maintain a copy of this signature with the inspection or audit report and shall leave a copy with the regulated person or on-site representative of the regulated person. If a regulated person or on-site representative of the regulated person is not at the site or refuses to sign the writing prescribed in subsection B of this section and section 41-1001.01, subsection C, if applicable, the agency inspector, auditor or regulator shall note that fact on the writing prescribed in subsection B of this section and section 41-1001.01, subsection C, if applicable.

D. An agency that conducts an inspection shall give a copy of the inspection report to the regulated person or on-site representative of the regulated person either:

1. At the time of the inspection.
2. Notwithstanding any other state law, within thirty working days after the inspection.
3. As otherwise required by federal law.

E. The inspection report shall contain alleged deficiencies identified during an inspection. Unless otherwise provided by state or federal law, the agency shall provide the regulated person an opportunity to correct the alleged deficiencies unless the agency documents in writing as part of the inspection report that the alleged deficiencies are:

1. Committed intentionally.
2. Not correctable within a reasonable period of time as determined by the agency.
3. Evidence of a pattern of noncompliance as demonstrated by alleged deficiencies previously identified in an inspection report or other written notice at the same premises.

4. A significant risk to any person, the public health, safety or welfare or the environment.

F. If the agency is unsure whether a regulated person meets the exemptions in subsection E of this section, the agency shall provide the regulated person with an opportunity to correct the alleged deficiencies.

G. If the agency allows the regulated person an opportunity to correct the alleged deficiencies pursuant to subsection E of this section, the regulated person shall notify the agency when the alleged deficiencies have been corrected. Within thirty days after receipt of notification from the regulated person that the alleged deficiencies have been corrected, the agency shall determine if the regulated person is in substantial compliance and notify the regulated person whether or not the regulated person is in substantial compliance. If the regulated person fails to correct the alleged deficiencies or the agency determines the alleged deficiencies have not been corrected within a reasonable period of time, the agency may take any enforcement action authorized by law for the alleged deficiencies.

H. If the agency does not allow the regulated person an opportunity to correct alleged deficiencies pursuant to subsection E of this section, on the request of the regulated person, the agency shall provide a detailed written explanation of the reason that an opportunity to correct was not allowed.

I. An agency decision pursuant to subsection E or G of this section is not an appealable agency action.

J. At least once every month after the commencement of the inspection, an agency shall provide a regulated person with an update on the status of any agency action resulting from an inspection of the regulated person. An agency is not required to provide an update after the regulated person is notified that no agency action will result from the agency inspection or after the completion of agency action resulting from the agency inspection.

K. For agencies with authority under title 49, if, as a result of an inspection or any other investigation, an agency alleges that a regulated person is not in compliance with licensure or other applicable regulatory requirements, the agency shall provide written notice of that allegation to the regulated person. The notice shall contain the following information:

1. A citation to the statute, regulation, license or permit condition on which the allegation of deficiency is based, including the specific provisions in the statute, regulation, license or permit condition that are alleged to be violated.
2. Identification of any documents relied on when determining the allegation of deficiency.
3. An explanation stated with reasonable specificity of the regulatory and factual basis for the allegation of deficiency.
4. Instructions for obtaining a timely opportunity to discuss the alleged deficiencies with the agency.

L. Subsection K of this section applies only to inspections or any other investigations necessary for the issuance of a license or to determine compliance with licensure or other regulatory requirements. Subsection K of this section does not apply to an action taken pursuant to section 11-871, 11-876, 11-877, 49-457.01, 49-457.03 or 49-474.01. Issuance of a notice under subsection K of this section is not a prerequisite to otherwise lawful agency actions seeking an injunction or issuing an order if the agency determines that the action is necessary on an expedited basis to abate an imminent and substantial endangerment to public health or the environment and documents the basis for that determination in the documents initiating the action.

M. This section does not authorize an inspection or any other act that is not otherwise authorized by law.

N. Except as otherwise provided in subsection L of this section, this section applies only to inspections necessary for the issuance of a license or to determine compliance with licensure or other regulatory requirements applicable to a licensee and audits pursuant to enforcement of title 23, chapters 2 and 4. This section does not apply:

1. To criminal investigations, investigations under tribal state gaming compacts and undercover investigations that are generally or specifically authorized by law.
 2. If the agency inspector, auditor or regulator has reasonable suspicion to believe that the regulated person may be engaged in criminal activity.
 3. To the Arizona peace officer standards and training board established by section 41-1821.
 4. To certificates of convenience and necessity that are issued by the corporation commission pursuant to title 40, chapter 2.
- O. If an agency inspector, auditor or regulator gathers evidence in violation of this section, the violation may be a basis to exclude the evidence in a civil or administrative proceeding.
- P. Failure of an agency, board or commission employee to comply with this section:
1. May subject the employee to disciplinary action or dismissal.
 2. Shall be considered by the judge and administrative law judge as grounds for reduction of any fine or civil penalty.
- Q. An agency may make rules to implement subsection A, paragraph 5 of this section.
- R. Nothing in this section shall be used to exclude evidence in a criminal proceeding.
- S. Subsection A, paragraph 7, subdivision (c) and subsection E of this section do not apply to the department of health services for the purposes of title 36, chapters 4 and 7.1.
- T. Subsection B, paragraph 5 and subsection E of this section do not apply to the corporation commission for the purposes of title 44, chapters 12 and 13.
- U. Except as otherwise prescribed by this section and notwithstanding any other law:
1. This section applies to all state agencies that conduct inspections and audits.
 2. If a conflict arises between the rights afforded a regulated person pursuant to this section and the rights afforded a regulated person pursuant to another statute, this section governs.

41-1010. Complaints; public record

Notwithstanding any other law, a person shall disclose the person's name during the course of reporting an alleged violation of law or rule. During the course of an investigation or enforcement action, the name of the complainant shall be a public record unless the affected agency determines that the release of the complainant's name may result in substantial harm to any person or to the public health or safety.

41-1011. Preparation and publication of code and register

A. The secretary of state shall prepare and publish the code and register.

B. The secretary of state shall prescribe a uniform numbering system and have reasonable discretion to determine the form and style for rules filed with and published by the office. The secretary of state shall refuse to accept a rule notice or other notice filing if the notice or filing does not comply with the secretary of state's prescribed filing requirements, numbering system, form and style.

C. The secretary of state shall assign titles and chapters to agencies and prepare, arrange and correlate rules and other text as necessary when publishing the code and register. The secretary of state may not alter the sense, meaning or effect of any rule but may renumber rules and parts of rules, rearrange rules, change reference numbers to agree with renumbered rules and parts of rules, substitute the proper rule number for "the preceding rule" and similar terms, delete figures if they are merely a repetition of written words, change capitalization for the purpose of uniformity and correct manifest clerical or typographical errors. With the consent of the attorney general, the secretary of state may remove from the code a provision of a rule that a court of final appeal declares unconstitutional or otherwise invalid and a rule made by an agency that is abolished if the rule is not transferred to a successor agency. The secretary of state shall remove a rule from the code when notified by the governor's regulatory review council that the rule has expired pursuant to section 41-1056, subsection J.

41-1012. Code; publication of rules; notification

- A. The code shall contain the full text of each final, expedited and emergency rule filed with the secretary of state and each exempt rule filed with the secretary of state to be published pursuant to a statutory exemption from the applicability of this chapter. The secretary of state shall remove each expired rule as prescribed in section 41-1011, subsection C.
- B. The secretary of state shall electronically publish at least once every quarter a code supplement. Publication of a rule by the secretary of state as provided in this section constitutes prima facie evidence of the making, approving and filing of a final, emergency or exempt rule pursuant to this chapter or a statutory exemption from the applicability of this chapter.
- C. The secretary of state shall offer an e-mail service for persons to receive notification when a quarterly supplement has been published. The service shall include a list of chapters published and where the chapters are posted.
- D. The secretary of state shall publish the code electronically for free. The secretary of state shall establish a commercial use fee pursuant to section 39-121.03. The secretary of state shall honor any paper subscription in place by the end of fiscal year 2017-2018 until the subscription expires.

41-1013. Register

- A. The secretary of state shall electronically publish the register at least once each month and include the contents listed under subsection B of this section. The secretary of state shall publish the notices that are filed with the secretary of state during the preceding thirty days. The register shall include a table of contents and a cumulative index.
- B. The register shall contain the following:
1. Notices of rulemaking docket openings, including the subject matter of the rules under consideration.
 2. Notices of proposed rulemaking.
 3. Notices of supplemental proposed rulemaking.
 4. Notices of proposed exempt rulemaking for agencies that are exempt from the requirements of chapter 6 of this title but that are required to publish the notice in the register.
 5. Notices of oral proceedings if the oral proceeding was not listed in the notice of rulemaking docket opening as provided in section 41-1021, subsection B, paragraph 5.
 6. Notices of final exempt rulemaking for agencies that are exempt from the requirements of chapter 6 of this title. For the purposes of this paragraph, "final exempt rulemaking" means rulemaking in which an agency received public comment on the rulemaking regardless of whether the proposed rulemaking was published in the register or elsewhere by the agency as required in the exemption.
 7. Notices of exempt rulemaking for agencies that have a onetime exemption from the requirements of chapter 6 of this title or that are exempt pursuant to section 41-1005. For the purposes of this paragraph, "exempt rulemaking" means a rulemaking in which an agency did not publish a notice of proposed rulemaking and the agency was not required to conduct a public hearing or receive public comments.
 8. Proposed and final notices of expedited rulemaking and notices that an objection was received regarding a proposed expedited rulemaking.
 9. Notices of an agency substantive policy statement. The notice of a substantive policy statement shall contain the name and summary of the policy statement and the website address where the full text of the document is available, if practicable.
 10. Notices of intent to increase state museum fees pursuant to section 15-1631.
 11. Notices of actions taken by the governor's regulatory review council.
 12. Notices of an agency guidance document or revisions to a guidance document. This notice shall contain the name and a summary of the guidance document and information where a person may view the document in its entirety.
 13. Notices of each agency ombudsman pursuant to section 41-1006.
 14. Notices of public information that pertain to rulemaking notices.
 15. Deadlines of the governor's regulatory review council.
- C. All notices listed in subsection B of this section, except the notices under subsection B, paragraphs 1, 5, 9, 10, 11, 12, 13, 14 and 15 of this section, must include a preamble and the full text of the rule being proposed, amended, renumbered or repealed.

D. The register shall be published electronically for free. The secretary of state shall establish a commercial-use fee pursuant to section 39-121.03. Any paper subscription in place at the end of fiscal year 2016-2017 shall be honored until the subscription expires.

E. For the purposes of this section, full text publication in the register includes new, amended, renumbered, repealed and existing language that an agency deems necessary for the proper understanding of a rule notice. Rules that are undergoing extensive revision may be reprinted in whole. Existing rule language that is not required for understanding shall be omitted and marked "no change".

41-1021. Public rule making docket; notice

A. Each agency shall establish and maintain a current, public rule making docket for each pending rule making proceeding. A rule making proceeding is pending from the time the agency begins to consider proposing the rule under section 41-1022 until any one of the following occurs:

1. The time the rule making proceeding is terminated by the agency indicating in the rule making docket that the agency is no longer actively considering proposing the rule.
2. One year after the notice of rule making docket opening is published in the register if the agency has not filed a notice of the proposed rule making with the secretary of state pursuant to section 41-1022.
3. The rule becomes effective.
4. One year after the notice of the proposed rule making is published in the register if the agency has not submitted the rule to the council for review and approval.
5. Publication of a notice of termination.

B. For each rule making proceeding, the docket shall indicate all of the following:

1. The subject matter of the proposed rule.
2. A citation to all published notices relating to the proceeding.
3. The name and address of agency personnel with whom persons may communicate regarding the rule.
4. Where written submissions on the proposed rule may be inspected.
5. The time during which written submissions may be made and the time and place where oral comments may be made.
6. Where a copy of the economic, small business and consumer impact statement and the minutes of the pertinent council meeting may be inspected.
7. The current status of the proposed rule.
8. Any known timetable for agency decisions or other action in the proceeding.
9. The date the rule was sent to the council.
10. The date of the rule's filing and publication.
11. The date the rule was approved by the council.
12. When the rule will become effective.

C. The agency shall provide public notice of the establishment of a rule making docket by causing a notice of docket opening to be published in the register, including the information set forth in subsection B, paragraphs 1, 2, 3, 5 and 8 of this section.

D. An agency may appoint formal advisory committees to comment, before publication of a notice of proposed rule making under section 41-1022, on the subject matter of a possible rule making under active consideration within the agency. The membership of these committees shall be published at the time of formation and annually thereafter in the register. Members of these committees are not eligible to receive compensation except as otherwise provided by law.

41-1021.01. Permissive examples

An agency may include a diagram, example, table, chart or formula in a rule, preamble, economic impact, small business and consumer impact statement or concise explanatory statement to the extent that it assists in making the document understandable by the persons affected by the rule.

41-1021.02. State agencies; annual regulatory agenda

A. On or before December 1 of each year, each agency, except for a self-supporting regulatory board as defined in section 41-1092, shall prepare and make available to the public the regulatory agenda that the agency expects to follow during the next calendar year.

B. The regulatory agenda shall include all of the following:

1. A notice of docket openings.
2. A notice of any proposed rule making, including potential sources of federal funding for each proposed rule making.
3. A review of existing rules.
4. A notice of a final rule making.

C. The regulatory agenda shall also provide for the following information:

1. Any rule making terminated during the current calendar year.
2. Any privatization option and nontraditional regulatory approach being considered by the agency.

D. This section does not prohibit an agency from undertaking any rule making action even if that action has not been included in the agency's annual regulatory agenda.

41-1022. Notice of proposed rulemaking; contents of notice

A. An agency shall prepare a notice of proposed rulemaking to make, amend, renumber or repeal a rule. The agency shall follow formatting guidelines prescribed by the secretary of state in the preparation of the notice. The agency shall file the notice with the secretary of state. The notice shall include all of the following:

1. The preamble.
2. The code chapter and article in which the rule is being proposed.
3. The proposed or current rule section number.
4. The exact wording of the rule, including the full text of a new rule and any amendment to, renumbering of or repeal of a current rule.

B. The secretary of state shall publish the notice in the register pursuant to section 41-1013.

C. When the agency files the notice, the agency shall notify by first class mail, fax or e-mail each person who has requested notification of the proposed rulemaking and each person who has requested notification of all proposed rulemakings. An agency may provide the notification prescribed in this subsection in a periodic agency newsletter. An agency may purge its list of persons requesting notification of proposed rulemakings once each year.

D. An agency shall allow for and accept public comment on the proposed rulemaking as prescribed in section 41-1023, subsection B. If the proposed rulemaking is exempt from the rulemaking requirements, the agency shall allow for and accept public comment as provided under the exemption.

E. If, as a result of public comments or internal review, an agency determines that a proposed rule requires a substantial change pursuant to section 41-1025, the agency shall prepare a notice of supplemental rulemaking that contains the change in the proposed rule. The agency shall provide for additional public comment pursuant to section 41-1023 and file the notice with the secretary of state. The secretary of state shall publish the notice in the register pursuant to section 41-1013.

41-1023. Public participation; written statements; oral proceedings

- A. After providing notice of docket openings, an agency may meet informally with any interested party for the purpose of discussing the proposed rule making action. The agency may solicit comments, suggested language or other input on the proposed rule. The agency may publish notice of these meetings in the register.
- B. For at least thirty days after publication of the notice of the proposed rule making, an agency shall afford persons the opportunity to submit in writing statements, arguments, data and views on the proposed rule, with or without the opportunity to present them orally.
- C. An agency shall schedule an oral proceeding on a proposed rule if, within thirty days after the published notice of proposed rule making, a written request for an oral proceeding is submitted to the agency personnel listed pursuant to section 41-1021, subsection B.
- D. An oral proceeding on a proposed rule may not be held earlier than thirty days after notice of its location and time is published in the register. The agency shall determine a location and time for the oral proceeding which affords a reasonable opportunity to persons to participate. The oral proceeding shall be conducted in a manner that allows for adequate discussion of the substance and the form of the proposed rule, and persons may ask questions regarding the proposed rule and present oral argument, data and views on the proposed rule.
- E. The agency, a member of the agency or another presiding officer designated by the agency shall preside at an oral proceeding on a proposed rule. If the agency does not preside, the presiding official shall prepare a memorandum for consideration by the agency summarizing the contents of the presentations made at the oral proceeding. Oral proceedings must be open to the public and recorded by stenographic or other means.
- F. Each agency may make rules for the conduct of oral rule making proceedings. Those rules may include provisions calculated to prevent undue repetition in the oral proceedings.

41-1024. Time and manner of rule making

- A. An agency may not submit a rule to the council until the rule making record is closed.
- B. Within one hundred twenty days after the close of the record on the proposed rule making, an agency shall take one of the following actions:
1. Submit the rule to the council or, if the rule is exempt pursuant to section 41-1057, to the attorney general.
 2. Terminate the proceeding by publication of a notice to that effect in the register.
- C. Before submitting a rule to the council or the attorney general, an agency shall consider the written submissions, the oral submissions or any memorandum summarizing oral submissions and the economic, small business and consumer impact statement regarding the rule or information in the preamble.
- D. Within the scope of its delegated authority, an agency may use its own experience, technical competence, specialized knowledge and judgment in the making of a rule.
- E. Unless exempted by section 41-1005 or 41-1057 or unless the rule is an emergency rule made pursuant to section 41-1026, if the agency chooses to make the rule, the agency shall submit a rule package to the council and to the committee. The rule package shall include:
1. The preamble.
 2. The exact words of the rule, including existing language and any deletions.
 3. The economic, small business and consumer impact statement.
- F. If the rule is exempt pursuant to section 41-1005, the agency shall file it as a final rule with the secretary of state.
- G. If the rule is exempt from council approval, pursuant to section 41-1057, the agency shall submit the rule package set forth in subsection E of this section to the attorney general for approval pursuant to section 41-1044.
- H. An agency shall not file a final rule with the secretary of state without prior approval from the council, unless the final rule is exempted pursuant to section 41-1005 or 41-1057 or the rule is an emergency rule made pursuant to section 41-1026 or an expedited rule made pursuant to section 41-1027.

41-1025. Variance between rule and published notice of proposed rule

A. An agency may not submit a rule to the council that is substantially different from the proposed rule contained in the notice of proposed rule making or a supplemental notice filed with the secretary of state pursuant to section 41-1022. However, an agency may terminate a rule making proceeding and commence a new rule making proceeding for the purpose of making a substantially different rule.

B. In determining whether a rule is substantially different from the published proposed rule on which it is required to be based, all of the following must be considered:

1. The extent to which all persons affected by the rule should have understood that the published proposed rule would affect their interests.
2. The extent to which the subject matter of the rule or the issues determined by that rule are different from the subject matter or issues involved in the published proposed rule.
3. The extent to which the effects of the rule differ from the effects of the published proposed rule if it had been made instead.

41-1026. Emergency rulemaking

A. If an agency makes a finding that a rule is necessary as an emergency measure, the rule may be made, amended or repealed as an emergency measure, without the notice prescribed by sections 41-1021 and 41-1022 and prior review by the council, if the rule is first approved by the attorney general and filed with the secretary of state. The attorney general may not approve the making, amendment or repeal of a rule as an emergency measure if the emergency situation is created due to the agency's delay or inaction and the emergency situation could have been averted by timely compliance with the notice and public participation provisions of this chapter, unless the agency submits substantial evidence that the rule is necessary as an emergency measure to do any of the following:

1. Protect the public health, safety or welfare.
2. Comply with deadlines in amendments to an agency's governing law or federal programs.
3. Avoid violation of federal law or regulation or other state law.
4. Avoid an imminent budget reduction.
5. Avoid serious prejudice to the public interest or the interest of the parties concerned.

B. Within sixty days after receipt, the attorney general shall review the demonstration of emergency and the rule in accordance with the standards prescribed in section 41-1044.

C. If the emergency is in accordance with the standards in section 41-1044, the attorney general shall create a certificate of approval and file the rule with the secretary of state. The secretary of state shall publish the rule in the register as provided in section 41-1013 and publish the rule in the code.

D. A rule made, amended or repealed pursuant to this section is valid for one hundred eighty days after the filing of the rule with the secretary of state. The emergency may be renewed for one more one hundred eighty-day period if all of the following requirements are met:

1. The agency determines that the emergency situation still exists.
2. The agency follows the procedures prescribed in this section.
3. The agency files a notice of the renewal of the emergency with the attorney general before the expiration of the preceding one hundred eighty-day period.
4. The agency makes the rule as a proposed rule or has issued an alternative proposed rule pursuant to section 41-1022.
5. The agency receives approval of the renewal from the attorney general before the expiration of the preceding one hundred eighty-day period.
6. The attorney general creates a certificate of approval and files the rule with the secretary of state. The secretary of state shall publish the renewal of the emergency rule in the register as provided in section 41-1013 and publish the rule in the code.

E. A rule that is made pursuant to this chapter shall repeal an emergency rule made, amended or repealed if the emergency is still effective within the one hundred eighty-day period.

F. On expiration of the one hundred eighty-day period, the secretary of state shall remove the emergency rule from the code. If a rule has not been made pursuant to subsection E of this section, the rule in place before the emergency is restored.

41-1026.01. Emergency adoption, amendment or termination of delegation agreements; definition

A. If a delegating agency makes a written finding that a delegation agreement is necessary as an emergency measure, the delegation agreement may be adopted, amended or terminated as an emergency measure, without complying with the public notice and participation provisions of this article. An agency may not adopt, amend or terminate a delegation agreement as an emergency measure if the emergency situation is created due to the agency's delay or inaction and the emergency situation could have been averted by timely compliance with the public notice and participation provisions of this article, unless the agency can present substantial evidence that failure to adopt, amend or terminate the delegation agreement as an emergency measure will result in imminent substantial peril to the public health, safety or welfare.

B. The agency shall file with the secretary of state a summary of the emergency delegation agreement. The summary shall provide the name of the person to contact in the agency with questions or comments. The secretary of state shall publish the summary in the next register.

C. The delegation agreement adopted, amended or terminated pursuant to this section is valid for one hundred eighty days after the filing of the agreement with the secretary of state and may be renewed for one or two more one hundred eighty day periods if all of the following occur:

1. The agency determines that the emergency situation still exists for each renewal.
2. The agency follows the procedures prescribed by this section for each renewal.
3. The agency has begun the public comment and participation process required by this section.
4. The agency makes a finding for an extension of time before the expiration of the preceding one hundred and eighty day period.
5. The agency files notice of the renewal with the secretary of state and notice is published in the register.

D. For purposes of this section, "emergency" means a situation which warrants the adoption of a delegation agreement without compliance with the public notice and participation provisions prescribed in this article because the adoption, amendment or termination of the delegation agreement is necessary for immediate preservation of the public health, safety or welfare, and the public notice and participation requirements of this article are impracticable.

41-1027. Expedited rulemaking

A. An agency may conduct expedited rulemaking pursuant to this section if the rulemaking does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated and does one or more of the following:

1. Amends or repeals rules made obsolete by repeal or supersession of an agency's statutory authority.
2. Amends or repeals rules for which the statute on which the rule is authorized has been declared unconstitutional by a court with jurisdiction, there is a final judgment and no statute has been enacted to replace the unconstitutional statute.
3. Corrects typographical errors, makes address or name changes or clarifies language of a rule without changing its effect.
4. Adopts or incorporates by reference without material change federal statutes or regulations pursuant to section 41-1028, statutes of this state or rules of other agencies of this state.
5. Reduces or consolidates steps, procedures or processes in the rules.
6. Amends or repeals rules that are outdated, redundant or otherwise no longer necessary for the operation of state government.
7. Implements, without material change, a course of action that is proposed in a five-year review report approved by the council pursuant to section 41-1056 within one hundred eighty days of the date that the agency files the proposed expedited rulemaking with the secretary of state.
8. Adopts, without material change, rules of another agency of this state that has been or imminently will be consolidated into the agency.

B. An agency shall deliver a notice of proposed expedited rulemaking to the governor, the president of the senate, the speaker of the house of representatives, the committee and the council. The notice shall contain the name, address and telephone number of the agency contact person and the exact wording of the proposed expedited rulemaking and indicate how the proposed expedited rulemaking achieves the purpose prescribed in subsection A of this section.

C. On delivery of the notice required in subsection B of this section, the agency shall file the notice of proposed expedited rulemaking with the secretary of state for publication in the next state administrative register. The agency and the council shall post the notice of proposed expedited rulemaking on their respective websites and shall allow any person to provide written comment for at least thirty days after posting the notice. The agency shall adequately respond in writing to the comments on the proposed expedited rulemaking.

D. An agency may not submit a final expedited rule to the council that is substantially different from the proposed rule contained in the notice of proposed expedited rulemaking. However, an agency may terminate an expedited rulemaking proceeding and commence a new rulemaking proceeding for the purpose of making a substantially different rule. An agency shall use the criteria prescribed in section 41-1025, subsection B for determining whether a final expedited rule is substantially different from the proposed expedited rule.

E. After adequately addressing, in writing, any written objections, an agency shall file a request for approval with the council. The request shall contain the notice of final expedited rulemaking and the agency's responses to any written comments. The council may require a representative of an agency whose expedited rulemaking is under examination to attend a council meeting and answer questions. The council may communicate to the agency its comments on the expedited rulemaking within the scope of subsection A of this section and require the agency to respond to its comments or testimony in writing. A person may submit written comments to the council that are within the scope of subsection A of this section.

F. Before an agency files a notice of final expedited rulemaking with the secretary of state, the council shall approve any expedited rulemaking. The council shall not approve the rule unless:

1. The rule satisfies the criteria for expedited rulemaking pursuant to subsection A of this section.
2. The rule is clear, concise and understandable.
3. The rule is not illegal, inconsistent with legislative intent or beyond the agency's statutory authority.
4. The agency, in writing, adequately addressed the comments on the proposed rule and any supplementary proposal.
5. If applicable, the permitting requirements comply with section 41-1037.
6. The rule is not a substantial change, considered as a whole, from the proposed rule and any supplementary proposal.
7. The rule imposes the least burden and costs to persons regulated by the rule.

G. On receipt of council approval, the agency shall file a notice of final expedited rulemaking and the council's certificate of approval with the secretary of state.

H. The expedited rulemaking becomes effective immediately on the filing of the notice of final expedited rulemaking.

41-1028. Incorporation by reference

A. An agency may incorporate by reference in its rules, and without publishing the incorporated matter in full, all or any part of a code, standard, rule or regulation of an agency of the United States or of this state or a nationally recognized organization or association, if incorporation of its text in agency rules would be unduly cumbersome, expensive or otherwise inexpedient.

B. The reference in the agency rules shall fully identify the incorporated matter by location, date and otherwise and shall state that the rule does not include any later amendments or editions of the incorporated matter.

C. An agency may incorporate by reference such matter in its rules only if the agency, organization or association originally issuing that matter makes copies of it readily available to the public for inspection and reproduction.

D. The rules shall state where copies of the incorporated matter are available from the agency issuing the rule and from the agency of the United States or this state or the organization or association originally issuing the matter.

E. An agency may incorporate later amendments or editions of the incorporated matter only after compliance with the rule making requirements of this chapter.

41-1029. Agency rule making record

A. An agency shall maintain an official rule making record for each rule it proposes by publication in the register of a notice of proposed rule making and each final rule filed in the office of the secretary of state. The record and matter incorporated by reference must be available for public inspection.

B. The agency rule making record shall contain all of the following:

1. A copy of the notice initially filed in the office of the secretary of state.
2. Copies of all publications in the register with respect to the rule or the proceeding on which the rule is based.
3. Copies of any portions of the agency's rule making docket containing entries relating to the rule or the proceeding on which the rule is based.
4. All written petitions, requests, submissions and comments received by the agency and all other written materials considered or prepared by the agency in connection with the rule or the proceeding on which the rule is based.
5. Any official transcript of oral presentations made in the proceeding on which the rule is based, or if not transcribed, any tape recording or stenographic record of those presentations, and any memorandum prepared by a presiding official summarizing the contents of those presentations.
6. A copy of all materials submitted to the council, including the economic, small business and consumer impact statement and the minutes of the council meeting at which the rule was reviewed.
7. A copy of the final rule and preamble.
8. Information requested regarding the experience, technical competence, specialized knowledge and judgment of an agency if the agency relies on section 41-1024, subsection D in the making of a rule and a request is made.

C. On judicial review, the record required by this section constitutes the official agency rule making record with respect to a rule. Except as provided in section 41-1036 or otherwise required by a provision of law, the agency rule making record need not constitute the exclusive basis for agency action on that rule or for judicial review of that rule.

41-1030. Invalidity of rules not made according to this chapter; prohibited agency action; prohibited acts by state employees; enforcement; notice

- A. A rule is invalid unless it is consistent with the statute, reasonably necessary to carry out the purpose of the statute and is made and approved in substantial compliance with sections 41-1021 through 41-1029 and articles 4, 4.1 and 5 of this chapter, unless otherwise provided by law.
- B. An agency shall not base a licensing decision in whole or in part on a licensing requirement or condition that is not specifically authorized by statute, rule or state tribal gaming compact. A general grant of authority in statute does not constitute a basis for imposing a licensing requirement or condition unless a rule is made pursuant to that general grant of authority that specifically authorizes the requirement or condition.
- C. An agency shall not base a decision regarding any filing or other matter submitted by a licensee on a requirement or condition that is not specifically authorized by a statute, rule, federal law or regulation or state tribal gaming compact. A general grant of authority in statute does not constitute a basis for imposing a requirement or condition for approval of a decision on any filing or other matter submitted by a licensee unless a rule is made pursuant to that general grant of authority that specifically authorizes the requirement or condition.
- D. An agency shall not:
1. Make a rule under a specific grant of rulemaking authority that exceeds the subject matter areas listed in the specific statute authorizing the rule.
 2. Make a rule under a general grant of rulemaking authority to supplement a more specific grant of rulemaking authority.
 3. Make a rule that is not specifically authorized by statute.
- E. This section may be enforced in a private civil action and relief may be awarded against the state. The court may award reasonable attorney fees, damages and all fees associated with the license application to a party that prevails in an action against the state for a violation of this section.
- F. A state employee may not intentionally or knowingly violate this section. A violation of this section is cause for disciplinary action or dismissal pursuant to the agency's adopted personnel policy.
- G. This section does not abrogate the immunity provided by section 12-820.01 or 12-820.02.
- H. An agency shall prominently print the provisions of subsections B, E, F and G of this section on all license applications, except license applications processed by the corporation commission.
- I. The license application may be in either print or electronic format.

41-1031. Filing rules and preamble with secretary of state; permanent record

A. Following the filing of a rule made pursuant to an exemption to this chapter or following approval and filing of a rule and preamble and an economic, small business and consumer impact statement by the council as provided in article 5 of this chapter or by the attorney general as provided in article 4 of this chapter, the secretary of state shall affix to each rule document, preamble and economic, small business and consumer impact statement the time and date of filing. A rule is not final until the secretary of state affixes the time and date of filing to the rule document as provided in this section.

B. The secretary of state shall keep a permanent record of rules, preambles and economic, small business and consumer impact statements filed with the office.

41-1032. Effective date of rules

A. A rule filed pursuant to section 41-1031 becomes effective sixty days after a certified original and two copies of the rule and preamble are filed in the office of the secretary of state and the time and date are affixed as provided in section 41-1031, unless the rule making agency includes in the preamble information that demonstrates that the rule needs to be effective immediately on filing in the office of the secretary of state and the time and date are affixed as provided in section 41-1031. A rule may only be effective immediately for any of the following reasons:

1. To preserve the public peace, health or safety.
2. To avoid a violation of federal law or regulation or state law, if the need for an immediate effective date is not created due to the agency's delay or inaction.
3. To comply with deadlines in amendments to an agency's governing statute or federal programs, if the need for an immediate effective date is not created due to the agency's delay or inaction.
4. To provide a benefit to the public and a penalty is not associated with a violation of the rule.
5. To adopt a rule that is less stringent than the rule that is currently in effect and that does not have an impact on the public health, safety, welfare or environment, or that does not affect the public involvement and public participation process.

B. Notwithstanding subsection A of this section, a rule making agency may specify an effective date more than sixty days after the filing of the rule in the office of the secretary of state if the agency determines that good cause exists for and the public interest will not be harmed by the later date.

C. This section does not affect the validity of an existing rule until the new or amended rule that is filed with the secretary of state is effective pursuant to this section.

41-1033. Petition for a rule or review of an agency practice, substantive policy statement, final rule or unduly burdensome licensing requirement; notice

A. Any person may petition an agency to do either of the following:

1. Make, amend or repeal a final rule.
2. Review an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule.

B. An agency shall prescribe the form of the petition and the procedures for the petition's submission, consideration and disposition. The person shall state on the petition the rulemaking to review or the agency practice or substantive policy statement to consider revising, repealing or making into a rule.

C. Not later than sixty days after submission of the petition, the agency shall either:

1. Reject the petition and state its reasons in writing for rejection to the petitioner.
2. Initiate rulemaking proceedings in accordance with this chapter.
3. If otherwise lawful, make a rule.

D. The agency's response to the petition is open to public inspection.

E. If an agency rejects a petition pursuant to subsection C of this section, the petitioner has thirty days to appeal to the council to review whether the existing agency practice or substantive policy statement constitutes a rule. The petitioner's appeal may not be more than five double-spaced pages.

F. A person may petition the council to request a review of a final rule based on the person's belief that the final rule does not meet the requirements prescribed in section 41-1030. A petition submitted under this subsection may not be more than five double-spaced pages.

G. A person may petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that the petitioner alleges is not specifically authorized by statute, exceeds the agency's statutory authority, is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern. On receipt of a properly submitted petition pursuant to this section, the council shall review the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement as prescribed by this section. A petition submitted under this subsection may not be more than five double-spaced pages. This subsection does not apply to an individual or institution that is subject to title 36, chapter 4, article 10 or chapter 20.

H. If the council receives information that alleges an existing agency practice or substantive policy statement may constitute a rule, that a final rule does not meet the requirements prescribed in section 41-1030 or that an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or does not meet the guidelines prescribed in subsection G of this section, or if the council receives an appeal under subsection E of this section, and at least three council members request of the chairperson that the matter be heard in a public meeting:

1. Within ninety days after receiving the third council member's request, the council shall determine whether any of the following applies:

- (a) The agency practice or substantive policy statement constitutes a rule.
- (b) The final rule meets the requirements prescribed in section 41-1030.

(c) An existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.

2. Within ten days after receiving the third council member's request, the council shall notify the agency that the matter has been or will be placed on the council's agenda for consideration on the merits.

3. Not later than thirty days after receiving notice from the council, the agency shall submit a statement of not more than five double-spaced pages to the council that addresses whether any of the following applies:

(a) The existing agency practice or substantive policy statement constitutes a rule.

(b) The final rule meets the requirements prescribed in section 41-1030.

(c) An existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.

I. At the hearing, the council shall allocate the petitioner and the agency an equal amount of time for oral comments not including any time spent answering questions raised by council members. The council may also allocate time for members of the public who have an interest in the issue to provide oral comments.

J. For the purposes of subsection H of this section, the council meeting shall not be scheduled until the expiration of the agency response period prescribed in subsection H, paragraph 3 of this section.

K. An agency practice, substantive policy statement, final rule or regulatory licensing requirement considered by the council pursuant to this section shall remain in effect while under consideration of the council. If the council determines that the agency practice, substantive policy statement or regulatory licensing requirement exceeds the agency's statutory authority, is not authorized by statute or constitutes a rule or that the final rule does not meet the requirements prescribed in section 41-1030, the practice, policy statement, rule or regulatory licensing requirement shall be void. If the council determines that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern, the council shall modify, revise or declare void any such existing agency practice, substantive policy statement, final rule or regulatory licensing requirement. If an agency decides to further pursue a practice, substantive policy statement or regulatory licensing requirement that has been declared void or has been modified or revised by the council, the agency may do so only pursuant to a new rulemaking.

L. A council decision pursuant to this section shall be made by a majority of the council members who are present and voting on the issue. Notwithstanding any other law, the council may not base any decision concerning an agency's compliance with the requirements of section 41-1030 in issuing a final rule or substantive policy statement on whether any party or person commented on the rulemaking or substantive policy statement.

M. A decision by the council pursuant to this section is not subject to judicial review, except that, in addition to the procedure prescribed in this section or in lieu of the procedure prescribed in this section, a person may seek declaratory relief pursuant to section 41-1034.

N. Each agency and the secretary of state shall post prominently on their websites notice of an individual's right to petition the council for review pursuant to this section.

41-1034. Declaratory judgment

A. Any person who is or may be affected by a rule may obtain a judicial declaration of the validity of the rule by filing an action for declaratory relief in the superior court in Maricopa county in accordance with title 12, chapter 10, article 2.

B. Any person who is or may be affected by an existing agency practice or substantive policy statement that the person alleges to constitute a rule may obtain a judicial declaration on whether the practice or substantive policy statement constitutes a rule by filing an action for declaratory relief in the superior court in Maricopa county in accordance with title 12, chapter 10, article 2.

41-1035. Rules affecting small businesses; reduction of rule impact

If an agency proposes a new rule or an amendment to an existing rule which may have an impact on small businesses, the agency shall consider each of the methods described in this section for reducing the impact of the rule making on small businesses. The agency shall reduce the impact by using one or more of the following methods, if it finds that the methods are legal and feasible in meeting the statutory objectives which are the basis of the proposed rule making:

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

41-1036. Preamble; justifications for rule making

Only the reasons contained in the preamble may be used by any party as justifications for the making of the rule in any proceeding in which its validity is at issue.

41-1037. General permits; issuance of traditional permit

A. If an agency proposes a new rule or an amendment to an existing rule that requires the issuance of a regulatory permit, license or agency authorization, the agency shall use a general permit if the facilities, activities or practices in the class are substantially similar in nature unless any of the following applies:

1. A general permit is prohibited by federal law.
2. The issuance of an alternative type of permit, license or authorization is specifically authorized by state statute.
3. The issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements.
4. The issuance of a general permit would result in additional regulatory requirements or costs being placed on the permit applicant.
5. The permit, license or authorization is issued pursuant to section 8-126, 8-503, 8-505, 23-504, 36-592, 36-594.01, 36-595, 36-596, 36-596.54, 41-1967.01 or 46-807.
6. The permit, license or authorization is issued pursuant to title V of the clean air act.

B. The agency retains the authority to revoke an applicant's ability to operate under a general permit and to require the applicant to obtain a traditional permit if the applicant is in substantial noncompliance with the applicable requirements for the general permit.

41-1038. Rules; restrictions; affirmative defense; exceptions; definition

A. Notwithstanding any other law, an agency may not adopt any new rule that would increase existing regulatory restraints or burdens on the free exercise of property rights or the freedom to engage in an otherwise lawful business or occupation unless the rule is either of the following:

1. A component of a comprehensive effort to reduce regulatory restraints or burdens.
2. Necessary to implement statutes or required by a final court order or decision.

B. Any person who is subject to a civil or criminal proceeding arising from the enforcement of a rule in violation of subsection A of this section has an affirmative defense to the enforcement action. Any court or administrative body considering or reviewing the defense shall rule on its merits without deference to any legislative, administrative or executive finding concerning the rule. The court or administrative body may award the prevailing party, other than the agency, attorney fees and costs.

C. This section does not apply to rules that either:

1. Govern public employees.
2. Are necessary to protect public health and safety.
3. Are necessary to avoid sanctions that would result from a failure to take rulemaking action pursuant to a court order or federal law.

D. For the purposes of this section, agency does not include any board, commission, department, officer or other administrative unit of this state established under the authority of the constitution of Arizona.

E. For the purposes of this section, "to protect public health and safety" means the immediate need to address or prevent an outbreak of an infectious disease, a disaster or any other catastrophic event.

41-1039. State agency rulemaking; governor approval; submission; definition

A. Notwithstanding any other law, a state agency may not conduct any rulemaking, including regular, expedited, informal, formal, emergency or exempt rulemaking, without prior written approval of the governor. In seeking approval, a state agency shall address any of the following as justification for the rulemaking:

1. Fulfilling an objective related to job creation, economic development or economic expansion in this state.
2. Reducing or ameliorating a regulatory burden on the public, while achieving the same regulatory objective.
3. Preventing a significant threat to public health, peace or safety.
4. Avoiding violating a court order or federal law that would result in sanctions by a federal court for failure to conduct the rulemaking action.
5. Complying with a new state statutory or regulatory requirement if the compliance is related to a condition for the receiving federal monies or participating in any federal program.
6. Complying with a new or existing state statutory requirement.
7. Fulfilling an obligation related to fees or any other action necessary to implement the state budget that is certified by the governor's office of strategic planning and budgeting.
8. Adopting a rule or other item that is exempt from this chapter.
9. Matters pertaining to the control, mitigation or eradication of waste, fraud or abuse within a state agency or wasteful, fraudulent or abusive activities perpetrated against a state agency.
10. Eliminating rules that are antiquated, redundant or otherwise no longer necessary for the operation of state government.

B. After the public comment period and the close of the rulemaking record, a state agency may not submit the proposed rules to the council without a written final approval from the governor. Before considering rules submitted by a state agency, the council must obtain from the state agency the initial approval pursuant to subsection A of the section and the final approval required by this subsection.

C. Notwithstanding any other law, a state agency that submits a rulemaking request shall recommend for consideration by the governor at least three existing rules to eliminate for every additional rule requested by the state agency. The requirements of this subsection do not apply to rules that are necessary to secure or maintain assumption of federal regulatory programs, rules that are necessary to comply with an auditor general recommendation or rules that are necessary to address a new statutory requirement.

D. A state agency may not publicize any directives, policy statements, documents or forms on its website unless the directive, policy statement, document or form is authorized by statute or rule. A state agency shall remove material not authorized by statute or rule from its website on September 24, 2022.

E. For the purposes of this section, "state agency":

1. Includes all executive departments, agencies and offices and all state boards and commissions.
2. Does not include:
 - (a) A state agency that is headed by a single elected state official.
 - (b) The corporation commission.

(c) Any board or commission established by ballot measure at or after the November 1998 general election.

(d) The judiciary.

41-1044. Attorney general review of certain exempt rules

A. The attorney general shall review rules that are exempt pursuant to section 41-1057.

B. Rules that are exempt pursuant to section 41-1057 shall not be filed with the secretary of state unless the attorney general approves the rule as:

1. To form.
2. Clear, concise and understandable.
3. Within the power of the agency to make and within the enacted legislative standards.
4. Made in compliance with the appropriate procedures.

C. The attorney general shall not approve a rule with an immediate effective date unless the attorney general determines that the rule complies with section 41-1032.

D. Within sixty days of receipt of the rule the attorney general shall endorse the attorney general's approval on the rule package. After approval, the attorney general shall file the rule package with the secretary of state.

E. If the attorney general determines that the rule does not comply with subsection B of this section, the attorney general shall endorse the attorney general's disapproval of the rule on the rule package, state the reasons for the disapproval and within sixty days after receipt of the rule return the rule package to the agency that made the rule.

41-1046. Administrative rules oversight committee; membership; appointment; staffing; meetings

- A. The administrative rules oversight committee is established. The committee has oversight over any rules except those rules exempted by section 41-1005.
- B. The committee consists of the following eleven members:
1. Five members of the house of representatives who are appointed by the speaker of the house of representatives. No more than three of the members who are appointed under this paragraph may be members of the same political party. The speaker of the house of representatives shall designate a member to serve as cochairperson of the committee.
 2. Five members of the senate who are appointed by the president of the senate. No more than three of the members who are appointed under this paragraph may be members of the same political party. The president of the senate shall designate a member to serve as cochairperson of the committee.
 3. The governor or the governor's designee who is not an appointed agency director.
- C. The speaker of the house of representatives and the president of the senate shall make the appointments to the committee on or before October 1, 2009. Members serve at the pleasure of their respective appointing officer.
- D. The legislative council shall staff the committee.
- E. The committee shall meet on the call of either of its cochairpersons.
- F. A party contesting the legality of a rule, agency practice or substantive policy statement is not required to file a complaint with the committee to exhaust its administrative remedies.

41-1047. Committee review of rules; practices alleged to constitute rules; substantive policy statements

The committee may review any proposed or final rule, expedited rule, agency practice alleged to constitute a rule or substantive policy statement for conformity with statute and legislative intent. The committee may hold hearings on whether a proposed or final rule, expedited rule, agency practice alleged to constitute a rule or substantive policy statement is consistent with statute and legislative intent. The committee may comment to the agency, attorney general or council on whether the proposed or final rule, expedited rule, agency practice alleged to constitute a rule or substantive policy statement is consistent with statute or legislative intent. The committee may designate a representative to testify before the council. The council shall consider the comments of the committee and any testimony. The administrative records shall contain the comments of the committee and any testimony.

41-1048. Committee review of duplicative or onerous statutes, rules, practices alleged to constitute rules and substantive policy statements

A. The committee shall receive complaints concerning statutes, rules, agency practices alleged to constitute rules and substantive policy statements that are alleged to be duplicative or onerous. The committee may review any statutes, rules, agency practices alleged to constitute rules or substantive policy statements alleged to be duplicative or onerous and may hold hearings regarding the allegations. The committee may comment to an agency, the attorney general, the council or the legislature on whether the statutes, rules, agency practices alleged to constitute rules or substantive policy statements are duplicative or onerous. The comments may include committee recommendations for alleviating the duplicative or onerous aspects of the statutes, rules, agency practices alleged to constitute rules and substantive policy statements.

B. The committee shall prepare a report to the legislature by December 1 of each year recommending legislation to alleviate the effects of duplicative or onerous statutes, rules, agency practices alleged to constitute rules and substantive policy statements.

C. This section applies to all statutes, rules, agency practices alleged to constitute rules and substantive policy statements, regardless of whether the statutes, rules, agency practices alleged to constitute rules or substantive policy statements were enacted or made before or after January 1, 1996.

41-1051. Governor's regulatory review council; membership; terms; compensation; powers

A. The governor's regulatory review council is established consisting of six members who are appointed by the governor pursuant to section 38-211 and who are subject to sections 38-291 and 38-295 and the director of the department of administration or the assistant director of the department of administration who is responsible for administering the council. The director or assistant director is an ex officio member and chairperson of the council. The council shall elect a vice-chairperson to serve as chairperson in the chairperson's absence. The governor shall appoint at least one member who represents the public interest, at least one member who represents the business community, at least one member who is a small business owner, one member from a list of three persons who are not legislators submitted by the president of the senate and one member from a list of three persons who are not legislators submitted by the speaker of the house of representatives. At least one member of the council shall be an attorney licensed to practice law in this state. The governor shall appoint the members of the council for staggered terms of three years. A vacancy occurring during the term of office of any member shall be filled by appointment by the governor for the unexpired portion of the term in the same manner as provided in this section.

B. The council shall meet at least once a month at a time and place set by the chairperson and at other times and places as the chairperson deems necessary.

C. Members of the council are eligible to receive compensation in an amount of two hundred dollars for each day on which the council meets and reimbursement of expenses pursuant to title 38, chapter 4, article 2.

D. The chairperson, subject to chapter 4, article 4 and, as applicable, articles 5 and 6 of this title, shall employ, determine the conditions of employment of and specify the duties of administrative, secretarial and clerical employees as the chairperson deems necessary.

E. The council may make rules pursuant to this chapter to carry out the purposes of this chapter.

F. The council shall make a list of agency rules approved or returned pursuant to sections 41-1027 and 41-1052 and section 41-1056, subsection C for the previous twelve-month period available to the public on request and on the council's website.

41-1052. Council review and approval; rule expiration

A. Before filing a final rule subject to this section with the secretary of state, an agency shall prepare, transmit to the council and the committee and obtain the council's approval of the rule and its preamble and economic, small business and consumer impact statement that meets the requirements of section 41-1055. The office of economic opportunity shall prepare the economic, small business and consumer impact statement.

B. The council shall accept an early review petition of a proposed rule, in whole or in part, if the proposed rule is alleged to violate any of the criteria prescribed in subsection D of this section and if the early petition is filed by a person who would be adversely impacted by the proposed rule. The council may determine whether the proposed rule, in whole or in part, violates any of the criteria prescribed in subsection D of this section.

C. Within one hundred twenty days after receipt of the rule, preamble and economic, small business and consumer impact statement, the council shall review and approve or return, in whole or in part, the rule, preamble or economic, small business and consumer impact statement. An agency may resubmit a rule, preamble or economic, small business and consumer impact statement if the council returns the rule, economic, small business and consumer impact statement or preamble, in whole or in part, to the agency.

D. The council shall not approve the rule unless:

1. The economic, small business and consumer impact statement contains information from the state, data and analysis prescribed by this article.
2. The economic, small business and consumer impact statement is generally accurate.
3. The probable benefits of the rule outweigh within this state the probable costs of the rule and the agency has demonstrated that it has selected the alternative that imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.
4. The rule is written in a manner that is clear, concise and understandable to the general public.
5. The rule is not illegal, inconsistent with legislative intent or beyond the agency's statutory authority and meets the requirements prescribed in section 41-1030.
6. The agency adequately addressed, in writing, the comments on the proposed rule and any supplemental proposals.
7. The rule is not a substantial change, considered as a whole, from the proposed rule and any supplemental notices.
8. The preamble discloses a reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.
9. The rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.
10. If a rule requires a permit, the permitting requirement complies with section 41-1037.

E. The council shall verify that a rule with new fees does not violate section 41-1008. The council shall not approve a rule that contains a fee increase unless two-thirds of the voting quorum present votes to approve the rule.

F. The council shall verify that a rule with an immediate effective date complies with section 41-1032. The council shall not approve a rule with an immediate effective date unless two-thirds of the voting quorum present

votes to approve the rule.

G. If the rule relies on scientific principles or methods, including a study disclosed pursuant to subsection D, paragraph 8 of this section, and a person submits an analysis to the council questioning whether the rule is based on valid scientific or reliable principles or methods, the council shall not approve the rule unless the council determines that the rule is based on valid scientific or reliable principles or methods that are specific and not of a general nature. In making a determination of reliability or validity, the council shall consider the following factors as applicable to the rule:

1. The authors of the study, principle or method have subject matter knowledge, skill, experience, training and expertise.
2. The study, principle or method is based on sufficient facts or data.
3. The study is the product of reliable principles and methods.
4. The study and its conclusions, principles or methods have been tested or subjected to peer reviewed publications.
5. The known or potential error rate of the study, principle or method has been identified along with its basis.
6. The methodology and approach of the study, principle or method are generally accepted in the scientific community.

H. The council may require a representative of an agency whose rule is under examination to attend a council meeting and answer questions. The council may also communicate to the agency its comments on any rule, preamble or economic, small business and consumer impact statement and require the agency to respond to its comments in writing.

I. At any time during the thirty days immediately following receipt of the rule, a person may submit written comments to the council that are within the scope of subsection D, E, F or G of this section. The council may allow testimony at a council meeting within the scope of subsection D, E, F or G of this section.

J. If the agency makes a good faith effort to comply with the requirements prescribed in this article and has explained in writing the methodology used to produce the economic, small business and consumer impact statement, the rule may not be invalidated after it is finalized on the ground that the contents of the economic, small business and consumer impact statement are insufficient or inaccurate or on the ground that the council erroneously approved the rule, except as provided by section 41-1056.01.

K. The absence of comments pursuant to subsection D, E, F or G of this section or article 4.1 of this chapter does not prevent the council from acting pursuant to this section.

L. The council shall review and approve or reject a notice of proposed expedited rulemaking pursuant to section 41-1027.

M. An agency that seeks to expire a rule or rules may file a notice of intent to expire with the council. The notice shall describe the rule or rules to be expired and the reasons for expiration. The council shall place the notice on the agenda for the next scheduled council meeting for consideration. If a quorum of the council approves the notice, the council shall cause a notice of rule expiration to be prepared and provide the notice of rule expiration to the agency for filing with the secretary of state.

41-1053. Council review of expedited rules

- A. After receipt of the expedited rule package from the agency, the council shall place the expedited rule on its consent agenda for approval unless a member of the council or the committee requests a hearing.
- B. If a hearing is requested, the council shall act on the expedited rule pursuant to section 41-1052 or shall remand the expedited rule to the agency for initiation of a rule making pursuant to sections 41-1022, 41-1023 and 41-1024.
- C. The council, at any time a proposed expedited rule is pending, may disapprove the expedited rule making and order initiation of a regular rule making pursuant to sections 41-1022, 41-1023 and 41-1024.

41-1055. Economic, small business and consumer impact statement

A. The economic, small business and consumer impact summary in the preamble shall include:

1. An identification of the proposed rule making, including all of the following:

(a) The conduct and its frequency of occurrence that the rule is designed to change.

(b) The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed.

(c) The estimated change in frequency of the targeted conduct expected from the rule change.

2. A brief summary of the information included in the economic, small business and consumer impact statement.

3. If the economic, small business and consumer impact summary accompanies a proposed rule or a proposed expedited rule, the name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement.

B. The economic, small business and consumer impact statement shall include:

1. An identification of the proposed rule making.

2. An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rule making.

3. A cost benefit analysis of the following:

(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rule making. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the economic, small business and consumer impact statement shall notify the joint legislative budget committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council.

(b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rule making.

(c) The probable costs and benefits to businesses directly affected by the proposed rule making, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rule making.

4. A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rule making.

5. A statement of the probable impact of the proposed rule making on small businesses. The statement shall include:

(a) An identification of the small businesses subject to the proposed rule making.

(b) The administrative and other costs required for compliance with the proposed rule making.

(c) A description of the methods prescribed in section 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not to use each method.

(d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rule making.

6. A statement of the probable effect on state revenues.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule making, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.

8. A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.

C. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement.

D. An agency is not required to prepare an economic, small business and consumer impact statement pursuant to this chapter and is not required to file a petition pursuant to subsection E of this section for the following rule makings:

1. Initial making, but not renewal, of an emergency rule pursuant to section 41-1026.
2. Proposed expedited rule making or final expedited rule making.

E. Before filing a proposed rule with the secretary of state, an agency may petition the council for a determination that the agency is not required to file an economic, small business and consumer impact statement. The petition shall demonstrate both of the following:

1. The rule making decreases monitoring, record keeping, costs or reporting burdens on agencies, political subdivisions, businesses or persons.
2. The rule making does not increase monitoring, record keeping, costs or reporting burdens on persons subject to the proposed rule making.

F. The council shall place a petition under subsection E of this section on the agenda of its next meeting if at least four council members make such a request of the council chairperson within two weeks after the filing of the petition.

G. The preamble for a rule making that is exempt pursuant to subsection D or E of this section shall state that the rule making is exempt from the requirements to prepare and file an economic, small business and consumer impact statement.

H. The cost-benefit analysis required by subsection B of this section shall calculate only the costs and benefits that occur in this state.

I. If a person submits an analysis to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states, the agency shall consider the analysis.

41-1056. Review by agency

A. At least once every five years, each agency shall review all of its rules, including rules made pursuant to an exemption from this chapter or any part of this chapter, to determine whether any rule should be amended or repealed. The agency shall prepare and obtain council approval of a written report summarizing its findings, its supporting reasons and any proposed course of action. The report shall contain a certification that the agency is in compliance with section 41-1091. For each rule, the report shall include a concise analysis of all of the following:

1. The rule's effectiveness in achieving its objectives, including a summary of any available data supporting the conclusions reached.
2. Written criticisms of the rule received during the previous five years, including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.
3. Authorization of the rule by existing statutes.
4. Whether the rule is consistent with statutes or other rules made by the agency and current agency enforcement policy.
5. The clarity, conciseness and understandability of the rule.
6. The estimated economic, small business and consumer impact of the rules as compared to the economic, small business and consumer impact statement prepared on the last making of the rules.
7. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.
8. If applicable, that the agency completed the previous five-year review process.
9. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.
10. A determination that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.
11. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license or agency authorization, whether the rule complies with section 41-1037.

B. An agency may also include as part of the report the text of a proposed expedited rule pursuant to section 41-1027.

C. The council shall schedule the periodic review of each agency's rules and shall approve or return, in whole or in part, the agency's report on its review. The council may grant an agency an extension from filing an agency's report. If the council returns an agency's report, in whole or in part, the council shall inform the agency of the manner in which its report is inadequate and, in consultation with the agency, shall schedule submission of a revised report. The council shall not approve a report unless the report complies with subsection A of this section.

D. The council may review rules outside of the five-year review process if requested by at least four council members.

E. The council may require the agency to propose an amendment or repeal of the rule by a date no earlier than six months after the date of the meeting at which the council considers the agency's report on its rule if the

council determines the agency's analysis under subsection A of this section demonstrates that the rule is materially flawed, including that the rule:

1. Is not authorized by statute.
2. Is inconsistent with other statutes, rules or agency enforcement policies and the inconsistency results in a significant burden on the regulated public.
3. Imposes probable costs, including costs to the regulated person, that significantly exceed the probable benefits of the rule within this state.
4. Is more stringent than a corresponding federal law and there is no statutory authority to exceed the requirements of federal law.
5. Is not clear, concise and understandable.
6. Does not use general permits if required under section 41-1037.
7. Does not impose the least burden to persons regulated by the rule as necessary to achieve the underlying regulatory objective of the rule.
8. Does not rely on valid scientific or reliable principles and methods, including a study, if the rule relies on scientific principles or methods, and a person has submitted an analysis under subsection A of this section questioning whether the rule is based on valid scientific or reliable principles or methods. In making a determination of validity or reliability, the council shall consider the factors listed in section 41-1052, subsection G.

F. An agency may request an extension of no longer than one year from the date specified by the council pursuant to subsection E of this section by sending a written request to the council that:

1. Identifies the reason for the extension request.
2. Demonstrates good cause for the extension.

G. The agency shall notify the council of an amendment or repeal of a rule for which the council has set an expiration date under subsection E of this section. If the agency does not amend or repeal the rule by the date specified by the council under subsection E of this section or the extended date under subsection F of this section, the rule automatically expires. The council shall file a notice of rule expiration with the secretary of state and notify the agency of the expiration of the rule.

H. The council may reschedule a report or portion of a report for any rule that is scheduled for review and that was initially made or substantially revised within two years before the due date of the report as scheduled by the council.

I. If an agency finds that it cannot provide the written report to the council by the date it is due, the agency may file an extension with the council before the due date indicating the reason for the extension. The timely filing for an extension permits the agency to submit its report on or before the date prescribed by the council.

J. If an agency fails to submit its report, including a revised report, pursuant to subsection A or C of this section, or file an extension before the due date of the report or if it files an extension and does not submit its report within the extension period, the rules scheduled for review expire and the council shall:

1. Cause a notice to be published in the next register that states the rules have expired and are no longer enforceable.
2. Notify the secretary of state that the rules have expired and that the rules are to be removed from the code.

3. Notify the agency that the rules have expired and are no longer enforceable.

K. If a rule expires as provided in subsection J of this section and the agency wishes to reestablish the rule, the agency shall comply with the requirements of this chapter.

L. Not less than ninety days before the due date of a report, the council shall send a written notice to the head of the agency whose report is due. The notice shall list the rules to be reviewed and the date the report is due.

M. A person who is regulated or could be regulated by an obsolete rule may petition the council to require an agency that has the obsolete rule to consider including the rule in the five-year report with a recommendation for repeal of the rule.

N. A person who is required to obtain or could be required to obtain a license may petition the council to require an agency to consider including a recommendation for reducing a licensing time frame in the five-year report.

41-1056.01. Impact statements; appeals

- A. Within two years after a rule is finalized, a person who is or may be affected by the rule may file a written petition with an agency objecting to all or part of a rule on any of the following grounds:
1. The actual economic, small business or consumer impact significantly exceeded the impact estimated in the economic, small business and consumer impact statement submitted during the making of the rule.
 2. The actual economic, small business or consumer impact was not estimated in the economic, small business and consumer impact statement submitted during the making of the rule and that actual impact imposes a significant burden on persons subject to the rule.
 3. The agency did not select the alternative that imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.
- B. The burden of proof is on the petitioner to show that any of the provisions set forth in subsection A of this section are met.
- C. Within thirty days after receiving the copy of the petition, the agency shall reevaluate the rule and its economic impacts and publish notice of the petition in the register. For at least thirty days after publication of the notice the agency shall afford persons the opportunity to submit in writing statements, arguments, data and views on the rule and its impacts. Within thirty days after the close of comment, the agency shall publish a written summary of comments received, the agency's response to those comments, and the final decision of the agency on whether to initiate a rule making or to amend or repeal the rule. The agency shall initiate any such rule making within forty-five days after publication of its final decision.
- D. Any person who is or may be affected by the agency's final decision on whether to initiate a rule making pursuant to subsection C of this section may appeal that decision to the council within thirty days after publication of the agency's final decision.
- E. The council shall place on its agenda the appeal if at least three council members make such a request of the council chairman within two weeks after the filing of the appeal with the council.
- F. If the appeal is placed on the council's agenda, the council chairman shall provide a copy of the appeal and written notice to the agency that the council will consider the appeal. The agency shall provide the council with a copy of the written summary described in subsection C of this section.
- G. The council shall require an agency to promptly initiate a rule making or to amend or repeal the rule or the rule package, as prescribed by section 41-1024, subsection E, objected to in the petition if the council finds that any of the provisions set forth in subsection A of this section are met.
- H. This section shall not apply to a rule for which there is a final judgment of a court of competent jurisdiction based on the grounds of whether the contents of the economic, small business and consumer impact statement were insufficient or inaccurate.

41-1057. Exemptions

A. In addition to the exemptions stated in section 41-1005, this article does not apply to:

1. An agency which is a unit of state government headed by a single elected official.
2. The corporation commission, which shall adopt substantially similar rule review procedures, including the preparation of an economic impact statement and a statement of the effect of the rule on small business.
3. The industrial commission of Arizona when incorporating by reference the federal occupational safety and health standards as published in 29 Code of Federal Regulations parts 1904, 1910, 1926 and 1928.
4. The Arizona state lottery if making rules that relate only to the design, operation or prize structure of a lottery game.

B. An agency exempt under subsection A of this section may elect to follow the requirements of this article instead of section 41-1044 for a particular rule making. The agency shall include with a final rule making filed with council a statement that the agency has elected to follow the requirements of this article.

41-1061. Contested cases; notice; hearing; records

A. In a contested case, all parties shall be afforded an opportunity for a hearing after reasonable notice. Unless otherwise provided by law, the notice shall be given at least twenty days before the date set for the hearing.

B. The notice shall include:

1. A statement of the time, place and nature of the hearing.
2. A statement of the legal authority and jurisdiction under which the hearing is to be held.
3. A reference to the particular sections of the statutes and rules involved.
4. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter on application a more definite and detailed statement shall be furnished.

C. Opportunity shall be afforded all parties to participate in a settlement conference or mediation unless both parties or the hearing officer decline to set a settlement conference or mediation.

D. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved. If there is no genuine issue of material fact, a party may seek disposition of the case by motion.

E. Unless precluded by law, and except as to claims for compensation and benefits under title 23, chapter 6, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

F. The record in a contested case shall include:

1. All pleadings, motions and interlocutory rulings.
2. Evidence received or considered.
3. A statement of matters officially noticed.
4. Objections and offers of proof and rulings thereon.
5. Proposed findings and exceptions.
6. Any decision, opinion or report by the officer presiding at the hearing.
7. All staff memoranda, other than privileged communications, or data submitted to the hearing officer or members of the agency in connection with their consideration of the case.

G. Oral proceedings or any part of the proceedings shall be recorded manually or by a recording device and shall be transcribed on request of any party, unless otherwise provided by law. The cost of the transcript shall be paid by the party making the request, unless otherwise provided by law or unless assessment of the cost is waived by the agency.

H. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

41-1062. Hearings; evidence; official notice; power to require testimony and records; rehearing

A. Unless otherwise provided by law, in contested cases the following shall apply:

1. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence required in judicial proceedings shall be grounds for reversing any administrative decision or order providing the evidence supporting such decision or order is substantial, reliable, and probative. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. Every person who is a party to such proceedings shall have the right to be represented by counsel, to submit evidence in open hearing and shall have the right of cross-examination. Unless otherwise provided by law, hearings may be held at any place determined by the agency.

2. Copies of documentary evidence may be received in the discretion of the presiding officer. Upon request, parties shall be given an opportunity to compare the copy with the original.

3. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

4. The officer presiding at the hearing may cause to be issued subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence and shall have the power to administer oaths. Unless otherwise provided by law or agency rule, subpoenas so issued shall be served and, upon application to the court by a party or the agency, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action. On application of a party or the agency and for use as evidence, the officer presiding at the hearing may permit a deposition to be taken, in the manner and upon the terms designated by him, of a witness who cannot be subpoenaed or is unable to attend the hearing. Prehearing depositions and subpoenas for the production of documents may be ordered by the officer presiding at the hearing, provided that the party seeking such discovery demonstrates that the party has reasonable need of the deposition testimony or materials being sought. All provisions of law compelling a person under subpoena to testify are applicable. Fees for attendance as a witness shall be the same as for a witness in the superior courts of the state of Arizona, unless otherwise provided by law or agency rule. Notwithstanding the provisions of section 12-2212, no subpoenas, depositions or other discovery shall be permitted in contested cases except as provided by agency rule or this paragraph.

B. Except when good cause exists otherwise, the agency shall provide an opportunity for a rehearing or review of the decision of an agency before such decision becomes final. Such rehearing or review shall be governed by agency rule drawn as closely as practicable from rule 59, Arizona rules of civil procedure, relating to new trial in superior court.

41-1063. Decisions and orders

Unless otherwise provided by law, any final decision or order adverse to a party in a contested case shall be in writing or stated in the record. Any final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Unless otherwise provided by law, parties shall be notified either personally or by mail to their last known address of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

41-1064. Licenses; renewal; revocation; suspension; annulment; withdrawal

- A. When the grant, denial or renewal of a license is required to be preceded by notice and an opportunity for a hearing, the provisions of this article concerning contested cases apply.
- B. When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.
- C. No revocation, suspension, annulment or withdrawal of any license is lawful unless, prior to the action, the agency provides the licensee with notice and an opportunity for a hearing in accordance with this chapter. If the agency finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

41-1065. Hearing on denial of license or permit

Proceedings for licenses or permits on application when not required by law to be preceded by notice and opportunity for hearing shall be governed by the provisions of the law relating to the particular agency, provided that when an application for a license or permit is denied under the provisions of the law relating to a particular agency the applicant shall be entitled to have a hearing before such agency on such denial upon filing within fifteen days after receipt of notice of such refusal a written application for such hearing. Notice shall be given in the manner prescribed by section 41-1061. At such hearing such applicant shall be the moving party and have the burden of proof. Such hearing shall be conducted in accordance with this article for hearing of a contested case before an agency. Such hearing before such agency shall be limited to those matters originally presented to the agency for its determination on such application.

41-1066. Compulsory testimony; privilege against self-incrimination

A. A person may not refuse to attend and testify or produce evidence sought by an agency in an action, proceeding or investigation instituted by or before the agency on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture unless it constitutes the compelled testimony or the private papers of the person which would be privileged evidence either pursuant to the fifth amendment of the Constitution of the United States or article II, section 10, Constitution of Arizona, and the person claims the privilege prior to the production of the testimony or papers.

B. If a person asserts his privilege against self-incrimination and the agency seeks to compel production of the testimony or documents sought, it may, with the prior written approval of the attorney general, issue a written order compelling the testimony or production of documents in proceedings and investigations before the agency or apply to the appropriate court for such an order in other actions or proceedings.

C. Evidence produced pursuant to subsection B is not admissible in evidence or usable in any manner in a criminal prosecution, except for perjury, false swearing, tampering with physical evidence or any other offense committed in connection with the appearance made pursuant to this section against the person testifying or the person producing his private papers.

41-1067. Applicability of article

This article only applies to contested cases of agencies that are exempt from article 10 of this chapter as provided in section 41-1092.02.

41-1072. Definitions

In this article, unless the context otherwise requires:

1. "Administrative completeness review time frame" means the number of days from agency receipt of an application for a license until an agency determines that the application contains all components required by statute or rule, including all information required to be submitted by other government agencies. The administrative completeness review time frame does not include the period of time during which an agency provides public notice of the license application or performs a substantive review of the application.
2. "Overall time frame" means the number of days after receipt of an application for a license during which an agency determines whether to grant or deny a license. The overall time frame consists of both the administrative completeness review time frame and the substantive review time frame.
3. "Substantive review time frame" means the number of days after the completion of the administrative completeness review time frame during which an agency determines whether an application or applicant for a license meets all substantive criteria required by statute or rule. Any public notice and hearings required by law shall fall within the substantive review time frame.

41-1073. Time frames; exception

A. No later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time frame during which the agency will either grant or deny each type of license that it issues. Agencies shall submit their overall time frame rules to the governor's regulatory review council pursuant to the schedule developed by the council. The council shall schedule each agency's rules so that final overall time frame rules are in place no later than December 31, 1998. The rule regarding the overall time frame for each type of license shall state separately the administrative completeness review time frame and the substantive review time frame.

B. If a statutory licensing time frame already exists for an agency but the statutory time frame does not specify separate time frames for the administrative completeness review and the substantive review, by rule the agency shall establish separate time frames for the administrative completeness review and the substantive review, which together shall not exceed the statutory overall time frame. An agency may establish different time frames for initial licenses, renewal licenses and revisions to existing licenses.

C. The submission by the department of environmental quality of a revised permit to the United States environmental protection agency in response to an objection by that agency shall be given the same effect as a notice granting or denying a permit application for licensing time frame purposes. For the purposes of this subsection, "permit" means a permit required by title 49, chapter 2, article 3.1 or section 49-426.

D. In establishing time frames, agencies shall consider all of the following:

1. The complexity of the licensing subject matter.
2. The resources of the agency granting or denying the license.
3. The economic impact of delay on the regulated community.
4. The impact of the licensing decision on public health and safety.
5. The possible use of volunteers with expertise in the subject matter area.
6. The possible increased use of general licenses for similar types of licensed businesses or facilities.
7. The possible increased cooperation between the agency and the regulated community.
8. Increased agency flexibility in structuring the licensing process and personnel.

E. This article does not apply to licenses issued either:

1. Pursuant to tribal state gaming compacts.
2. Within seven days after receipt of initial application.
3. By a lottery method.

41-1074. Compliance with administrative completeness review time frame

A. An agency shall issue a written notice of administrative completeness or deficiencies to an applicant for a license within the administrative completeness review time frame.

B. If an agency determines that an application for a license is not administratively complete, the agency shall include a comprehensive list of the specific deficiencies in the written notice provided pursuant to subsection A of this section. If the agency issues a written notice of deficiencies within the administrative completeness time frame, the administrative completeness review time frame and the overall time frame are suspended from the date the notice is issued until the date that the agency receives the missing information from the applicant.

C. If an agency does not issue a written notice of administrative completeness or deficiencies within the administrative completeness review time frame, the application is deemed administratively complete. If an agency issues a timely written notice of deficiencies, an application is not complete until the agency receives all requested information.

D. Except for an application submitted to the department of water resources pursuant to title 45, a determination by an agency that an application is not administratively complete is an appealable agency action, which if timely initiated, entitles the applicant to an adjudication on the merits of the administrative completeness of the application.

41-1075. Compliance with substantive review time frame

A. During the substantive review time frame, an agency may make one comprehensive written request for additional information. The agency and applicant may mutually agree in writing to allow the agency to submit supplemental requests for additional information. If an agency issues a comprehensive written request or a supplemental request by mutual written agreement for additional information, the substantive review time frame and the overall time frame are suspended from the date the request is issued until the date that the agency receives the additional information from the applicant.

B. By mutual written agreement, an agency and an applicant for a license may 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 twenty-five per cent of the overall time frame.

41-1076. Compliance with overall time frame

Unless an agency and an applicant for a license mutually agree to extend the substantive review time frame and the overall time frame pursuant to section 41-1075, an agency shall issue a written notice granting or denying a license within the overall time frame to an applicant. If an agency denies an application for a license, the agency shall include in the written notice at least the following information:

1. Justification for the denial with references to the statutes or rules on which the denial is based.
2. An explanation of the applicant's right to appeal the denial. The explanation shall include the number of days in which the applicant must file a protest challenging the denial and the name and telephone number of an agency contact person who can answer questions regarding the appeals process.

41-1077. Consequence for agency failure to comply with overall time frame; refund; penalty.

A. If an agency does not issue to an applicant the written notice granting or denying a license within the overall time frame or within the time frame extension pursuant to section 41-1075, the agency shall refund to the applicant all fees charged for reviewing and acting on the application for the license and shall excuse payment of any such fees that have not yet been paid. The agency shall not require an applicant to submit an application for a refund pursuant to this subsection. The refund shall be made within thirty days after the expiration of the overall time frame or the time frame extension. The agency shall continue to process the application subject to subsection B of this section. Notwithstanding any other statute, the agency shall make the refund from the fund in which the application fees were originally deposited. This section applies only to license applications that were subject to substantive review.

B. Except for license applications that were not subject to substantive review, the agency shall pay a penalty to the state general fund for each month after the expiration of the overall time frame or the time frame extension until the agency issues written notice to the applicant granting or denying the license. The agency shall pay the penalty from the agency fund in which the application fees were originally deposited. The penalty shall be two and one-half per cent of the total fees received by the agency for reviewing and acting on the application for each license that the agency has not granted or denied on the last day of each month after the expiration of the overall time frame or time frame extension for that license.

41-1079. Information required to be provided

A. An agency that issues licenses shall provide the following information to an applicant at the time the applicant obtains an application for a license:

1. A list of all of the steps the applicant is required to take in order to obtain the license.
2. The applicable licensing time frames.
3. The name and telephone number of an agency contact person who can answer questions or provide assistance throughout the application process.

B. This section does not apply to the Arizona peace officer standards and training board established by section 41-1821.

41-1080. Licensing eligibility; authorized presence; documentation; applicability; definitions

A. Subject to subsections C and D of this section, an agency or political subdivision of this state shall not issue a license to an individual if the individual does not provide documentation of citizenship or alien status by presenting any of the following documents to the agency or political subdivision indicating that the individual's presence in the United States is authorized under federal law:

1. An Arizona driver license issued after 1996 or an Arizona nonoperating identification license.
2. A driver license issued by a state that verifies lawful presence in the United States.
3. A birth certificate or delayed birth certificate issued in any state, territory or possession of the United States.
4. A United States certificate of birth abroad.
5. A United States passport.
6. A foreign passport with a United States visa.
7. An I-94 form with a photograph.
8. A United States citizenship and immigration services employment authorization document or refugee travel document.
9. A United States certificate of naturalization.
10. A United States certificate of citizenship.
11. A tribal certificate of Indian blood.
12. A tribal or bureau of Indian affairs affidavit of birth.
13. Any other license that is issued by the federal government, any other state government, an agency of this state or a political subdivision of this state that requires proof of citizenship or lawful alien status before issuing the license.

B. This section does not apply to an individual if either:

1. Both of the following apply:

- (a) The individual is a citizen of a foreign country or, if at the time of application, the individual resides in a foreign country.
- (b) The benefits that are related to the license do not require the individual to be present in the United States in order to receive those benefits.

2. All of the following apply:

- (a) The individual is a resident of another state.
- (b) The individual holds an equivalent license in that other state and the equivalent license is of the same type being sought in this state.
- (c) The individual seeks the Arizona license to comply with this state's licensing laws and not to establish residency in this state.

C. If, pursuant to subsection A of this section, an individual has affirmatively established citizenship of the United States or a form of nonexpiring work authorization issued by the federal government, the individual, on renewal or reinstatement of a license, is not required to provide subsequent documentation of that status.

D. If, on renewal or reinstatement of a license, an individual holds a limited form of work authorization issued by the federal government that has expired, the individual shall provide documentation of that status.

E. If a document listed in subsection A, paragraphs 1 through 12 of this section does not contain a photograph of the individual, the individual shall also present a government issued document that contains a photograph of the individual.

F. For the purposes of this section:

1. "Agency" means any agency, department, board or commission of this state or any political subdivision of this state that issues a license for the purposes of operating a business in this state or to an individual who provides a service to any person.

2. "License" means any agency permit, certificate, approval, registration, charter or similar form of authorization that is required by law and that is issued by any agency for the purposes of operating a business in this state or to an individual who provides a service to any person where the license is necessary in performing that service.

41-1080.01. Licensing fees; waiver; annual report; definitions

A. Except for an individual who applies for a license pursuant to title 36, chapter 4, article 10 or chapter 28.1, an agency shall waive any fee charged for an initial license for any of the following individuals if the individual is applying for that specific license in this state for the first time:

1. Any individual applicant whose family income does not exceed two hundred percent of the federal poverty guidelines.
2. Any active duty military service member's spouse.
3. Any honorably discharged veteran who has been discharged not more than two years before application.

B. On or before March 1 of each year, the department of administration shall report to the president of the senate, the speaker of the house of representatives, the joint legislative budget committee and the governor's office of strategic planning and budgeting the total number of waived licensing fees by each agency. The report shall specify for which purpose the fee was waived pursuant to this section.

C. For the purposes of this section, "agency" and "license" have the same meanings prescribed in section 41-1080.

41-1081. Standards for delegation

A. No agency may enter into or amend any delegation agreement unless the delegation agreement clearly sets forth all of the following:

1. Each function, power or duty being delegated by the agency, the term of the agreement and the procedures for terminating the agreement.
2. The standards of performance required to fulfill the agreement.
3. The types of fees that will be imposed on regulated parties and the legal authority for imposing any such fees.
4. The qualifications of the personnel of the political subdivision responsible for exercising the delegated functions, powers or duties.
5. Record keeping and reporting requirements.
6. Auditing requirements if the delegation agreement includes the transfer of funds from the delegating agency to the political subdivision.
7. A definition of the enforcement role if enforcement authority is being delegated.
8. Procedures for resolving conflicts between the parties to the delegation agreement.
9. Procedures for amending the delegation agreement.
10. The names and addresses of primary contact persons at both the delegating agency and the political subdivision.

B. An agency that seeks to delegate functions, powers or duties shall file with the secretary of state a summary of the proposed delegation agreement. The summary shall provide the name of a person to contact in the agency with questions or comments and shall state that a copy of the proposed delegation agreement may be obtained upon request from the agency. The secretary of state shall publish the summary in the next register.

C. For at least thirty days after publication of the notice of the proposed delegation agreement in the register, the agency shall provide persons the opportunity to submit in writing statements, arguments, data and views on the proposed delegation agreement and shall provide an opportunity for a public hearing if there is sufficient public interest.

D. A public hearing on the delegation agreement shall not be held earlier than thirty days after the notice of its location and time is published in the register. The agency shall determine a location and time for the public hearing that affords a reasonable opportunity for persons to participate. At that public hearing persons may present oral argument, data and views on the proposed delegation agreement.

E. After the conclusion of the public comment period and hearing, if any, the agency shall prepare a written summary, responding to the comments received, whether oral or written. The agency shall consider the comments received from the public in determining whether to enter into the proposed delegation agreement. The agency shall give written notice to those persons who submitted comments of the agency's decision on whether to enter into the proposed delegation agreement. The delegation agreement is effective thirty days after written notice of the agency's final decision is given unless an appeal is filed and pending before the council pursuant to subsection F.

F. A person who filed written comments with the delegating agency objecting to all or part of the proposed delegation agreement may appeal to the council the delegating agency's decision to enter into the delegation agreement within thirty days after the agency gives written notice to enter into the delegation agreement

pursuant to subsection E. The council shall place the appeal of the delegation agreement on its next meeting agenda if at least three council members make such a request of the council chairman within two weeks of the filing of the appeal.

G. Delegation agreements that are appealed to and considered by the council shall become effective upon council approval of the delegation agreement. Delegation agreements that are appealed to the council and not considered by the council are effective either thirty days after written notice of the agency's final decision is given pursuant to subsection E, or two weeks after an appeal is filed if at least three council members do not request council consideration of the delegation agreement pursuant to subsection F, whichever date is later.

H. The council shall not approve the delegation agreement if it does not meet the provisions set forth in subsection A or if the agency has not provided adequate notice and an opportunity for comment to the public.

41-1082. Existing delegation agreements

A. By January 1, 1995, each state agency shall compile and make public a list of all delegation agreements that it has entered into with political subdivisions and a list of all subdelegation agreements to the delegation agreements. Upon request and for a reasonable cost, a person may obtain a copy of any delegation agreement on the list.

B. By January 1, 1996, each state agency shall amend, if necessary, any delegation agreement entered into prior to the effective date of this article to conform with criteria set forth in section 41-1081, subsection A.

41-1083. No presumption of funding authority

No political subdivision may assess any fee, tax or other assessment in the exercise of its delegated authorities pursuant to any delegation agreement unless the delegation agreement specifically authorizes the fee, tax or other assessment or the political subdivision is otherwise authorized by law to impose the fee, tax or other assessment.

41-1084. Prohibition on subdelegation

No political subdivision that exercises delegated authority pursuant to a delegation agreement may subdelegate its delegated authority to another agency or political subdivision without first notifying the delegating agency.

41-1091. Substantive policy statements; directory

A. An agency shall file substantive policy statements pursuant to section 41-1013, subsection B.

B. An agency shall ensure that the first page of each substantive policy statement includes the following notice:

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under section 41-1033, Arizona Revised Statutes, for a review of the statement.

C. The agency shall publish at least annually a directory summarizing the subject matter of all currently applicable rules and substantive policy statements. The agency shall keep copies of this directory and all of its substantive policy statements at one location. The directory, rules and substantive policy statements and any materials incorporated by reference in the rules or substantive policy statements shall be open to public inspection at the office of the agency director.

41-1091.01. Posting substantive policy statement and rules

An agency shall post on the agency's website:

1. The full text of each rule currently in use or the website address and location of the full text of each rule currently in use.
2. Each substantive policy statement currently in use, including its full text, if practicable.
3. The notice required by section 41-1091, subsection B.

41-1092. Definitions

In this article, unless the context otherwise requires:

1. "Administrative law judge" means an individual or an agency head, board or commission that sits as an administrative law judge, that conducts administrative hearings in a contested case or an appealable agency action and that makes decisions regarding the contested case or appealable agency action.
2. "Administrative law judge decision" means the findings of fact, conclusions of law and recommendations or decisions issued by an administrative law judge.
3. "Adversely affected party" means:
 - (a) An individual who both:
 - (i) Provides evidence of an actual injury or economic damage that the individual has suffered or will suffer as a direct result of the action and not due to being a competitor or a general taxpayer.
 - (ii) Timely submits comments on the license application that include, with sufficient specificity, the questions of law, if applicable, that are the basis for the appeal.
 - (b) A group or association that identifies, by name and physical address in the notice of appeal, a member of the group or association who would be an adversely affected party in the individual's own right.
4. "Appealable agency action" means an action that determines the legal rights, duties or privileges of a party, including the administrative completeness of an application other than an application submitted to the department of water resources pursuant to title 45, and that is not a contested case. Appealable agency actions do not include interim orders by self-supporting regulatory boards, rules, orders, standards or statements of policy of general application issued by an administrative agency to implement, interpret or make specific the legislation enforced or administered by it or clarifications of interpretation, nor does it mean or include rules concerning the internal management of the agency that do not affect private rights or interests. For the purposes of this paragraph, administrative hearing does not include a public hearing held for the purpose of receiving public comment on a proposed agency action.
5. "Director" means the director of the office of administrative hearings.
6. "Final administrative decision" means a decision by an agency that is subject to judicial review pursuant to title 12, chapter 7, article 6.
7. "Licensee":
 - (a) Means any individual or business entity that has been issued a license by a state agency to engage in any business or activity in this state and that is subject to a licensing decision.
 - (b) Includes any individual or business entity that has applied for such a license and that appeals a licensing decision pursuant to section 41-1092.08 or 41-1092.12.
8. "Office" means the office of administrative hearings.
9. "Self-supporting regulatory board" means any one of the following:
 - (a) The Arizona state board of accountancy.
 - (b) The barbering and cosmetology board.
 - (c) The board of behavioral health examiners.

- (d) The Arizona state boxing and mixed martial arts commission.
- (e) The state board of chiropractic examiners.
- (f) The state board of dental examiners.
- (g) The state board of funeral directors and embalmers.
- (h) The Arizona game and fish commission.
- (i) The board of homeopathic and integrated medicine examiners.
- (j) The Arizona medical board.
- (k) The naturopathic physicians medical board.
- (l) The Arizona state board of nursing.
- (m) The board of examiners of nursing care institution administrators and assisted living facility managers.
- (n) The board of occupational therapy examiners.
- (o) The state board of dispensing opticians.
- (p) The state board of optometry.
- (q) The Arizona board of osteopathic examiners in medicine and surgery.
- (r) The Arizona peace officer standards and training board.
- (s) The Arizona state board of pharmacy.
- (t) The board of physical therapy.
- (u) The state board of podiatry examiners.
- (v) The state board for private postsecondary education.
- (w) The state board of psychologist examiners.
- (x) The board of respiratory care examiners.
- (y) The state board of technical registration.
- (z) The Arizona state veterinary medical examining board.
- (aa) The acupuncture board of examiners.
- (bb) The Arizona regulatory board of physician assistants.
- (cc) The board of athletic training.
- (dd) The board of massage therapy.

41-1092.01. Office of administrative hearings; director; powers and duties; fund

A. An office of administrative hearings is established.

B. The governor shall appoint the director pursuant to section 38-211. At a minimum, the director shall have the experience necessary for appointment as an administrative law judge. The director also shall possess supervisory, management and administrative skills, as well as knowledge and experience relating to administrative law.

C. The director shall:

1. Serve as the chief administrative law judge of the office.

2. Make and execute the contracts and other instruments that are necessary to perform the director's duties.

3. Subject to chapter 4, article 4 of this title, hire employees, including full-time administrative law judges, and contract for special services, including temporary administrative law judges, that are necessary to carry out this article. An administrative law judge employed or contracted by the office shall have graduated from an accredited college of law or shall have at least two years of administrative or managerial experience in the subject matter or agency section the administrative law judge is assigned to in the office.

4. Make rules that are necessary to carry out this article, including rules governing ex parte communications in contested cases.

5. Submit a report to the governor, speaker of the house of representatives and president of the senate by November 1 of each year describing the activities and accomplishments of the office. The director's annual report shall include a summary of the extent and effect of agencies' utilization of administrative law judges, court reporters and other personnel in proceedings under this article and recommendations for changes or improvements in the administrative procedure act or any agency's practice or policy with respect to the administrative procedure act. The director shall provide a copy of the report to the secretary of state.

6. Secure, compile and maintain all decisions, opinions or reports of administrative law judges issued pursuant to this article and the reference materials and supporting information that may be appropriate.

7. Develop, implement and maintain a program for the continuing training and education of administrative law judges and agencies in regard to their responsibilities under this article. The program shall require that an administrative law judge receive training in the technical and subject matter areas of the sections to which the administrative law judge is assigned.

8. Develop, implement and maintain a program of evaluation to aid the director in the evaluation of administrative law judges appointed pursuant to this article that includes comments received from the public.

9. Annually report the following to the governor, the president of the senate and the speaker of the house of representatives and provide a copy of this report to the secretary of state by December 1 for the prior fiscal year:

(a) The number of administrative law judge decisions rejected or modified by agency heads.

(b) By category, the number and disposition of motions filed pursuant to section 41-1092.07, subsection A to disqualify office administrative law judges for bias, prejudice, personal interest or lack of expertise.

(c) By agency, the number and type of violations of section 41-1009.

10. Schedule hearings pursuant to section 41-1092.05 on the request of an agency or the filing of a notice of appeal pursuant to section 41-1092.03.

D. The director shall not require legal representation to appear before an administrative law judge.

E. Except as provided in subsection F of this section, all state agencies supported by state general fund sources, unless exempted by this article, and the registrar of contractors shall use the services and personnel of the office to conduct administrative hearings. All other agencies shall contract for services and personnel of the office to conduct administrative hearings.

F. An agency head, board or commission that directly conducts an administrative hearing as an administrative law judge is not required to use the services and personnel of the office for that hearing.

G. Each state agency, and each political subdivision contracting for office services pursuant to subsection I of this section, shall make its facilities available, as necessary, for use by the office in conducting proceedings pursuant to this article.

H. The office shall employ full-time administrative law judges to conduct hearings required by this article or other laws as follows:

1. The director shall assign administrative law judges from the office to an agency, on either a temporary or a permanent basis, at supervisory or other levels, to preside over contested cases and appealable agency actions in accordance with the special expertise of the administrative law judge in the subject matter of the agency.

2. The director shall establish the subject matter and agency sections within the office that are necessary to carry out this article. Each subject matter and agency section shall provide training in the technical and subject matter areas of the section as prescribed in subsection C, paragraph 7 of this section.

I. If the office cannot furnish an office administrative law judge promptly in response to an agency request, the director may contract with qualified individuals to serve as temporary administrative law judges. These temporary administrative law judges are not employees of this state.

J. The office may provide administrative law judges on a contract basis to any governmental entity to conduct any hearing not covered by this article. The director may enter into contracts with political subdivisions of this state, and these political subdivisions may contract with the director for the purpose of providing administrative law judges and reporters for administrative proceedings or informal dispute resolution. The contract may define the scope of the administrative law judge's duties. Those duties may include the preparation of findings, conclusions, decisions or recommended decisions or a recommendation for action by the political subdivision. For these services, the director shall request payment for services directly from the political subdivision for which the services are performed, and the director may accept payment on either an advance or reimbursable basis.

K. The office shall apply monies received pursuant to subsections E and J of this section to offset its actual costs for providing personnel and services.

L. The office shall receive complaints against a county, a local government as defined in section 9-1401 or a video service provider as defined in section 9-1401 or 11-1901 and shall comply with the duties imposed on the office pursuant to title 9, chapter 13 for complaints involving local governments and title 11, chapter 14 for complaints involving counties.

41-1092.02. Appealable agency actions; application of procedural rules; exemption from article

A. This article applies to all contested cases as defined in section 41-1001 and all appealable agency actions, except contested cases with or appealable agency actions of:

1. The state department of corrections.
2. The board of executive clemency.
3. The industrial commission of Arizona.
4. The Arizona corporation commission.
5. The Arizona board of regents and institutions under its jurisdiction.
6. The state personnel board.
7. The department of juvenile corrections.
8. The department of transportation, except as provided in title 28, chapter 30, article 2.
9. The department of economic security except as provided in section 46-458.
10. The department of revenue regarding:
 - (a) Income tax or withholding tax.
 - (b) Any tax issue related to information associated with the reporting of income tax or withholding tax unless the taxpayer requests in writing that this article apply and waives confidentiality under title 42, chapter 2, article 1.
11. The board of tax appeals.
12. The state board of equalization.
13. The state board of education, but only in connection with contested cases and appealable agency actions related to either:
 - (a) Applications for issuance or renewal of a certificate and discipline of certificate holders and noncertificated persons pursuant to sections 15-203, 15-505, 15-534, 15-534.01, 15-535, 15-545 and 15-550.
 - (b) The Arizona empowerment scholarship account program pursuant to title 15, chapter 19.
14. The board of fingerprinting.
15. The department of child safety except as provided in sections 8-506.01 and 8-811.

B. Unless waived by all parties, an administrative law judge shall conduct all hearings under this article, and the procedural rules set forth in this article and rules made by the director apply.

C. Except as provided in subsection A of this section:

1. A contested case heard by the office of administrative hearings regarding taxes administered under title 42 shall be subject to section 42-1251.
2. A final decision of the office of administrative hearings regarding taxes administered under title 42 may be appealed by either party to the director of the department of revenue, or a taxpayer may file and appeal directly

to the board of tax appeals pursuant to section 42-1253.

D. Except as provided in subsections A, B, E, F and G of this section and notwithstanding any other administrative proceeding or judicial review process established in statute or administrative rule, this article applies to all appealable agency actions and to all contested cases.

E. Except for a contested case or an appealable agency action regarding unclaimed property, sections 41-1092.03, 41-1092.08 and 41-1092.09 do not apply to the department of revenue.

F. The board of appeals established by section 37-213 is exempt from:

1. The time frames for hearings and decisions provided in section 41-1092.05, subsection A, section 41-1092.08 and section 41-1092.09.

2. The requirement in section 41-1092.06, subsection A to hold an informal settlement conference at the appellant's request if the sole subject of an appeal pursuant to section 37-215 is the estimate of value reported in an appraisal of lands or improvements.

G. Auction protest procedures pursuant to title 37, chapter 2, article 4.1 are exempt from this article.

41-1092.03. Notice of appealable agency action or contested case; hearing; informal settlement conference; applicability

A. Except as provided in subsection D of this section, an agency shall serve notice of an appealable agency action or contested case pursuant to section 41-1092.04. The notice shall:

1. Identify the statute or rule that is alleged to have been violated or on which the action is based.
2. Identify with reasonable particularity the nature of any alleged violation, including, if applicable, the conduct or activity constituting the violation.
3. Include a description of the party's right to request a hearing on the appealable agency action or contested case.
4. Include a description of the party's right to request an informal settlement conference pursuant to section 41-1092.06.

B. A party may obtain a hearing on an appealable agency action or contested case by filing a notice of appeal or request for a hearing with the agency within thirty days after receiving the notice prescribed in subsection A of this section. The notice of appeal or request for a hearing may be filed by a party whose legal rights, duties or privileges were determined by the appealable agency action or contested case. A notice of appeal or request for a hearing also may be filed by a party who will be adversely affected by the appealable agency action or contested case and who exercised any right provided by law to comment on the action being appealed or contested, provided that the grounds for the notice of appeal or request for a hearing are limited to issues raised in that party's comments. The notice of appeal or request for a hearing shall identify the party, the party's address, the agency and the action being appealed or contested and shall contain at least the following:

1. A concise statement of the reasons for the appeal or request for a hearing.
2. Detailed and complete information regarding all questions of law, if applicable, that are the basis for the appeal.
3. All relevant supporting documentation.
4. How the party is an adversely affected party, if applicable.

C. The agency shall notify the office of the appeal or request for a hearing and the office shall schedule an appeal or contested case hearing pursuant to section 41-1092.05, except as provided in section 41-1092.01, subsection F.

D. If good cause is shown an agency head may accept an appeal or request for a hearing that is not filed in a timely manner.

E. This section does not apply to a contested case if the agency:

1. Initiates the contested case hearing pursuant to law other than this chapter and not in response to a request by another party.
2. Is not required by law, other than this chapter, to provide an opportunity for an administrative hearing before taking action that determines the legal rights, duties or privileges of an applicant for a license.

41-1092.04. Service of documents

Unless otherwise provided in this article, every notice or decision under this article shall be served by personal delivery or certified mail, return receipt requested, or by any other method reasonably calculated to effect actual notice on the agency and every other party to the action to the party's last address of record with the agency. Each party shall inform the agency and the office of any change of address within five days of the change.

41-1092.05. Scheduling of hearings; prehearing conferences

A. Except as provided in subsections B and C, hearings for:

1. Appealable agency actions shall be held within sixty days after the notice of appeal is filed.
2. Contested cases shall be held within sixty days after the agency's request for a hearing.

B. Hearings for appealable agency actions of or contested cases with self-supporting regulatory boards that meet quarterly or less frequently shall be held at the next meeting of the board after the board receives the written decision of an administrative law judge or the issuance of the notice of hearing, except that:

1. If the decision of the administrative law judge is received or the notice of hearing is issued within thirty days before the board meets, the hearing shall be held at the following meeting of the board.
2. If good cause is shown, the hearing may be held at a later meeting of the board.

C. The date scheduled for the hearing may be advanced or delayed on the agreement of the parties or on a showing of good cause.

D. The agency shall prepare and serve a notice of hearing on all parties to the appeal or contested case at least thirty days before the hearing. The notice shall include:

1. A statement of the time, place and nature of the hearing.
2. A statement of the legal authority and jurisdiction under which the hearing is to be held.
3. A reference to the particular sections of the statutes and rules involved.
4. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. After the initial notice and on application, a more definite and detailed statement shall be furnished.

E. Notwithstanding subsection D, a hearing shall be expedited as provided by law or upon a showing of extraordinary circumstances or the possibility of irreparable harm if the parties to the appeal or contested case have actual notice of the hearing date. Any party to the appeal or contested case may file a motion with the director asserting the party's right to an expedited hearing. The right to an expedited hearing shall be listed on any abatement order. The Arizona health care cost containment system administration may file a motion with every member grievance and eligibility appeal that cites federal law and that requests that a hearing be set within thirty days after the motion is filed.

F. Prehearing conferences may be held to:

1. Clarify or limit procedural, legal or factual issues.
2. Consider amendments to any pleadings.
3. Identify and exchange lists of witnesses and exhibits intended to be introduced at the hearing.
4. Obtain stipulations or rulings regarding testimony, exhibits, facts or law.
5. Schedule deadlines, hearing dates and locations if not previously set.
6. Allow the parties opportunity to discuss settlement.

41-1092.06. Appeals of agency actions and contested cases; informal settlement conferences; applicability.

A. If requested by the appellant of an appealable agency action or the respondent in a contested case, the agency shall hold an informal settlement conference within fifteen days after receiving the request. A request for an informal settlement conference shall be in writing and shall be filed with the agency no later than twenty days before the hearing. If an informal settlement conference is requested, the agency shall notify the office of the request and the outcome of the conference, except as provided in section 41-1092.01, subsection F. The request for an informal settlement conference does not toll the sixty day period in which the administrative hearing is to be held pursuant to section 41-1092.05.

B. If an informal settlement conference is held, a person with the authority to act on behalf of the agency must represent the agency at the conference. The agency representative shall notify the appellant in writing that statements, either written or oral, made by the appellant at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations are inadmissible in any subsequent administrative hearing. The parties participating in the settlement conference shall waive their right to object to the participation of the agency representative in the final administrative decision.

41-1092.07. Hearings

A. A party to a contested case or appealable agency action may file a nonperemptory motion with the director to disqualify an office administrative law judge from conducting a hearing for bias, prejudice, personal interest or lack of technical expertise necessary for a hearing.

B. The parties to a contested case or appealable agency action have the right to be represented by counsel or to proceed without counsel, to submit evidence and to cross-examine witnesses.

C. The administrative law judge may issue subpoenas to compel the attendance of witnesses and the production of documents. The subpoenas shall be served and, on application to the superior court, enforced in the manner provided by law for the service and enforcement of subpoenas in civil matters. The administrative law judge may administer oaths and affirmations to witnesses.

D. All parties shall have the opportunity to respond and present evidence and argument on all relevant issues. All relevant evidence is admissible, but the administrative law judge may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues or by considerations of undue delay, waste of time or needless presentation of cumulative evidence. The administrative law judge shall exercise reasonable control over the manner and order of cross-examining witnesses and presenting evidence to make the cross-examination and presentation effective for ascertaining the truth, avoiding needless consumption of time and protecting witnesses from harassment or undue embarrassment.

E. All hearings shall be recorded. The administrative law judge shall secure either a court reporter or an electronic means of producing a clear and accurate record of the proceeding at the agency's expense. Any party that requests a transcript of the proceeding shall pay the costs of the transcript to the court reporter or other transcriber.

F. Unless otherwise provided by law, the following apply:

1. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence required in judicial proceedings is grounds for reversing any administrative decision or order if the evidence supporting the decision or order is substantial, reliable and probative.

2. Copies of documentary evidence may be received in the discretion of the administrative law judge. On request, the parties shall be given an opportunity to compare the copy with the original.

3. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. The parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be used in the evaluation of the evidence. An agency-issued license that substantially complied with the applicable licensing requirements establishes a prima facie demonstration that the license meets all state and federal legal and technical requirements and the license would protect public health, welfare and the environment. An adversely affected party may rebut a prima facie demonstration by presenting clear and convincing evidence demonstrating that one or more provisions in the license violate a specifically applicable state or federal requirement. If an adversely affected party rebuts a prima facie demonstration, the applicant or licensee and the agency director may present additional evidence to support issuing the license.

4. On application of a party or the agency and for use as evidence, the administrative law judge may permit a deposition to be taken, in the manner and on the terms designated by the administrative law judge, of a witness who cannot be subpoenaed or who is unable to attend the hearing. The administrative law judge may order subpoenas for the production of documents if the party seeking the discovery demonstrates that the party has reasonable need of the materials being sought. All provisions of law compelling a person under subpoena to

testify are applicable. Fees for attendance as a witness shall be the same as for a witness in court, unless otherwise provided by law or agency rule. Notwithstanding section 12-2212, subpoenas, depositions or other discovery shall not be permitted except as provided by this paragraph or subsection C of this section.

5. Informal disposition may be made by stipulation, agreed settlement, consent order or default.

6. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

7. A final administrative decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Conclusions of law shall specifically address the agency's authority to make the decision consistent with section 41-1030.

G. Except as otherwise provided by law:

1. At a hearing on an agency's denial of a license or permit or a denial of an application or request for modification of a license or permit, the applicant has the burden of persuasion.

2. At a hearing on an agency action to suspend, revoke, terminate or modify on its own initiative material conditions of a license or permit, the agency has the burden of persuasion.

3. At a hearing on an agency's imposition of fees or penalties or any agency compliance order, the agency has the burden of persuasion.

4. At a hearing held pursuant to chapter 23 or 24 of this title, the appellant or claimant has the burden of persuasion.

H. Subsection G of this section does not affect the law governing burden of persuasion in an agency denial of, or refusal to issue, a license renewal.

41-1092.08. Final administrative decisions; review; exception

A. The administrative law judge of the office shall issue a written decision within twenty days after the hearing is concluded. The written decision shall contain a concise explanation of the reasons supporting the decision, including the findings of fact and conclusions of law. The administrative law judge shall serve a copy of the decision on all parties to the contested case or appealable agency action. On request of the agency, the office shall also transmit to the agency the record of the hearing as described in section 12-904, except as provided in section 41-1092.01, subsection F.

B. Within thirty days after the date the office sends a copy of the administrative law judge's decision to the head of the agency, executive director, board or commission, the head of the agency, executive director, board or commission may review the decision and accept, reject or modify it. If the head of the agency, executive director, board or commission declines to review the administrative law judge's decision, the agency shall serve a copy of the decision on all parties. If the head of the agency, executive director, board or commission rejects or modifies the decision, the agency head, executive director, board or commission must file with the office, except as provided in section 41-1092.01, subsection F, and serve on all parties a copy of the administrative law judge's decision with the rejection or modification and a written justification setting forth the reasons for the rejection or modification of each finding of fact or conclusion of law. If there is a rejection or modification of a conclusion of law, the written justification shall be sent to the president of the senate and the speaker of the house of representatives.

C. A board or commission whose members are appointed by the governor may review the decision of the agency head, as provided by law, and make the final administrative decision.

D. Except as otherwise provided in this subsection, if the head of the agency, the executive director or a board or commission does not accept, reject or modify the administrative law judge's decision within thirty days after the date the office sends a copy of the administrative law judge's decision to the head of the agency, executive director, board or commission, as evidenced by receipt of such action by the office by the thirtieth day, the office shall certify the administrative law judge's decision as the final administrative decision. If the board or commission meets monthly or less frequently, if the office sends the administrative law judge's decision at least thirty days before the next meeting of the board or commission and if the board or commission does not accept, reject or modify the administrative law judge's decision at the next meeting of the board or commission, as evidenced by receipt of such action by the office within five days after the meeting, the office shall certify the administrative law judge's decision as the final administrative decision.

E. For the purposes of subsections B and D of this section, a copy of the administrative law judge's decision is sent on personal delivery of the decision or five days after the decision is mailed to the head of the agency, executive director, board or commission.

F. The decision of the agency head is the final administrative decision unless one of the following applies:

1. The agency head, executive director, board or commission does not review the administrative law judge's decision pursuant to subsection B of this section or does not reject or modify the administrative law judge's decision as provided in subsection D of this section, in which case the administrative law judge's decision is the final administrative decision.
2. The decision of the agency head is subject to review pursuant to subsection C of this section.
3. The licensee accepts the administrative law judge's decision concerning the appeal of a licensing decision as final pursuant to subsection I of this section.

G. If a board or commission whose members are appointed by the governor makes the final administrative decision as an administrative law judge or on review of the decision of the agency head, the decision is not subject to review by the head of the agency.

H. A party may appeal a final administrative decision pursuant to title 12, chapter 7, article 6, except as provided in section 41-1092.09, subsection B and except that if a party has not requested a hearing on receipt of a notice of appealable agency action pursuant to section 41-1092.03, the appealable agency action is not subject to judicial review. The license is not stayed during the appeal unless the affected party that has appealed applies to the superior court for an order requiring a stay pending final disposition of the appeal as necessary to prevent an imminent and substantial endangerment to public health or the environment. The court shall determine the matter under the standards applicable for granting preliminary injunctions.

I. Except for a licensing decision concerning the administrative completeness of an application submitted by a licensee or a licensing decision where the agency, executive director, board or commission has determined that the licensee poses a threat of grave harm or danger to the public or has acted with complete disregard for the well-being of the public in engaging or in being allowed to engage in the licensee's regulated business activity, for any appealable agency action or contested case involving a licensing decision, the licensee may accept the decision not more than ten days after receiving the administrative law judge's written decision. If the licensee accepts the administrative law judge's written decision, the decision shall be certified as the final decision by the office. If the licensee does not accept the administrative law judge's written decision as the final decision in the matter, the head of the agency, executive director, board or commission may review the decision and accept, reject or modify the decision. If the head of the agency, executive director, board or commission intends to reject or modify the decision, the parties shall meet and confer, within thirty days after receiving the administrative law judge's decision pursuant to subsection A of this section, concerning the agency's proposed modifications to the findings of fact and conclusions of law. Within twenty days after conferring, the head of the agency, executive director, board or commission shall file its final decision in accordance with subsection B of this section. This subsection does not apply to any appealable agency actions of the department of water resources pursuant to title 45.

J. This section does not apply to the Arizona peace officer standards and training board established by section 41-1821.

41-1092.09. Rehearing or review

A. Except as provided in subsection B of this section:

1. A party may file a motion for rehearing or review within thirty days after service of the final administrative decision.
2. The opposing party may file a response to the motion for rehearing within fifteen days after the date the motion for rehearing is filed.
3. After a hearing has been held and a final administrative decision has been entered pursuant to section 41-1092.08, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.

B. A party to an appealable agency action of or contested case with a self-supporting regulatory board shall exhaust the party's administrative remedies by filing a motion for rehearing or review within thirty days after the service of the administrative decision that is subject to rehearing or review in order to be eligible for judicial review pursuant to title 12, chapter 7, article 6. The board shall notify the parties in the administrative decision that is subject to rehearing or review that a failure to file a motion for rehearing or review within thirty days after service of the decision has the effect of prohibiting the parties from seeking judicial review of the board's decision.

C. Service is complete on personal service or five days after the date that the final administrative decision is mailed to the party's last known address.

D. Except as provided in this subsection, the agency head, executive director, board or commission shall rule on the motion within fifteen days after the response to the motion is filed or, if a response is not filed, within five days of the expiration of the response period. A self-supporting regulatory board shall rule on the motion within fifteen days after the response to the motion is filed or at the board's next meeting after the motion is received, whichever is later.

41-1092.10. Compulsory testimony; privilege against self-incrimination

A. A person may not refuse to attend and testify or produce evidence sought by an agency in an action, proceeding or investigation instituted by or before the agency on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture unless it constitutes the compelled testimony or the private papers of the person that would be privileged evidence either pursuant to the fifth amendment of the Constitution of the United States or article II, section 10, Constitution of Arizona, and the person claims the privilege before the production of the testimony or papers.

B. If a person asserts the privilege against self-incrimination and the agency seeks to compel production of the testimony or documents sought, the office or agency as provided in section 41-1092.01, subsection F may issue, with the prior written approval of the attorney general, a written order compelling the testimony or production of documents in proceedings and investigations before the office or agency as provided in section 41-1092.01, subsection F or apply to the appropriate court for such an order in other actions or proceedings.

C. Evidence produced pursuant to subsection B of this section is not admissible in evidence or usable in any manner in a criminal prosecution, except for perjury, false swearing, tampering with physical evidence or any other offense committed in connection with the appearance made pursuant to this section against the person testifying or the person producing the person's private papers.

41-1092.11. Licenses; renewal; revocation; suspension; annulment; withdrawal

A. If a licensee makes timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

B. Revocation, suspension, annulment or withdrawal of any license is not lawful unless, before the action, the agency provides the licensee with notice and an opportunity for a hearing in accordance with this article. If the agency finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the agency may order summary suspension of a license pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

41-1092.12. Private right of action; recovery of costs and fees; definitions

A. If an agency takes an action against a party that is arbitrary, capricious or not in accordance with law, the action is an appealable agency action if all of the following apply:

1. Within ten days after receiving notification of the action that is arbitrary, capricious or not in accordance with law, the party notifies the director of the agency in writing of the party's intent to file a claim pursuant to this section. This notice shall include a description of the action the party claims to be arbitrary, capricious or not in accordance with law and reasons why the action is arbitrary, capricious or not in accordance with law.

2. The agency continues the action that is arbitrary, capricious or not in accordance with law more than ten days after the agency receives the notice.

3. The action is not excluded from the definition of appealable agency action as defined in section 41-1092.

B. This section only applies if an administrative remedy or an administrative or a judicial appeal of final agency action is not otherwise provided by law.

C. If the party prevails, the agency shall pay reasonable costs and fees to the party from any monies appropriated to the agency and available for that purpose or from other operating monies of the agency. If the agency fails or refuses to pay the award within fifteen days after the demand, and if no further review or appeal of the award is pending, the prevailing party may file a claim with the department of administration. The department of administration shall pay the claim within thirty days in the same manner as an uninsured property loss under chapter 3.1, article 1 of this title, except that the agency is responsible for the total amount awarded and shall pay it from its operating monies. If the agency had appropriated monies available for paying the award at the time it failed or refused to pay, the legislature shall reduce the agency's operating appropriation for the following fiscal year by the amount of the award and shall appropriate that amount to the department of administration as reimbursement for the loss.

D. If the administrative law judge determines that the appealable agency action is frivolous, the administrative law judge may require the party to pay reasonable costs and fees to the agency in responding to the appeal filed before the office of administrative hearings.

E. Notwithstanding any other law, a licensee may forgo an administrative appeal and seek judicial review of an agency's grant, denial, modification or revocation of a permit issued pursuant to title 49.

F. For the purposes of this section:

1. "Action against the party" means any of the following that results in the expenditure of costs and fees:

(a) A decision.

(b) An inspection.

(c) An investigation.

(d) The entry of private property.

(e) A notice of violation.

2. "Agency" means the department of environmental quality established pursuant to title 49, chapter 1, article 1.

3. "Costs and fees" means reasonable attorney and professional fees.

4. "Notice of violation" means a written notice issued after an inspection or investigation pursuant to section 41-1009 that documents and communicates an alleged deficiency meeting one or more of the criteria listed in

section 41-1009, subsection E.

5. "Party" means an individual, partnership, corporation, association and public or private organization at whom the action was directed and who has expended costs and fees as a result of the action against the party.

41-1093. Definitions

In this article, unless the context otherwise requires:

1. "Health, safety or welfare":

(a) Means the protection of members of the public against harm, fraud or loss, including the preservation of public security, order or health.

(b) Does not include the protection of existing businesses or agencies, whether publicly or privately owned, against competition.

2. "Individual" means a natural person.

3. "Occupational regulation":

(a) Means a rule, regulation, practice or policy that allows an individual to use an occupational title or work in a lawful occupation, trade or profession or a cease and desist demand or other regulatory requirement that prevents an individual from using an occupational title or working in a lawful occupation, trade or profession.

(b) Does not include:

(i) A business license, facility license, building permit or zoning and land use regulation.

(ii) Any rule or regulation relating to an institution or individual that is subject to title 36, chapter 4, article 10 or chapter 20.

(iii) Any license or regulation that is required by federal law.

(iv) Any rule or regulation adopted by an agency that is authorized by statute and has been approved by the council pursuant to section 41-1052.

(v) Any rule or regulation relating to emergency medical and transportation services that originated with a public access system or medical transportation requested by a medical authority or by the patient for which a certificate of necessity is required under section 36-2233.

(vi) Any rule relating to the licensing of a securities dealer, securities salesman, investment adviser or investment adviser representative.

41-1093.01. Occupational regulations; limitations

An agency shall limit all occupational regulations to regulations that are demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern.

41-1093.02. Administrative proceedings

A. Any individual harmed by an occupational regulation may petition an agency to repeal or modify any occupational regulation within the agency's jurisdiction.

B. Within ninety days after a petition is filed, the agency shall repeal the occupational regulation, modify the occupational regulation to comply with section 41-1093.01, recommend legislative action, if required, to repeal or amend the occupational regulation to comply with section 41-1093.01 or state the basis on which the agency concludes that the occupational regulation complies with section 41-1093.01.

41-1093.03. Enforcement; fees and costs

- A. Whether or not a petition is filed pursuant to section 41-1093.02, any individual may file an action in a court of general jurisdiction to challenge an occupational regulation.
- B. To prevail in an action challenging the occupational regulation, the court must find by a preponderance of the evidence that the challenged occupational regulation on its face or in its effect burdens the entry into or participation in an occupation, trade or profession and that this state has failed to prove by a preponderance of the evidence that the challenged occupational regulation is demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern.
- C. If the court finds for the plaintiff, the court shall enjoin further enforcement of the challenged occupational regulation and shall award reasonable attorney fees and costs to the plaintiff.

41-1093.04. Occupational license, permit or certificate or other state recognition rights; petition for review of criminal record; annual report

A. A person with a criminal record may petition an agency, at any time, including before obtaining any required education or experience, taking any examination or paying any fee, for a determination of whether the person's criminal record disqualifies the person from obtaining a license, permit, certificate or other state recognition.

B. In the petition, the person shall include:

1. The person's complete criminal history record or authorization for the agency to obtain the person's criminal history record.
2. Any additional information about the person's current circumstances, including the time since the offense was committed and the sentence was completed, the payment of any court-ordered restitution, evidence of rehabilitation, testimonials, employment history and employment aspirations.

C. The agency shall determine whether the person's criminal record disqualifies the person from obtaining a license, permit, certificate or other state recognition.

D. Notwithstanding any other law or rule, the agency may determine that the person's criminal record disqualifies the person from obtaining a license, permit, certificate or other state recognition only if the agency concludes that the state has an important interest in protecting public safety that is superior to the person's right and either of the following applies:

1. The person was convicted of any of the following, the conviction occurred within seven years before the date of the petition, excluding any period of time that the person was imprisoned in the custody of the state department of corrections, and the conviction has not been set aside:

- (a) A felony offense.

- (b) A violent crime as defined in section 13-901.03.

- (c) An offense included in title 13, chapter 20, 21 or 22 or section 13-2310 or 13-2311 if the license, permit, certificate or other state recognition is for an occupation in which the applicant would owe a fiduciary duty to a client.

2. The person was, at any time, convicted of either of the following:

- (a) An offense that a law specifically requires the agency to consider when issuing a license, permit, certificate or other state recognition and the conviction has not been set aside.

- (b) A dangerous offense as defined in section 13-105, a serious offense as defined in section 13-706, a dangerous crime against children as defined in section 13-705 or an offense included in title 13, chapter 14 or 35.1, and the conviction has not been set aside.

E. To conclude that the state has an important interest in protecting public safety that is superior to the person's right, as required by subsection D of this section, the agency must determine by clear and convincing evidence at the time of the petition that both of the following apply:

1. The specific offense that the person was convicted of substantially relates to the state's interest and specifically and directly relates to the duties and responsibilities of the occupation, except offenses involving moral turpitude.

2. The person, based on the nature of the specific offense that the person was convicted of and the person's current circumstances, including the passage of time since the person committed the crime and any evidence of

rehabilitation or treatment, is more likely to reoffend by virtue of having the license, permit, certificate or other state recognition than if the person did not have the license, permit, certificate or other state recognition.

F. In determining if a person's criminal record disqualifies the person from obtaining a license, permit, certificate or other state recognition, the agency may not consider negatively any of the following:

1. Nonconviction information, including information related to a deferred adjudication, participation in a diversion program or an arrest that was not followed by a conviction.
2. A conviction that has been sealed, dismissed, expunged or pardoned.
3. A juvenile adjudication.
4. A nonviolent misdemeanor.

G. The agency shall issue a determination on the petition within ninety days after the agency receives the petition. The determination on the petition must be in writing and include all of the following:

1. Findings of fact and conclusions of law.
2. The grounds and reasons for the determination if the person's criminal history disqualifies the person.

H. If the agency determines that the state's interest to protect public safety is superior to the person's right, the agency may advise the person of the actions that the person may take to remedy the disqualification, including:

1. An appeal of the determination as provided in title 12, chapter 7, article 6.
2. The earliest date the person may submit a new petition to the agency, which must be not later than two years after the final determination of the initial petition.

I. The agency shall rescind the determination any time after the determination is made but before issuing a license, permit, certificate or other state recognition if the person is convicted of an additional offense that is included in subsection D of this section.

J. Subsection D and subsection F, paragraphs 1, 2 and 4 of this section do not apply to any of the following:

1. Any law enforcement agency or the Arizona peace officer standards and training board.
2. Any license or registration certificate that is issued pursuant to title 32, chapter 24 or 26.
3. Any certification, license or permit that is issued pursuant to title 15.
4. Statutory requirements for a fingerprint clearance card issued pursuant to chapter 12, article 3.1 of this title.
5. Any criteria for license, permit or certificate eligibility that is established by an interstate compact.

K. Each agency shall submit a report on or before July 1 of each year to the governor and the legislature and provide a copy of this report to the secretary of state. The report shall include the following information for the previous calendar year:

1. The number of applicants who petitioned the agency for a determination.
2. The number of petitions that were granted and the types of offenses at issue.
3. The number of petitions that were denied and the types of offenses at issue.
4. The number of determinations that were rescinded.

L. An agency shall adopt forms for petitions as prescribed in subsections A and B of this section.

41-1093.05. License applicants; notice

An agency shall prominently post the following on the agency's website and print on a license application, a communication denying a license, a cease and desist order or any other communication in which the agency asserts that a person is required to obtain a license:

Notice:

Pursuant to section 41-1093.01, Arizona Revised Statutes, an agency shall limit all occupational regulations to regulations that are demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern. Pursuant to sections 41-1093.02 and 41-1093.03, Arizona Revised Statutes, you have the right to petition this agency to repeal or modify the occupational regulation or bring an action in a court of general jurisdiction to challenge the occupational regulation and to ensure compliance with section 41-1093.01, Arizona Revised Statutes.

41-1093.06. Occupational licenses; drug offense conviction; eligibility; exceptions; definition

A. Notwithstanding any other law, an agency may not deny to an otherwise qualified applicant who has been convicted of an offense that involves a violation of title 13, chapter 34 or 34.1 or an offense committed in another jurisdiction that has the same elements as an offense listed in title 13, chapter 34 or 34.1 either of the following:

1. The regular occupational license for which the applicant applied.
2. A provisional occupational license.

B. This section does not apply to the following:

1. The state board of education for the purposes of certification of persons pursuant to section 15-501.01.
2. A health profession regulatory board as defined in section 32-3201.
3. The department of health services for the purposes of title 36, chapter 28.1.
4. A law enforcement agency and the Arizona peace officer standards and training board.

C. For the purposes of this section, "occupational license" means any agency permit, certificate, approval, registration or charter or any similar form of permission that allows an individual to use an occupational title or work in a lawful occupation, trade or profession.

41-1093.07. Private employers; effect of article

This article does not:

1. Require a private employer to grant or deny employment to any individual.
2. Impair the right of private employers to establish and enforce eligibility criteria, ethics codes or disciplinary policies.

44-7001. [Short title](#)

This chapter may be cited as the Arizona electronic transactions act.

44-7002. Definitions

In this chapter, unless the context otherwise requires:

1. "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations and procedures that are given the effect of agreements under laws otherwise applicable to a particular transaction.
2. "Automated transaction" means a transaction that is conducted or performed, in whole or in part, by electronic means or electronic records and in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract or fulfilling an obligation that is required by the transaction.
3. "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.
4. "Contract" means the total legal obligation resulting from the parties' agreement as affected by this chapter and any other applicable law.
5. "Electronic" means relating to technology that has electrical, digital, magnetic, wireless, optical or electromagnetic capabilities or similar capabilities.
6. "Electronic agent" means a computer program or an electronic or other automated means that is used independently to initiate an action or respond to electronic records or performances, in whole or in part, without review or action by an individual.
7. "Electronic record" means a record that is created, generated, sent, communicated, received or stored by electronic means.
8. "Electronic signature" means an electronic sound, symbol or process that is attached to or logically associated with a record and that is executed or adopted by an individual with the intent to sign the record.
9. "Governmental agency" means an executive, legislative or judicial agency, department, board, commission, authority, institution or instrumentality of the federal government or a state or of a county or municipality or other political subdivision of a state.
10. "Information" means data, text, images, sounds, codes, computer programs, software or databases or similar items.
11. "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying or processing information.
12. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency or public corporation or any other legal or commercial entity.
13. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and that is retrievable in perceivable form.
14. "Security procedure" means a procedure that is employed to verify that an electronic signature, record or performance is that of a specific person or to detect changes or errors in the information in an electronic record. Security procedure includes a procedure that requires the use of algorithms or other codes, identifying words or numbers or encryption, callback or other acknowledgment procedures.
15. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. State includes an

Indian tribe or band or Alaskan native village that is recognized by federal law or formally acknowledged by another state.

16. "State agency" means any department, commission, board, institution or other agency of the state that receives, expends or disburses state funds or incurs obligations of the state, including the Arizona board of regents but excluding the universities under the jurisdiction of the Arizona board of regents, the community college districts and the legislative or judicial branches.

17. "Transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial or governmental affairs.

44-7003. Scope

- A. Except as otherwise provided in subsections B and C of this section, this chapter applies to any electronic record and electronic signature relating to a transaction.
- B. For the purposes of this article and articles 2, 3 and 4 of this chapter, this chapter does not apply to a transaction to the extent the transaction is governed by:
1. Title 14 as it relates to the creation and execution of wills, codicils or testamentary trusts.
 2. Title 19, chapter 1 as it relates to the signing of referendum petitions and initiative petitions.
 3. Title 47, other than title 47, chapters 2 and 2A and section 47-1306 and as otherwise provided in section 44-7016.
- C. Article 5 of this chapter applies only to title 10 and transactions governed by title 47, chapters 2, 2A and 7.
- D. This chapter applies to an electronic record or electronic signature otherwise excluded from the application of this chapter under subsection B or C of this section to the extent the record or signature is governed by a law other than those laws described in subsection B or C of this section.
- E. Any transaction subject to this chapter is also subject to any other applicable substantive law.

44-7004. Prospective application

This chapter applies to any electronic record or electronic signature created, generated, sent, communicated, received or stored on or after the effective date of this chapter.

44-7005. Use of electronic records and signatures; variation by agreement

- A. This chapter does not require a record or signature to be created, generated, sent, communicated, received or stored or otherwise processed or used by electronic means or in electronic form.
- B. This chapter applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.
- C. A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.
- D. Except as provided in subsection C and otherwise provided in this chapter, the effect of any of the provisions of this chapter may be varied by agreement. The words "unless otherwise agreed", or other similar words, as used in this chapter do not imply that the effect of other provisions may not be varied by agreement.
- E. Whether an electronic record or electronic signature has legal consequences is determined by this chapter and any other applicable law.

44-7006. Construction; application

This chapter shall be construed and applied to:

1. Facilitate electronic transactions consistent with other applicable law.
2. Be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices.
3. Effectuate its general purpose to make uniform the law of this state with respect to the subject of this chapter for intrastate, interstate and international transactions.

44-7007. Legal recognition of electronic records, signatures and contracts; definition

A. A record or signature in electronic form cannot be denied legal effect and enforceability solely because the record or signature is in electronic form.

B. A contract formed by an electronic record cannot be denied legal effect and enforceability solely because an electronic record was used in its formation.

C. An electronic record satisfies any law that requires a record to be in writing or to be retained, or both.

D. An electronic signature satisfies any law that requires a signature.

E. For the purposes of this section, "law" includes a governmental agency's policy.

44-7008. Provision of information in writing; presentation of records

A. If the parties to a transaction have agreed to conduct the transaction by electronic means and a law requires a person to provide, send or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent or delivered, as the case may be, in an electronic record that is capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or the sender's information processing system inhibits the ability of the recipient to print or store the electronic record.

B. If a law other than this chapter requires a person to post or display a record in a certain manner, to send, communicate or transmit a record by a specified method or to format information in a record in a certain manner, the following requirements apply:

1. The record shall be posted or displayed in the manner prescribed in that law.
2. Except as otherwise provided in subsection D, paragraph 2, the record shall be sent, communicated or transmitted by the method prescribed in that law.
3. The record shall contain the information formatted in the manner prescribed in that law.

C. If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

D. The parties to the transaction shall not vary the requirements of this section, except that to the extent a law other than this chapter requires:

1. Information to be provided, sent or delivered in writing but allows that requirement to be varied by agreement, the parties may agree to vary the requirement prescribed in subsection A that the information be in the form of an electronic record capable of retention.
2. A record to be sent, communicated or transmitted by postage prepaid first class mail or regular mail but allows that requirement to be varied by agreement, the parties may agree to vary the requirement to the extent allowed by the other law.

44-7009. Attribution and effect of electronic record and signature

A. An electronic record or electronic signature is attributable to a person if the record or signature was the act of the person or the person's electronic agent. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

B. The effect of an electronic record or electronic signature that is attributed to a person under subsection A is determined from the context and surrounding circumstances at the time the record or signature was created, executed or adopted, including the parties' agreement, if any, and as otherwise provided by law.

44-7010. Effect of change or error

A. The following apply to any change or error in an electronic record that occurs in a transmission between the parties to a transaction:

1. If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.
2. In an automated transaction that involves an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:
 - (a) Promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person.
 - (b) Takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record.
 - (c) Has not used or received any benefit or value from the consideration, if any, received from the other person.

B. If subsection A, paragraphs 1 and 2 do not apply, the change or error has the effect provided by other applicable law, including the law of mistake, and the parties' contract, if any.

C. The parties to the transaction shall not agree to vary the requirements prescribed in subsection A, paragraph 2 and subsection B.

44-7011. Notarization; acknowledgment

If a law requires a signature or record to be notarized, acknowledged, verified or made under oath, that requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

44-7012. Electronic records retention; originals; definition

A. If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record that:

1. Accurately reflects the information prescribed in the record after the record was first generated in its final form as an electronic record or otherwise.
2. Remains accessible for later reference.

B. A person may satisfy subsection A of this section by using the services of another person to satisfy subsection A of this section.

C. If a law requires:

1. A record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained according to subsection A of this section.
2. Retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check according to subsection A of this section.

D. A record retained as an electronic record pursuant to subsection A of this section satisfies a law that requires a person to retain a record for evidentiary, audit or like purposes, unless a law that is enacted after July 18, 2000 prohibits the use of an electronic record for the specified purpose.

E. For the purposes of this section, "law" includes a governmental agency's policy.

44-7013. Admissibility in evidence

In any proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

44-7014. Automated transaction contracts

A. In any automated transaction, the parties may form a contract by the interaction of:

1. Electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

2. An electronic agent and an individual who acts on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual may refuse to perform and in which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.

B. In addition to subsection A, paragraphs 1 and 2, the terms of any contract are determined by the substantive law that applies to that contract.

44-7015. Time and place of sending and receipt

A. Unless otherwise agreed to by the sender and the recipient, an electronic record is sent if the record:

1. Is properly addressed or otherwise properly directed to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record.
2. Is in a form that is capable of being processed by the information processing system described in paragraph 1 of this subsection.
3. Enters an information processing system that is outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system that is designated or used by the recipient and that is under the control of the recipient.

B. Unless otherwise agreed to by the sender and the recipient, an electronic record is received if the record:

1. Enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record.
2. Is in a form that is capable of being processed by the information processing system described in paragraph 1 of this subsection.

C. Subsection B applies even if the information processing system is located in a different place from the place the electronic record is deemed to be received pursuant to subsection D.

D. Unless otherwise expressly provided in the electronic record or agreed to by the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. If the sender or recipient has more than one place of business, the place of business of that person is the place that has the closest relationship to the underlying transaction. If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as applicable.

E. An electronic record is received pursuant to subsection B even if no individual is aware of its receipt.

F. Receipt of an electronic acknowledgment from an information processing system described in subsection B establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

G. If a person is aware that an electronic record was purportedly sent as prescribed in subsection A or purportedly received as prescribed in subsection B, but was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent allowed by the other law, the parties may not agree to vary the requirements of this subsection.

44-7016. Transferable records; definition

A. A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

B. A system complies with subsection A and a person has control of a transferable record if the transferable record is created, stored and assigned in such a manner that all of the following are true:

1. A single authoritative copy of the transferable record exists that is unique, identifiable and, except as otherwise provided in paragraphs 4, 5 and 6 of this subsection, unalterable.

2. The authoritative copy identifies the person asserting control as either:

(a) The person to which the transferable record was issued.

(b) If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred.

3. The authoritative copy is communicated to and maintained by the person asserting control or the person's designated custodian.

4. Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control.

5. Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy.

6. Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

C. Except as otherwise agreed, a person that has control of a transferable record is the holder as defined in section 47-1201 of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing pursuant to title 47 including, if the applicable requirements under section 47-3302, subsection A or section 47-7501 or 47-9308 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated or a purchaser, respectively. Delivery, possession and indorsement are not required to obtain or exercise any of the rights under this subsection.

D. Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under title 47.

E. If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records that are sufficient to review the terms of the transferable record and to establish the identity of the person that has control of the transferable record.

F. For the purposes of this section, "transferable record" means an electronic record that both:

1. Would be a note pursuant to title 47, chapter 3 or a document pursuant to title 47, chapter 7 if the electronic record were in writing.

2. The issuer has expressly agreed the electronic record is a transferable record.

44-7031. Secure electronic signatures

A signature is a secure electronic signature if, through the application of a security procedure, it can be demonstrated that the electronic signature at the time the signature was made was all of the following:

1. Unique to the person using it.
2. Capable of verification.
3. Under the sole control of the person using it.
4. Linked to the electronic record to which it relates in such a manner that if the record were changed the electronic signature would be invalidated.

44-7032. Secure electronic records

If, through the ongoing application of a security procedure, it can be demonstrated that an electronic record signed by a secure electronic signature has remained unaltered since a specified time, the record is a secure electronic record from that time of signing forward.

44-7033. Presumptions

- A. There is a rebuttable presumption that a secure electronic record has not been altered since the specific time to which the secure status relates.
- B. There is a rebuttable presumption that the secure electronic signature is the electronic signature of the party to whom it relates.
- C. In the absence of a secure electronic record or a secure electronic signature, this chapter does not create any presumption regarding the authenticity and integrity of an electronic record or an electronic signature.

44-7034. Electronic notarization; acknowledgment

If a law requires a signature or record to be notarized, acknowledged, verified or made under oath, that requirement is satisfied if all of the following are true:

1. A secure electronic signature of the individual who is authorized to perform those acts and all other information that is required to be included pursuant to any other applicable law are applied to a secure electronic record.
2. The secure electronic record has a time stamp token that is both:
 - (a) Created by a party recognized by the secretary of state.
 - (b) In a form that is accepted by the secretary of state to do all of the following:
 - (i) Reasonably verify the validity of the signing party's secure electronic signature.
 - (ii) Reasonably establish the time of signing.
3. The secure electronic record cannot be altered without invalidating the time stamp token.

44-7041. Creation; retention; conversion of written records

A. Each governmental agency shall determine if, and the extent to which, the governmental agency will create and retain electronic records and convert written records to electronic records. Any governmental agency that is subject to the management, preservation, determination of value and disposition of records requirements prescribed in sections 41-151, 41-151.12, 41-151.13, 41-151.14, 41-151.15, 41-151.16, 41-151.17 and 41-151.19 and the permanent public records requirements prescribed in section 39-101 shall comply with those requirements.

B. State agencies shall comply with the standards adopted by the department of administration pursuant to title 18, chapter 1.

C. All governmental agencies shall comply with the policies that are established pursuant to section 18-106 and that apply to the use of electronic signatures.

44-7042. Sending and accepting electronic records; exemption

A. Except as otherwise provided in section 44-7012, subsection D, and this subsection, each governmental agency, except state agencies, shall determine if, and the extent to which, the governmental agency will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use and rely on electronic records and electronic signatures. State agencies shall accept electronic records and electronic signatures and shall comply with the appropriate standards and policies adopted or established by the department of administration pursuant to title 18, chapter 1.

B. To the extent that a governmental agency uses electronic records and electronic signatures pursuant to subsection A of this section, the governmental agency after giving due consideration to security may specify:

1. The manner and format in which the electronic records must be created, generated, sent, communicated, received and stored and the systems established for those purposes.
2. If electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record and the identity of or criteria that must be met by any third party used by a person filing a document to facilitate the process.
3. Control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality and ability to perform audits of electronic records.
4. Any other required attributes for electronic records that are specified for corresponding nonelectronic records or that are reasonably necessary under the circumstances.

C. This section does not apply to the judicial branch.

44-7043. Interoperability

Technology standards adopted by the governmental information technology agency, electronic signature use policies adopted by the secretary of state or any other similar standards adopted by any other governmental agency pursuant to section 44-7042 shall encourage and promote consistency and interoperability with similar requirements adopted by other governmental agencies, other states, the federal government and nongovernmental persons that interact with governmental agencies. If deemed appropriate by the entity adopting the standards, the standards may allow for differing levels of standards from which governmental agencies may choose in implementing the most appropriate standard for a particular application.

44-7051. Consumer protection

A. Nothing in this chapter diminishes the parties' consumer protection rights prescribed in chapter 10, article 7 of this title or any other federal or state law relating to consumers.

B. If a consumer law, other than this chapter, requires a paper record or notice of the transaction, the parties to the transaction may request that the record or notice be provided in an electronic format and that record or notice shall comply with this chapter. Even if before completing a consumer transaction by an electronic method that complies with this chapter, a party to the transaction requests that a record or notice of the transaction be delivered in electronic form, that party may subsequently change that preference and request that all future records or notices relating to that transaction be sent in paper form to an appropriate address. Withdrawal of consent does not affect the enforceability of electronic records or notices previously provided or made available to that party in accordance with this chapter.

C. A nonelectronic consumer contract or agreement may not contain a provision that authorizes any transaction or part of any transaction pursuant to that contract or agreement by electronic means unless all of the following apply:

1. The consumer makes a separate and express assent or signing either manually or electronically that specifies that the consumer agrees that certain transactions or parts of transactions will be conducted by electronic means.
2. The contract or agreement indicates which transactions or parts of transactions that may be conducted by electronic means and the manner in which those transactions or parts of transactions shall be conducted.
3. The consumer agrees, as part of the assent, to provide the other party with the consumer's electronic address that complies with section 44-7015.
4. The consumer agrees, as part of the assent, to notify the other party, either manually or electronically, of any change in the electronic address prescribed in paragraph 3 or the consumer's withdrawal of consent to electronic transactions.

44-7052. Electronic delivery of written communications; exception; definition

A. Any law requiring an entity, a government agency, a government official or any person acting with official government authority to communicate with a person in writing or by mail may be satisfied by use of a secure electronic delivery service.

B. This section does not apply to ballots, sample ballots, publicity pamphlets or other similar governmental communication regarding an election.

C. For the purposes of this section, "secure electronic delivery service" means a service that both:

1. Employs security procedures to provide, send, deliver or otherwise communicate electronic records to their intended recipients by means that use either:

(a) Security methods such as passwords, encryption and matching an electronic address to a person's physical United States postal address.

(b) Other security methods that are consistent with applicable law or industry standards.

2. Operates subject to otherwise applicable requirements of the electronic signatures in global and national commerce act (15 United States Code chapter 96) or this chapter and that allows information to be provided, sent, delivered or otherwise communicated by or from an entity, a government agency, a government official or any person acting with official government authority to a person in the form of an electronic record.

44-7061. Signatures and records secured through blockchain technology; smart contracts; ownership of information; definitions

A. A signature that is secured through blockchain technology is considered to be in an electronic form and to be an electronic signature.

B. A record or contract that is secured through blockchain technology is considered to be in an electronic form and to be an electronic record.

C. Smart contracts may exist in commerce. A contract relating to a transaction may not be denied legal effect, validity or enforceability solely because that contract contains a smart contract term.

D. Notwithstanding any other law, a person that, in or affecting interstate or foreign commerce, uses blockchain technology to secure information that the person owns or has the right to use retains the same rights of ownership or use with respect to that information as before the person secured the information using blockchain technology. This subsection does not apply to the use of blockchain technology to secure information in connection with a transaction to the extent that the terms of the transaction expressly provide for the transfer of rights of ownership or use with respect to that information.

E. For the purposes of this section:

1. "Blockchain technology" means distributed ledger technology that uses a distributed, decentralized, shared and replicated ledger, which may be public or private, permissioned or permissionless, or driven by tokenized crypto economics or tokenless. The data on the ledger is protected with cryptography, is immutable and auditable and provides an uncensored truth.

2. "Smart contract" means an event-driven program, with state, that runs on a distributed, decentralized, shared and replicated ledger and that can take custody over and instruct transfer of assets on that ledger.

49-205. Availability of information to the public

A. Any records, reports or information obtained from any person under this chapter, including records, reports or information obtained or prepared by the director or a department employee, shall be available to the public, except that:

1. Income tax returns are confidential.

2. Drinking water system security vulnerability assessments that are submitted to the United States environmental protection agency, pursuant to Public Law 107-188, are exempt from disclosure under this chapter and title 39, chapter 1.

3. Other information, or a particular part of the information, shall be considered confidential on either:

(a) A showing, satisfactory to the director, by any person that the information, or a particular part of the information, if made public, would divulge the trade secrets of the person.

(b) A determination by the attorney general that disclosure of the information or a particular part of the information would be detrimental to an ongoing criminal investigation or to an ongoing or contemplated civil enforcement action under this chapter in superior court.

B. Notwithstanding subsection A of this section, the following information shall be available to the public:

1. The name and address of any permit applicant or permittee.

2. The chemical constituents, concentrations and amounts of any pollutant discharge.

3. The existence or level of a concentration of a pollutant in drinking water or in the environment.

C. Notwithstanding subsection A of this section, and in addition to the information prescribed by subsection B of this section, the following information that is obtained by the department and that relates to discharges authorized by a permit issued under the program adopted pursuant to section 49-203, subsection A, paragraph 2 shall be made available to the public by the department:

1. Information required to be submitted in a permit application.

2. The frequency of the discharge.

3. The temperature and pH level of the discharge.

4. Other water quality characteristics that are required to be reported under the permit.

D. Notwithstanding subsection A of this section, the director may disclose any records, reports or information obtained from any person under this chapter, including records, reports or information obtained by the director or department employees, to:

1. Other state employees concerned with administering this chapter or if the records, reports or information is relevant to any administrative or judicial proceeding under this chapter.

2. Employees of the United States environmental protection agency if such information is necessary or required to administer and implement or comply with the clean water act, the safe drinking water act, CERCLA or provisions and regulations relating to those acts.

49-208. Public participation

A. The director, by rule, shall prescribe procedures to assure adequate public participation in proceedings of the department under this chapter. The public participation procedures shall meet the requirements of the clean water act and safe drinking water act for permits issued under those acts. At a minimum, public participation procedures shall prescribe public notice requirements including the content and publication of the notice, provide an opportunity for public hearings and specify the procedures governing the hearings and require the public availability of relevant documents. Public hearings shall be held at places and times which afford a reasonable opportunity to persons to participate.

B. The director shall provide for and encourage public participation in developing such rules, plans and informational materials, including handbooks and guidance documents, as are required or necessary to implement the provisions of this chapter.

49-257. Applicability of federal definitions

The definitions prescribed in the underground injection control program in part C of the safe drinking water act in effect on January 1, 2018 and in the implementing regulations contained in the Code of Federal Regulations in effect on January 1, 2018 apply to this article.

49-257.01. Underground injection control permit program; permits; prohibitions; rules

- A. The department shall establish an underground injection control permit program, including a permitting process.
- B. An underground injection is prohibited unless the underground injection is into a well authorized by rule or unless it is authorized by a permit issued pursuant to this article or by a permit issued by the United States environmental protection agency, which are not subject to section 49-224, subsection B. A person may not construct any well that is required to have a permit until the person is issued the permit or is otherwise authorized under the permit program established pursuant to this article or federal law.
- C. Any underground injection activity is prohibited if it is conducted in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water and if the presence of that contaminant may endanger underground sources of drinking water.
- D. The director shall adopt rules for the purposes of establishing and operating the underground injection control permit program pursuant to this article. Rules adopted by the director shall meet the minimum requirements prescribed by 42 United States Code section 300h(b).

49-261. Compliance orders; appeal; enforcement

- A. If the director determines that a person is in violation of a rule adopted or a condition of a permit issued pursuant to section 49-203, subsection A, paragraph 7, any provision of article 2, 3, 3.1, 3.2 or 3.3 of this chapter, a rule adopted pursuant to article 2, 3, 3.1, 3.2 or 3.3 of this chapter, a discharge limitation or any other condition of a permit issued under article 2, 3, 3.1, 3.2 or 3.3 of this chapter or is creating an imminent and substantial endangerment to the public health or environment, the director may issue an order requiring compliance within a reasonable time period.
- B. A compliance order shall state with reasonable specificity the nature of the violation, a time for compliance if applicable and the right to a hearing.
- C. A compliance order shall be transmitted to the alleged violator by certified mail, return receipt requested, or by personal service.
- D. A compliance order becomes final and enforceable in the superior court unless within thirty days after the receipt of the order the alleged violator requests a hearing before an administrative law judge. If a hearing is requested, the order does not become final until the administrative law judge has issued a final decision on the appeal. Appeals shall be conducted pursuant to section 49-321.
- E. At the request of the director the attorney general may commence an action in superior court to enforce orders issued under this section once an order becomes final.

49-262. Injunctive relief; civil penalties; recovery of litigation costs; affirmative defense

A. Whether or not a person has requested a hearing, the director, through the attorney general, may request a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief necessary to protect the public health if the director has reason to believe either of the following:

1. That a person is in violation of:

(a) Any provision of article 2, 3, 3.1, 3.2 or 3.3 of this chapter.

(b) A rule adopted pursuant to section 49-203, subsection A, paragraph 7.

(c) A rule adopted pursuant to article 2, 3, 3.1, 3.2 or 3.3 of this chapter.

(d) A discharge limitation or any other condition of a permit issued under article 2, 3, 3.1, 3.2 or 3.3 of this chapter.

2. That a person is creating an actual or potential endangerment to the public health or environment because of acts performed that violate this chapter.

B. Notwithstanding any other provision of this chapter, if the director, the county attorney or the attorney general has reason to believe that a person is creating an imminent and substantial endangerment to the public health or environment because of acts performed that violate article 2, 3, 3.1, 3.2 or 3.3 of this chapter or a rule adopted or a condition of a permit issued pursuant to section 49-203, subsection A, paragraph 2, 7 or 8, the county attorney or attorney general may request a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief necessary to protect the public health.

C. A person who violates any provision of article 2, 3, 3.1 or 3.2 of this chapter or a rule, permit, discharge limitation or order issued or adopted pursuant to article 2, 3, 3.1 or 3.2 of this chapter is subject to a civil penalty of not more than \$25,000 per day per violation. A person who violates any rule adopted or a condition of a permit issued pursuant to section 49-203, subsection A, paragraph 7 is subject to a civil penalty of not more than \$5,000 per day per violation. A person who violates any rule adopted, permit condition or other provision of article 3.3 of this chapter is subject to a civil penalty of not more than \$5,000 per day per violation. The attorney general may, and at the request of the director shall, commence an action in superior court to recover civil penalties provided by this section.

D. The court, in issuing any final order in any civil action brought under this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any substantially prevailing party if the court determines such an award is appropriate. If a temporary restraining order is sought, the court may require the filing of a bond or equivalent security.

E. All civil penalties except litigation costs obtained under this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

F. Except as applied to permits issued or authorized pursuant to article 3.1, 3.2 or 3.3 of this chapter, it is an affirmative defense to civil liability under this section and section 49-261 for causing or contributing to a violation of a water quality standard established pursuant to this chapter, or a violation of a permit condition prohibiting a violation of an aquifer water quality standard or limitation at the point of compliance or a surface water quality standard if the release that caused or contributed to the violation came from a facility owned or operated by a party that has either:

1. Undertaken a remedial or response action approved by the director or the administrator under this title or CERCLA in response to the release of a hazardous substance, pollutant or contaminant that caused or contributed to the violation of article 2 of this chapter and is in compliance with that remedial or response action.

2. Otherwise resolved its liability for the release of a hazardous substance that caused or contributed to the violation of article 2 of this chapter in whole or in part by the execution of a settlement agreement or consent decree with the director or administrator under this article, CERCLA or any other environmental law and is in compliance with that settlement agreement or consent decree.

G. Subsection F of this section does not prevent the director from taking an appropriate enforcement action to address the release of a hazardous substance, pollutant or contaminant or the violation of a permit condition before or as an element of an approved remedial or response action, settlement agreement or consent decree.

H. In determining the amount of a civil penalty for a violation under article 3, 3.1, 3.2 or 3.3 of this chapter, the court shall consider the following factors:

1. The seriousness of the violation or violations.
2. The economic benefit, if any, that results from the violation.
3. Any history of similar violations.
4. Any good faith efforts to comply with the applicable requirements.
5. The economic impact of the penalty on the violator.
6. The extent to which the violation was caused by a third party.
7. Other matters as justice may require.

I. A single operational upset that leads to simultaneous violations of more than one pollutant limitation in a permit issued or authorized pursuant to section 49-255.01 constitutes a single violation for purposes of any penalty calculation.

J. If a permittee holds both a permit issued or authorized pursuant to article 3 of this chapter and a permit issued or authorized pursuant to article 3.1, 3.2 or 3.3 of this chapter and the permittee violates a similar provision in both permits simultaneously, the department shall not recover penalties for violations of both permits based on the same act or omission.

K. For a wastewater treatment facility or system that is regulated as a public service corporation by the corporation commission, the department shall make a written request to the chairperson and executive director of the corporation commission to take necessary corrective actions, and the corporation commission shall commence necessary corrective actions within thirty calendar days after both of the following occur:

1. The department does any one or more of the following:
 - (a) Determines that the wastewater treatment facility or system is out of compliance with an administrative order issued by the department for a violation of this chapter.
 - (b) Files a civil action against the owner (b) or operator of the wastewater treatment facility or system for a violation of this chapter.
 - (c) Determines that an emergency exists with respect to the wastewater treatment facility or system.
2. The department determines that the corporation commission taking necessary corrective actions would expedite the wastewater treatment facility's or system's return to compliance with this chapter.

L. If the department makes a written request to the corporation commission as prescribed by subsection K of this section, the department shall provide a copy of the request to the governing body of any local jurisdiction with residents served by the facility or system that is the subject of the request.

49-263. Criminal violations; classification; definition

A. It is unlawful to:

1. Discharge without a permit or appropriate authority under this chapter.
2. Fail to monitor, sample or report discharges as required by a permit issued under this chapter.
3. Violate a discharge limitation specified in a permit issued under this chapter.
4. Violate a water quality standard.
5. Commence underground injection or construction of an underground injection well without a permit or other appropriate authority under this chapter.
6. Violate any underground injection standard or requirement that is required by a permit issued or authorized under this chapter.

B. A person who with criminal negligence performs an act prohibited under subsection A of this section is guilty of a class 6 felony.

C. A person who knowingly performs an act prohibited under subsection A of this section is guilty of a class 5 felony.

D. A person who knowingly or recklessly manifests an extreme indifference for human life in performing an act prohibited under subsection A of this section is guilty of a class 2 felony.

E. For a class II well, a person who knowingly violates any underground injection control permit program requirements prescribed by this chapter may be subject to pipeline (production) severance.

F. A violation of any provision of this chapter for which a penalty is not otherwise prescribed is a class 2 misdemeanor.

G. The attorney general may enforce this section.

H. Monetary criminal penalties obtained under this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

I. For purposes of this section "person" has the meaning assigned to that term by section 13-105.

49-264. Private right of action; citizen suits; right to intervene

A. Except as provided in subsection B of this section, a person that has an interest that is or may be adversely affected by a violation of this chapter or a rule adopted or an order issued by the department pursuant to this chapter may commence a civil action in superior court on the person's own behalf against the director alleging a failure of the director to perform an act or duty under this chapter that is not discretionary with the director. The court shall have jurisdiction to order the director to perform the act or duty.

B. No action may be commenced in any of the following cases:

1. Before one hundred twenty days after the plaintiff has given notice of the alleged violation to the director and to an alleged violator.
2. If after conducting an investigation the director determines within one hundred twenty days after receiving notice of the alleged violation from the plaintiff that no violation has occurred, or the director had determined before receiving the notice of the alleged violation that the violation had not occurred.
3. If the department has issued and is diligently processing a notice of violation or an order or has commenced and is diligently prosecuting a civil action in the superior court to require compliance with the provision, order, permit, standard, rule or discharge limitation.
4. If the attorney general or county attorney has commenced and is diligently prosecuting a civil action in the superior court to require compliance with the provision, order, permit, standard, rule or discharge limitation.
5. If the director is diligently pursuing the violation under another state or federal environmental law.

C. In an action commenced under this section the plaintiff has the burden of proof.

D. The court, in issuing a final order in an action brought under this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any party that substantially prevails.

E. A person that is or may be adversely affected by a violation of any requirement of the underground injection control permit program established pursuant to article 3.3 of this chapter may intervene as a matter of right in any pending state civil or administrative enforcement action. A person's right to intervene is limited as follows:

1. A person may intervene only if the person is adversely affected by the violation that is named in the state's action.
2. A person may intervene only for purposes of obtaining the following remedies for the state:
 - (a) A temporary restraining order.
 - (b) Injunctive relief.
 - (c) Civil penalties.
 - (d) Any combination of the penalties prescribed in this paragraph.

49-265. Venue

All actions commenced under sections 49-261 and 49-262 shall be brought in the superior court in the county in which the alleged violation occurred or in which the department maintains an office.

49-321. Appeals

- A. An order of the director under this chapter is subject to appeal pursuant to title 41, chapter 6, article 10.
- B. Except as provided in section 41-1092.08, subsection H, final administrative decisions are subject to appeal to superior court pursuant to title 12, chapter 7, article 6. For the benefit of the people of this state, appeals under this section have precedence, in every court, over all other civil proceedings. The presiding judge for the county in which the appeal has been made shall assign the appeal to the appropriate judge designated by the chief justice of the supreme court pursuant to section 45-406 to hear appeals relating to groundwater.
- C. Except as provided in section 49-324, subsection E, the decision shall not be stayed pending appeal, except that the judge to whom the appeal is assigned may stay the decision, with or without bond, on a showing of good cause. In determining whether good cause exists under the circumstances, the court may consider whether:
1. The public interest will be adversely affected by a stay.
 2. The stay will harm others.
 3. There is a high probability that the appellant will succeed on the merits.
 4. The appellant will suffer irreparable harm before a decision on the merits can be rendered.
- D. The final decision of the superior court is appealable in the same manner as in civil actions generally and shall be governed by the rules of appellate procedure.

49-322. Water quality appeals board

A. A water quality appeals board is established in the department of administration consisting of three members appointed by the governor pursuant to section 38-211 to terms of three years. One member of the board shall be an attorney licensed to practice law in this state, and all members shall possess technical competence to perform the duties of the board. Board members are entitled to compensation determined under section 38-611.

B. Members of the board are subject to title 38, chapter 3, article 8 and shall not receive a significant portion of their income directly or indirectly from persons subject to individual permits or enforcement orders under this chapter. In addition, the members shall not have been employed by such persons, other than state agencies, within two years before appointment and may not be employed by such persons, other than state agencies, within two years after their appointment expires. For purposes of this subsection "significant portion of income" means ten per cent or more of gross personal income for a calendar year or fifty per cent or more of gross personal income for a calendar year if the recipient is over sixty years of age and is receiving that portion under retirement, pension or similar benefits.

C. The board may employ a staff. The real party in interest shall represent the board in any appeals from decisions of the board.

D. The board shall adopt rules of procedure to govern the conduct of hearings before the board.

49-323. Appeals to the board; judicial review

A. An appeal to the appeals board may be taken from any grant, denial, modification or revocation of any individual permit issued under this chapter, from any issuance, denial or revocation of a determination pursuant to section 49-241, subsections B and C or from the establishment of numeric values and data gap issues for pesticides pursuant to sections 49-303 and 49-304, by any person who is adversely affected by the action or by any person who may with reasonable probability be adversely affected by the action and who has exercised any right to comment on the action as provided in section 41-1092.03. Any interested person may intervene in the appeal as a matter of right. The board shall hold a hearing if questions of material fact are at issue in the appeal. Notice and hearing procedures are subject to title 41, chapter 6, article 10.

B. Final decisions of the board are subject to appeal to superior court pursuant to title 12, chapter 7, article 6. For the benefit of the people of this state, appeals under this section have precedence, in every court, over all other civil proceedings. The presiding judge for the county in which the appeal has been made shall assign the appeal to the appropriate judge designated by the chief justice of the supreme court pursuant to section 45-406 to hear appeals relating to groundwater.

49-324. Stay pending appeal; standard of review

A. If an appeal is taken from the director's decision to issue a permit for a new facility, the facility may not discharge any pollutants inconsistent with the director's decision until the appeal process is completed.

B. Except as provided in subsections D and E of this section:

1. If an appeal is taken from the director's decision to grant or deny a permit for an existing facility under circumstances in which that facility was previously subject to a permit, the facility may continue to operate pending final disposition of the appeal if there is no increase in the amount of pollutants discharged or change in the characteristics of the discharge.

2. If an appeal is taken from the director's decision to grant, deny, modify or revoke a permit for a facility already subject to a permit, the facility may continue to operate as long as the operation complies with the conditions of the existing permit until final disposition of the appeal.

C. Decisions by the director shall be affirmed by the appeals board unless, considering the entire record before the board, it concludes that the director's decision is arbitrary, unreasonable, unlawful or based upon a technical judgment that is clearly invalid.

D. The director or any interested person who has appealed or intervened before the board may apply to the superior court for an order requiring cessation of discharge or conditions for continued discharge pending final disposition of the appeal as necessary to prevent an imminent and substantial endangerment to public health and the environment. The court shall determine the matter under the standards applicable for granting preliminary injunctions.

E. Notwithstanding section 41-1092.11, if a notice of appeal of a permit that is issued under article 3.1 of this chapter is filed with the water quality appeals board, those permit provisions that are specifically identified in the notice of appeal as being contested and those other permit provisions that cannot be severed from the contested provisions are automatically stayed while the appeal is pending before the board. Uncontested permit provisions that are severable from the contested provisions are effective and enforceable thirty days after the director serves notice on the applicant, the water quality appeals board and any party who commented on the proposed action of the conditions that are uncontested and severable.

49-921. Definitions

In this article, unless the context otherwise requires:

1. "Disposal" means discharging, depositing, injecting, dumping, spilling, leaking or placing hazardous waste into or on land or water so that hazardous waste or any constituent of hazardous waste may enter the environment, be emitted into the air or discharged into any waters, including groundwater.
2. "Facility" includes all contiguous land and structures, other appurtenances and improvements on the land used for treating, storing or disposing of hazardous waste. A facility may consist of several treatment, storage or disposal units.
3. "Federal act" means the solid waste disposal act, as amended by the resource conservation and recovery act of 1976 and the hazardous and solid waste amendments of 1984 (P.L. 94-580; 90 Stat. 2795).
4. "Generation" means the act or process of producing hazardous waste.
5. "Hazardous waste" means garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, or other discarded materials, including solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations or from community activities which because of its quantity, concentration or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or pose a substantial present or potential hazard to human health or the environment if improperly treated, stored, transported, disposed of or otherwise managed or any waste identified as hazardous pursuant to section 49-922. Hazardous waste does not include solid or dissolved material in domestic sewage, solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the federal water pollution control act (P.L. 92-500; 86 Stat. 816), as amended, or source, special nuclear or by-product material as defined by the atomic energy act of 1954 (68 Stat. 919), as amended.
6. "Key employee" means any person employed by an applicant or permittee in a supervisory capacity or empowered to make discretionary decisions with respect to the solid waste or hazardous waste operations of the business concern. Key employee does not include an employee exclusively engaged in the physical or mechanical collection, transportation, treatment, storage or disposal of solid or hazardous waste.
7. "Manifest" means the form used for identifying the quantity, composition, origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.
8. "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, state, municipality, commission, political subdivision of the state, interstate body or federal facility.
9. "Storage" means the holding of hazardous waste for a temporary period at the end of which the hazardous waste is treated, disposed of or stored elsewhere.
10. "Transportation" means the movement of hazardous waste by air, rail, highway or water.
11. "Treatment" means a method, technique or process designed to change the physical, chemical or biological character or composition of hazardous waste so as to neutralize such waste or to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume.

49-922. Department rules and standards; prohibited permittees

A. The director shall adopt rules to establish a hazardous waste management program equivalent to and consistent with the federal hazardous waste regulations promulgated pursuant to subtitle C of the federal act. Federal hazardous waste regulations may be adopted by reference. The director shall not adopt a nonprocedural standard that is more stringent than or conflicts with those found in 40 Code of Federal Regulations parts 260 through 268, 270 through 272, 279 and 124. The director shall not identify a waste as hazardous if not so identified in the federal hazardous waste regulations unless the director finds, based on all the factors in 40 Code of Federal Regulations section 261.11(a)(1), (2), or (3), that the waste may cause or significantly contribute to an increase in serious irreversible or incapacitating reversible illness or pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed or otherwise managed.

B. These rules shall establish criteria and standards for the characteristics, identification, listing, generation, transportation, treatment, storage and disposal of hazardous waste within this state. In establishing the standards the director shall, where appropriate, distinguish between new and existing facilities. The criteria and standards shall include requirements respecting:

1. Maintaining records of hazardous waste identified under this article and the manner in which the waste is generated, transported, treated, stored or disposed.
2. Submitting reports, data, manifests and other information necessary to ensure compliance with such standards.
3. Transporting hazardous waste, including appropriate packaging, labeling and marking requirements and requirements respecting the use of a manifest system, which are consistent with the regulations of the state and United States departments of transportation governing transporting hazardous materials.
4. The operation, maintenance, location, design and construction of hazardous waste treatment, storage or disposal facilities, including such additional qualifications as to ownership, continuity of operation, contingency plans, corrective actions and abatement of continuing releases, monitoring and inspection programs, personnel training, closure and postclosure requirements and financial responsibility as may be necessary and appropriate.
5. Requiring a permit for a hazardous waste treatment, storage or disposal facility including the modification and termination of permits, the authority to continue activities and permits existing on July 27, 1983 consistent with the federal hazardous waste regulations and the payment of reasonable fees. The director shall establish and collect reasonable fees from the applicant to cover the cost of administrative services and other expenses associated with evaluating the application and issuing or denying the permit. The director shall establish by rule an application fee to cover the cost of administrative services and other expenses associated with evaluating the application and issuing or denying the permit, including a maximum fee. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the hazardous waste management fund established by section 49-927.
6. Providing the right of entry for inspection and sampling to ensure compliance with the standards.
7. Providing for appropriate public participation in developing, revising, implementing, amending and enforcing any rule, guideline, information or program under this article consistent with the federal hazardous waste program.

C. The director may refuse to issue a permit for a facility for storage, treatment or disposal of hazardous waste to a person if any of the following applies:

1. The person fails to demonstrate sufficient reliability, expertise, integrity and competence to operate a hazardous waste facility.
2. The person has been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the permit application.

3. In the case of a corporation or business entity, if any of its officers, directors, partners, key employees or persons or business entities holding ten percent or more of its equity or debt liability has been convicted of, or pled guilty or no contest to, a felony in any state or federal court during the five years before the date of the permit application.

D. This article does not affect the validity of any existing rules adopted by the director that are equivalent to and consistent with the federal hazardous waste regulations until new rules for hazardous waste are adopted.

E. This article does not authorize the regulation of small quantity generators as defined by 40 Code Of Federal Regulations part 262 in a manner inconsistent with the federal hazardous waste regulations. However, the director may require reports of any small quantity generator or group of small quantity generators regarding the treatment, storage, transportation, disposal or management of hazardous waste if the hazardous waste of such generator or generators may pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed or otherwise managed.

49-1403. Privilege

A. Except as provided in sections 49-1404, 49-1405 and 49-1406, any part of an audit report is privileged and is not admissible as evidence or subject to discovery in any of the following:

1. A civil action, whether legal or equitable.
2. An administrative proceeding.

B. When called or subpoenaed as a witness, a person cannot be compelled to testify or produce a document related to an audit if both of the following apply:

1. The testimony or document discloses any privileged part of an audit report or any item listed in section 49-1402.
2. For the purposes of this subsection only, the person is:
 - (a) A person who conducted any portion of the audit but who did not personally observe the physical events.
 - (b) A person to whom the audit results are disclosed under section 49-1404, subsection B.
 - (c) A custodian of the audit results.

C. A person who conducts or participates in the preparation of an environmental audit and who has actually observed physical events of violation may testify regarding those events but may not be compelled to testify about or produce documents related to any privileged part of an audit or any item listed in section 49-1402.

D. A state agency employee may not request, review or otherwise use an audit report during an agency inspection of a regulated facility or operation or an activity of a regulated facility or operation.

E. A party asserting the privilege prescribed in this section has the burden of establishing the applicability of the privilege.

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5. A license not identified in a category shown on the license tables.
 6. A license required under an abatement or compliance order or consent agreement, if a time-frame in the order or consent agreement is different than the time-frame for the license category. The time-frame in the order or consent agreement shall supersede the time-frame for the license category.
 7. An application for which the applicant is not the prospective licensee.
 8. Compliance activity by licensees in conformance with an issued license except for license renewal or revision activity.
 9. Contractual activity under A.R.S. § 41-1005(A)(15).
 10. Activity that leads to the revocation, suspension, annulment, or withdrawal of a license.
- B.** If an application becomes subject to this Article, it remains subject to the terms of the original license category in which it was classified unless the application is withdrawn, is altered by a licensing time-frames agreement, or is changed under R18-1-516. If altered by a licensing time-frames agreement, the terms of the original license category are modified only to the extent expressly stated in the licensing time-frames agreement.
- C.** If an Arizona statute or other rule in this Title conflicts with this Article, the statute or other rule governs except that only this Article determines whether an applicant is entitled to a refund and fee excusal due to Department failure to notify an applicant of a licensing decision within a licensing time-frame under A.R.S. § 41-1077(A).
- Historical Note**
New Section adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Amended by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).
- R18-1-503. Administrative Completeness Review Time-frame Operation; Administrative Completeness**
- A.** The administrative completeness review time-frame for an application begins on the day of Department receipt of the first component submittal in support of the application that contains all the following:
1. Identification of the applicant.
 2. If the license is for a facility, identification of the facility.
 3. Name and mailing address of the applicant and, if applicable, the applicant's agent authorized by the applicant to receive all notices issued by the Department under this Article.
 4. Identification of the license category in which the application shall be first processed. If companion categories are shown on a license table for this license, the application shall be first processed in the companion category that is determined as follows:
 - a. If "standard" and "complex" categories are shown, in the "standard" category.
 - b. If "without a public hearing" and "with a public hearing" are shown, in the "without a public hearing" category.
 - c. If "without a public meeting" and "with a public meeting" are shown, in the "without a public meeting" category.
 5. Completed Department application form if required for the license category.
 6. Initial fee if required for the license category.
7. All application components required by statute or rule necessary for the Department to determine whether an application is administratively complete.
- B.** The administrative completeness review time-frame for an application ends on the earlier of the following days:
1. The day the Department notifies the applicant that the application is administratively complete under A.R.S. § 41-1074.
 2. If the Department does not notify the applicant that the application is administratively complete under A.R.S. § 41-1074, the last day shown for the administrative completeness review time-frame for the relevant license category on the license tables.
- C.** If a notice of administrative deficiencies states that the Department is suspending the running of days within the time-frames until the applicant supplies the missing information identified on a comprehensive list of specific deficiencies included with the notice, the running of days within the administrative completeness review time-frame suspends on the day of notification.
- D.** If suspended, the running of days within the administrative completeness review time-frame remains suspended from the time of the first notice under subsection (C) of this Section until the applicant supplies the Department all missing information identified on the comprehensive list of specific deficiencies.
- E.** If the Department determines that an applicant has submitted all application components required by statute or rule within the administrative completeness review time-frame and necessary to allow the Department to grant the license, the Department shall notify the applicant that the application is administratively complete under A.R.S. § 41-1074.
- F.** If presumptive administrative completeness occurs:
1. Further notices of administrative deficiencies issued under subsection (C) of this Section will not suspend the running of days within the substantive review or overall time-frames and
 2. The Department does not waive the requirement for the applicant to submit all application components necessary to allow the Department to grant the license.
- G.** The running of days within the administrative completeness review time-frame also suspends and resumes under R18-1-518 (emergencies).
- Historical Note**
New Section adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Amended by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).
- R18-1-504. Substantive Review Time-frame Operation; Requests for Additional Information**
- A.** The substantive review time-frame for an application begins on one of the following days:
1. If the Department notifies the applicant that the application is administratively complete before the expiration of the administrative completeness review time-frame, one day after notification.
 2. If the Department does not notify the applicant that the application is administratively complete before the expiration of the administrative completeness review time-frame, one day after expiration.
- B.** The substantive review time-frame for an application ends on the earlier of the following days:

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1. The day of Department notification that it has made a licensing decision under A.R.S. § 41-1076 and R18-1-507.
 2. The last day shown for the substantive review time-frame for the license category on the license tables.
- C. If the Department notifies the applicant to respond to a comprehensive request for additional information, the running of days within the substantive review time-frame is suspended beginning on the day of Department notification. The Department may issue only one comprehensive request that suspends the running of days within the substantive review time-frame under A.R.S. § 41-1075(A).
- D. The running of days within the substantive review time-frame remains suspended from the time of the notice under subsection (C) until the applicant supplies all missing information to the Department.
- E. The running of days within the substantive review time-frame also suspends and resumes under R18-1-518 (emergencies).

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Amended by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).

R18-1-505. Overall Time-frame Operation

- A. The overall time-frame for an application begins on the same day as the administrative completeness review time-frame.
- B. The running of days within the overall time-frame suspends and resumes in concert with the administrative completeness and substantive review time-frames and time-frame extensions.
- C. The duration of the overall time-frame equals the sum of all the following days unless altered by R18-1-508 (licensing time-frames pre-application agreements) or R18-1-511 (changed licensing time-frames agreements):
1. The lesser of:
 - a. The number of days shown for the administrative completeness review time-frame on the license tables, or
 - b. The actual number of days for the administrative completeness review time-frame if the Department notifies the applicant under R18-1-503(E) that the application is administratively complete before the expiration of the administrative completeness review time-frame;
 2. The lesser of:
 - a. The number of days shown for the substantive review time-frame on the license tables,
 - b. The actual number of days for the substantive review time-frame if the Department notifies the applicant of a licensing decision under R18-1-504(B)(1), or
 - c. The actual number of days for the substantive review time-frame if the applicant causes the time-frames to end under R18-1-507(D); and
 3. The number of days added by one or more licensing time-frames extension agreements under R18-1-510.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Amended by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).

R18-1-506. Time-frame Extension Operation

- A. If created by a licensing time-frames extension agreement under R18-1-510, the time-frame extension for an application begins one day after the substantive review and overall time-frames would otherwise expire and operates as if they were still in operation.
- B. The time-frame extension for an application ends on one of the following days, whichever is earlier:
 1. The day of Department notification that it has made a licensing decision under A.R.S. § 41-1076 and R18-1-507.
 2. The day shown for the expiration of the time-frame extension identified in the time-frame extension agreement.
- C. The Department may notify an applicant to respond to one comprehensive request for additional information during the time-frame extension on the same terms as prescribed in R18-1-504 except that the Department shall not make more than one comprehensive request for additional information under both R18-1-504 and this Section.
- D. An applicant and the Department may enter into one or more licensing time-frames supplemental request agreements during the time-frame extension on the same terms as prescribed in R18-1-509.
- E. The running of days within the time-frame extension also suspends and resumes under R18-1-518 (emergencies).

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3).

R18-1-507. Ending of Time-frames; Licensing Decisions; Withdrawal; Notice of Licensing Time-frames Nonapplicability

- A. Department notification of the grant or denial of a license ends the running of all licensing time-frames for an application.
- B. The Department may deny a license if the applicant submits incomplete or inaccurate information in response to a notice of administrative deficiencies under R18-1-503, a request for additional information or a comprehensive request for additional information under R18-1-504, a supplemental request for additional information under R18-1-509, or any other deficiency in the application that prevents the Department from exercising its authority to grant the license.
- C. The Department may deny a license if the applicant fails to respond in a reasonably timely manner to a notice of administrative deficiencies under R18-1-503, a request for additional information or a comprehensive request for additional information under R18-1-504, or a supplemental request for additional information under R18-1-509, and the deficiency in the application prevents the Department from exercising its authority to grant the license. In determining whether an applicant has failed to respond to a notice or request in a reasonably timely manner and the deficiency in the application prevents the Department from exercising its authority to grant the license, the Department shall consider the following factors:
 1. The nature of the information requested.
 2. The time that an applicant has been given in the notice or request to respond relative to the overall time-frame for that category of license.
 3. The extent to which the Department's ability to process applications for that license category or related license categories is adversely affected by overdue responses for information.
- D. Department notice of the denial of a license shall include all the following:
 1. A justification for the denial under A.R.S. § 41-1076(1).

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2. An explanation of the applicant's right to appeal the action under A.R.S. §§ 41-1076(2) and 41-1092.03(A).
 3. An explanation of the applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.
- E.** The following actions by the applicant are sufficient to end all time-frames for an application:
1. Withdrawing the application under R18-1-517.
 2. Entering into a changed licensing time-frames agreement under R18-1-511.
- F.** If the Department determines during its review of an application that the application is not subject to this Article, the Department shall notify the applicant that the application is not subject to this Article. The Department notification shall contain the Department's reason for making the determination. Department notification under this subsection causes all time-frames for the application to end.
- Historical Note**
New Section adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3). Amended by final rulemaking at 13 A.A.R. 1854, effective June 30, 2007 (Supp. 07-2).
- R18-1-508. Licensing Time-frames Pre-application Agreements**
- A.** An applicant and the Department may enter into a licensing time-frames pre-application agreement to allow the applicant to do one or more of the following:
1. Submit certain application components in one or more phases during the substantive review time-frame.
 2. Coordinate the licensing time-frames requirements of this Article with expedited application review by a private consultant under contract with the Department for that purpose.
 3. Coordinate the licensing time-frames requirements of this Article with an applicant's requirements to apply for and obtain other approvals reasonably related to the subject matter of the application.
- B.** A licensing time-frames pre-application agreement shall contain at least the following terms:
1. Unless otherwise specified in the agreement, all requirements of this Article remain in effect.
 2. A waiver under A.R.S. § 41-1004 by the applicant of its rights to the number of time-frame days identified on the license tables in consideration of the Department allowing the applicant to enter into a licensing time-frames pre-application agreement.
 3. Identification of application components.
 4. The number of days for the administrative completeness review time-frame and the substantive review time-frame. Time spent in pre-application review shall not count toward the running of days within the time-frames.
 5. A fee adjustment, if appropriate.
 6. Identification of the license category within which the Department shall begin processing the application.
- C.** A licensing time-frames pre-application agreement that allows the applicant to submit certain application components in one or more phases during the substantive review time-frame shall contain at least the terms identified in subsection (B) of this Section and the following terms:
1. The overall time-frame shall not be less than the presumptive overall time-frame identified in subsection (B)(6) of this Section.
2. The administrative completeness review time-frame shown for the license category identified in subsection (B)(6) of this Section shall apply only to the first application phase.
 3. The applicant may submit components otherwise required for administrative completeness in subsequent phases during the substantive review time-frame only to the extent that the agreement specifies deadlines for each subsequent application phase and identifies the application components required in each subsequent phase. The Department may notify the applicant to respond to a notice of administrative deficiencies within 15 days after each subsequent submittal or the deadline identified in the agreement for each subsequent phased application component submittal.
 4. The Department may suspend the running of days within the time-frames once in each application phase with a comprehensive request for additional information on the same terms as prescribed under R18-1-504.
- D.** The Department shall consider all the following factors when determining whether to enter into a licensing time-frames pre-application agreement:
1. The complexity of the licensing subject matter. The Department shall not enter into an agreement if the presumptive substantive review time-frame is less than 90 days.
 2. The resources of the Department. The Department shall not enter into an agreement if the Department determines that either the negotiation of the agreement or the terms of the agreement are likely to require the Department to expend additional resources to the significant detriment of other applicants.
 3. The impact on public health and safety or the environment. The Department shall not enter into an agreement if the Department determines that the terms of the agreement are likely to cause a significant increase or change in the nature of the potential detrimental effects of the facility or activity to be governed by the license on public health and safety or the environment.
- Historical Note**
New Section adopted by final rulemaking at 5 A.A.R. 3343, effective August 13, 1999 (Supp. 99-3).
- R18-1-509. Licensing Time-frames Supplemental Request Agreements**
- A.** An applicant and the Department may enter into one or more licensing time-frames supplemental request agreements to allow the suspension of the running of days within the relevant substantive review and overall time-frames and time-frame extensions pending a response from the applicant to a supplemental request for additional information under A.R.S. § 41-1075(A). A request for additional time alone is not a valid justification for a supplemental request agreement.
- B.** A licensing time-frames supplemental request agreement shall contain at least the following terms:
1. Unless otherwise specified in the agreement, all requirements of this Article remain in effect.
 2. A list of the additional information requested.
 3. The running of days within the relevant substantive review and overall time-frames and time-frame extensions shall suspend and resume under Sections R18-1-504 through R18-1-506.

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years. Based on this review, the owner or operator shall submit an amended emergency and remedial response plan or demonstrate to the Director that no amendment to the emergency and remedial response plan is needed. Any amendments to the emergency and remedial response plan must be approved by the Director, must be incorporated into the permit, and are subject to the permit modification requirements at R18-9-C632 or R18-9-C633, as appropriate. Amended plans or demonstrations shall be submitted to the Director as follows:

1. Within one year of an area of review reevaluation;
2. Following any significant changes to the facility, such as addition of injection or monitoring wells, on a schedule determined by the Director; or
3. When required by the Director.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J670. Class VI; Injection Depth Waiver Requirements

- A. This Section sets forth information which an owner or operator seeking a waiver of the Class VI injection depth requirements must submit to the Director; information the Director must consider in consultation with all affected Public Water System Supervision Directors; the procedure for Director-- Administrator communication and waiver issuance; and the additional requirements that apply to owners or operators of Class VI wells granted a waiver of the injection depth requirements.
- B. In seeking a waiver of the requirement to inject below the lowest USDW, the owner or operator must submit a supplemental report concurrent with permit application. The supplemental report must include the following:
 1. A demonstration that the injection zone or zones is/are laterally continuous, is not a USDW, and is not hydraulically connected to USDWs; does not outcrop; has adequate injectivity, volume, and sufficient porosity to safely contain the injected carbon dioxide and formation fluids; and has appropriate geochemistry.
 2. A demonstration that the injection zone or zones is/are bounded by laterally continuous, impermeable confining units above and below the injection zone or zones adequate to prevent fluid movement and pressure buildup outside of the injection zone or zones; and that the confining unit or units is/are free of transmissive faults and fractures. The report shall further characterize the regional fracture properties and contain a demonstration that such fractures will not interfere with injection, serve as conduits, or endanger USDWs.
 3. A demonstration, using computational modeling, that USDWs above and below the injection zone will not be endangered as a result of fluid movement. This modeling should be conducted in conjunction with the area of review determination, as described in R18-9-J659, and is subject to requirements, as described in R18-9-J659(C), and periodic reevaluation, as described in R18-9-J659(E).
 4. A demonstration that well design and construction, in conjunction with the waiver, will ensure isolation of the injectate in lieu of requirements at R18-9-J661(A)(1) and will meet well construction requirements in subsection (G).
 5. A description of how the monitoring and testing and any additional plans will be tailored to the geologic sequestration project to ensure protection of USDWs above and below the injection zone or zones, if a waiver is granted.

6. Information on the location of all the public water supplies affected, reasonably likely to be affected, or served by USDWs in the area of review.
7. Any other information requested by the Director to inform the Administrator's decision to issue a waiver.
- C. To inform the Administrator's decision on whether to grant a waiver of the injection depth requirements at R18-9-A604 and R18-9-J661(A)(1), the Director must submit, to the Administrator, documentation of the following:
 1. An evaluation of the following information as it relates to siting, construction, and operation of a geologic sequestration project with a waiver:
 - a. The integrity of the upper and lower confining units;
 - b. The suitability of the injection zone or zones, such as lateral continuity, lack of transmissive faults and fractures, knowledge of current or planned artificial penetrations into the injection zone or zones, or formations below the injection zone;
 - c. The potential capacity of the geologic formation or formations to sequester carbon dioxide, accounting for the availability of alternative injection sites;
 - d. All other site characterization data, the proposed emergency and remedial response plan, and a demonstration of financial responsibility;
 - e. Community needs, demands, and supply from drinking water resources;
 - f. Planned needs, potential and/or future use of USDWs and non-USDWs in the area;
 - g. Planned or permitted water, hydrocarbon, or mineral resource exploitation potential of the proposed injection formation or formations and other formations both above and below the injection zone to determine if there are any plans to drill through the formation to access resources in or beneath the proposed injection zone or zones/formation or formations;
 - h. The proposed plan for securing alternative resources or treating USDW formation waters in the event of contamination related to the Class VI injection activity; and,
 - i. Any other applicable considerations or information requested by the Director.
 2. Consultation with the Public Water System Supervision Directors of all States and Tribes having jurisdiction over lands within the area of review of a well for which a waiver is sought.
 3. Any written waiver-related information submitted by the Public Water System Supervision Director or Directors to the (UIC) Director.
- D. Pursuant to requirements at R18-9-C620 and concurrent with the Class VI permit application notice process, the Director shall give public notice that a waiver application has been submitted. The notice shall clearly state:
 1. The depth of the proposed injection zone or zones;
 2. The location of the injection well or wells;
 3. The name and depth of all USDWs within the area of review;
 4. A map of the area of review;
 5. The names of any public water supplies affected, reasonably likely to be affected, or served by USDWs in the area of review; and,
 6. The results of UIC-Public Water System Supervision consultation required under subsection (C)(2).

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- E. Following public notice, the Director shall provide all information received through the waiver application process to the Administrator. Based on the information provided, the Administrator shall provide written concurrence or non-concurrence regarding waiver issuance.
 - 1. If the Administrator determines that additional information is required to support a decision, the Director shall provide the information. At the Administrator’s discretion, they may require that public notice of the new information be initiated.
 - 2. In no case shall a Director of a State-approved program issue a waiver without receipt of written concurrence from the Administrator.
- F. If a waiver is issued, within 30 days of waiver issuance, EPA shall post the following information on the Office of Water’s Web site:
 - 1. The depth of the proposed injection zone or zones;
 - 2. The location of the injection well or wells;
 - 3. The name and depth of all USDWs within the area of review;
 - 4. A map of the area of review;
 - 5. The names of any public water supplies affected, reasonably likely to be affected, or served by USDWs in the area of review; and
 - 6. The date of waiver issuance.
- G. Upon receipt of a waiver of the requirement to inject below the lowermost USDW for geologic sequestration, the owner or operator of the Class VI well must comply with:
 - 1. All requirements at R18-9-J659, R18-9-J660, R18-9-J662, R18-9-J663, R18-9-J664, R18-9-J666, R18-9-J667, and R18-9-J669;
 - 2. All requirements at R18-9-J661 with the following modified requirements:
 - a. The owner or operator must ensure that Class VI wells with a waiver are constructed and completed to prevent movement of fluids into any unauthorized zones including USDWs, in lieu of requirements at R18-9-J661(A)(1).
 - b. The casing and cementing program must be designed to prevent the movement of fluids into any unauthorized zones including USDWs in lieu of requirements at R18-9-J661(B)(1).
 - c. The surface casing must extend through the base of the nearest USDW directly above the injection zone and be cemented to the surface; or, at the Director’s discretion, another formation above the injection zone and below the nearest USDW above the injection zone.
 - 3. All requirements at R18-9-J665 with the following modified requirements:
 - a. The owner or operator shall monitor the groundwater quality, geochemical changes, and pressure in the first USDWs immediately above and below the injection zone or zones; and in any other formations at the discretion of the Director.
 - b. Testing and monitoring to track the extent of the carbon dioxide plume and the presence or absence of elevated pressure by using direct methods to monitor for pressure changes in the injection zone or zones; and, indirect methods (such as seismic, electrical, gravity, or electromagnetic surveys and/or down-hole carbon dioxide detection tools), unless the Director determines, based on site-specific geology, that such methods are not appropriate.
 - 4. All requirements at R18-9-J668 with the following, modified post-injection site care monitoring requirements:
 - a. The owner or operator shall monitor the groundwater quality, geochemical changes and pressure in the first USDWs immediately above and below the injection zone; and in any other formations at the discretion of the Director.
 - b. Testing and monitoring to track the extent of the carbon dioxide plume and the presence or absence of elevated pressure by using direct methods in the injection zone or zones; and indirect methods, unless the Director determines based on site-specific geology, that such methods are not appropriate.
 - 5. Any additional requirements requested by the Director designed to ensure protection of USDWs above and below the injection zone or zones.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

Table 1: Applicable Standards National Primary Drinking Water Regulations

Contaminant	MCL ¹ (mg/L) ²
Alachlor	0.002
Alpha/photon emitters	15 picocuries per Liter (pCi/L)
Antimony	0.006
Arsenic	0.010
Asbestos (fibers>10 micrometers)	7 million fibers per Liter (MFL)
Atrazine	0.003
Barium	2
Benzene	0.005
Benzo(a)pyrene (PAHs)	0.0002
Beryllium	0.004
Beta photon emitters	4 millirems per year
Bromate	0.010
Cadmium	0.005
Carbofuran	0.04
Carbon tetrachloride	0.005
Chlordane	0.002
Chlorite	1.0
Chlorobenzene	0.1
Chromium (total)	0.1
Cyanide (as free cyanided)	0.2
2,4-D	0.07
Dalapon	0.2
1,2-Dibromo-3-chloropropane (DBCP)	0.0002
o-Dichlorobenzene	0.6
p-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
Cis-1,2-Dichloroethylene	0.07
Trans-1,2-Dichloroethylene	0.1

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Dichloromethane	0.005
1,2-Dichloropropane	0.005
Di(2-ethylhexyl) adipate	0.4
DI(2-ethylhexyl) phthalate	0.006
Dinoseb	0.007
Dioxin (2,3,7,8-TCDD)	0.00000003
Diquat	0.02
Endothall	0.1
Endrin	0.002
Ethylbenzene	0.7
Ethylene dibromide	0.00005
Fecal coliform and <i>E.coli</i>	MCL ³
Fluoride	4.0
Glyphosate	0.7
Haloacetic acids (HAA5)	0.060
Heptachlor	0.0004
Heptachlor epoxide	0.0002
Hexachlorobenzene	0.001
Hexachlorocyclopentadiene	0.05
Lindane	0.0002
Mercury (inorganic)	0.002
Methoxychlor	0.04
Nitrate (measured as Nitrogen)	10
Nitrite (measured as Nitrogen)	1
Oxamyl (Vydate)	0.2
Pentachlorophenol	0.001
Picloram	0.5
Polychlorinated biphenyls (PCBs)	0.0005
Radium 226 and Radium 228 (combined)	5 pCi/L
Selenium	0.05
Simazine	0.004
Styrene	0.1
Tetrachloroethylene	0.005
Thallium	0.002
Toluene	1
Total Coliforms	5.0 percent ⁴
Total Trihalomethanes (TTHMs)	0.080
Toxaphene	0.003
2,4,5-TP (Silvex)	0.05
1,2,4-Trichlorobenzene	0.07
1,1,1-Trichloroethane	0.2
1,1,2-Trichloroethane	0.005
Trichloroethylene	0.005
Uranium	30µg/L
Vinyl chloride	0.002
Xylenes (total)	10

¹ Maximum Contaminant Level (MCL) – The highest level of a contaminant that is allowed in drinking water. MCLs are set as close to MCLGs as feasible using the best available treatment technology and taking cost into consideration. MCLs are enforceable standards.

² Units are in milligrams per liter (mg/L) unless otherwise noted. Milligrams per liter are equivalent to parts per million (ppm).

³ A routine sample that is fecal coliform-positive or *E. coli*-positive triggers repeat samples-if any repeat sample is total coliform-positive, the system has an acute MCL violation. A routine sample that is total coliform-positive, and fecal coliform-negative or *E. coli*-negative triggers repeat samples – if any repeat sample is fecal coliform-positive or *E. coli*-positive, the system has an acute MCL violation. See also Total Coliforms.

⁴ No more than 5.0 percent samples total coliform-positive in a month. (For water systems that collect fewer than 40 routine samples per month, no more than one sample can be total coliform-positive per month.) Every sample that has total coliform must be analyzed for either fecal coliforms or *E. coli*. If two consecutive TC-positive samples, and one is also positive for *E. coli* or fecal coliforms, system has an acute MCL violation.

Historical Note

New Table 1, under Article 6, Part J made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

ARTICLE 7. USE OF RECYCLED WATER**R18-9-701. Renumbered****Historical Note**

Former Section R9-20-401 repealed, new Section R9-20-401 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-401 renumbered without change as Section R18-9-701 (Supp. 87-3). Amended by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-701 renumbered to R18-9-A701 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-702. Renumbered**Historical Note**

Former Section R9-20-402 repealed, new Section R9-20-402 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-402 renumbered without change as Section R18-9-702 (Supp. 87-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-702 renumbered to R18-9-A702 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-703. Renumbered**Historical Note**

Former Section R9-20-403 repealed, new Section R9-20-403 adopted effective May 24, 1985 (Supp. 85-3). Former Section R9-20-403 renumbered without change as Section R18-9-703 (Supp. 87-3). Editorial change to labels in subsection (c)(8) (Supp. 89-4). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section R18-9-703 renumbered to R18-9-B701 by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-704. Renumbered

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- i. The first use of an impoundment not used before November 12, 2005; or
 - ii. Completion of a liner upgrade required under this Section for an impoundment used before November 12, 2005; or
 - b. Include the information required in subsections (B)(3)(a)(i) and (ii) in the next annual report submitted for the AZPDES Concentrated Animal Feeding Operation General Permit, issued under 18 A.A.C. 9, Article 9, Part C.
2. Installs rangeland improvements, such as fences, water developments, trails, and corrals to help achieve Surface Water Quality Standards;
 3. Implements land treatments to help achieve Surface Water Quality Standards;
 4. Implements supplemental feeding, salting, and parasite control measures to help achieve Surface Water Quality Standards.
- B.** The person to whom a permit is issued shall make the following information available to the Department, at the person's place of business, within 10 business days of Department notice:

1. The name and address of the person grazing livestock, and
2. The best management practices selected for livestock grazing.

Historical Note

Adopted effective January 4, 1991 (Supp. 91-1). Section R18-9-403 renumbered from R18-9-203 and amended by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4). Amended by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

R18-9-404. Revocation of Coverage under a Nitrogen Management General Permit

- A.** The Director may revoke coverage under a nitrogen management general permit and require the permittee to obtain an individual permit under 18 A.A.C. 9, Article 2, if the Director determines that the permittee failed to comply with the best management practices under R18-9-403.
- B.** Notification.
1. If coverage under the nitrogen management general permit is revoked under subsection (A), the Director shall notify the permittee by certified mail of the decision according to the notification and hearing procedures in A.R.S. Title 41, Chapter 6, Article 10. The notification shall include:
 - a. A brief statement of the reason for the decision,
 - b. The effective revocation date of the general permit coverage, and
 - c. A statement of whether the discharge shall cease immediately or whether the discharge may continue until the individual permit is issued, and
 2. If the Director requires a person to obtain an individual permit, the notification shall include:
 - a. An individual permit application form, and
 - b. A deadline between 90 and 180 days after receipt of the notification for filing the application.
- C.** When the Director issues an individual permit to an owner or operator of a facility covered under a nitrogen management general permit, the coverage under the nitrogen management general permit is superseded by the individual permit allowing the discharge.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4544, effective November 12, 2005 (05-3).

ARTICLE 5. GRAZING BEST MANAGEMENT PRACTICES**R18-9-501. Surface Water Quality General Grazing Permit**

- A.** A person who engages in livestock grazing and applies any of the following voluntary best management practices to maintain soil cover and prevent accelerated erosion, nitrogen discharges, and bacterial impacts to surface water greater than the natural background amount is issued a Surface Water Quality General Grazing Permit:
1. Manages the location, timing, and intensity of grazing activities to help achieve Surface Water Quality Standards;

Historical Note

New Section made by final rulemaking at 7 A.A.R. 1768, effective April 5, 2001 (Supp. 01-2).

ARTICLE 6. UNDERGROUND INJECTION CONTROL**R18-9-601. Repealed****Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section repealed by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-602. Repealed**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section repealed by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

R18-9-603. Repealed**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 758, effective January 16, 2001 (Supp. 01-1). Section repealed by final rulemaking at 23 A.A.R. 3091, effective January 1, 2018 (Supp. 17-4).

PART A. GENERAL PROVISIONS**R18-9-A601. Definitions**

The following terms apply to this Article:

1. "Abandoned well" means a well whose use has been permanently discontinued or which is in a state of disrepair such that it cannot be used for its intended purpose or for observation purposes.
2. "Administrator" means the Administrator of the United States Environmental Protection Agency (EPA), or an authorized representative.
3. "Application" means the ADEQ prescribed method, such as a form, for applying for a permit, including any additions, revisions or modifications thereof.
4. "Appropriate Act and regulations" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA); or Safe Drinking Water Act (SDWA), whichever is applicable; and applicable regulations promulgated under those statutes.
5. "Aquifer" means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

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6. "Area of review" means the area surrounding an injection well described according to the criteria set forth in R18-9-B612 or in the case of an area permit, the project area plus a circumscribing area the width of which is either 1/4 of a mile or a number calculated according to the criteria set forth in R18-9-B612.
7. "Arizona UIC Memorandum of Agreement" means the agreement between the Administrator and the Director that coordinates EPA and ADEQ activities, responsibilities, and programs under the Arizona UIC Program.
8. "Arizona UIC Program" means the UIC program administered by the Director and approved by EPA according to 42 U.S.C. § 300h-1.
9. "Casing" means a pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling to support the sides of the hole and prevent the walls from caving; to prevent loss of drilling mud into porous ground; or to prevent water, gas, or other fluid from entering or leaving the hole.
10. "Catastrophic collapse" means the sudden and utter failure of overlying strata caused by removal of underlying materials.
11. "Cementing" means the operation whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing.
12. "Cesspool" means a drywell that receives untreated sanitary waste containing human excreta, and which sometimes has an open bottom and/or perforated sides.
13. "Confining zone" means a geological formation, group of formations, or parts of a formation that is capable of limiting fluid movement above an injection zone.
14. "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.
15. "Conventional mine" means an open pit or underground excavation for the production of minerals.
16. "Director" means the Director of the Arizona Department of Environmental Quality or the Director's designee.
17. "Disposal well" means a well that is used for the disposal of waste into a subsurface stratum.
18. "Draft permit" means a document prepared under R18-9-C618 indicating the Director's tentative decision to issue, renew, modify, revoke and reissue, or terminate a permit. A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in R18-9-C631 are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination, of a permit is not a draft permit, except as discussed in R18-9-C631(B).
19. "Drilling mud" means a heavy suspension used in drilling an injection well, introduced down the drill pipe and through the drill bit.
20. "Drywell" means a well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids.
21. "Effective date of the Arizona UIC Program" means the date that the Arizona UIC Program is approved or established by the Administrator.
22. "Emergency permit" means a UIC permit issued in accordance with R18-9-C625.
23. "Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.
24. "Exempted aquifer" means an aquifer or its portion that meets the criteria in the definition of underground source of drinking water (USDW) but has been exempted according to the procedures in R18-9-A605.
25. "Existing injection well" means an injection well other than a new injection well.
26. "Experimental technology" means a technology which has not been proven feasible under the conditions in which it is being tested.
27. "Facility" or "activity" means any UIC injection well subject to regulation under this Article.
28. "Fault" means a surface or zone of rock fracture along which there has been displacement.
29. "Final permit decision" means the Director's decision to issue, renew, modify, revoke and reissue, deny or terminate a permit as described in R18-9-C627.
30. "Flow rate" means the volume per time unit given the flow of gases or other fluid substance which emerges from an orifice, pump, turbine, or passes along a conduit or channel.
31. "Fluid" means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.
32. "Formation" means a body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is prevailing, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.
33. "Formation fluid" means fluid present in a formation under natural conditions as opposed to introduced fluids, such as drilling mud.
34. "Generator" means any person, by site location, whose act or process produces hazardous waste identified or listed in A.A.C. Title 18, Chapter 8 (Hazardous Waste Management).
35. "Geologic sequestration" means the long-term containment of a gaseous, liquid, or supercritical carbon dioxide stream in subsurface geologic formations. This term does not apply to carbon dioxide capture or transport.
36. "Ground water" means water below the land surface in a zone of saturation.
37. "Hazardous waste" means a hazardous waste as defined in A.R.S. § 49-921.
38. "Improved sinkhole" means a naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface.
39. "Indian lands" means Indian country as defined in 18 U.S.C. 1151.
40. "Indian Tribe" means any Indian Tribe having a Federally recognized governing body carrying out substantial governmental duties and powers over a defined area.
41. "Injection well" means a well into which fluids are being injected.
42. "Injection zone" means a geological formation group of formations, or part of a formation receiving fluids through a well.
43. "Lithology" means the description of rocks on the basis of their physical and chemical characteristics.
44. "Major facility" means any UIC facility or activity classified as such by the Administrator in conjunction with the Director.
45. "New injection wells" means an injection well which began injection after the effective date of the Arizona UIC Program.

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46. "Owner" or "operator" means the owner or operator of any facility or activity subject to regulation under the Arizona UIC program.
47. "Packer" means a device lowered into a well to produce a fluid-tight seal.
48. "Permit" means an authorization issued by the Director pursuant to this Article. 'Permit' includes an area permit under R18-9-C624 and an emergency permit under R18-9-C625. 'Permit' does not include UIC authorization by rule or any permit which has not yet been subject to a final permit decision, such as a 'draft permit.'"
49. "Person" means an individual, employee, officer, managing body, trust, firm, joint-stock company, consortium, public or private corporation, Partnership, association or state, a political subdivision of this state, a commission, the United States government or any federal facility, interstate body, Tribal agency, or other entity.
50. "Plugging" means the act or process of stopping the flow of water, oil or gas into or out of a formation through a borehole or well penetrating that formation.
51. "Plugging record" means a systematic listing of permanent or temporary abandonment of water, oil, gas, test, exploration and waste injection wells, and may contain a well log, description of amounts and types of plugging material used, the method employed for plugging, a description of formations which are sealed and a graphic log of the well showing formation location, formation thickness, and location of plugging structures.
52. "Pressure" means the total load or force per unit area acting on a surface.
53. "Project" means a group of wells in a single operation.
54. "Radioactive Waste" means any waste which contains radioactive material in concentrations which exceed those listed in 10 CFR part 20, appendix B, table II column 2.
55. "RCRA" means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580, as amended by Pub. L. 95-609, Pub. L. 96-510, 42 U.S.C. 6901 et seq.).
56. "Sanitary waste" means liquid or solid wastes originating solely from humans and human activities, such as wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned. Sources of these wastes may include single or multiple residences, hotels and motels, restaurants, bunkhouses, schools, ranger stations, crew quarters, guard stations, campgrounds, picnic grounds, day-use recreation areas, other commercial facilities, and industrial facilities provided the waste is not mixed with industrial waste.
57. "Schedule of compliance" means a schedule of remedial measures included in a permit including an enforceable sequence of interim requirements leading to compliance with this Article.
58. "SDWA" or "Safe Drinking Water Act" means the Safe Drinking Water Act (Pub. L. 93-523, as amended; 42 U.S.C. 300f et seq.).
59. "Septic system" means a well that is used to emplace sanitary waste below the surface and is typically comprised of a septic tank and subsurface fluid distribution system or disposal system.
60. "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.
61. "Stratum" means a single sedimentary bed or layer, or series of layers that consists of generally the same kind of rock material regardless of thickness. The plural of stratum is strata.
62. "Subsidence" means the lowering of the natural land surface in response to earth movements; lowering fluid pressures; removal of underlying support material by mining or solution of solids, either artificially or from natural causes; compaction due to wetting; oxidation of organic matter in soils; or added load on the land surface.
63. "Subsurface fluid distribution system" means an assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground.
64. "Surface casing" means the first string of well casing to be installed in the well.
65. "Total dissolved solids" or "TDS" means the total dissolved (filterable) solids as determined by use of the method specified in A.A.C. R9-14-610 or R9-14-611.
66. "Transferee" means the owner or operator receiving ownership and/or operational control of the well.
67. "Transferor" means the owner or operator transferring ownership and/or operational control of the well.
68. "Underground injection" means a well injection; which excludes the underground injection of natural gas for purposes of storage and the underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities.
69. "Underground Injection Control" or "UIC" means the Underground Injection Control program under Part C of the Safe Drinking Water Act, including the Arizona UIC Program.
70. "USDW;" "USDWs," or "Underground source of drinking water" means an aquifer or aquifers or its portion that:
- Supplies any public water system; or
 - Contains a sufficient quantity of ground water to supply a public water system; and
 - Currently supplies drinking water for human consumption; or
 - Contains fewer than 10,000 mg/l total dissolved solids; and
 - Is not an exempted aquifer.
71. "Well" means a bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or a dug hole whose depth is greater than the largest surface dimension; or, an improved sinkhole; or a subsurface fluid distribution system.
72. "Well injection" means the subsurface emplacement of fluids through a well.
73. "Well plug" means a watertight and gastight seal installed in a borehole or well to prevent movement of fluids.
74. "Well monitoring" means the measurement, by on-site instruments or laboratory methods, of the quality of water in a well.
75. "Well stimulation" means several processes used to clean the well bore, enlarge channels and increase pore space in the interval to be injected thus making it possible for wastewater to move more readily into the formation and includes surging, jetting, blasting, acidizing, or hydraulic fracturing.

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Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-A602. Applicability

- A.** This Article becomes effective upon the date of the Environmental Protection Agency's approval of the Arizona UIC Program. Upon that date, the Department shall, under A.R.S. Title 49, Chapter 2, Articles 3.3, 4 and Article 6 of this Chapter, administer and enforce any permit which has been previously authorized or issued in this state under the Federal UIC program.
- B.** This Article and 40 CFR Part 145, Subpart C provide the minimum requirements of the State of Arizona's Underground Injection Control (UIC) program under A.R.S. Title 49, Chapter 2, Article 3.3 (Underground Injection Control Permit Program) and pursuant to Part C of the Safe Drinking Water Act (SDWA) (Pub. L. 93-523, as amended; 42 U.S.C. 300h et seq.).
- C.** Underground injection is prohibited in lands under the jurisdiction of the State of Arizona unless:
1. Authorized by permit or rule under this Article in accordance with 42 U.S.C. 300h et seq., or
 2. Authorized by OGCC pursuant to regulations approved by EPA.
- D.** Any injection activity authorized by permit or rule under this Article shall prohibit the movement of fluid containing any contaminant into underground sources of drinking water (USDWs), where the presence of that contaminant may cause a violation of this Article or may adversely affect the health of persons.
- E.** Injection wells regulated under this Article are categorized into six classes based on characteristics of the injection well activity. Owners or operators of injection wells regulated under all six classes must be authorized by permit (all classes) or rule (Class V only if no permit is required) pursuant to the requirements of this Article.
- F.** Specific inclusions. The following wells are included among those types of injection activities which are covered by the UIC regulations in this Article. (This list is not intended to be exclusive but is for clarification only.)
1. Any injection well located on a drilling platform inside the State's territorial waters.
 2. Any dug hole or well that is deeper than its largest surface dimension, where the principal function of the hole is emplacement of fluids.
 3. Any well used by generators of hazardous waste, or by owners or operators of hazardous waste management facilities, to dispose of fluids containing hazardous waste. This includes the disposal of hazardous waste into what would otherwise be septic systems and cesspools, regardless of their capacity.
 4. Any septic tank, cesspool, or other well used by a multiple dwelling, or community, or other large system for the injection of wastes.
- G.** Specific exclusions. The following are not covered by these regulations:
1. Septic systems or similar waste disposal systems if such systems:
 - a. Are used solely for the disposal of sanitary waste, and
 - b. Have a design capacity of less than 3,000 gallons per day.

2. Injection wells used for injection of hydrocarbons which are of pipeline quality and are gases at standard temperature and pressure for the purpose of storage.
 3. Any dug hole, drilled hole, or bored shaft which is not used for the subsurface emplacement of fluids.
 4. Injection wells authorized by OGCC pursuant to regulations approved by EPA, in accordance with 42 U.S.C. 300h et seq.
- H.** Safe Drinking Water Act exemptions. The following activities are exempt from the Arizona UIC Program:
1. The underground injection of natural gas for purposes of storage.
 2. The underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing operations related to oil, gas, or geothermal production activities.
- I.** The Director may identify aquifers and portions of aquifers which are actual or potential sources of drinking water, to assist in carrying out the Director's duty pursuant to this Article. Any aquifer meeting the criteria under R18-9-A601(70) shall be protected as an USDW, even if it has not been explicitly identified pursuant to this Section.
- J.** The Director may also designate aquifers or portions of aquifers as exempt from the program using the criteria in R18-9-A605 and R18-9-A606, subject to EPA approval. Any aquifer or portion thereof within the State that has previously been designated exempt by EPA pursuant to 40 CFR § 144.7 shall be part of the Arizona UIC program upon the effective date of the Arizona UIC program.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-A603. Confidentiality of Information

- A.** In accordance with A.R.S. § 49-205, any information submitted to the Director pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, the Director may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in A.R.S. § 49-205 (Availability of information to the public).
- B.** Claims of confidentiality for the following information will be denied:
1. The name and address of any permit applicant or permittee.
 2. Information which deals with the existence, absence, or level of contaminants in drinking water.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-A604. Classification of Wells

- A.** Class I wells are:
1. Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation

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that contains, within one-quarter mile of the well bore, an USDW.

2. Other industrial and municipal disposal wells which inject fluids beneath the lowermost formation that contains, within one-quarter mile of the well bore, an USDW.
 3. Radioactive waste disposal wells which inject fluids beneath the lowermost formation that contains, within one-quarter mile of the well bore, an USDW.
- B.** Class II wells are injection wells that inject fluids:
1. That are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection.
 2. For enhanced recovery of oil or natural gas.
 3. For storage of hydrocarbons which are liquid at standard temperatures and pressure.
- C.** Class III wells are injection wells used for the extraction of minerals, including:
1. Sulfur mining by the Frasch process.
 2. In-situ production of uranium or other metals from those ore bodies not conventionally mined. Solution mining of conventional mines such as stopes leaching is included in Class V.
 3. Solution mining of salts or potash.
- D.** Class IV wells are injection wells that either:
1. Inject hazardous or radioactive wastes into or above a formation with an USDW located within one-quarter mile of the well bore, or
 2. Inject hazardous wastes and cannot be classified under subsection (A)(1), or (D)(1) (e.g., wells used to dispose of hazardous wastes into or above a formation which contains an aquifer which has been previously exempted or exempted pursuant to R18-9-A606).
- E.** Class V wells are injection wells not included in Class I, II, III, IV, or VI.
1. Class V wells include but are not limited to:
 - a. Air conditioning return flow wells used to return to the supply aquifer the water used for heating or cooling in a heat pump.
 - b. Cesspools including multiple dwelling, community or regional cesspools, or other devices that receive wastes which have an open bottom and sometimes have perforated sides. The UIC requirements do not apply to single family residential cesspools nor to non-residential cesspools which receive solely sanitary wastes and have the capacity to serve fewer than 20 persons a day.
 - c. Cooling water return flow wells used to inject water previously used for cooling.
 - d. Drainage wells used to drain surface fluid, primarily storm runoff, into a subsurface formation.
 - e. Dry wells used for the injection of wastes into a subsurface formation.
 - f. Recharge wells used to replenish the water in an aquifer.
 - g. Salt water intrusion barrier wells used to inject water into a fresh water aquifer to prevent the intrusion of salt water into the fresh water.
 - h. Sand backfill and other backfill wells used to inject a mixture of water and sand, mill tailings or other solids into mined out portions of subsurface mines, except for radioactive wastes.
 - i. Septic system wells used to inject the waste or effluent from a multiple dwelling, business establishment, community or regional business establishment septic tank.
 - j. Subsidence control wells, other than those used in oil or natural gas production, that inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with freshwater overdraft.
 - k. Injection wells associated with the recovery of geothermal energy for heating, aquaculture, and production of electric power.
 - l. Wells used for solution mining of conventional mines such as stopes leaching.
 - m. Wells used to inject spent brine into the same formation from which it was withdrawn after extraction of halogens or their salts.
 - n. Injection wells used in experimental technologies.
 - o. Injection wells used for in situ recovery of lignite, coal, tar sands, and oil shale.
2. Class V wells do not include single-family residential septic system wells or non-residential septic system wells used solely for the disposal of sanitary waste with a design capacity of less than 3,000 gallons per day.
- F.** Class VI wells are:
1. Not experimental in nature that are used for geologic sequestration of carbon dioxide beneath the lowermost formation containing a USDW;
 2. Wells used for geologic sequestration of carbon dioxide that have been granted a waiver of the injection depth requirements pursuant to requirements at R18-9-J670; or
 3. Wells used for geologic sequestration of carbon dioxide that have received an expansion to the areal extent of an existing Class II enhanced oil recovery or enhanced gas recovery aquifer exemption pursuant to R18-9-A605 of this Chapter and R18-9-A604.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-A605. Identification of Underground Sources of Drinking Water and Exempt Aquifers

A. The Director may identify, by narrative description, illustration, maps, or other means, and shall protect as USDWs, all aquifers and parts of aquifers that meet the definition of USDW in R18-9-A601(70) except to the extent there is an applicable aquifer exemption under subsection (B) or an expansion to the areal extent of an existing Class II enhanced oil recovery or enhanced gas recovery aquifer exemption for the exclusive purpose of Class VI injection for geologic sequestration under subsection (D). Other than EPA-approved aquifer exemption expansions that meet the criteria set forth in R18-9-A606(4), new aquifer exemptions shall not be issued for Class VI injection wells. Even if an aquifer has not been specifically identified by the Director, it is an USDW if it meets the definition in R18-9-A601(70).

B. Aquifer exemptions procedure:

1. The Director may identify, by narrative description, illustrations, maps, or other means, and describe in geographic and/or geometric terms, such as vertical and lateral limits and gradient, that are clear and definite, all aquifers or parts thereof that the Director proposes to designate as exempted aquifers using the criteria in R18-9-A606.

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2. No designation of an exempted aquifer submitted as part of Arizona's UIC program shall be final until approved by EPA as part of the Arizona UIC Program. No designation of an expansion to the areal extent of a Class II enhanced oil recovery or enhanced gas recovery aquifer exemption for the exclusive purpose of Class VI injection for geologic sequestration shall be final until approved by the EPA as a substantial revision of the Arizona UIC Program in accordance with 40 CFR 145.32.
 3. Subsequent to the program approval or promulgation, the Director may, after notice and opportunity for public hearing, identify additional exempted aquifers.
 4. Exemption of aquifers identified:
 - a. Under R18-9-A606(2) shall be treated as a program revision under 40 CFR 145.32;
 - b. Under R18-9-A606(3) shall become final if the Director submits the exemption in writing to the Administrator and the Administrator has not disapproved the designation within 45 days.
- C. Additional aquifer exemption requirements:**
1. For Class III wells, the Director shall require an applicant for a permit which necessitates an aquifer exemption under R18-9-A606(2)(a) to furnish the data necessary to demonstrate that the aquifer is expected to be mineral or hydrocarbon producing. Information contained in the mining plan for the proposed project, such as a map and general description of the mining zone, general information on the mineralogy and geochemistry of the mining zone, analysis of the amenability of the mining zone to the proposed mining method, and a time-table of planned development of the mining zone shall be considered by the Director in addition to the information required by R18-9-C616(D).
 2. For Class II wells, a demonstration of commercial producibility shall be made as follows:
 - a. For a Class II well to be used for enhanced oil recovery processes in a field or project containing aquifers from which hydrocarbons were previously produced, commercial producibility shall be presumed by the Director upon a demonstration by the applicant of historical production having occurred in the project area or field.
 - b. For Class II wells not located in a field or project containing aquifers from which hydrocarbons were previously produced, information such as logs, core data, formation description, formation depth, formation thickness and formation parameters such as permeability and porosity shall be considered by the Director, to the extent such information is available.
- D. Owners or operators of Class II enhanced oil recovery or enhanced gas recovery wells may request that the Director approve an expansion to the areal extent of an aquifer exemption already in place for a Class II enhanced oil recovery or enhanced gas recovery well for the exclusive purpose of Class VI injection for geologic sequestration. Such requests must be treated as a substantial program revision to the Arizona UIC program under 40 CFR 145.32 and will not be final until approved by EPA.**
1. The owner or operator of a Class II enhanced oil recovery or enhanced gas recovery well that requests an expansion of the areal extent of an existing aquifer exemption for the exclusive purpose of Class VI injection for geologic sequestration must define, by narrative description, illustrations, maps or other means, and describe in geographic and/or geometric terms, such as vertical and lateral limits and gradient, that are clear and definite, all aquifers or parts thereof that are requested to be designated as exempted using the criteria in R18-9-A606.
 2. In evaluating a request to expand the areal extent of an aquifer exemption of a Class II enhanced oil recovery or enhanced gas recovery well for the purpose of Class VI injection, the Director must determine that the request meets the criteria for exemptions in R18-9-A606. In making the determination, the Director shall consider:
 - a. Current and potential future use of the USDWs to be exempted as drinking water resources;
 - b. The predicted extent of the injected carbon dioxide plume, and any mobilized fluids that may result in degradation of water quality, over the lifetime of the geologic sequestration project, as informed by computational modeling performed pursuant to R18-9-J659(C)(1), in order to ensure that the proposed injection operation will not at any time endanger USDWs including non-exempted portions of the injection formation;
 - c. Whether the areal extent of the expanded aquifer exemption is of sufficient size to account for any possible revisions to the computational model during reevaluation of the area of review, pursuant to R18-9-J659(E); and
 - d. Any information submitted to support a waiver request made by the owner or operator under R18-9-J670 if appropriate.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-A606. Criteria for Exempted Aquifers

An aquifer or a portion thereof which meets the criteria for an "USDW" in R18-9-A601(70) may be determined under R18-9-A605 to be an "exempted aquifer" for Class I-V wells if it meets the criteria in subsections (A)(1) through (A)(3). Class VI wells must meet the criteria under subsection (A)(4).

1. It does not currently serve as a source of drinking water; and
2. It cannot now and will not in the future serve as a source of drinking water because:
 - a. It is mineral hydrocarbon or geothermal energy producing, or can be demonstrated by a permit applicant as part of a permit application for a Class II or Class III operation to contain minerals or hydrocarbons that considering their quantity and location are expected to be commercially producible;
 - b. It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technically impractical;
 - c. It is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption; or
 - d. It is located over a Class III well mining area subject to subsidence or catastrophic collapse; or
3. The total dissolved solids content of the ground water is more than 3,000 and less than 10,000 mg/l and it is not reasonably expected to supply a public water system.
4. The areal extent of an aquifer exemption for a Class II enhanced oil recovery or enhanced gas recovery well may be expanded for the exclusive purpose of Class VI injection

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tion for geologic sequestration under R18-9-A605(D) if it meets the following criteria:

- a. It does not currently serve as a source of drinking water; and
- b. The total dissolved solids content of the ground water is more than 3,000 mg/l and less than 10,000 mg/l; and
- c. It is not reasonably expected to supply a public water system.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART B. GENERAL PROGRAM REQUIREMENTS

R18-9-B607. Prohibition of Unauthorized Injection

Any underground injection, except into a well authorized by rule or authorized by permit under the Arizona UIC program, is prohibited. The construction of any well required to have a permit is prohibited until the permit has been issued.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-B608. Prohibition of Movement of Fluid into Underground Sources of Drinking Water

- A. No owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows the movement of fluid containing any contaminant into USDWs, if the presence of that contaminant may cause a violation of any primary drinking water regulation under this Article, as shown in Table 1, or may otherwise adversely affect the health of persons. The applicant for a permit shall have the burden of showing that the requirements of this subsection are met.
- B. For Class I, II, III, and VI wells, if any water quality monitoring of an USDW indicates the movement of any contaminant into the USDW, except as authorized under this Article, the Director shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting (including closure of the injection well) as are necessary to prevent such movement. In the case of wells authorized by permit, these additional requirements shall be imposed by modifying the permit in accordance with R18-9-C632 or the permit may be terminated under R18-9-C634 if cause exists, or appropriate enforcement action may be taken if the permit has been violated. In the case of Class V wells authorized by rule see R18-9-I650 through R18-9-I655 in Part I of this Article.
- C. For Class V wells, if at any time the Director learns that a Class V well may cause a violation of primary drinking water regulations under this Article, they shall:
 1. Require the injector to obtain an individual permit;
 2. Order the injector to take such actions (including, where required, closure of the injection well) as may be necessary to prevent the violation; or
 3. Take enforcement action.
- D. Whenever the Director learns that a Class V well may be otherwise adversely affecting the health of persons, they may prescribe such actions as may be necessary to prevent the adverse effect, including any action authorized under subsection (C).
- E. Notwithstanding any other provision of this Section, the Director may take emergency action upon receipt of informa-

tion that a contaminant which is present in or likely to enter a public water system or USDW may present an imminent and substantial endangerment to the health of persons.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-B609. Prohibition of Hazardous Waste Injection and Class IV Wells

- A. Hazardous Waste Injection.
 1. The following are prohibited, except as provided in subsection (B)(3):
 - a. The construction of any well for the purpose of hazardous waste injection.
 - b. The operation of any well for the purpose of hazardous waste injection.
 2. The owner or operator of a well for the purpose of hazardous waste injection shall close the well in accordance with this subsection.
 3. The owner or operator of a well for the purpose of hazardous waste injection shall comply with the following requirements regarding closure of the well.
 - a. Prior to abandoning any well for the purpose of hazardous waste injection, the owner or operator shall plug or otherwise close the well in a manner acceptable to the Director.
 - b. The owner or operator of a well for the purpose of hazardous waste injection must notify the Director of intent to abandon the well at least 30 days prior to abandonment.
- B. Class IV.
 1. The following are prohibited, except as provided in subsection (B)(3):
 - a. The construction of any Class IV well.
 - b. The operation or maintenance of any Class IV well.
 2. The owner or operator of a Class IV well shall comply with the requirements of R18-9-H649 regarding closure of Class IV wells.
 3. Wells used to inject contaminated groundwater that has been treated and is being reinjected into the same formation that it was drawn are not prohibited by this Section if such injection is approved by the Administrator or the Director pursuant to subsections (B)(3)(a), (b) or (c):
 - a. Provisions for cleanup of releases under CERCLA, or
 - b. The requirements and provisions under RCRA, or
 - c. The requirements and provisions under other applicable state laws for corrective and remedial action.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-B610. Waiver of Requirement by Director

- A. When injection does not occur into, through, or above an USDW, the Director may authorize a well or project with less stringent requirements for area of review, construction, mechanical integrity, operation, monitoring, and reporting than required under this Article or R18-9-D636 to the extent that reduction in requirements will not result in an increased risk of movement of fluids into an USDW.
- B. When injection occurs through or above an USDW, but the radius of endangering influence when computed under R18-9-

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B612(A) is smaller or equal to the radius of the well, the Director may authorize a well or project with less stringent requirements for operation, monitoring, and reporting than required under R18-9-D636 to the extent that a reduction in requirements will not result in an increased risk of movement of fluids into an USDW.

- C. When reducing requirements under this Section, the Director shall prepare a fact sheet under R18-9-C619 explaining the reasons for the action.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-B611. Records

The Director may require, by written notice on a selective well-by-well basis, an owner or operator of an injection well to establish and maintain records, make reports, conduct monitoring, and provide other information as is deemed necessary to determine whether the owner or operator has acted or is acting in compliance with this Article and Part C of the SDWA or its implementing regulations.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-B612. Area of Review

- A. The area of review for each injection well or each field, project or area of the State shall be determined according to this Section. The Director may solicit input from the owners or operators of injection wells within the State as to which method is most appropriate for each geographic area or field.
- B. Where the area of review is determined according to the zone of endangering influence:
 - 1. The zone of endangering influence shall be:
 - a. In the case of application or applications for well permit or permits under R18-9-C616 that area the radius of which is the lateral distance in which the pressures in the injection zone may cause the migration of the injection and/or formation fluid into an USDW; or
 - b. In the case of an application for an area permit under R18-9-C624, the project area plus a circumscribing area the width of which is the lateral distance from the perimeter of the project area, in which the pressures in the injection zone may cause the migration of the injection and/or formation fluid into an USDW.
 - 2. Computation of the zone of endangering influence may be based upon the parameters listed in the following equation and should be calculated for an injection time period equal to the expected life of the injection well or pattern. The following modified Theis equation illustrates one form which the mathematical model may take.
 - a.

$$r = \left(\frac{2.25KHt}{510^x} \right)^{1/2}$$

where:

$$X = \frac{4\pi KH (h_w - h_{bo} \times S_p G_b)}{2.3Q}$$

r = Radius of endangering influence from injection well (length)

K = Hydraulic conductivity of the injection zone (length/time)

- H = Thickness of the injection zone (length)
- t = Time of injection (time)
- S = Storage coefficient (dimensionless)
- Q = Injection rate (volume/time)
- h_{bo} = Observed original hydrostatic head of injection zone (length) measured from the base of the lowermost USDW
- h_w = Hydrostatic head of USDW (length) measured from the base of the lowest USDW
- S_p G_b = Specific gravity of fluid in the injection zone (dimensionless)
- π = 3.142 (dimensionless)

- b. The equation in subsection (B)(2)(a) is based on the following assumptions:
 - 1. The injection zone is homogeneous and isotropic;
 - 2. The injection zone has infinite area extent;
 - 3. The injection well penetrates the entire thickness of the injection zone;
 - 4. The well diameter is infinitesimal compared to “r” when injection time is longer than a few minutes; and
 - 5. The emplacement of fluid into the injection zone creates instantaneous increase in pressure.
- C. Where Fixed Radius is used, the following shall apply:
 - 1. In the case of application of applications for well permit or permits under R18-9-C616 a fixed radius around the well of not less than one-quarter mile may be used.
 - 2. In the case of an application for an area permit under R18-9-C624, a fixed radius width of not less than one-quarter mile for circumscribing area may be used.
 - 3. In determining the fixed radius, the following factors shall be taken into consideration: Chemistry of injected and formation fluids; hydrogeology; population and ground-water use and dependence; and historical practices in the area.
- D. If the area of review is determined by a mathematical model according to subsection (B), the permissible radius is the result of such calculation even if it is less than one-fourth mile.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-B613. Mechanical Integrity

- A. An injection well has mechanical integrity if:
 - 1. There is no significant leak in the casing, tubing or packer; and
 - 2. There is no significant fluid movement into an USDW through vertical channels adjacent to the injection well bore.
- B. One of the following methods must be used to evaluate the absence of significant leaks under subsection (A)(1):
 - 1. Following an initial pressure test, monitoring of the tubing-casing annulus pressure with sufficient frequency to be representative, as determined by the Director, while maintaining an annulus pressure different from atmospheric pressure measured at the surface;
 - 2. Pressure test with liquid or gas; or
 - 3. Records of monitoring showing the absence of significant changes in the relationship between injection pressure

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and injection flow rate for the following Class II enhanced recovery wells:

- a. Existing wells completed without a packer provided that a pressure test has been performed and the data is available and provided further that one pressure test shall be performed at a time when the well is shut down and if the running of such a test will not cause further loss of significant amounts of oil or gas; or
 - b. Existing wells constructed without a long string casing, but with surface casing which terminates at the base of fresh water provided that local geological and hydrological features allow such construction and provided further that the annular space shall be visually inspected. For these wells, the Director shall prescribe a monitoring program which will verify the absence of significant fluid movement from the injection zone into an USDW.
- C. One of the following methods must be used to determine the absence of significant fluid movement under subsection (A)(2):
1. The results of a temperature or noise log;
 2. For Class II only, cementing records demonstrating the presence of adequate cement to prevent such migration;
 3. For Class III wells where the nature of the casing precludes the use of the logging techniques prescribed at subsection (C)(1), cementing records demonstrating the presence of adequate cement to prevent such migration; or
 4. For Class III wells where the Director elects to rely on cementing records to demonstrate the absence of significant fluid movement, the monitoring program prescribed by R18-9-G647(B) shall be designed to verify the absence of significant fluid movement.
- D. The Director may allow the use of a test to demonstrate mechanical integrity other than those listed in subsections (B) and (C)(2) with the written approval of the Administrator.
- E. In conducting and evaluating the tests enumerated in this Section or others to be allowed by the Director, the owner or operator and the Director shall apply methods and standards generally accepted in the industry. When the owner or operator reports the results of mechanical integrity tests to the Director, they shall include a description of the test or tests and the method or methods used. In making the evaluation, the Director shall review monitoring and other test data submitted since the previous evaluation.
- F. The Director may require additional or alternative tests if the results presented by the owner or operator under subsection (E) are not satisfactory to the Director to demonstrate that there is no movement of fluid into or between USDWs resulting from the injection activity.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-B614. Plugging and Abandoning Class I, II, III, IV, and V Wells

- A. Requirements for Class I, II and III wells.
1. Prior to abandoning Class I, II and III wells, the well shall be plugged with cement in a manner which will not allow the movement of fluids either into or between USDWs. The Director may allow Class III wells to use other plugging materials if the Director is satisfied that such materi-

als will prevent movement of fluids into or between USDWs.

2. Placement of the cement plugs shall be accomplished by one of the following:
 - a. The Balance method;
 - b. The Dump Bailer method;
 - c. The Two-Plug method; or
 - d. An alternative method approved by the Director, which will reliably provide a comparable level of protection to USDWs.
 3. The well to be abandoned shall be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once or by a comparable method prescribed by the Director, prior to the placement of the cement plug or plugs.
 4. The plugging and abandonment plan required under R18-9-D635(15) and R18-9-D636(A)(5) shall, in the case of a Class III project which underlies or is in an aquifer which has been exempted under R18-9-A606, also demonstrate adequate protection of USDWs. The Director shall prescribe aquifer cleanup and monitoring where it is deemed necessary and feasible to insure adequate protection of USDWs.
- B. Requirements for Class IV wells. Prior to abandoning a Class IV well, the owner or operator shall close the well in accordance with R18-9-H649.
- C. Requirements for Class V wells.
1. Prior to abandoning a Class V well, the owner or operator shall close the well in a manner that prevents the movement of fluid containing any contaminant into an USDW, if the presence of that contaminant may cause a violation of any primary drinking water regulation under Table 1 of this Article or may otherwise adversely affect the health of persons.
 2. The owner or operator shall dispose of or otherwise manage any soil, gravel, sludge, liquids, or other materials removed from or adjacent to the well in accordance with all applicable Federal, State, and local regulations and requirements.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-B615. Transitioning from Class II to Class VI Injection Well

- A. Owners and operators that are injecting carbon dioxide for the primary purpose of long-term storage into an oil and gas reservoir must apply for and obtain a Class VI geologic sequestration permit when there is an increased risk to the USDWs compared to Class II operations. In determining if there is an increased risk to USDWs, the owner or operator must consider the factors specified in subsection (B).
- B. The Director shall determine when there is an increased risk to USDWs compared to Class II operations and a Class VI permit is required. In order to make this determination the Director shall consider the following:
1. Increase in reservoir pressure within the injection zone or zones;
 2. Increase in carbon dioxide injection rates;
 3. Decrease in reservoir production rates;
 4. Distance between the injection zone or zones and USDWs;
 5. Suitability of the Class II area of review delineation;

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6. Quality of abandoned well plugs within the area of review;
 7. The owner's or operator's plan for recovery of carbon dioxide at the cessation of injection;
 8. The source and properties of injected carbon dioxide; and
 9. Any additional site-specific factors as determined by the Director.
9. A listing of any historic property or potential historic property as defined by R12-8-301.
- E. Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this Section for a period of at least three years from the date the application is signed.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART C. AUTHORIZATION BY PERMIT FOR UNDERGROUND INJECTION

R18-9-C616. Individual Permits; Application for Individual Permits

- A. Unless an underground injection well is authorized by rule under R18-9-I650, all injection activities including construction of an injection well are prohibited until the owner or operator is authorized by permit. Authorization by rule for a well or project that has submitted a permit application terminates for the well or project upon the effective date of the permit. Procedures for applications, issuance, and administration of emergency permits are found exclusively under R18-9-C625.
- B. When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.
- C. Any person who performs or proposes an underground injection for which a permit is or will be required shall submit an application to the Director in accordance with the Arizona UIC program as follows:
1. For existing wells, as expeditiously as practicable.
 2. For new injection wells, except new wells authorized by an existing area permit under R18-9-C624(C), at a reasonable time before construction is expected to begin.
- D. All applicants for Class I, II, III, and V permits shall provide the following information to the Director, using the application form provided by the Director. Applicants for Class VI permits shall follow the criteria provided in R18-9-J657.
1. Activities conducted by the applicant which require a permit;
 2. Name, mailing address, and location of the facility for which the application is submitted;
 3. Up to four NAICS codes which best reflect the principal products or services provided by the facility;
 4. The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity;
 5. A listing of all state and federal environmental permits or construction approvals received or applied for and other relevant environmental permits;
 6. A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, and other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within a quarter mile of the facility property boundary;
 7. A brief description of the nature of the business;
 8. A plugging and abandonment plan that meets the requirements of R18-9-B614 and is acceptable to the Director;
- E. All permit applications, except those submitted for Class II wells, shall be signed as follows:
1. For a corporation: by a responsible corporate officer. For the purpose of this Section, a responsible corporate officer means:
 - a. A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or
 - b. The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 2. For a Partnership or sole proprietorship: by a general Partner or the proprietor, respectively; or
 3. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this Section, a principal executive officer of a Federal agency includes:
 - a. The chief executive officer of the agency; or
 - b. A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.
- B. All reports required by permits, other information requested by the Director, and all permit applications submitted for Class II wells under R18-9-C616 shall be signed by a person described in subsection (A), or by a duly authorized representative of that person. A person is a duly authorized representative only if:
1. The authorization is made in writing by a person described in subsection (A);
 2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility; and
 3. The written authorization is submitted to the Director.
- C. If an authorization under subsection (B) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (B) must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.
- D. Any person signing a document under subsection (A) or (B) shall make the following certification: *I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry*

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of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C618. Draft Permits

- A. Once an application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application.
- B. If the Director tentatively decides to deny the permit application, they shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this Section. If the Director's final decision is that the tentative decision to deny the permit application was incorrect, they shall withdraw the notice of intent to deny and proceed to prepare a draft permit under subsection (D).
- C. If the Director decides to prepare a draft permit, it shall contain the following information, to the extent applicable:
 1. All conditions under R18-9-D635;
 2. All compliance schedules under R18-9-D637;
 3. All monitoring requirements under R18-9-D638; and
 4. Permit conditions under R18-9-D636.
- D. All draft permits prepared under this Section shall be accompanied by a brief summary of the basis for the draft permit conditions or the intent to deny, including references to applicable statutory or regulatory provisions and a fact sheet pursuant to R18-9-C619. The Director shall provide the applicant with the draft permit and the fact sheet and allow reasonable time for informal comment by the applicant prior to publicly noticing the draft permit and fact sheet. The Director shall give notice of opportunity for a public hearing and public comment, issue a final permit decision, and respond to comments.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C619. Fact Sheet

- A. A fact sheet shall be prepared for every draft permit for a UIC facility or activity. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The Director shall send the fact sheet to the applicant and, on request, to any other person.
- B. The fact sheet shall include, when applicable:
 1. A brief description of the type of facility or activity that is the subject of the draft permit.
 2. The type and quantity of wastes, fluids, or pollutants that are proposed to be or are being injected.
 3. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record.
 4. Reasons why any requested variance or alternatives to required standards do or do not appear justified.

5. A description of the procedures for reaching a final decision on the draft permit, including:
 - a. The beginning and ending dates of the comment period under R18-9-C620 and the address where comments will be received;
 - b. Procedures for requesting a hearing and the nature of that hearing; and
 - c. Any other procedures by which the public may Participate in the final decision.
6. The name and telephone number of a person to contact for additional information.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C620. Public Notice of Permit Actions and Public Comment Period

- A. The Director shall give public notice that the following actions have occurred:
 1. A draft permit that has been prepared under R18-9-C618, and
 2. A hearing has been scheduled under R18-9-C622.
- B. Public notices may describe more than one permit or permit action.
- C. Public notice of the preparation of a draft permit required under subsection (A):
 1. Shall allow at least 30 days for public comment; and
 2. Shall be given at least 30 days before the hearing date.
- D. Public notice of activities described in subsection (A) shall be given by the following methods:
 1. Delivery of a copy of the notice to:
 - a. The applicant;
 - b. Any affected federal, state, tribal, or local agency, or council of government;
 - c. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, and the State Historic Preservation Office;
 - d. Any person who requested, in writing, notification of the activity;
 - e. Any persons on a contact list developed from past permit proceedings and public outreach; and
 - f. For Class VI injection well UIC permits, mailing or e-mailing a notice to State and local oil and gas regulatory agencies and State agencies regulating mineral exploration and recovery and all agencies that oversee injection wells in the State.
 2. For Major Facilities only, newspaper publication in accordance with A.A.C. R18-1-401(A)(1).
- E. All public notices issued under this Part shall contain the following information:
 1. Name and address of the Department;
 2. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;
 3. A brief description of the business conducted at the facility or activity described in the permit application or the draft permit;
 4. Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, fact sheet, and the application;
 5. A brief description of the comment procedures, the time and place of any hearing, including a statement of proce-

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dures to request a hearing, unless a hearing has already been scheduled, and other procedures that the public may use to participate in the final permit decision; and

6. Any additional information considered necessary to the permit decision.
- F.** In addition to the general public notice described in subsection (E), the public notice of hearing under R18-9-C622 shall contain the following information:
1. Reference to the date of previous public notices relating to the permit;
 2. Date, time, and place of the hearing; and
 3. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.
- G.** In addition to the general public notice described in subsection (E), the Director shall deliver a copy of the fact sheet, permit application, and draft permit to all persons identified in subsections (D)(1)(a), (b), and (c).

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C621. Public Comments and Requests for Public Hearings

During the public comment period provided under R18-9-C620, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in R18-9-C623.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C622. Public Hearings

- A.** The Director shall hold a public hearing whenever they find, on the basis of a request, a significant degree of public interest in a draft permit or permits.
- B.** The Director may also hold a public hearing at their discretion such as when a hearing might clarify one or more issues involved in the permit decision. The Director may designate a presiding officer if a hearing is held.
- C.** Public notice of the hearing shall be given as specified in R18-9-C620.
- D.** Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under R18-9-C620 shall automatically be extended to the close of any public hearing under this Section. The hearing officer may also extend the comment period by so stating at the hearing.
- E.** An audio recording or written transcript of the hearing shall be made available to the public upon request.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C623. Response to Comments

- A.** At the time that any final permit is issued under R18-9-C627, the Director shall issue a response to comments. This response shall:
 1. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and
 2. Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.
- B.** The response to comments shall be available to the public.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C624. Area Permits

- A.** The Director may issue a permit on an area basis, rather than for each well individually, provided that the permit is for injection wells:
 1. Described and identified by location in permit application or applications if they are existing wells, except that the Director may accept a single description of wells with substantially the same characteristics;
 2. Within the same well field, facility site, reservoir, project, or similar unit located in Arizona;
 3. Operated by a single owner or operator;
 4. Used to inject fluids other than hazardous waste; and
 5. Other than Class VI wells.
- B.** Area permits shall specify:
 1. The area within which underground injections are authorized; and
 2. The requirements for construction, monitoring, reporting, operation, and abandonment, for all wells authorized by the permit.
- C.** The area permit may authorize the permittee to construct and operate, convert, or plug and abandon wells within the permit area provided:
 1. The permittee notifies the Director at such time as the permit requires;
 2. The additional well satisfies the criteria in subsection (A) and meets the requirements specified in the permit under subsection (B); and
 3. The cumulative effects of drilling and operation of additional injection wells are considered by the Director during evaluation of the area permit application and are acceptable to the Director.
- D.** If the Director determines any well that is constructed pursuant to subsection (C) does not satisfy any of the requirements of subsections (C)(1) and (2) the Director may modify the permit under R18-9-C632, terminate under R18-9-C634, or take enforcement action. If the Director determines that cumulative effects are unacceptable, the permit may be modified under R18-9-C632.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C625. Emergency Permits

- A.** Notwithstanding any other provision of this Article, the Director may temporarily permit a specific underground injection if:
 1. An imminent and substantial endangerment to the health of persons will result unless a temporary emergency permit is granted; or

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2. A substantial and irretrievable loss of oil or gas resources will occur unless a temporary emergency permit is granted to a Class II well; and
 - a. Timely application for a permit could not practically have been made; and
 - b. The injection will not result in the movement of fluids into USDWs; or
 3. A substantial delay in production of oil or gas resources will occur unless a temporary emergency permit is granted to a new Class II well and the temporary authorization will not result in the movement of fluids into an USDW.
- B. Requirements for issuance.**
1. Any temporary permit under subsection (A)(1) shall be for no longer term than required to prevent the hazard.
 2. Any temporary permit under subsection (A)(2) shall be for no longer than 90 days, except that if a permit application has been submitted prior to the expiration of the 90-day period, the Director may extend the temporary permit until final action on the application.
 3. Any temporary permit under subsection (A)(3) shall be issued only after a complete permit application has been submitted and shall be effective until final action on the application.
 4. Notice of any temporary permit under this Section shall be published in accordance with R18-9-C621 within 10 days of the issuance of the permit.
 5. The temporary permit under this Section may be either oral or written. If oral, it must be followed within five calendar days by a written temporary emergency permit.
 6. The Director shall condition the temporary permit in any manner they determine is necessary to ensure that the injection will not result in the movement of fluids into an USDW.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C626. Effect of a Permit

- A.** Except for Class II and III wells, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with this Article and Part C of the SDWA. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in R18-9-C632 and R18-9-C634.
- B.** The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.
- C.** The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C627. Final Permit Decision and Notification

- A.** Issuance of a final permit decision by the Director shall be accompanied by the permit and an updated fact sheet per R18-9-C619, if applicable, and a notification to the applicant and each person who has submitted written comments or requested notice of the final permit decision. The notice and hearing procedures are subject to either A.R.S. Title 41, Chapter 6, Article 10, or A.R.S. Title 49, Chapter 2, Article 7.

- B.** The notice shall include:
 1. If applicable, the reasons for the denial, revocation or termination, including reference to the statutes or rules on which the decision is based.
 2. A description of the party's right to request a hearing and a reference to the procedures for appealing the final permit decision, including the number of days within which an appeal may be filed and the name and telephone number of the Department contact person who can answer questions regarding the appeals process.
 3. A reference to the applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06.
- C.** If the final permit decision is based on a determination by the Director that the applicable criteria under R18-9-A606 are not satisfied, then that determination may be included as part of the appeal.
- D.** The final permit decision shall take effect 30 days after its issuance in accordance with the notification requirements of subsection A unless stayed pursuant to A.R.S. Title 41, Chapter 6, Article 10, or A.R.S. Title 49, Chapter 2, Article 7.
- E.** If, under this Article, the issuance, modification, or revocation and reissuance of a permit necessitates a new aquifer exemption or enlargement of a previously approved aquifer exemption, then the issuance, modification, or revocation and reissuance of the permit is appealable, but shall not become effective unless the new aquifer exemption or enlargement of the previously approved aquifer exemption has been approved by the Administrator.
- F.** If, under this Article, the issuance, modification, or revocation and reissuance of a permit necessitates an injection depth waiver pursuant to R18-9-J670 of this Article then the issuance, modification, or revocation and reissuance of the permit is appealable, but shall not become effective until the Director is in receipt of written concurrence from the Administrator.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C628. Permit Duration

- A.** Permits for Class I and Class V wells shall be effective for a fixed term not to exceed 10 years. UIC permits for Class II and III wells shall be issued for a period up to the operating life of the facility. UIC permits for Class VI wells shall be issued for the operating life of the facility and the post-injection site care period. The Director shall review each issued Class II, III, and VI well UIC permit at least once every five years to determine whether it should be modified, revoked and reissued, terminated, or a minor modification made as provided in R18-9-C632.
- B.** Except as provided in R18-9-C629, the term of a permit shall not be extended by modification beyond the maximum duration specified in this Section.
- C.** The Director may issue any permit for a duration that is less than the full allowable term under this Section.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C629. Continuation of Expiring Permits

- A.** The conditions of an expiring permit continue in force under A.R.S. § 41-1092.11(A) until the effective date of a new permit if:

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1. The permittee has submitted a timely application that is a complete application for a new permit; and
 2. The Director, through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the prior permit.
- B.** Permits continued under this Section remain fully effective and enforceable.
- C.** When the permittee is not in compliance with the conditions of the expiring or expired permits the Director may choose to do any or all of the following:
1. Initiate enforcement action based upon the permit that has been continued;
 2. Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;
 3. Issue a new permit under this Article with appropriate conditions; or
 4. Take other action as authorized under this Article.
- D.** Upon the effective date of EPA's approval of Arizona's UIC program, the Department shall administer any permit authorized or issued under the EPA UIC program in the state of Arizona, excluding Indian lands. The Director may continue expired or expiring EPA-issued UIC permits until the effective date of a new state-issued UIC permit.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C630. Permit Transfer

- A.** Except as provided in subsection (B), a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued under R18-9-C632(F)(2), or a minor modification made under R18-9-C633(4), to identify the new permittee and incorporate such other requirements as may be necessary under this Article the Safe Drinking Water Act.
- B.** As an alternative to transfers under subsection (A), any UIC permit for a well not injecting hazardous waste or injecting carbon dioxide for geological sequestration may be automatically transferred to a new permittee if:
1. The current permittee notifies the Director at least 30 days in advance of the proposed transfer date referred to in subsection (B)(2);
 2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer or permit responsibility, coverage, and liability between them, and the notice demonstrates that the financial responsibility requirements of R18-9-D636(A)(6) will be met by the new permittee; and
 3. The Director does not notify the existing permittee and the proposed new permittee of the Director's intent to modify or revoke and reissue the permit. A modification under this Section may also be a minor modification under R18-9-C633. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in subsection (B)(2).

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022

(Supp. 22-3).

R18-9-C631. Modification; Revocation and Reissuance; or Termination of Permits

- A.** Permits may only be modified or revoked and reissued pursuant to R18-9-C632 or terminated pursuant to R18-9-C634 either at the request of any interested person, including the permittee, or upon the Director's initiative. All requests shall be made in writing and shall contain facts or reasons supporting the request.
- B.** If the Director decides a request to modify, revoke and reissue, or terminate is not justified, they shall send the requestor a brief written response giving a reason for the decision. Denial of a request to terminate does not require a notice of intent to deny. Denial of a request for modification or revocation and reissuance requires a notice of intent to deny only when the request is made by the permittee, the scope of the request has not previously been requested and denied and the request is not for a minor modification. A notice of intent to deny is a type of draft permit which shall follow the same procedures as any draft permit prepared pursuant to R18-9-C618.
- C.** If the Director preliminarily decides to modify or revoke and reissue a permit under R18-9-C632, they shall prepare a draft permit under R18-9-C618 incorporating the proposed changes and notify the permittee in writing of the reason for the preliminary decision to modify or revoke and reissue a permit with reference to the statute or rule on which the decision is based. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. The Director shall require the submission of a new application in the case of revoked and reissued permits.
- D.** In a permit modification under this Section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this Section, the entire permit is reopened just as if the permit had expired and was being reissued. During any modification or revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is issued.
- E.** Minor modifications pursuant to R18-9-C633 are not subject to the requirements of this Section.
- F.** If the Director preliminarily decides to terminate under R18-9-C634(A)(1), (2) or (3), the Director shall issue a notice of intent to terminate that identifies the reason for the preliminary decision to terminate with reference to the statute or rule on which the decision is based. A notice of intent to terminate is not required when a permittee requests termination under R18-9-C634(A)(4). A notice of intent to terminate is a type of draft permit which shall follow the same procedures as any draft permit prepared pursuant to R18-9-C618.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C632. Modification; Revocation and Reissuance of Permits

- A.** When the Director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit, receives a request for modification or revocation and reissuance under R18-9-C631, or conducts a review of the permit file) they may determine whether or not one or more of the causes listed in subsections

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- (E) and (F) for modification or revocation and reissuance or both exist.
- B.** If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to the limitations of subsection (G), and may request an updated application if necessary.
- C.** If cause does not exist under this Section or R18-9-C633, the Director shall not modify or revoke and reissue the permit.
- D.** If a permit modification satisfies the criteria in R18-9-C633 for “minor modifications” the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures under this Article must be followed.
- E.** For Class II, Class III or Class VI wells the following may be causes for revocation and reissuance as well as modification; and for all other wells the following may be cause for revocation or reissuance as well as modification when the permittee requests or agrees:
1. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.
 2. Permits other than for Class II and III wells may be modified during their terms for this cause only if the information was not available at the time of permit issuance, other than revised regulations, guidance, or test methods, and would have justified the application of different permit conditions at the time of issuance. For UIC area permits under R18-9-C624, this cause shall include any information indicating that cumulative effects on the environment are unacceptable.
 3. The standards or regulations on which the permit was based have been changed by promulgation of new regulations or by judicial decision after the permit was issued. Permits other than those for Class II, Class III or Class VI wells may be modified during their permit terms for this cause only as follows:
 - a. For promulgation of amended standards or regulations, when:
 - i. The permit condition requested to be modified was based on a regulation promulgated under this Article;
 - ii. ADEQ has revised, withdrawn, or modified that portion of the regulation on which the permit condition was based; and
 - iii. A permittee requests modification in accordance with R18-9-C631 within 90 days after *Arizona Administrative Register* notice of the ADEQ action on which the request is based.
 - b. For judicial decisions, a court of competent jurisdiction has remanded and stayed ADEQ promulgated regulations if the remand and stay concern that portion of the regulations on which the permit condition was based and a request is filed by the permittee in accordance with R18-9-C631 within 90 days of judicial remand.
 4. The Director determines if good cause exists for modification of a compliance schedule. Good cause includes unforeseen circumstances, like a strike, a flood, a materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. See also R18-9-C633 (minor modifications).
 5. Additionally, for Class VI wells, whenever the Director determines that permit changes are necessary based on:
 - a. Area of review reevaluations under R18-9-J659(E)(1);
 - b. Any amendments to the testing and monitoring plan under R18-9-J665(10);
 - c. Any amendments to the injection well plugging plan under R18-9-J667(C);
 - d. Any amendments to the post-injection site care and site closure plan under R18-9-J668(A)(3);
 - e. Any amendments to the emergency and remedial response plan under R18-9-J669(D); or
 - f. A review of monitoring and/or testing results conducted in accordance with permit requirements.
- F.** The following are causes to modify or, alternatively, revoke and reissue a permit:
1. Cause exists for termination under R18-9-C634, and the Director determines that modification or revocation and reissuance is appropriate.
 2. The Director has received notification of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer under R18-9-C630(B) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.
 3. A determination that the waste being injected is a hazardous waste as defined in A.R.S. § 49-921 either because the definition has been revised, or because a previous determination has been changed.
- G.** Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C633. Minor Modifications of Permits

Upon the consent of the permittee, the Director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this Section, without following the procedures of this Article. Any permit modification not processed as a minor modification under this Section must be made for cause and with a draft permit and public notice as required by R18-9-C632. Minor modifications may only:

1. Correct typographical errors;
2. Require more frequent monitoring or reporting by the permittee;
3. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;
4. Allow for a change in ownership or operational control of a facility where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director;
5. Change quantities or types of fluids injected which are within the capacity of the facility as permitted and, in the

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judgment of the Director, would not interfere with the operation of the facility or its ability to meet conditions described in the permit and would not change its classification;

6. Change construction requirements approved by the Director pursuant to R18-9-D636(A)(1), provided that any such alteration shall comply with the requirements of this Article;
7. Amend a plugging and abandonment plan that has been updated under R18-9-D636(A)(5); or
8. Amend a Class VI injection well testing and monitoring plan, plugging plan, post-injection site care and site closure plan, or emergency and remedial response plan where the modifications merely clarify or correct the plan, as determined by the Director.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-C634. Termination of Permits

- A. The Director may terminate a permit during its term, or deny a permit renewal application for the following causes:
 1. Noncompliance by the permittee with any condition of the permit;
 2. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or
 3. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or
 4. The permittee has requested termination of their permit due to the completion of the terms and conditions therein, including proper abandonment or plugging pursuant to R18-9-B614.
- B. The Director shall follow the applicable procedures as required under R18-9-C631(F) in terminating any permit under this Section.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART D. PERMIT CONDITIONS FOR UNDERGROUND INJECTION**R18-9-D635. Conditions Applicable to All Permits**

The following conditions apply to all UIC permits. All conditions applicable to all permits shall be incorporated into the permits issued under this Article, either expressly or referenced by specific citation. If incorporated by reference, a specific citation to this Section must be given in the permit.

1. The permittee must comply with all conditions of any permit issued under this Article. Any permit noncompliance constitutes a violation of this Article and is grounds for enforcement action; for permit modification, revocation and reissuance, or termination; or for denial of a permit renewal application unless otherwise authorized in an emergency permit under R18-9-C625.
2. If the permittee wishes to continue any activity regulated by permit under this Article after the expiration date of this permit, the permittee must apply for and obtain a new permit.

3. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
4. The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.
5. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control, and related appurtenances, that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.
6. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
7. This permit does not convey property rights of any sort, or any exclusive privilege.
8. The permittee shall furnish to the Director, within a time specified, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.
9. The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:
 - a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
 - b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
 - c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
 - d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by this Article the SDWA, any substances or parameters at any location.
10. Monitoring and records.
 - a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
 - b. The permittee shall retain records of all monitoring information, including the following:
 - i. Calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from

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- the date of the sample, measurement, report, or application. This period may be extended by request of the Director at any time; and
- ii. The nature and composition of all injected fluids until three years after the completion of any plugging and abandonment procedures specified under R18-9-D636(A)(5), or under this Article as appropriate. The Director may require the owner or operator to deliver the records to the Director at the conclusion of the retention period.
 - c. Records of monitoring information shall include:
 - i. The date, exact place, and time of sampling or measurements;
 - ii. The individual or individuals who performed the sampling or measurements;
 - iii. The date or dates analyses were performed;
 - iv. The individual or individuals who performed the analyses;
 - v. The analytical techniques or methods used; and
 - vi. The results of such analyses.
 - d. Owners or operators of Class VI wells shall retain records as specified in Part J of this Article, including R18-9-J659(G), R18-9-J666(6), R18-9-J667(D), R18-9-J668(F), and R18-9-J668(H).
11. All applications, reports, or information submitted to the Director shall be signed and certified as required under R18-9-C617.
 12. Reporting requirements.
 - a. The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility.
 - b. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.
 - c. This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under this Article.
 - d. Monitoring results shall be reported at the intervals specified in this permit.
 - e. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 30 days following each schedule date.
 - f. The permittee shall report any noncompliance that may endanger health or the environment within 24 hours, including:
 - i. Any monitoring or other information that indicates any contaminant may cause an endangerment to a USDW; or
 - ii. Any noncompliance with a permit condition or malfunction of the injection system that may cause fluid migration into or between USDWs. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
 - g. The permittee shall report all instances of noncompliance not reported under subsections (A)(12)(a), (d), (e), and (f), at the time monitoring reports are submitted. The reports shall contain the information listed in subsection (A)(12)(f).
 - h. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.
 13. Except for all new wells authorized by an area permit under R18-9-C624(C), a new injection well may not commence injection until construction is complete; and:
 - a. The permittee has submitted notice of completion of construction to the Director; and
 - b. Either of the following apply:
 - i. The Director has inspected or otherwise reviewed the new injection well and finds it is in compliance with the conditions of the permit; or
 - ii. The permittee has not received notice from the Director of the intent to inspect or otherwise review the new injection well within 13 days of the date of the notice under subsection (A)(13)(a), in which case prior inspection or review is waived and the permittee may commence injection. The Director shall include in the notice a reasonable time period in which the well shall be inspected.
 14. The permittee shall notify the Director at such times as the permit requires before conversion or abandonment of the well or in the case of area permits before closure of the project.
 15. A Class I, II, or III permit shall include, and a Class V permit may include, conditions that meet the requirements of R18-9-B614 to ensure that plugging and abandonment of the well will not allow the movement of fluids into or between USDWs. Where the plan meets the requirements of R18-9-B614, the Director shall incorporate the plan into the permit as a permit condition. Where the Director's review of an application indicates that the permittee's plan is inadequate, the Director may require the applicant to revise the plan, prescribe conditions meeting the requirements of this subsection, or deny the permit. A Class VI permit shall include conditions that meet the requirements set forth in R18-9-J667. Where the plan meets the requirements of R18-9-J667, the Director shall incorporate it into the permit as a permit condition. For purposes of this subsection, temporary or intermittent cessation of injection operations is not abandonment.
 16. Within 60 days after plugging a well or at the time of the next quarterly report, whichever is less, the owner or operator shall submit a report to the Director. If the quarterly report is due less than 15 days before completion of plugging, then the report shall be submitted within 60 days. The report shall be certified as accurate by the per-

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son who performed the plugging operation. Such report shall consist of either:

- a. A statement that the well was plugged in accordance with the plan previously submitted to the Director; or
 - b. Where actual plugging differed from the plan previously submitted, an updated version of the plan on the form supplied by the Director, specifying the differences.
17. Duty to establish and maintain mechanical integrity.
- a. The owner or operator of a Class I, II, III or VI well permitted under this Article shall establish mechanical integrity prior to commencing injection or on a schedule determined by the Director. Thereafter the owner or operator of Class I, II, and III wells must maintain mechanical integrity as defined in R18-9-B613 and the owner or operator of Class VI wells must maintain mechanical integrity as defined in R18-9-J664.
 - b. When the Director determines that a Class I, II, III or VI well lacks mechanical integrity pursuant to R18-9-B613 or R18-9-J664 for Class VI, written notice of the determination will be given to the owner or operator. Unless the Director requires immediate cessation, the owner or operator shall cease injection into the well within 48 hours of receipt of the Director's determination. The Director may allow plugging of the well pursuant to the requirements of R18-9-B614 or require the permittee to perform such additional construction, operation, monitoring, reporting, and corrective action as is necessary to prevent the movement of fluid into or between USDWs caused by the lack of mechanical integrity. The owner or operator may resume injection upon written notification from the Director that the owner or operator has demonstrated mechanical integrity pursuant to R18-9-B613.
 - c. The Director may allow the owner or operator of a well that lacks mechanical integrity pursuant to R18-9-B613(A)(1) to continue or resume injection, if the owner or operator has made a satisfactory demonstration that there is no movement of fluid into or between USDWs.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-D636. Establishing Permit Conditions

- A. In addition to conditions required in R18-9-D635, the Director shall establish conditions, as required on a case-by-case basis under R18-9-C628 (Permit Duration), R18-9-D637 (Schedules of Compliance), and R18-9-D638 (Requirements for Recording and Reporting Monitoring Results). Permits for owners or operators of Class VI injection wells shall include conditions meeting the requirements of Part J of this Article. Permits for other wells shall contain the following requirements, when applicable.
1. Construction requirements as set forth in this Article. Existing wells shall achieve compliance with such requirements according to a compliance schedule established as a permit condition. The owner or operator of a proposed new injection well shall submit plans for testing, drilling, and construction as part of the permit appli-

cation. Except as authorized by an area permit, no construction may commence until a permit has been issued containing construction requirements. New wells shall be in compliance with these requirements prior to commencing injection operations. Changes in construction plans during construction may be approved by the Director as minor modifications as defined under R18-9-C633. No such changes may be physically incorporated into construction of the well prior to approval of the modification by the Director.

2. Corrective action as set forth in R18-9-D639 and R18-9-J659.
3. Operation requirements as set forth in this Article; the permit shall establish any maximum injection volumes and/or pressures necessary to assure that fractures are not initiated in the confining zone, that injected fluids do not migrate into any USDW, that formation fluids are not displaced into any USDW, and to assure compliance with the operating requirements under this Article.
4. Monitoring and reporting requirements as set forth in this Article. The permittee shall be required to identify types of tests and methods used to generate the monitoring data. Monitoring of the nature of injected fluids shall comply with an analytical method prescribed in A.A.C. R9-14-610, or an alternative analytical method approved under A.A.C. R9-14-610(C), or as approved by the Director. A test result from a sample taken to determine compliance with a national primary drinking water standard is valid only if the sample is analyzed by a laboratory that is licensed by the Arizona Department of Health Services, an out-of-state laboratory licensed under A.R.S. § 36-495.14, or a laboratory exempted under A.R.S. § 36-495.02, for the analysis performed.
5. After a cessation of operations for two years the owner or operator shall plug and abandon the well in accordance with the plan unless they:
 - a. Provide notice to the Director; and
 - b. Describe actions or procedures, satisfactory to the Director, that the owner or operator will take to ensure that the well will not endanger USDWs during the period of temporary abandonment. These actions and procedures shall include compliance with the technical requirements applicable to active injection wells unless waived by the Director.
6. Financial responsibility.
 - a. The permittee, including the transferor of a permit, is required to demonstrate and maintain financial responsibility and resources to close, plug, and abandon the underground injection operation in a manner prescribed by the Director until:
 - i. The well has been plugged and abandoned in accordance with an approved plugging and abandonment plan pursuant to R18-9-D635(15), R18-9-B614, and R18-9-J667, and submitted a plugging and abandonment report pursuant to R18-9-D635(16); or
 - ii. The well has been converted in compliance with the requirements of R18-9-D635(14); or
 - iii. The transferor of a permit has received notice from the Director that the owner or operator receiving transfer of the permit, the new permittee, has demonstrated financial responsibility for the well.

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- b. The permittee shall show evidence of such financial responsibility to the Director by the submission of a surety bond, or other adequate assurance, such as a financial statement or other materials acceptable to the Director. For Class VI wells, the permittee shall show evidence of such financial responsibility to the Director by the submission of a qualifying instrument, such as a financial statement or other materials acceptable to the Director. The owner or operator of a Class VI well must comply with the financial responsibility requirements set forth in R18-9-J660.
7. A permit for any Class I, II, III or VI well or injection project that lacks mechanical integrity shall include, and for any Class V well may include, a condition prohibiting injection operations until the permittee shows to the satisfaction of the Director under R18-9-B613 or R18-9-J664 for Class VI, that the well has mechanical integrity.
8. The Director shall impose on a case-by-case basis such additional conditions as are necessary to prevent the migration of fluids into USDWs.
- B.** In addition to conditions required in all permits, the Director shall establish conditions in permits as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of this Article. Applicable requirements include, but are not limited to:
1. State statutory or regulatory requirements in effect prior to final administrative disposition of a permit; or
 2. Any requirement in effect prior to the modification or revocation and reissuance of a permit, to the extent allowed under R18-9-C632.
- C.** New or reissued permits, and to the extent allowed under R18-9-C632 modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in this Section.
- D.** All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.
- E.** Permits shall provide language on duration, expiration and termination.
3. The permit shall be written to require that if subsection (A)(1) is applicable, progress reports be submitted no later than 30 days following each interim date and the final date of compliance.
- B.** A permit applicant or permittee may cease conducting regulated activities at a given time by plugging and abandonment rather than continue to operate and meet permit requirements as follows:
1. If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:
 - a. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or
 - b. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.
 2. If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination that will ensure timely compliance with the applicable requirements.
 3. If the permittee is undecided whether to cease conducting regulated activities, the Director may issue or modify a permit to contain two schedules as follows:
 - a. Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date that ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;
 - b. One schedule shall lead to timely compliance with applicable requirements;
 - c. The second schedule shall lead to cessation of the regulated activities by a date that ensures timely compliance with applicable requirements; and
 - d. Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under subsection (B)(3)(a) it shall follow the schedule leading to compliance if the decision is to continue conducting the regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.
 4. The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Director, such as a resolution of the board of Directors of a corporation.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-D637. Compliance Schedule

- A.** A permit may, when appropriate, specify a schedule for compliance with this Article.
1. Any compliance schedules shall require compliance as soon as possible, and in no case later than three years after the effective date of the permit.
 2. Except as provided in subsection (B)(1)(b), if a permit establishes a compliance schedule that exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.
 - a. The time between interim dates shall not exceed one year.
 - b. If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-D638. Requirements for Recording and Reporting Monitoring Results

All permits shall specify:

1. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods, including biological monitoring methods when appropriate;
2. Required monitoring including type, intervals, and frequency sufficient to yield data that are representative of

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the monitored activity including when appropriate, continuous monitoring; and

3. Applicable reporting requirements based upon the impact of the regulated activity and as specified under this Article. Reporting shall be no less frequent than specified in the above rules.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-D639. Corrective Action

- A. Applicants for Class I, II, or III injection well permits shall identify the location of all known wells within the injection well's area of review that penetrates the injection zone, or in the case of Class II wells operating over the fracture pressure of the injection formation, all known wells within the area of review penetrating formations affected by the increase in pressure. For such wells that are improperly sealed, completed, or abandoned, the applicant shall also submit a plan consisting of such steps or modifications as are necessary to prevent movement of fluid into USDWs. Where the plan is adequate, the Director shall incorporate it into the permit as a condition. Where the Director's review of an application indicates that the permittee's plan is inadequate, the Director shall require the applicant to revise the plan, prescribe a plan for corrective action as a condition of the permit under subsection (B) through (E), or deny the application. The Director may disregard the provisions of R18-9-B612 and this Section when reviewing an application to permit an existing Class II well.
- B. Any permit issued for an existing injection well, other than Class II wells, requiring corrective action shall include a compliance schedule requiring any corrective action accepted or prescribed under subsection (A) to be completed as soon as possible.
- C. No owner or operator of a new injection well may begin injection until all required corrective action has been taken.
- D. The Director may require as a permit condition that injection pressure be so limited that pressure in the injection zone does not exceed hydrostatic pressure at the site of any improperly completed or abandoned well within the area of review. This pressure limitation shall satisfy the corrective action requirement. Alternatively, such injection pressure limitation can be part of a compliance schedule and last until all other required corrective action has been taken.
- E. When setting corrective action requirements for Class III wells, the Director shall consider the overall effect of the project on the hydraulic gradient in potentially affected USDWs, and the corresponding changes in potentiometric surface or surfaces and flow direction or directions rather than the discrete effect of each well. If a decision is made that corrective action is not necessary based on the determinations above, the monitoring program required in R18-9-G647(B) shall be designed to verify the validity of such determinations.
- F. In determining the adequacy of corrective action proposed by the applicant under this Section and in determining the additional steps needed to prevent fluid movement into USDWs, the following criteria and factors shall be considered by the Director:
 1. Nature and volume of injected fluid;
 2. Nature of native fluids or by-products of injection;
 3. Potentially affected population;
 4. Geology;
 5. Hydrology;

6. History of the injection operation;
7. Completion and plugging records;
8. Abandonment procedures in effect at the time the well was abandoned; and
9. Hydraulic connections with USDWs.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART E. CLASS I INJECTION WELL REQUIREMENTS

R18-9-E640. Class I; Construction Requirements

- A. All Class I wells shall be sited in such a fashion that they inject into a formation which is beneath the lowermost formation containing, within one-quarter mile of the well bore, an USDW.
- B. All Class I wells shall be cased and cemented to prevent the movement of fluids into or between USDWs. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:
 1. Depth to the injection zone;
 2. Injection pressure, external pressure, internal pressure, and axial loading;
 3. Hole size;
 4. Size and grade of all casing strings, such as wall thickness, diameter, nominal weight, length, joint Specification, and construction material;
 5. Corrosiveness of injected fluid, formation fluids, and temperatures;
 6. Lithology of injection and confining intervals; and
 7. Type or grade of cement.
- C. All Class I injection wells, except those municipal wells injecting non-corrosive wastes, shall inject fluids through tubing with a packer set immediately above the injection zone, or tubing with an approved fluid seal as an alternative. The tubing, packer, and fluid seal shall be designed for the expected service.
 1. The use of other alternatives to a packer may be allowed with the written approval of the Director. To obtain approval, the operator shall submit a written request to the Director, which shall set forth the proposed alternative and all technical data supporting its use. The Director shall approve the request if the alternative method will reliably provide a comparable level of protection to USDWs. The Director may approve an alternative method solely for an individual well or for general use.
 2. In determining and specifying requirements for tubing, packer, or alternatives the following factors shall be considered:
 - a. Depth of setting;
 - b. Characteristics of injection fluid such as chemical content, corrosiveness, and density;
 - c. Injection pressure;
 - d. Annular pressure;
 - e. Rate, temperature and volume of injected fluid; and
 - f. Size of casing.
- D. Appropriate logs and other tests shall be conducted during the drilling and construction of new Class I wells. A descriptive report interpreting the results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the Director. At a minimum, such logs and tests shall include:

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1. Deviation checks on all holes constructed by first drilling a pilot hole, and then enlarging the pilot hole by reaming or another method. Such checks shall be at sufficiently frequent intervals to assure that vertical avenues for fluid migration in the form of diverging holes are not created during drilling.
 2. Such other logs and tests as may be needed after taking into account the availability of similar data in the area of the drilling site, the construction plan, and the need for additional information that may arise from time to time as the construction of the well progresses. In determining which logs and tests shall be required, the following logs shall be considered for use in the following situations:
 - a. For surface casing intended to protect USDWs:
 - i. Resistivity, spontaneous potential, and caliper logs before the casing is installed; and
 - ii. A cement bond, temperature, or density log after the casing is set and cemented.
 - b. For intermediate and long strings of casing intended to facilitate injection:
 - i. Resistivity, spontaneous potential, porosity, and gamma ray logs before the casing is installed;
 - ii. Fracture finder logs; and
 - iii. A cement bond, temperature, or density log after the casing is set and cemented.
- E.** At a minimum, the following information concerning the injection formation shall be determined or calculated for new Class I wells:
1. Fluid pressure;
 2. Temperature;
 3. Fracture pressure;
 4. Other physical and chemical characteristics of the injection matrix; and
 5. Physical and chemical characteristics of the formation fluids.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-E641. Class I; Operating, Monitoring, and Reporting Requirements

- A.** Operating requirements shall, at a minimum, specify that:
1. Except during stimulation injection pressure at the wellhead shall not exceed a maximum which shall be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. In no case shall injection pressure initiate fractures in the confining zone or cause the movement of injection or formation fluids into an USDW.
 2. Injection between the outermost casing protecting USDWs and the well bore is prohibited.
 3. Unless an alternative to a packer has been approved under R18-9-E640(C), the annulus between the tubing and the long string of casings shall be filled with a fluid approved by the Director and a pressure, also approved by the Director, shall be maintained on the annulus.
- B.** Monitoring requirements shall, at a minimum, include:
1. The analysis of the injected fluids with sufficient frequency to yield representative data of their characteristics;
 2. Installation and use of continuous recording devices to monitor injection pressure, flow rate and volume, and the

pressure on the annulus between the tubing and the long string of casing;

3. A demonstration of mechanical integrity pursuant to R18-9-B613 at least once every five years during the life of the well; and
 4. The type, number and location of wells within the area of review to be used to monitor any migration of fluids into and pressure in the USDWs, the parameters to be measured and the frequency of monitoring.
- C.** Reporting requirements shall, at a minimum, include:
1. Quarterly reports to the Director on:
 - a. The physical, chemical and other relevant characteristics of injection fluids;
 - b. Monthly average, maximum and minimum values for injection pressure, flow rate and volume, and annular pressure; and
 - c. The results of monitoring prescribed under subsection (B)(4).
 2. Reporting the results, with the first quarterly report after the completion, of:
 - a. Periodic tests of mechanical integrity;
 - b. Any other test of the injection well conducted by the permittee if required by the Director; and
 - c. Any well work over.
- D.** Ambient monitoring.
1. Based on a site-specific assessment of the potential for fluid movement from the well or injection zone and on the potential value of monitoring wells to detect such movement, the Director shall require the owner or operator to develop a monitoring program. At a minimum, the Director shall require monitoring of the pressure buildup in the injection zone annually, including at a minimum, a shut down of the well for a time sufficient to conduct a valid observation of the pressure fall-off curve.
 2. When prescribing a monitoring system the Director may also require:
 - a. Continuous monitoring for pressure changes in the first aquifer overlying the confining zone. When such a well is installed, the owner or operator shall, on a quarterly basis, sample the aquifer and analyze for constituents specified by the Director;
 - b. The use of indirect, geophysical techniques to determine the position of the waste front, the water quality in a formation designated by the Director, or to provide other site specific data;
 - c. Periodic monitoring of the ground water quality in the first aquifer overlying the injection zone;
 - d. Periodic monitoring of the ground water quality in the lowermost USDW; and
 - e. Any additional monitoring necessary to determine whether fluids are moving into or between USDWs.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-E642. Class I; Information to be Considered by the Director

- A.** This Section sets forth the information which must be considered by the Director in authorizing Class I wells.
1. For an existing or converted new Class I well the Director may rely on the existing permit file for those items of information listed in subsections (B), (C) and (D) which are current and accurate in the file.

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2. For a newly drilled Class I well, the Director shall require the submission of all the information listed in subsections (B), (C) and (D) which are current and accurate in the file.
 3. For both existing and new Class I wells certain maps, cross sections, tabulations of wells within the area of review and other data may be included in the application by reference provided they are current, readily available to the Director and sufficiently identified to be retrieved.
- B.** Prior to the issuance of a permit for an existing Class I well to operate or the construction or conversion of a new Class I well the Director shall consider the following:
1. Information required in R18-9-C616;
 2. A map showing the injection well or wells for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number, or name, and location of all producing wells, injection wells, abandoned wells, dry holes, surface bodies of water, springs, mines, quarries, water wells and other pertinent surface features including residences and roads. The map should also show faults, if known or suspected. Only information of public record is required to be included on this map;
 3. A tabulation of data on all wells within the area of review which penetrate into the proposed injection zone. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion, and any additional information the Director may require;
 4. Maps and cross sections indicating the general vertical and lateral limits of all USDWs within the area of review, their position relative to the injection formation and the direction of water movement, where known, in each USDW which may be affected by the proposed injection;
 5. Maps and cross sections detailing the geologic structure of the local area;
 6. Generalized maps and cross sections illustrating the regional geologic setting;
 7. Proposed operating data:
 - a. Average and maximum daily rate and volume of the fluid to be injected;
 - b. Average and maximum injection pressure; and
 - c. Source and an analysis of the chemical, physical, radiological and biological characteristics of injection fluids;
 8. Proposed formation testing program to obtain an analysis of the chemical, physical and radiological characteristics of and other information on the receiving formation;
 9. Proposed stimulation program;
 10. Proposed injection procedure;
 11. Schematic or other appropriate drawings of the surface and subsurface construction details of the well.
 12. Contingency plans to cope with all shut-ins or well failures so as to prevent migration of fluids into any USDW;
 13. Plans, including maps, for meeting the monitoring requirements in R18-9-E641(B);
 14. For wells within the area of review which penetrate the injection zone but are not properly completed or plugged, the corrective action proposed to be taken under R18-9-D639;
 15. Construction procedures including a cementing and casing program, logging procedures, deviation checks, and a drilling, testing, and coring program; and
 16. A certificate that the applicant has assured, through a performance bond or other appropriate means, the resources necessary to close, plug or abandon the well as required by R18-9-D636(A)(6).
- C.** Prior to granting approval for the operation of a Class I well the Director shall consider the following information:
1. All available logging and testing program data on the well;
 2. A demonstration of mechanical integrity pursuant to R18-9-B613;
 3. The anticipated maximum pressure and flow rate at which the permittee will operate;
 4. The results of the formation testing program;
 5. The actual injection procedure;
 6. The compatibility of injected waste with fluids in the injection zone and minerals in both the injection zone and the confining zone; and
 7. The status of corrective action on defective wells in the area of review.
- D.** Prior to granting approval for the plugging and abandonment of a Class I well the Director shall consider the following information:
1. The type and number of plugs to be used;
 2. The placement of each plug including the elevation of the top and bottom;
 3. The type and grade and quantity of cement to be used;
 4. The method for placement of the plugs; and
 5. The procedure to be used to meet the requirements of R18-9-B614(C).

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART F. CLASS II INJECTION WELL REQUIREMENTS**R18-9-F643. Class II; Construction Requirements**

- A.** All new Class II wells shall be sited in such a fashion that they inject into a formation which is separated from any USDW by a confining zone that is free of known open faults or fractures within the area of review.
- B.** All Class II injection wells:
1. Shall be cased and cemented to prevent movement of fluids into or between USDWs. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:
 - a. Depth to the injection zone;
 - b. Depth to the bottom of all USDWs; and
 - c. Estimated maximum and average injection pressures.
 2. In addition the Director may consider information on:
 - a. Nature of formation fluids;
 - b. Lithology of injection and confining zones;
 - c. External pressure, internal pressure, and axial loading;
 - d. Hole size;
 - e. Size and grade of all casing strings; and
 - f. Class of cement.
- C.** The requirements in subsection (B) need not apply to existing or newly converted Class II wells located in existing fields if:
1. Regulatory controls for casing and cementing existed for those wells at the time of drilling and those wells are in compliance with those controls; and

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2. Well injection will not result in the movement of fluids into an USDW so as to create a significant risk to the health of persons.
- D.** The requirements in subsection (B) need not apply to newly drilled wells in existing fields if:
1. They meet the requirements of the State for casing and cementing applicable to that field at the time of submission of the State program to the Administrator; and
 2. Well injection will not result in the movement of fluids into an USDW so as to create a significant risk to the health of persons.
- E.** Appropriate logs and other tests shall be conducted during the drilling and construction of new Class II wells. A descriptive report interpreting the results of that portion of those logs and tests which specifically relate to (1) an USDW and the confining zone adjacent to it, and (2) the injection and adjacent formations shall be prepared by a knowledgeable log analyst and submitted to the Director. At a minimum, these logs and tests shall include:
1. Deviation checks on all holes constructed by first drilling a pilot hole and then enlarging the pilot hole, by reaming or another method. Such checks shall be at sufficiently frequent intervals to assure that vertical avenues for fluid movement in the form of diverging holes are not created during drilling.
 2. Such other logs and tests as may be needed after taking into account the availability of similar data in the area of the drilling site, the construction plan, and the need for additional information that may arise from time to time as the construction of the well progresses. In determining which logs and tests shall be required the following shall be considered by the Director in setting logging and testing requirements:
 - a. For surface casing intended to protect USDWs in areas where the lithology has not been determined:
 - i. Electric and caliper logs before casing is installed; and
 - ii. A cement bond, temperature, or density log after the casing is set and cemented.
 - b. For intermediate and long strings of casing intended to facilitate injection:
 - i. Electric, porosity and gamma ray logs before the casing is installed;
 - ii. Fracture finder logs; and
 - iii. A cement bond, temperature, or density log after the casing is set and cemented.
- F.** At a minimum, the following information concerning the injection formation shall be determined or calculated for new Class II wells or projects:
1. Fluid pressure;
 2. Estimated fracture pressure; and
 3. Physical and chemical characteristics of the injection zone.
- or propagate existing fractures in the confining zone adjacent to the USDWs. In no case shall injection pressure cause the movement of injection or formation fluids into an USDW.
2. Injection between the outermost casing protecting USDWs and the well bore shall be prohibited.
- B.** Monitoring requirements shall, at a minimum, include:
1. Monitoring of the nature of injected fluids at time intervals sufficiently frequent to yield data representative of their characteristics;
 2. Observation of injection pressure, flow rate, and cumulative volume at least with the following frequencies:
 - a. Weekly for produced fluid disposal operations;
 - b. Monthly for enhanced recovery operations;
 - c. Daily during the injection of liquid hydrocarbons and injection for withdrawal of stored hydrocarbons; and
 - d. Daily during the injection phase of cyclic steam operations; and
 - e. Record one observation of injection pressure, flow rate and cumulative volume at reasonable intervals no greater than 30 days;
 3. A demonstration of mechanical integrity pursuant to R18-9-B613 at least once every five years during the life of the injection well;
 4. Maintenance of the results of all monitoring until the next permit review; and
 5. Hydrocarbon storage and enhanced recovery may be monitored on a field or project basis rather than on an individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one injection well, operating with a common manifold. Separate monitoring systems for each well are not required provided the owner/operator demonstrates that manifold monitoring is comparable to individual well monitoring.
- C.** Reporting requirements.
1. Reporting requirements shall at a minimum include an annual report to the Director summarizing the results of monitoring required under subsection (B). Such summary shall include monthly records of injected fluids, and any major changes in characteristics or sources of injected fluid. Previously submitted information may be included by reference.
 2. Owners or operators of hydrocarbon storage and enhanced recovery projects may report on a field or project basis rather than an individual well basis where manifold monitoring is used.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-F645. Class II; Information to be Considered by the Director

- A.** This Section sets forth the information which must be considered by the Director in authorizing Class II wells. Certain maps, cross sections, tabulations of wells within the area of review, and other data may be included in the application by reference provided they are current, readily available to the Director and sufficiently identified to be retrieved.
- B.** Prior to the issuance of a permit for an existing Class II well to operate or the construction or conversion of a new Class II well the Director shall consider the following:

R18-9-F644. Class II; Operating, Monitoring, and Reporting Requirements

- A.** Operating requirements shall, at a minimum, specify that:
1. Injection pressure at the wellhead shall not exceed a maximum which shall be calculated so as to assure that the pressure during injection does not initiate new fractures

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1. Information required in R18-9-C616.
 2. A map showing the injection well or project area for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number or name and location of all existing producing wells, injection wells, abandoned wells, dry holes, and water wells. The map may also show surface bodies of waters, mines (surface and subsurface), quarries and other pertinent surface features including residences and roads, and faults if known or suspended. Only information of public record and pertinent information known to the applicant is required to be included on this map. This requirement does not apply to existing Class II wells.
 3. A tabulation of data reasonably available from public records or otherwise known to the applicant on all wells within the area of review included on the map required under subsection (B)(2) which penetrate the proposed injection zone or, in the case of Class II wells operating over the fracture pressure of the injection formation, all known wells within the area of review which penetrate formations affected by the increase in pressure. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and completion, and any additional information the Director may require. In cases where the information would be repetitive and the wells are of similar age, type, and construction the Director may elect to only require data on a representative number of wells. This requirement does not apply to existing Class II wells.
 4. Proposed operating data:
 - a. Average and maximum daily rate and volume of fluids to be injected;
 - b. Average and maximum injection pressure; and
 - c. Source and an appropriate analysis of the chemical and physical characteristics of the injection fluid.
 5. Appropriate geological data on the injection zone and confining zone including lithologic description, geological name, thickness and depth.
 6. Geologic name and depth to bottom of all USDWs which may be affected by the injection.
 7. Schematic or other appropriate drawings of the surface and subsurface construction details of the well.
 8. In the case of new injection wells the corrective action proposed to be taken by the applicant under R18-9-D639.
 9. A certificate that the applicant has assured through a performance bond or other appropriate means, the resources necessary to close, plug or abandon the well as required by R18-9-D636(A)(6).
- C.** In addition the Director may consider the following:
1. Proposed formation testing program to obtain the information required by R18-9-F643(F);
 2. Proposed stimulation program;
 3. Proposed injection procedure;
 4. Proposed contingency plans, if any, to cope with well failures so as to prevent migration of contaminating fluids into an USDW;
 5. Plans for meeting the monitoring requirements of R18-9-F644(B).
- D.** Prior to granting approval for the operation of a Class II well the Director shall consider the following information:
1. All available logging and testing program data on the well;
 2. A demonstration of mechanical integrity pursuant to R18-9-B613;
 3. The anticipated maximum pressure and flow rate at which the permittee will operate;
 4. The results of the formation testing program;
 5. The actual injection procedure; and
 6. For new wells the status of corrective action on defective wells in the area of review.
- E.** Prior to granting approval for the plugging and abandonment of a Class II well the Director shall consider the following information:
1. The type, and number of plugs to be used;
 2. The placement of each plug including the elevation of top and bottom;
 3. The type, grade, and quantity of cement to be used;
 4. The method of placement of the plugs; and
 5. The procedure to be used to meet the requirements of R18-9-B614(A).

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART G. CLASS III INJECTION WELL REQUIREMENTS**R18-9-G646. Class III; Construction Requirements**

- A.** All new Class III wells shall be cased and cemented to prevent the migration of fluids into or between USDWs. The Director may waive the cementing requirement for new wells in existing projects or portions of existing projects where they have substantial evidence that no contamination of USDWs would result. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:
1. Depth to the injection zone;
 2. Injection pressure, external pressure, internal pressure, axial loading, etc.;
 3. Hole size;
 4. Size and grade of all casing strings, such as wall thickness, diameter, nominal weight, length, joint specification, and construction material;
 5. Corrosiveness of injected fluids and formation fluids;
 6. Lithology of injection and confining zones; and
 7. Type and grade of cement.
- B.** Appropriate logs and other tests shall be conducted during the drilling and construction of new Class III wells. A descriptive report interpreting the results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the Director. The logs and tests appropriate to each type of Class III well shall be determined based on the intended function, depth, construction and other characteristics of the well, availability of similar data in the area of the drilling site and the need for additional information that may arise from time to time as the construction of the well progresses. Deviation checks shall be conducted on all holes where pilot holes and reaming are used, unless the hole will be cased and cemented by circulating cement to the surface. Where deviation checks are necessary they shall be conducted at sufficiently frequent intervals to assure that vertical avenues for fluid migration in the form of diverging holes are not created during drilling.
- C.** Where the injection zone is a formation which is naturally water-bearing the following information concerning the injection zone shall be determined or calculated for new Class III wells or projects:
1. Fluid pressure;
 2. Fracture pressure; and

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3. Physical and chemical characteristics of the formation fluids.
- D.** Where the injection formation is not a water-bearing formation, the information in subsection (C)(2) must be submitted.
- E.** Where injection is into a formation which contains water with less than 10,000 mg/l TDS monitoring wells shall be completed into the injection zone and into any USDWs above the injection zone which could be affected by the mining operation. These wells shall be located in such a fashion as to detect any excursion of injection fluids, process by-products, or formation fluids outside the mining area or zone. If the operation may be affected by subsidence or catastrophic collapse the monitoring wells shall be located so that they will not be physically affected.
- F.** Where injection is into a formation which does not contain water with less than 10,000 mg/l TDS, no monitoring wells are necessary in the injection stratum.
- G.** Where the injection wells penetrate a USDW in an area subject to subsidence or catastrophic collapse an adequate number of monitoring wells shall be completed into the USDW to detect any movement of injected fluids, process by-products or formation fluids into the USDW. The monitoring wells shall be located outside the physical influence of the subsidence or catastrophic collapse.
- H.** In determining the number, location, construction and frequency of monitoring of the monitoring wells the following criteria shall be considered:
1. The population relying on the USDW affected or potentially affected by the injection operation;
 2. The proximity of the injection operation to points of withdrawal of drinking water;
 3. The local geology and hydrology;
 4. The operating pressures and whether a negative pressure gradient is being maintained;
 5. The nature and volume of the injected fluid, the formation water, and the process by-products; and
 6. The injection well density.
- 2.** Monitoring of injection pressure and either flow rate or volume semi-monthly, or metering and daily recording of injected and produced fluid volumes as appropriate.
- 3.** Demonstration of mechanical integrity pursuant to R18-9-B613 at least once every five years during the life of the well for salt solution mining.
- 4.** Monitoring of the fluid level in the injection zone semi-monthly, where appropriate and monitoring of the parameters chosen to measure water quality in the monitoring wells required by R18-9-G646(E), semi-monthly.
- 5.** Quarterly monitoring of wells required by R18-9-G646(G).
- 6.** All Class III wells may be monitored on a field or project basis rather than an individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one injection well, operating with a common manifold. Separate monitoring systems for each well are not required provided the owner/operator demonstrates that manifold monitoring is comparable to individual well monitoring.
- C.** Reporting requirements shall, at a minimum, include:
1. Quarterly reporting to the Director on required monitoring;
 2. Results of mechanical integrity and any other periodic test required by the Director reported with the first regular quarterly report after the completion of the test; and
 3. Monitoring may be reported on a project or field basis rather than individual well basis where manifold monitoring is used.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-G648. Class III; Information to be Considered by the Director

- A.** This Section sets forth the information which must be considered by the Director in authorizing Class III wells. Certain maps, cross sections, tabulations of wells within the area of review, and other data may be included in the application by reference provided they are current, readily available to the Director and sufficiently identified to be retrieved.
- B.** Prior to the issuance of a permit for an existing Class III well or area to operate or the construction of a new Class III well the Director shall consider the following:
1. Information required in R18-9-C616;
 2. A map showing the injection well or project area for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number or name and location of all existing producing wells, injection wells, abandoned wells, dry holes, public water systems and water wells. The map may also show surface bodies of waters, mines (surface and subsurface) quarries and other pertinent surface features including residences and roads, and faults if known or suspected. Only information of public record and pertinent information known to the applicant is required to be included on this map;
 3. A tabulation of data reasonably available from public records or otherwise known to the applicant on wells within the area of review included on the map required under subsection (B)(2) which penetrate the proposed injection zone. Such data shall include a description of each well's type, construction, date drilled, location,

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-G647. Class III; Operating, Monitoring, and Reporting Requirements

- A.** Operating requirements prescribed shall, at a minimum, specify that:
1. Except during well stimulation, injection pressure at the wellhead shall be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. In no case, shall injection pressure initiate fractures in the confining zone or cause the migration of injection or formation fluids into an USDW.
 2. Injection between the outermost casing protecting USDWs and the well bore is prohibited.
- B.** Monitoring requirements shall, at a minimum, specify:
1. Monitoring of the nature of injected fluids with sufficient frequency to yield representative data on its characteristics. Whenever the injection fluid is modified to the extent that the analysis required by R18-9-G648(B)(7)(c) is incorrect or incomplete, a new analysis as required by R18-9-G648(B)(7)(c) shall be provided to the Director.

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depth, record of plugging and completion, and any additional information the Director may require. In cases where the information would be repetitive and the wells are of similar age, type, and construction the Director may elect to only require data on a representative number of wells;

4. Maps and cross sections indicating the vertical limits of all USDWs within the area of review, their position relative to the injection formation, and the direction of water movement, where known, in every USDW which may be affected by the proposed injection;
 5. Maps and cross sections detailing the geologic structure of the local area;
 6. Generalized map and cross sections illustrating the regional geologic setting;
 7. Proposed operating data:
 - a. Average and maximum daily rate and volume of fluid to be injected;
 - b. Average and maximum injection pressure; and
 - c. Qualitative analysis and ranges in concentrations of all constituents of injected fluids. If the information is confidential pursuant to R18-9-A603 an applicant may, in lieu of the ranges in concentrations, choose to submit maximum concentrations which shall not be exceeded. In such a case the applicant shall retain records of the undisclosed concentrations and provide them upon request to the Director as part of any enforcement investigation.
 8. Proposed formation testing program to obtain the information required by R18-9-G646(C);
 9. Proposed stimulation program;
 10. Proposed injection procedure;
 11. Schematic or other appropriate drawings of the surface and subsurface construction details of the well;
 12. Plans (including maps) for meeting the monitoring requirements of R18-9-G647(B);
 13. Expected changes in pressure, native fluid displacement, direction of movement of injection fluid;
 14. Contingency plans to cope with all shut-ins or well failures so as to prevent the migration of contaminating fluids into USDWs;
 15. A certificate that the applicant has assured, through a performance bond, or other appropriate means, the resources necessary to close, plug, or abandon the well as required by R18-9-D636(A)(5); and
 16. The corrective action proposed to be taken under R18-9-D639.
- C. Prior to granting approval for the operation of a Class III well the Director shall consider the following information:
1. All available logging and testing data on the well;
 2. A satisfactory demonstration of mechanical integrity for all new wells and for all existing salt solution wells pursuant to R18-9-B613;
 3. The anticipated maximum pressure and flow rate at which the permittee will operate;
 4. The results of the formation testing program;
 5. The actual injection procedures; and
 6. The status of corrective action on defective wells in the area of review.
- D. Prior to granting approval for the plugging and abandonment of a Class III well the Director shall consider the following information:
1. The type and number of plugs to be used;

2. The placement of each plug including the elevation of the top and bottom;
3. The type, grade and quantity of cement to be used;
4. The method of placement of the plugs; and
5. The procedure to be used to meet the requirements of R18-9-B614(A).

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART H. CLASS IV INJECTION WELL REQUIREMENTS

R18-9-H649. Class IV; Closure Requirements and Remediation

- A. Closure.
1. Prior to abandoning any Class IV well, the owner or operator shall plug or otherwise close the well in a manner acceptable to the Director.
 2. The owner or operator of a Class IV well must notify the Director of intent to abandon the well at least 30 days prior to abandonment.
- B. Remediation. Injection wells used to inject contaminated groundwater that has been treated and is being injected into the same formation from which it was drawn are authorized by rule for the life of the well if such subsurface emplacement of fluids is approved by the Administrator or the Director pursuant to subsections (B)(1), (2) or (3):
1. Provisions for cleanup of releases under CERCLA, or
 2. The requirements and provisions under RCRA, or
 3. The requirements and provisions under other applicable state laws for corrective and remedial action.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART I. CLASS V INJECTION WELL REQUIREMENTS

R18-9-I650. Class V; General Requirements

- A. The following requirements apply to Class V Wells authorized by rule:
1. A Class V Injection well is authorized by rule subject to the conditions under this Section.
 2. Well authorization under this Section expires upon the effective date of a permit issued pursuant to R18-9-I651, R18-9-C616, R18-9-C624, R18-9-C625, or upon proper closure of the well.
 3. An owner or operator of a well that is authorized by rule pursuant to this Section is prohibited from injecting into the well:
 - a. Upon the effective date of an applicable permit denial;
 - b. Upon failure to submit a permit application in a timely manner pursuant to R18-9-I651 or R18-9-C616;
 - c. Upon failure to submit inventory information in a timely manner pursuant to R18-9-I652; or
 - d. Upon failure to comply with a request for information in a timely manner pursuant to R18-9-I653.
 4. Submission of the following is required in order to transfer ownership of a well that is authorized by rule pursuant to this Section:
 - a. An inventory, and

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- b. Class V authorized by rule transfer fee pursuant to R18-14-111(3).
- B.** The following requirements apply for all Class V Wells:
1. With certain exceptions listed in subsection (B)(2), Class V injection activity is “authorized by rule,” meaning owners and operators must comply with all the requirements of this Article but do not have to get an individual permit. Well authorization expires once the injection well has been properly closed.
 2. A Class V well requires a permit and shall no longer be authorized by rule upon any of the following:
 - a. Failure to comply with the prohibition of movement standard in R18-9-B608(A).
 - b. The Director specifically requires a Class V permit for the well to operate pursuant to R18-9-I651. In which case rule authorization expires upon the effective date of the permit issued, or you are prohibited from injecting into your well upon:
 - i. Failure to submit a permit application in a timely manner as specified in a notice from the Director; or
 - ii. Upon the effective date of permit denial.
 - c. Failure to submit inventory information as required under R18-9-I652.
 - d. Failure to comply with the Director’s request for additional information under R18-9-I653 in a timely manner.
 3. Prior to abandoning a Class V well, the owner or operator shall meet the plugging requirements in R18-9-B614(C).
 4. In limited cases, the Director may authorize the conversion (reclassification) of a motor vehicle waste disposal well to another type of Class V well. Motor vehicle wells may only be converted if: all motor vehicle fluids are segregated by physical barriers and are not allowed to enter the well; and, injection of motor vehicle waste is unlikely based on a facility’s compliance history and records showing proper waste disposal. The use of a semi-permanent plug as the means to segregate waste is not sufficient to convert a motor vehicle waste disposal well to another type of Class V well.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-I651. Class V; Requiring a Permit

- A.** The Director may require the owner or operator of any Class V injection well authorized by rule under this Article to apply for and obtain an individual or area UIC permit. Cases where individual or area UIC permits may be required include:
1. The injection well is not in compliance with any requirement under this Article or A.R.S. Title 49, Chapter 2, Article 3.3;
 2. The injection well is not or no longer is within the category of wells and types of well operations authorized in the rule; or
 3. The protection of USDWs requires that the injection operation be regulated by requirements, such as for corrective action, monitoring and reporting, or operation, which are not contained in the rule.
- B.** If an individual or area UIC permit is required, the Director shall notify the discharger in writing of the decision. The notice shall include:
1. A brief statement of the reasons for the decision,

2. An application form,
3. A statement setting a deadline to file the application,
4. A statement that on the effective date of issuance or denial of the individual or area UIC permit, coverage by rule will automatically terminate.
5. The applicant’s right to appeal the individual permit requirement under A.R.S. § 49-323 and the name and telephone number of the Department contact person who can answer questions regarding the appeals process.

- C.** An owner or operator of a well authorized by rule may request to be excluded from the coverage of this Section by applying for an individual or area UIC permit. The owner or operator shall submit an application under R18-9-C616 with reasons supporting the request to the Director. The Director may grant any such requests.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-I652. Class V; Inventory Requirements for Class V Wells Authorized by Rule

- A.** The owner or operator of an injection well authorized by rule under R18-9-I650 shall submit inventory information to the Director. Such an owner or operator is prohibited from injecting into the well upon failure to submit inventory information for the well within the timeframe specified in subsection (D).
- B.** As part of the inventory, the Director shall require and the owner/operator shall provide at least the following information:
1. Facility name and location;
 2. Name and address of legal contact;
 3. Ownership of facility;
 4. Nature and type of injection well; and
 5. Operating status of injection well.
- C.** Upon approval of the Arizona UIC Program, the Director shall notify all known owners or operators of injection wells of their duty to submit inventory information in the manner specified by the Director.
- D.** The owner or operator of an injection well shall submit inventory information no later than one year after the effective date of the Arizona UIC program. The Director need not require inventory information from any facility with interim status under RCRA.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-I653. Class V; Requiring Other Information

- A.** In addition to the inventory requirements under R18-9-I652, the Director may require the owner or operator of any well authorized by rule under this Article to submit information as deemed necessary by the Director to determine whether a well may be endangering an USDW in violation of R18-9-B608 of this Part.
- B.** Such information requirements may include, but are not limited to:
1. Performance of ground-water monitoring and the periodic submission of reports of such monitoring;
 2. An analysis of injected fluids, including periodic submission of such analyses; and
 3. A description of the geologic strata through and into which injection is taking place.

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- C. Any request for information under this Section shall be made in writing, and include a brief statement of the reasons for requiring the information. An owner and operator shall submit the information within the time period or time periods provided in the notice.
- D. An owner or operator of an injection well authorized by rule under this Part is prohibited from injecting into the well upon failure of the owner or operator to comply with a request for information within the time period or time periods specified by the Director pursuant to subsection (C). An owner or operator of a well prohibited from injection under this Section shall not resume injection except under a permit issued pursuant to R18-9-I651; R18-9-C616, R18-9-C624, or R18-9-C625.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-I654. Class V; Prohibition of Class V Cesspools and Motor Vehicle Waste Disposal Wells

The construction and operation of cesspools and motor vehicle waste disposal wells are prohibited.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-I655. Class V; Prohibition of Non-Experimental Class V Wells for Geologic Sequestration

The construction, operation or maintenance of any non-experimental Class V geologic sequestration well is prohibited.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

PART J. CLASS VI INJECTION WELL REQUIREMENTS

R18-9-J656. Class VI; Applicability

- A. This Part establishes criteria and standards for underground injection control programs to regulate any Class VI carbon dioxide geologic sequestration injection wells.
- B. This Part applies to any well used to inject carbon dioxide specifically for the purpose of geologic sequestration.
- C. This Part also applies to owners or operators of permit- or rule-authorized Class V experimental carbon dioxide injection projects who seek to apply for Class VI geologic sequestration permit for their well or wells. Owners or operators seeking to convert existing Class I, Class II, or Class V experimental wells to Class VI geologic sequestration wells must demonstrate to the Director that the wells were engineered and constructed to meet the requirements of R18-9-J661 and ensure protection of USDWs, in lieu of requirements at R18-9-J661 and R18-9-J662. A converted well must still meet all other requirements under Part F of this Article.
- D. The following definitions apply to this Part and govern for Class VI wells to the extent that these definitions conflict with those in R18-9-A601:
1. "Area of review" means the region surrounding the geologic sequestration project where USDWs may be endangered by the injection activity. The area of review is delineated using computational modeling that accounts for the physical and chemical properties of all phases of the injected carbon dioxide stream and displaced fluids,

and is based on available site characterization, monitoring, and operational data as set forth in R18-9-J659.

2. "Carbon dioxide plume" means the extent underground, in three dimensions, of an injected carbon dioxide stream.
3. "Carbon dioxide stream" means carbon dioxide that has been captured from an emission source, plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process. This Part does not apply to any carbon dioxide stream that meets the definition of a hazardous waste under A.R.S. § 49-921.
4. "Confining zone" means a geologic formation, group of formations, or part of a formation stratigraphically overlying the injection zone or zones that acts as barrier to fluid movement. For Class VI wells operating under an injection depth waiver, confining zone means a geologic formation, group of formations, or part of a formation stratigraphically overlying and underlying the injection zone or zones.
5. "Corrective action" means the use of Director-approved methods to ensure that wells within the area of review do not serve as conduits for the movement of fluids into USDWs.
6. "Geologic sequestration" means the long-term containment of a gaseous, liquid, or supercritical carbon dioxide stream in subsurface geologic formations. This term does not apply to carbon dioxide capture or transport.
7. "Geologic sequestration project" means an injection well or wells used to emplace a carbon dioxide stream beneath the lowermost formation containing a USDW; or, wells used for geologic sequestration of carbon dioxide that have been granted a waiver of the injection depth requirements pursuant to requirements at R18-9-J670; or, wells used for geologic sequestration of carbon dioxide that have received an expansion to the areal extent of an existing Class II enhanced oil recovery or enhanced gas recovery aquifer exemption pursuant to R18-9-A605 and R18-9-A606. It includes the subsurface three-dimensional extent of the carbon dioxide plume, associated area of elevated pressure, and displaced fluids, as well as the surface area above that delineated region.
8. "Injection zone" means a geologic formation, group of formations, or part of a formation that is of sufficient areal extent, thickness, porosity, and permeability to receive carbon dioxide through a well or wells associated with a geologic sequestration project.
9. "Post-injection site care" means appropriate monitoring and other actions, including corrective action, needed following cessation of injection to ensure that USDWs are not endangered, as required under R18-9-J668.
10. "Pressure front" means the zone of elevated pressure that is created by the injection of carbon dioxide into the subsurface. For the purposes of this Part, the pressure front of a carbon dioxide plume refers to a zone where there is a pressure differential sufficient to cause the movement of injected fluids or formation fluids into a USDW.
11. "Site closure" means the point/time, as determined by the Director following the requirements under R18-9-J668, at which the owner or operator of a geologic sequestration site is released from post-injection site care responsibilities.

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12. "Transmissive fault" or "fracture" means a fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J657. Class VI; Required Permit Information

- A.** This Section sets forth the information which must be considered by the Director in authorizing Class VI wells. For converted Class I, Class II, or Class V experimental wells, certain maps, cross sections, tabulations of wells within the area of review and other data may be included in the application by reference provided they are current, readily available to the Director, and sufficiently identified to be retrieved.
- B.** Prior to the issuance of a permit for the construction of a new Class VI well or the conversion of an existing Class I, Class II, or Class V well to a Class VI well, the owner or operator shall submit, pursuant to R18-9-J666, and the Director shall consider the following:
1. Information required in R18-9-C616(D)(1) through (9);
 2. A map showing the injection well for which a permit is sought and the applicable area of review consistent with R18-9-J659. Within the area of review, the map must show the number or name, and location of all injection wells, producing wells, abandoned wells, plugged wells or dry holes, deep stratigraphic boreholes, State- or EPA-approved subsurface cleanup sites, surface bodies of water, springs, mines (surface and subsurface), quarries, water wells, other pertinent surface features including structures intended for human occupancy, State, Tribal, and Territory boundaries, and roads. The map should also show faults, if known or suspected. Only information of public record is required to be included on this map;
 3. Information on the geologic structure and hydrogeologic properties of the proposed storage site and overlying formations, including:
 - a. Maps and cross sections of the area of review;
 - b. The location, orientation, and properties of known or suspected faults and fractures that may transect the confining zone or zones in the area of review and a determination that they would not interfere with containment;
 - c. Data on the depth, areal extent, thickness, mineralogy, porosity, permeability, and capillary pressure of the injection and confining zone or zones; including geology/facies changes based on field data which may include geologic cores, outcrop data, seismic surveys, well logs, and names and lithologic descriptions;
 - d. Geomechanical information on fractures, stress, ductility, rock strength, and in situ fluid pressures within the confining zone or zones;
 - e. Information on the seismic history including the presence and depth of seismic sources and a determination that the seismicity would not interfere with containment; and
 - f. Geologic and topographic maps and cross sections illustrating regional geology, hydrogeology, and the geologic structure of the local area.
 4. A tabulation of all wells within the area of review which penetrate the injection or confining zone or zones. Such data must include a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion, and any additional information the Director may require;
 5. Maps and stratigraphic cross sections indicating the general vertical and lateral limits of all USDWs, water wells and springs within the area of review, their positions relative to the injection zone or zones, and the direction of water movement, where known;
 6. Baseline geochemical data on subsurface formations, including all USDWs in the area of review;
 7. Proposed operating data for the proposed geologic sequestration site:
 - a. Average and maximum daily rate and volume and/or mass and total anticipated volume and/or mass of the carbon dioxide stream;
 - b. Average and maximum injection pressure;
 - c. The source or sources of the carbon dioxide stream; and
 - d. An analysis of the chemical and physical characteristics of the carbon dioxide stream.
 8. Proposed pre-operational formation testing program to obtain an analysis of the chemical and physical characteristics of the injection zone or zones and confining zone or zones and that meets the requirements at R18-9-J662;
 9. Proposed stimulation program, a description of stimulation fluids to be used and a determination that stimulation will not interfere with containment;
 10. Proposed procedure to outline steps necessary to conduct injection operation;
 11. Schematics or other appropriate drawings of the surface and subsurface construction details of the well;
 12. Injection well construction procedures that meet the requirements of R18-9-J661;
 13. Proposed area of review and corrective action plan that meets the requirements under R18-9-J659;
 14. A demonstration, satisfactory to the Director, that the applicant has met the financial responsibility requirements under R18-9-J660;
 15. Proposed testing and monitoring plan required by R18-9-J665;
 16. Proposed injection well plugging plan required by R18-9-J667(B);
 17. Proposed post-injection site care and site closure plan required by R18-9-J668(A);
 18. At the Director's discretion, a demonstration of an alternative post-injection site care timeframe required by R18-9-J668(C);
 19. Proposed emergency and remedial response plan required by R18-9-J669;
 20. A list of contacts, submitted to the Director, for those States, Tribes, and Territories identified to be within the area of review of the Class VI project based on information provided in subsection (B)(2);
 21. A listing of any historic property or potential historic property as defined by R12-8-301; and
 22. Any other information requested by the Director.
- C.** The Director shall notify, in writing, any States, Tribes, or Territories within the area of review of the Class VI project based on information provided in subsections (B)(2) and (B)(20) of the permit application.
- D.** Prior to granting approval for the operation of a Class VI well, the Director shall consider the following information:
1. The final area of review based on modeling, using data obtained during logging and testing of the well and the

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formation as required by subsections (D)(2), (3), (4), (6), (7), and (10);

2. Any relevant updates, based on data obtained during logging and testing of the well and the formation as required by subsections (D)(3), (4), (6), (7), and (10), to the information on the geologic structure and hydrogeologic properties of the proposed storage site and overlying formations, submitted to satisfy the requirements of subsection (B)(3);
 3. Information on the compatibility of the carbon dioxide stream with fluids in the injection zone or zones and minerals in both the injection and the confining zone or zones, based on the results of the formation testing program, and with the materials used to construct the well;
 4. The results of the formation testing program required at subsection (B)(8);
 5. Final injection well construction procedures that meet the requirements of R18-9-J661;
 6. The status of corrective action on wells in the area of review;
 7. All available logging and testing program data on the well required by R18-9-J662;
 8. A demonstration of mechanical integrity pursuant to R18-9-J664;
 9. Any updates to the proposed area of review and corrective action plan, testing and monitoring plan, injection well plugging plan, post-injection site care and site closure plan, or the emergency and remedial response plan submitted under subsection (B), which are necessary to address new information collected during logging and testing of the well and the formation as required by all subsections of this Section, and any updates to the alternative post-injection site care timeframe demonstration submitted under subsection (B), which are necessary to address new information collected during the logging and testing of the well and the formation as required by this Section; and
 10. Any other information requested by the Director.
- E. Owners or operators seeking a waiver of the requirement to inject below the lowermost USDW must also refer to R18-9-J670 and submit a supplemental report, as required at R18-9-J670. The supplemental report is not part of the permit application.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J658. Class VI; Minimum Criteria for Siting

- A. Owners or operators of Class VI wells must demonstrate to the satisfaction of the Director that the wells will be sited in areas with a suitable geologic system. The owners or operators must demonstrate that the geologic system comprises:
1. An injection zone or zones of sufficient areal extent, thickness, porosity, and permeability to receive the total anticipated volume of the carbon dioxide stream.
 2. Confining zone or zones free of transmissive faults or fractures and of sufficient areal extent and integrity to contain the injected carbon dioxide stream and displaced formation fluids and allow injection at proposed maximum pressures and volumes without initiating or propagating fractures in the confining zone or zones.
- B. The Director may require owners or operators of Class VI wells to identify and characterize additional zones that will

impede vertical fluid movement, are free of faults and fractures that may interfere with containment, allow for pressure dissipation, and provide additional opportunities for monitoring, mitigation, and remediation.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J659. Class VI; Area of Review and Corrective Action

- A. The area of review is the region surrounding the geologic sequestration project where USDWs may be endangered by the injection activity. The area of review is delineated using computational modeling that accounts for the physical and chemical properties of all phases of the injected carbon dioxide stream and is based on available site characterization, monitoring, and operational data.
- B. The owner or operator of a Class VI well must prepare, maintain, and comply with a plan to delineate the area of review for a proposed geologic sequestration project, periodically reevaluate the delineation, and perform corrective action that meets the requirements of this Section and is acceptable to the Director. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. As a part of the permit application for approval by the Director, the owner or operator must submit an area of review and corrective action plan that includes the following information:
1. The method for delineating the area of review that meets the requirements of subsection (C), including the model to be used, assumptions that will be made, and the site characterization data on which the model will be based.
 2. A description of:
 - a. The minimum fixed frequency, not to exceed five years, at which the owner or operator proposes to reevaluate the area of review;
 - b. The monitoring and operational conditions that would warrant a reevaluation of the area of review prior to the next scheduled reevaluation as determined by the minimum fixed frequency established in subsection (B)(2)(a);
 - c. How monitoring and operational data will be used to inform an area of review reevaluation; and
 - d. How corrective action will be conducted to meet the requirements of subsection (D), including what corrective action will be performed prior to injection and what, if any, portions of the area of review will have corrective action addressed on a phased basis and how the phasing will be determined; how corrective action will be adjusted if there are changes in the area of review; and how site access will be guaranteed for future corrective action.
- C. Owners or operators of Class VI wells must perform the following actions to delineate the area of review and identify all wells that require corrective action:
1. Predict, using existing site characterization, monitoring and operational data, and computational modeling, the projected lateral and vertical migration of the carbon dioxide plume and formation fluids in the subsurface from the commencement of injection activities until the plume movement ceases, until pressure differentials sufficient to cause the movement of injected fluids or formation fluids into a USDW are no longer present, or until

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the end of a fixed time period as determined by the Director. The model must:

- a. Be based on detailed geologic data collected to characterize the injection zone zones, confining zone or zones and any additional zones; and anticipated operating data, including injection pressures, rates, and total volumes over the proposed life of the geologic sequestration project;
 - b. Take into account any geologic heterogeneities, other discontinuities, data quality, and their possible impact on model predictions; and
 - c. Consider potential migration through faults, fractures, and artificial penetrations.
2. Using methods approved by the Director, identify all penetrations, including active and abandoned wells and underground mines, in the area of review that may penetrate the confining zone or zones. Provide a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion, and any additional information the Director may require; and
 3. Determine which abandoned wells in the area of review have been plugged in a manner that prevents the movement of carbon dioxide or other fluids that may endanger USDWs, including use of materials compatible with the carbon dioxide stream.
- D.** Owners or operators of Class VI wells must perform corrective action on all wells in the area of review that are determined to need corrective action, using methods designed to prevent the movement of fluid into or between USDWs, including use of materials compatible with the carbon dioxide stream, where appropriate.
- E.** At the minimum fixed frequency, not to exceed five years, as specified in the area of review and corrective action plan, or when monitoring and operational conditions warrant, owners or operators must:
1. Reevaluate the area of review in the same manner specified in subsection (C)(1);
 2. Identify all wells in the reevaluated area of review that require corrective action in the same manner specified in subsection (C);
 3. Perform corrective action on wells requiring corrective action in the reevaluated area of review in the same manner specified in subsection (C); and
 4. Submit an amended area of review and corrective action plan or demonstrate to the Director through monitoring data and modeling results that no amendment to the area of review and corrective action plan is needed. Any amendments to the area of review and corrective action plan must be approved by the Director, must be incorporated into the permit, and are subject to the permit modification requirements under R18-9-C632 or R18-9-C633, as appropriate.
- F.** The emergency and remedial response plan and the demonstration of financial responsibility must account for the area of review delineated as specified in subsection (C)(1) or the most recently evaluated area of review delineated under subsection (E), regardless of whether or not corrective action in the area of review is phased.
- G.** All modeling inputs and data used to support area of review reevaluations under subsection (E) shall be retained for 10 years.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022

(Supp. 22-3).

R18-9-J660. Class VI; Financial Responsibility

- A.** The owner or operator must demonstrate and maintain financial responsibility as determined by the Director that meets the following conditions:
1. The financial responsibility instrument or instruments used must be from the following list of qualifying instruments:
 - a. Trust Funds;
 - b. Surety Bonds;
 - c. Letter of Credit;
 - d. Insurance;
 - e. Self Insurance (i.e., Financial Test and Corporate Guarantee);
 - f. Escrow Account;
 - g. Any other instrument or instruments satisfactory to the Director.
 2. The qualifying instrument or instruments must be sufficient to cover the cost of:
 - a. Corrective action under R18-9-J659;
 - b. Injection well plugging under R18-9-J667;
 - c. Post injection site care and site closure under R18-9-J668; and
 - d. Emergency and remedial response under R18-9-J669.
 3. The financial responsibility instrument or instruments must be sufficient to address endangerment of USDWs.
 4. The qualifying financial responsibility instrument or instruments must comprise protective conditions of coverage.
 - a. Protective conditions of coverage must include at a minimum cancellation, renewal, and continuation provisions, specifications on when the provider becomes liable following a notice of cancellation if there is a failure to renew with a new qualifying financial instrument, and requirements for the provider to meet a minimum rating, minimum capitalization, and ability to pass the bond rating when applicable.
 - i. Cancellation – for purposes of this Part, an owner or operator must provide that their financial mechanism may not cancel, terminate or fail to renew except for failure to pay such financial instrument. If there is a failure to pay the financial instrument, the financial institution may elect to cancel, terminate, or fail to renew the instrument by sending notice by certified mail to the owner or operator and the Director. The cancellation must not be final for 120 days after receipt of cancellation notice. The owner or operator must provide an alternate financial responsibility demonstration within 60 days of notice of cancellation, and if an alternate financial responsibility demonstration is not acceptable (or possible), any funds from the instrument being cancelled must be released within 60 days of notification by the Director.
 - ii. Renewal – for purposes of this Part, owners or operators must renew all financial instruments, if an instrument expires, for the entire term of the geologic sequestration project. The instrument may be automatically renewed as long as the owner or operator has the option of renewal

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- at the face amount of the expiring instrument. The automatic renewal of the instrument must, at a minimum, provide the holder with the option of renewal at the face amount of the expiring financial instrument.
- iii. Cancellation, termination, or failure to renew may not occur and the financial instrument will remain in full force and effect in the event that on or before the date of expiration: The Director deems the facility abandoned; or the permit is terminated or revoked or a new permit is denied; or closure is ordered by the Director or a U.S. district court or other court of competent jurisdiction; or the owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or the amount due is paid.
5. The qualifying financial responsibility instrument or instruments must be approved by the Director.
- a. The Director shall consider and approve the financial responsibility demonstration for all the phases of the geologic sequestration project prior to issue a Class VI permit under R18-9-J657.
- b. The owner or operator must provide any updated information related to their financial responsibility instrument or instruments on an annual basis and if there are any changes, the Director must evaluate, within a reasonable time, the financial responsibility demonstration to confirm that the instrument or instruments used remain adequate for use. The owner or operator must maintain financial responsibility requirements regardless of the status of the Director's review of the financial responsibility demonstration.
- c. The Director may disapprove the use of a financial instrument if they determine that it is not sufficient to meet the requirements of this Section.
6. The owner or operator may demonstrate financial responsibility by using one or multiple qualifying financial instruments for specific phases of the geologic sequestration project.
- a. In the event that the owner or operator combines more than one instrument for a specific geologic sequestration phase such combination must be limited to instruments that are not based on financial strength or performance, for example trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, escrow account, and insurance. In this case, it is the combination of mechanisms, rather than the single mechanism, which must provide financial responsibility for an amount at least equal to the current cost estimate.
- b. When using a third-party instrument to demonstrate financial responsibility, the owner or operator must provide a proof that the third-party providers either have passed financial strength requirements based on credit ratings; or has met a minimum rating, minimum capitalization, and ability to pass the bond rating when applicable.
- c. An owner or operator using certain types of third-party instruments must establish a standby trust to enable ADEQ to be party to the financial responsibility agreement without ADEQ being the beneficiary of any funds. The standby trust fund must be used along with other financial responsibility instruments (e.g., surety bonds, letters of credit, or escrow accounts) to provide a location to place funds if needed.
- d. An owner or operator may deposit money to an escrow account to cover financial responsibility requirements; this account must segregate funds sufficient to cover estimated costs for Class VI (geologic sequestration) financial responsibility from other accounts and uses.
- e. An owner or operator or its guarantor may use self insurance to demonstrate financial responsibility for geologic sequestration projects. In order to satisfy this requirement the owner or operator must meet a Tangible Net Worth of an amount approved by the Director, have a Net working capital and tangible net worth each at least six times the sum of the current well plugging, post injection site care and site closure cost, have assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current well plugging, post injection site care and site closure cost, and must submit a report of its bond rating and financial information annually. In addition the owner or operator must either: Have a bond rating test of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A, or Baa as issued by Moody's; or meet all of the following five financial ratio thresholds: A ratio of total liabilities to net worth less than 2.0; a ratio of current assets to current liabilities greater than 1.5; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; A ratio of current assets minus current liabilities to total assets greater than -0.1; and a net profit (revenues minus expenses) greater than 0.
- f. An owner or operator who is not able to meet corporate financial test criteria may arrange a corporate guarantee by demonstrating that its corporate parent meets the financial test requirements on its behalf. The parent's demonstration that it meets the financial test requirement is insufficient if it has not also guaranteed to fulfill the obligations for the owner or operator.
- g. An owner or operator may obtain an insurance policy to cover the estimated costs of geologic sequestration activities requiring financial responsibility. This insurance policy must be obtained from a third party provider.
- B.** The requirement to maintain adequate financial responsibility and resources is directly enforceable regardless of whether the requirement is a condition of the permit.
1. The owner or operator must maintain financial responsibility and resources until:
- a. The Director receives and approves the completed post-injection site care and site closure plan; and
- b. The Director approves site closure.
2. The owner or operator may be released from a financial instrument in the following circumstances:
- a. The owner or operator has completed the phase of the geologic sequestration project for which the financial instrument was required and has fulfilled all its financial obligations as determined by the Director, including obtaining financial responsibility

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for the next phase of the geologic sequestration project, if required; or

- b. The owner or operator has submitted a replacement financial instrument and received written approval from the Director accepting the new financial instrument and releasing the owner or operator from the previous financial instrument.
- C. The owner or operator must have a detailed written estimate, in current dollars, of the cost of performing corrective action on wells in the area of review, plugging the injection well or wells, post-injection site care and site closure, and emergency and remedial response.
1. The cost estimate must be performed for each phase separately and must be based on the costs to the regulatory agency of hiring a third party to perform the required activities. A third party is a party who is not within the corporate structure of the owner or operator.
 2. During the active life of the geologic sequestration project, the owner or operator must adjust the cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument or instruments used to comply with subsection (A) and provide this adjustment to the Director. The owner or operator must also provide to the Director written updates of adjustments to the cost estimate within 60 days of any amendments to the area of review and corrective action plan as required under R18-9-J659, the injection well plugging plan under R18-9-J667, the post-injection site care and site closure plan as required under R18-9-J668, and the emergency and remedial response plan as required under R18-9-J669.
 3. The Director must approve any decrease or increase to the initial cost estimate. During the active life of the geologic sequestration project, the owner or operator must revise the cost estimate no later than 60 days after the Director has approved the request to modify the area of review and corrective action plan as required under R18-9-J659, the injection well plugging plan under R18-9-J667, the post-injection site care and site closure plan as required under R18-9-J668, and the emergency and response plan as required under R18-9-J669, if the change in the plan increases the cost. If the change to the plans decreases the cost, any withdrawal of funds must be approved by the Director. Any decrease to the value of the financial assurance instrument must first be approved by the Director. The revised cost estimate must be adjusted for inflation as specified at subsection (C)(2).
 4. Whenever the current cost estimate increases to an amount greater than the face amount of a financial instrument currently in use, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Director, or obtain other financial responsibility instruments to cover the increase. Whenever the current cost estimate decreases, the face amount of the financial assurance instrument may be reduced to the amount of the current cost estimate only after the owner or operator has received written approval from the Director.
- D. The owner or operator must notify the Director by certified mail of adverse financial conditions such as bankruptcy that may affect the ability to carry out injection well plugging and post-injection site care and site closure.
1. In the event that the owner or operator or the third party provider of a financial responsibility instrument is going through a bankruptcy, the owner or operator must notify the Director by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding.
 2. A guarantor of a corporate guarantee must make such a notification to the Director if they are named as debtor, as required under the terms of the corporate guarantee.
 3. An owner or operator who fulfills the requirements of subsection (A) by obtaining a trust fund, surety bond, letter of credit, escrow account, or insurance policy will be deemed to be without the required financial assurance in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee of the institution issuing the trust fund, surety bond, letter of credit, escrow account, or insurance policy. The owner or operator must establish other financial assurance within 60 days after such an event.
- E. The owner or operator must provide an adjustment of the cost estimate to the Director within 60 days of notification by the Director, if the Director determines during the annual evaluation of the qualifying financial responsibility instrument or instruments that the most recent demonstration is no longer adequate to cover the cost of corrective action as required under R18-9-J659, injection well plugging under R18-9-J667, post-injection site care and site closure as required under R18-9-J668, and emergency and remedial response as required under R18-9-J669.
- F. The Director must approve the use and length of pay-in-periods for trust funds or escrow accounts.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J661. Class VI; Injection Well Construction Requirements

- A. The owner or operator must ensure that all Class VI wells are constructed and completed to:
1. Prevent the movement of fluids into or between USDWs or into any unauthorized zones;
 2. Permit the use of appropriate testing devices and work-over tools; and
 3. Permit continuous monitoring of the annulus space between the injection tubing and long string casing.
- B. Casing and Cementing of Class VI Wells.
1. Casing and cement or other materials used in the construction of each Class VI well must have sufficient structural strength and be designed for the life of the geologic sequestration project. All well materials must be compatible with fluids with which the materials may be expected to come into contact and must meet or exceed standards developed for such materials by the American Petroleum Institute, ASTM International, or comparable standards acceptable to the Director. The casing and cementing program must be designed to prevent the movement of fluids into or between USDWs. In order to allow the Director to determine and specify casing and cementing requirements, the owner or operator must provide the following information:

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- a. Depth to the injection zone or zones;
 - b. Injection pressure, external pressure, internal pressure, and axial loading;
 - c. Hole size;
 - d. Size and grade of all casing strings (wall thickness, external diameter, nominal weight, length, joint specification, and construction material);
 - e. Corrosiveness of the carbon dioxide stream and formation fluids;
 - f. Down-hole temperatures;
 - g. Lithology of injection and confining zone or zones;
 - h. Type or grade of cement and cement additives; and
 - i. Quantity, chemical composition, and temperature of the carbon dioxide stream.
2. Surface casing must extend through the base of the lowermost USDW and be cemented to the surface through the use of a single or multiple strings of casing and cement.
 3. At least one long string casing, using a sufficient number of centralizers, must extend to the injection zone and must be cemented by circulating cement to the surface in one or more stages.
 4. Circulation of cement may be accomplished by staging. The Director may approve an alternative method of cementing in cases where the cement cannot be recirculated to the surface, provided the owner or operator can demonstrate by using logs that the cement does not allow fluid movement behind the well bore.
 5. Cement and cement additives must be compatible with the carbon dioxide stream and formation fluids and of sufficient quality and quantity to maintain integrity over the design life of the geologic sequestration project. The integrity and location of the cement shall be verified using technology capable of evaluating cement quality radially and identifying the location of channels to ensure that USDWs are not endangered.

C. Tubing and packer.

1. Tubing and packer materials used in the construction of each Class VI well must be compatible with fluids with which the materials may be expected to come into contact and must meet or exceed standards developed for such materials by the American Petroleum Institute, ASTM International, or comparable standards acceptable to the Director.
2. All owners or operators of Class VI wells must inject fluids through tubing with a packer set at a depth opposite a cemented interval at the location approved by the Director.
3. In order for the Director to determine and specify requirements for tubing and packer, the owner or operator must submit the following information:
 - a. Depth of setting;
 - b. Characteristics of the carbon dioxide stream (chemical content, corrosiveness, temperature, and density) and formation fluids;
 - c. Maximum proposed injection pressure;
 - d. Maximum proposed annular pressure;
 - e. Proposed injection rate (intermittent or continuous) and volume and/or mass of the carbon dioxide stream;
 - f. Size of tubing and casing; and
 - g. Tubing tensile, burst, and collapse strengths.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022

(Supp. 22-3).

R18-9-J662. Class VI; Logging, Sampling, and Testing Prior to Well Operation

- A. During the drilling and construction of a Class VI injection well, the owner or operator must run appropriate logs, surveys and tests to determine or verify the depth, thickness, porosity, permeability, and lithology of, and the salinity of any formation fluids in all relevant geologic formations to ensure conformance with the injection well construction requirements under R18-9-J661 and to establish accurate baseline data against which future measurements may be compared. The owner or operator must submit to the Director a descriptive report prepared by a knowledgeable log analyst that includes an interpretation of the results of such logs and tests. At a minimum, such logs and tests must include:
 1. Deviation checks during drilling on all holes constructed by drilling a pilot hole which is enlarged by reaming or another method. Such checks must be at sufficiently frequent intervals to determine the location of the borehole and to ensure that vertical avenues for fluid movement in the form of diverging holes are not created during drilling; and
 2. Before and upon installation of the surface casing:
 - a. Resistivity, spontaneous potential, and caliper logs before the casing is installed; and
 - b. A cement bond and variable density log to evaluate cement quality radially, and a temperature log after the casing is set and cemented.
 3. Before and upon installation of the long string casing:
 - a. Resistivity, spontaneous potential, porosity, caliper, gamma ray, fracture finder logs, and any other logs the Director requires for the given geology before the casing is installed; and
 - b. A cement bond and variable density log, and a temperature log after the casing is set and cemented.
 4. A series of tests designed to demonstrate the internal and external mechanical integrity of injection wells, which may include:
 - a. A pressure test with liquid or gas;
 - b. A tracer survey such as oxygen-activation logging;
 - c. A temperature or noise log;
 - d. A casing inspection log; and
 5. Any alternative methods that provide equivalent or better information and that are required by and/or approved of by the Director.
- B. The owner or operator must take whole cores or sidewall cores of the injection zone and confining system and formation fluid samples from the injection zone or zones, and must submit to the Director a detailed report prepared by a log analyst that includes: Well log analyses (including well logs), core analyses, and formation fluid sample information. The Director may accept information on cores from nearby wells if the owner or operator can demonstrate that core retrieval is not possible and that such cores are representative of conditions at the well. The Director may require the owner or operator to core other formations in the borehole.
- C. The owner or operator must record the fluid temperature, pH, conductivity, reservoir pressure, and static fluid level of the injection zone or zones.
- D. At a minimum, the owner or operator must determine or calculate the following information concerning the injection and confining zone or zones:
 1. Fracture pressure;

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2. Other physical and chemical characteristics of the injection and confining zone or zones; and
 3. Physical and chemical characteristics of the formation fluids in the injection zone or zones.
- E.** Upon completion, but prior to operation, the owner or operator must conduct the following tests to verify hydrogeologic characteristics of the injection zone or zones:
1. A pressure fall-off test; and,
 2. A pump test; or
 3. Injectivity tests.
- F.** The owner or operator must provide the Director with the opportunity to witness all logging and testing by this Part. The owner or operator must submit a schedule of such activities to the Director 30 days prior to conducting the first test and submit any changes to the schedule 30 days prior to the next scheduled test.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J663. Class VI; Injection Well Operating Requirements

- A.** Except during stimulation, the owner or operator must ensure that injection pressure does not exceed 90 percent of the fracture pressure of the injection zone or zones so as to ensure that the injection does not initiate new fractures or propagate existing fractures in the injection zone or zones. In no case may injection pressure initiate fractures in the confining zone or zones or cause the movement of injection or formation fluids that endangers a USDW. Pursuant to requirements at R18-9-J657(B)(9), all stimulation programs must be approved by the Director as part of the permit application and incorporated into the permit.
- B.** Injection between the outermost casing protecting USDWs and the well bore is prohibited.
- C.** The owner or operator must fill the annulus between the tubing and the long string casing with a non-corrosive fluid approved by the Director. The owner or operator must maintain on the annulus a pressure that exceeds the operating injection pressure, unless the Director determines that such requirement might harm the integrity of the well or endanger USDWs.
- D.** Other than during periods of well workover (maintenance) approved by the Director in which the sealed tubing-casing annulus is disassembled for maintenance or corrective procedures, the owner or operator must maintain mechanical integrity of the injection well at all times.
- E.** The owner or operator must install and use:
1. Continuous recording devices to monitor: The injection pressure; the rate, volume and/or mass, and temperature of the carbon dioxide stream; and the pressure on the annulus between the tubing and the long string casing and annulus fluid volume; and
 2. Alarms and automatic surface shut-off systems or, at the discretion of the Director, down-hole shut-off systems for onshore wells or, other mechanical devices that provide equivalent protection.
- F.** If a shutdown (such as down-hole or at the surface) is triggered or a loss of mechanical integrity is discovered, the owner or operator must immediately investigate and identify as expeditiously as possible the cause of the shutoff. If, upon such investigation, the well appears to be lacking mechanical integrity, or if monitoring required under subsection (E) otherwise indicates that the well may be lacking mechanical integrity, the owner or operator must:

1. Immediately cease injection;
2. Take all steps reasonably necessary to determine whether there may have been a release of the injected carbon dioxide stream or formation fluids into any unauthorized zone;
3. Notify the Director within 24 hours;
4. Restore and demonstrate mechanical integrity to the satisfaction of the Director prior to resuming injection; and
5. Notify the Director when injection can be expected to resume.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J664. Class VI; Mechanical Integrity

- A.** A Class VI well has mechanical integrity if:
1. There is no significant leak in the casing, tubing, or packer; and
 2. There is no significant fluid movement into a USDW through channels adjacent to the injection well bore.
- B.** To evaluate the absence of significant leaks under subsection (A)(1), owners or operators must, following an initial annulus pressure test, continuously monitor injection pressure, rate, injected volumes; pressure on the annulus between tubing and long-string casing; and annulus fluid volume as specified in R18-9-J663;
- C.** At least once per year, the owner or operator must use one of the following methods to determine the absence of significant fluid movement under subsection (A)(2):
1. An approved tracer survey such as an oxygen-activation log; or
 2. A temperature or noise log.
- D.** If required by the Director, at a frequency specified in the testing and monitoring plan required at R18-9-J665, the owner or operator must run a casing inspection log to determine the presence or absence of corrosion in the long-string casing.
- E.** The Director may require any other test to evaluate mechanical integrity under subsections (A)(1) or (2). Also, the Director may allow the use of a test to demonstrate mechanical integrity other than those listed above with the written approval of the Administrator. To obtain approval for a new mechanical integrity test, the Director must submit a written request to the Administrator setting forth the proposed test and all technical data supporting its use.
- F.** In conducting and evaluating the tests enumerated in this Section or others to be allowed by the Director, the owner or operator and the Director must apply methods and standards generally accepted in the industry. When the owner or operator reports the results of mechanical integrity tests to the Director, they shall include a description of the test or tests and the method or methods used. In making his or her evaluation, the Director must review monitoring and other test data submitted since the previous evaluation.
- G.** The Director may require additional or alternative tests if the results presented by the owner or operator under subsections (A) through (F) are not satisfactory to the Director to demonstrate that there is no significant leak in the casing, tubing, or packer, or to demonstrate that there is no significant movement of fluid into a USDW resulting from the injection activity as stated in subsections (A)(1) and (2).

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022

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(Supp. 22-3).

R18-9-J665. Class VI; Testing and Monitoring Requirements

The owner or operator of a Class VI well must prepare, maintain, and comply with a testing and monitoring plan to verify that the geologic sequestration project is operating as permitted and is not endangering USDWs. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. The testing and monitoring plan must be submitted with the permit application, for Director approval, and must include a description of how the owner or operator will meet the requirements of this Section, including accessing sites for all necessary monitoring and testing during the life of the project. Testing and monitoring associated with geologic sequestration projects must, at a minimum, include:

1. Analysis of the carbon dioxide stream with sufficient frequency to yield data representative of its chemical and physical characteristics;
2. Installation and use, except during well workovers as defined in R18-9-J663, of continuous recording devices to monitor injection pressure, rate, and volume; the pressure on the annulus between the tubing and the long string casing; and the annulus fluid volume added;
3. Corrosion monitoring of the well materials for loss of mass, thickness, cracking, pitting, and other signs of corrosion, which must be performed on a quarterly basis to ensure that the well components meet the minimum standards for material strength and performance set forth in R18-9-J661, by:
 - a. Analyzing coupons of the well construction materials placed in contact with the carbon dioxide stream; or
 - b. Routing the carbon dioxide stream through a loop constructed with the material used in the well and inspecting the materials in the loop; or
 - c. Using an alternative method approved by the Director;
4. Periodic monitoring of the ground water quality and geochemical changes above the confining zone or zones that may be a result of carbon dioxide movement through the confining zone or zones or additional identified zones including:
 - a. The location and number of monitoring wells based on specific information about the geologic sequestration project, including injection rate and volume, geology, the presence of artificial penetrations, and other factors; and
 - b. The monitoring frequency and spatial distribution of monitoring wells based on baseline geochemical data that has been collected under R18-9-J657 and on any modeling results in the area of review evaluation required by R18-9-J659(C).
5. A demonstration of external mechanical integrity pursuant to R18-9-J664(C) at least once per year until the injection well is plugged; and, if required by the Director, a casing inspection log pursuant to requirements under R18-9-J664(D) at a frequency established in the testing and monitoring plan;
6. A pressure fall-off test at least once every five years unless more frequent testing is required by the Director based on site-specific information;
7. Testing and monitoring to track the extent of the carbon dioxide plume and the presence or absence of elevated pressure (e.g., the pressure front) by using:
 - a. Direct methods in the injection zone or zones; and,

- b. Indirect methods (e.g., seismic, electrical, gravity, or electromagnetic surveys and/or down-hole carbon dioxide detection tools), unless the Director determines, based on site-specific geology, that such methods are not appropriate;
8. The Director may require surface air monitoring and/or soil gas monitoring to detect movement of carbon dioxide that could endanger a USDW.
 - a. Design of Class VI surface air and/or soil gas monitoring must be based on potential risks to USDWs within the area of review;
 - b. The monitoring frequency and spatial distribution of surface air monitoring and/or soil gas monitoring must be decided using baseline data, and the monitoring plan must describe how the proposed monitoring will yield useful information on the area of review delineation and/or compliance with standards under R18-9-B608;
 - c. If an owner or operator demonstrates that monitoring employed under 40 CFR §§ 98.440 to 98.449 (Clean Air Act, 42 U.S.C. 7401 et seq.) accomplishes the goals of subsections (A)(8)(a) and (b), and meets the requirements pursuant to R18-9-J666(3)(e), a Director that requires surface air/soil gas monitoring must approve the use of monitoring employed under 40 CFR §§ 98.440 to 98.449. Compliance with 40 CFR §§ 98.440 to 98.449 pursuant to this provision is considered a condition of the Class VI permit;
 9. Any additional monitoring, as required by the Director, necessary to support, upgrade, and improve computational modeling of the area of review evaluation required under R18-9-J659(C) and to determine compliance with standards under R18-9-B608;
 10. The owner or operator shall periodically review the testing and monitoring plan to incorporate monitoring data collected under this Part, operational data collected under R18-9-J663, and the most recent area of review reevaluation performed under R18-9-J659(E). In no case shall the owner or operator review the testing and monitoring plan less often than once every five years. Based on this review, the owner or operator shall submit an amended testing and monitoring plan or demonstrate to the Director that no amendment to the testing and monitoring plan is needed. Any amendments to the testing and monitoring plan must be approved by the Director, must be incorporated into the permit, and are subject to the permit modification requirements under R18-9-C632 or R18-9-C633, as appropriate. Amended plans or demonstrations shall be submitted to the Director as follows:
 - a. Within one year of an area of review reevaluation;
 - b. Following any significant changes to the facility, such as addition of monitoring wells or newly permitted injection wells within the area of review, on a schedule determined by the Director; or
 - c. When required by the Director.
 11. A quality assurance and surveillance plan for all testing and monitoring requirements.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J666. Class VI; Reporting Requirements

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The owner or operator must provide at a minimum, the following reports to the Director, and as specified in subsection (5) to EPA, for each permitted Class VI well:

1. Semi-annual reports containing:
 - a. Any changes to the physical, chemical, and other relevant characteristics of the carbon dioxide stream from the proposed operating data;
 - b. Monthly average, maximum, and minimum values for injection pressure, flow rate and volume, and annular pressure;
 - c. A description of any event that exceeds operating parameters for annulus pressure or injection pressure specified in the permit;
 - d. A description of any event which triggers a shut-off device required pursuant to R18-9-J663(E) and the response taken;
 - e. The monthly volume and/or mass of the carbon dioxide stream injected over the reporting period and the volume injected cumulatively over the life of the project;
 - f. Monthly annulus fluid volume added; and
 - g. The results of monitoring prescribed under R18-9-J665.
2. Report, within 30 days, the results of:
 - a. Periodic tests of mechanical integrity;
 - b. Any well workover; and,
 - c. Any other test of the injection well conducted by the permittee if required by the Director.
3. Report, within 24 hours:
 - a. Any evidence that the injected carbon dioxide stream or associated pressure front may cause an endangerment to a USDW;
 - b. Any noncompliance with a permit condition, or malfunction of the injection system, which may cause fluid migration into or between USDWs;
 - c. Any triggering of a shut-off system (i.e., down-hole or at the surface);
 - d. Any failure to maintain mechanical integrity; or
 - e. Pursuant to compliance with the requirement at R18-9-J665(8) for surface air/soil gas monitoring or other monitoring technologies, if required by the Director, any release of carbon dioxide to the atmosphere or biosphere.
4. Owners or operators must notify the Director in writing 30 days in advance of:
 - a. Any planned well workover;
 - b. Any planned stimulation activities, other than stimulation for formation testing conducted under R18-9-J657; and
 - c. Any other planned test of the injection well conducted by the permittee.
5. Owners or operators must submit all required reports, submittals, and notifications under Part J of this Article to EPA in an electronic format approved by EPA.
6. Records shall be retained by the owner or operator as follows:
 - a. All data collected under R18-9-J657 for Class VI permit applications shall be retained throughout the life of the geologic sequestration project and for 10 years following site closure.
 - b. Data on the nature and composition of all injected fluids collected pursuant to R18-9-J665(1) shall be retained until 10 years after site closure. The Director may require the owner or operator to deliver the

records to the Director at the conclusion of the retention period.

- c. Monitoring data collected pursuant to R18-9-J665(2) through (9) shall be retained for 10 years after it is collected.
- d. Well plugging reports, post-injection site care data, including, if appropriate, data and information used to develop the demonstration of the alternative post-injection site care timeframe, and the site closure report collected pursuant to requirements at R18-9-J668(F) and (H) shall be retained for 10 years following site closure.
- e. The Director has authority to require the owner or operator to retain any records required in this Part for longer than 10 years after site closure.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J667. Class VI; Injection Well Plugging

- A. Prior to the well plugging, the owner or operator must flush each Class VI injection well with a buffer fluid, determine bottomhole reservoir pressure, and perform a final external mechanical integrity test.
- B. The owner or operator of a Class VI well must prepare, maintain, and comply with a plan that is acceptable to the Director. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit. The well plugging plan must be submitted as part of the permit application and must include the following information:
 1. Appropriate tests or measures for determining bottomhole reservoir pressure;
 2. Appropriate testing methods to ensure external mechanical integrity as specified in R18-9-J664;
 3. The type and number of plugs to be used;
 4. The placement of each plug, including the elevation of the top and bottom of each plug;
 5. The type, grade, and quantity of material to be used in plugging. The material must be compatible with the carbon dioxide stream; and
 6. The method of placement of the plugs.
- C. The owner or operator must notify the Director in writing pursuant to R18-9-J666(5), at least 60 days before plugging of a well. At this time, if any changes have been made to the original well plugging plan, the owner or operator must also provide the revised well plugging plan. The Director may allow for a shorter notice period. Any amendments to the injection well plugging plan must be approved by the Director, must be incorporated into the permit, and are subject to the permit modification requirements at R18-9-C632 or R18-9-C633, as appropriate.
- D. Within 60 days after plugging, the owner or operator must submit, pursuant to R18-9-J666(5), a plugging report to the Director. The report must be certified as accurate by the owner or operator and by the person who performed the plugging operation, if other than the owner or operator. The owner or operator shall retain the well plugging report for 10 years following site closure.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022

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(Supp. 22-3).

R18-9-J668. Class VI; Post-Injection Site Care and Site Closure

- A. The owner or operator of a Class VI well must prepare, maintain, and comply with a plan for post-injection site care and site closure that meets the requirements of subsection (A)(2) and is acceptable to the Director. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit.
1. The owner or operator must submit the post-injection site care and site closure plan as a part of the permit application to be approved by the Director.
 2. The post-injection site care and site closure plan must include the following information:
 - a. The pressure differential between pre-injection and predicted post-injection pressures in the injection zone or zones;
 - b. The predicted position of the carbon dioxide plume and associated pressure front at site closure as demonstrated in the area of review evaluation required under R18-9-J659(C)(1);
 - c. A description of post-injection monitoring location, methods, and proposed frequency;
 - d. A proposed schedule for submitting post-injection site care monitoring results to the Director pursuant to R18-9-J666(5); and
 - e. The duration of the post-injection site care timeframe and, if approved by the Director, the demonstration of the alternative post-injection site care timeframe that ensures non-endangerment of USDWs.
 3. Upon cessation of injection, owners or operators of Class VI wells must either submit an amended post-injection site care and site closure plan or demonstrate to the Director through monitoring data and modeling results that no amendment to the plan is needed. Any amendments to the post-injection site care and site closure plan must be approved by the Director, be incorporated into the permit, and are subject to the permit modification requirements at R18-9-C632 or R18-9-C633, as appropriate.
 4. At any time during the life of the geologic sequestration project, the owner or operator may modify and resubmit the post-injection site care and site closure plan for the Director's approval within 30 days of such change.
- B. The owner or operator shall monitor the site following the cessation of injection to show the position of the carbon dioxide plume and pressure front and demonstrate that USDWs are not being endangered.
1. Following the cessation of injection, the owner or operator shall continue to conduct monitoring as specified in the Director-approved post-injection site care and site closure plan for at least 50 years or for the duration of the alternative timeframe approved by the Director pursuant to requirements in subsection (C), unless they make a demonstration under subsection (B)(2). The monitoring must continue until the geologic sequestration project no longer poses an endangerment to USDWs and the demonstration under subsection (B)(2) is submitted and approved by the Director.
 2. If the owner or operator can demonstrate to the satisfaction of the Director before 50 years or prior to the end of the approved alternative timeframe based on monitoring and other site-specific data, that the geologic sequestration project no longer poses an endangerment to USDWs, the Director may approve an amendment to the post-injection site care and site closure plan to reduce the frequency of monitoring or may authorize site closure before the end of the 50-year period or prior to the end of the approved alternative timeframe, where they have substantial evidence that the geologic sequestration project no longer poses a risk of endangerment to USDWs.
3. Prior to authorization for site closure, the owner or operator must submit to the Director for review and approval a demonstration, based on monitoring and other site-specific data, that no additional monitoring is needed to ensure that the geologic sequestration project does not pose an endangerment to USDWs.
 4. If the demonstration in subsection (B)(3) cannot be made at the end of the 50-year period or at the end of the approved alternative timeframe, or if the Director does not approve the demonstration, the owner or operator must submit to the Director a plan to continue post-injection site care until a demonstration can be made and approved by the Director.
- C. At the Director's discretion, the Director may approve, in consultation with EPA, an alternative post-injection site care timeframe other than the 50-year default, if an owner or operator can demonstrate during the permitting process that an alternative post-injection site care timeframe is appropriate and ensures non-endangerment of USDWs. The demonstration must be based on significant, site-specific data and information including all data and information collected pursuant to R18-9-J657 or R18-9-J658, and must contain substantial evidence that the geologic sequestration project will no longer pose a risk of endangerment to USDWs at the end of the alternative post-injection site care timeframe.
1. A demonstration of an alternative post-injection site care timeframe must include consideration and documentation of:
 - a. The results of computational modeling performed pursuant to delineation of the area of review under R18-9-J659;
 - b. The predicted timeframe for pressure decline within the injection zone, and any other zones, such that formation fluids may not be forced into any USDWs; and/or the timeframe for pressure decline to pre-injection pressures;
 - c. The predicted rate of carbon dioxide plume migration within the injection zone, and the predicted timeframe for the cessation of migration;
 - d. A description of the site-specific processes that will result in carbon dioxide trapping including immobilization by capillary trapping, dissolution, and mineralization at the site;
 - e. The predicted rate of carbon dioxide trapping in the immobile capillary phase, dissolved phase, and/or mineral phase;
 - f. The results of laboratory analyses, research studies, and/or field or site-specific studies to verify the information required in subsection (C)(1)(d) and (C)(1)(e);
 - g. A characterization of the confining zone or zones including a demonstration that it is free of transmissive faults, fractures, and micro-fractures and of appropriate thickness, permeability, and integrity to impede fluid movement, such as carbon dioxide and formation fluids;

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- h. The presence of potential conduits for fluid movement including planned injection wells and project monitoring wells associated with the proposed geologic sequestration project or any other projects in proximity to the predicted/modeled, final extent of the carbon dioxide plume and area of elevated pressure;
 - i. A description of the well construction and an assessment of the quality of plugs of all abandoned wells within the area of review;
 - j. The distance between the injection zone and the nearest USDWs above and/or below the injection zone; and
 - k. Any additional site-specific factors required by the Director.
2. Information submitted to support the demonstration in subsection (C)(1) must meet the following criteria:
- a. All analyses and tests performed to support the demonstration must be accurate, reproducible, and performed in accordance with the established quality assurance standards;
 - b. Estimation techniques must be appropriate and EPA-certified test protocols must be used where available;
 - c. Predictive models must be appropriate and tailored to the site conditions, composition of the carbon dioxide stream and injection and site conditions over the life of the geologic sequestration project;
 - d. Predictive models must be calibrated using existing information where sufficient data are available;
 - e. Reasonably conservative values and modeling assumptions must be used and disclosed to the Director whenever values are estimated on the basis of known, historical information instead of site-specific measurements;
 - f. An analysis must be performed to identify and assess aspects of the alternative post-injection site care timeframe demonstration that contribute significantly to uncertainty. The owner or operator must conduct sensitivity analyses to determine the effect that significant uncertainty may contribute to the modeling demonstration;
 - g. An approved quality assurance and quality control plan must address all aspects of the demonstration; and
 - h. Any additional criteria required by the Director.
- D.** The owner or operator must notify the Director in writing at least 120 days before site closure. At this time, if any changes have been made to the original post-injection site care and site closure plan, the owner or operator must also provide the revised plan. The Director may allow for a shorter notice period.
- E.** After the Director has authorized site closure, the owner or operator must plug all monitoring wells in a manner which will not allow movement of injection or formation fluids that endangers a USDW.
- F.** The owner or operator must submit a site closure report to the Director within 90 days of site closure, which must thereafter be retained at a location designated by the Director for 10 years. The report must include:
- 1. Documentation of appropriate injection and monitoring well plugging as specified in R18-9-J667 and subsection (E). The owner or operator must provide a copy of a survey plat which has been submitted to the local zoning authority designated by the Director. The plat must indicate the location of the injection well relative to permanently surveyed benchmarks. The owner or operator must also submit a copy of the plat to the Administrator of EPA Region 9;
 - 2. Documentation of appropriate notification and information to such State, local and Tribal authorities that have authority over drilling activities to enable such State, local, and Tribal authorities to impose appropriate conditions on subsequent drilling activities that may penetrate the injection and confining zone or zones; and
 - 3. Records reflecting the nature, composition, and volume of the carbon dioxide stream.
- G.** Each owner or operator of a Class VI injection well must record a notation on the deed to the facility property or any other document that is normally examined during Title search that will in perpetuity provide any potential purchaser of the property the following information:
- 1. The fact that land has been used to sequester carbon dioxide;
 - 2. The name of the State agency, local authority, and/or Tribe with which the survey plat was filed, as well as the address of the Environmental Protection Agency Regional Office to which it was submitted; and
 - 3. The volume of fluid injected, the injection zone or zones into which it was injected, and the period over which injection occurred.
- H.** The owner or operator must retain for 10 years following site closure, records collected during the post-injection site care period. The owner or operator must deliver the records to the Director at the conclusion of the retention period, and the records must thereafter be retained at a location designated by the Director for that purpose.

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1903 (August 5, 2022), effective September 6, 2022 (Supp. 22-3).

R18-9-J669. Class VI; Emergency and Remedial Response

- A.** As part of the permit application, the owner or operator must provide the Director with an emergency and remedial response plan that describes actions the owner or operator must take to address movement of the injection or formation fluids that may cause an endangerment to a USDW during construction, operation, and post-injection site care periods. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit.
- B.** If the owner or operator obtains evidence that the injected carbon dioxide stream and associated pressure front may cause an endangerment to a USDW, the owner or operator must:
- 1. Immediately cease injection;
 - 2. Take all steps reasonably necessary to identify and characterize any release;
 - 3. Notify the Director within 24 hours; and
 - 4. Implement the emergency and remedial response plan approved by the Director.
- C.** The Director may allow the operator to resume injection prior to remediation if the owner or operator demonstrates that the injection operation will not endanger USDWs.
- D.** The owner or operator shall periodically review the emergency and remedial response plan developed under subsection (A). In no case shall the owner or operator review the emergency and remedial response plan less often than once every five

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ARTICLE 1. WATER QUALITY PROTECTION FEES**R18-14-101. Definitions**

In addition to the definitions in A.R.S. §§ 49-201, 49-241.02, 49-255, 49-331, and A.A.C. R18-9-101, A.A.C. R18-9-701, and A.A.C. R18-9-A901, the following terms apply to this Article:

1. "APP" means an Aquifer Protection Permit.
2. "Complex modification" means:
 - a. A revision of an individual Aquifer Protection Permit for a facility within a mining sector as defined in A.R.S. § 49-241.02(F)(1); and
 - b. A revision of an individual Aquifer Protection Permit for a facility within a non-mining sector due to any of the following:
 - i. An expansion of an existing pollutant management area requiring a new or relocated point of compliance;
 - ii. A new subsurface disposal including injection or recharge, or new wetlands construction;
 - iii. Submission of data indicating contamination, or identification of a discharging facility or pollutants not included in previous applications that requires reevaluation of BADCT; or
 - iv. Closure of a facility that cannot meet the clean closure requirements of A.R.S. § 49-252 and requires post-closure care, monitoring, or remediation.
3. "Courtesy review" means a design review service that the Department performs within 30 days from the date of receiving the submittals, of the 60 percent completion specifications, design report, and construction drawings for a sewage collection system.
4. "Priority review" means a design review service for an APP Type 4 permit application that the Department completes using not more than 50 percent of the total review time-frame for the applicable Type 4 permit application as specified in 18 A.A.C. 1, Table 10.
5. "Request" means a written application, notice, letter, or memorandum submitted by an applicant to the Department for water quality protection services. The Department considers a request made on the date it is received by the Department.
6. "Review hours" means the hours or portions of hours that the Department's staff spends on a request for a water quality protection service. Review hours include the time spent by the project manager and technical review team members, and if requested by the applicant, the supervisor or unit manager.
7. "Review-related costs" means any of the following costs applicable to a specific request for water quality protection service:
 - a. Presiding officer services for public hearings on a permitting decision,
 - b. Court reporter services for public hearings on a permitting decision,
 - c. Facility rentals for public hearings on a permitting decision,
 - d. Charges for laboratory analyses performed during the review, and
 - e. Other reasonable and necessary review-related expenses documented in writing by the Department and agreed to by an applicant.
8. "Standard modification" means an amendment to an individual Aquifer Protection Permit that is not a complex modification.

9. "UIC" means Arizona's Underground Injection Control Program.
10. "Water quality protection service" means:
 - a. Reviewing a request for an APP determination of applicability;
 - b. Issuing, renewing, amending, modifying, transferring, or denying an aquifer protection permit, an AZPDES permit, a UIC permit, a UIC application for an aquifer exemption or an injection depth waiver or a reclaimed water permit;
 - c. Reviewing supplemental information required by a permit condition, including closure for an APP;
 - d. Performing an APP clean closure plan review;
 - e. Issuing or denying a Certificate of Approval for Sanitary Facilities for a Subdivision;
 - f. Registering or transferring registration of a dry well;
 - g. Conducting a site visit;
 - h. Reviewing proprietary and other reviewed products under A.A.C. R18-9-A309(E);
 - i. Reviewing, processing, and managing documentation related to an AZPDES general permit, including a notice of intent, notice of termination, certificate of no exposure, and waiver;
 - j. Registering and reporting land application of biosolids; or
 - k. Pretreatment program review, inspection, or audit.

Historical Note

Adopted effective November 15, 1996 (Supp. 96-4). Amended by final rulemaking at 7 A.A.R. 564, effective January 2, 2001 (Supp. 01-1). Amended by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 (Supp. 11-2). Amended by final rulemaking at 28 A.A.R. 1811 (July 29, 2022), effective September 6, 2022 (Supp. 22-3).

R18-14-102. Hourly Rate and Maximum Fees for Water Quality Protection Services

- A. The Department shall assess and collect an hourly rate fee for a water quality protection service, except for APP minor permit amendments specified under A.A.C. R18-9-A211(C)(1), (2) and (3) and A.A.C. R18-9-B906(B), unless a flat fee is other-wise designated in this Article, and UIC minor modifications specified under A.A.C. R18-9-C633(A).
- B. Hourly rate fees. The Department shall calculate the fee using an hourly rate of \$122 except for the UIC program, where the Department shall calculate the fee using an hourly rate of \$145. These rates shall then be multiplied by the number of review hours to provide a water quality protection service, plus any applicable review-related costs, up to the maximum fee specified in subsection (C). The Department shall not charge an applicant for the first 60 minutes of Department pre-application consultation time costs for the project manager.
- C. Maximum fees for a water quality protection service assessed at an hourly rate in Table 1.

Historical Note

Adopted effective November 15, 1996 (Supp. 96-4). Amended by final rulemaking at 7 A.A.R. 564, effective January 2, 2001 (Supp. 01-1). Amended by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 (Supp. 11-2). Amended by final rulemaking at 28 A.A.R. 1811 (July 29, 2022), effective September 6, 2022 (Supp. 22-3).

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Table 1. Maximum Fees

Program Area	Permit Type	Maximum Fee
APP	Individual or area-wide	\$200,000
APP	Complex modification to individual or area-wide	\$150,000
APP	Clean closure of facility	\$50,000
APP	Standard modification to individual or area-wide (per modification up to the maximum fee, and modification can be reassigned under A.A.C. R18-1-516): <ul style="list-style-type: none"> ▪ Maximum fee (cumulative per submittal) \$150,000 ▪ Modification under A.A.C. R18-9-A211(C)(1) through (3) No fee ▪ Modification under A.A.C. R18-9-A211(C)(4) through (6) \$5,000 ▪ Modification under A.A.C. R18-9-A211(C)(7), (D)(2)(b) through (i), and (k) through (l) \$15,000 ▪ Modification under A.A.C. R18-9-A211(D)(2)(a) and (j) \$25,000 ▪ Modification under A.A.C. R18-9-A211(B) that is not classified as complex modification under R18-14-101(2) \$25,000 	
APP	For an APP issued before July 1, 2011, the fee for a submittal required by a compliance schedule is assessed per submittal and cumulative up to the maximum fee. The applicable maximum fee for all compliance schedule submissions shall be according to one of the three maximum fee categories listed below. The maximum fee is for the lifetime of the APP unless a new compliance schedule is established in the APP due to a modification that is classified as both a significant amendment under A.A.C. R18-9-A211(B) and a complex modification under R18-14-101(2) <ul style="list-style-type: none"> ▪ For a permit with a compliance schedule where one or more submissions require a permit modification that requires a determination or reevaluation of BADCT, the fee is assessed as described above for each standard modification, with a maximum fee for the permit’s entire compliance schedule of: \$150,000 ▪ For a permit with a compliance schedule where one or more submissions require a permit modification, but no determination or reevaluation of BADCT is required, the fee is assessed as described above for each standard modification, with a maximum fee for the permit’s entire compliance schedule of: \$100,000 ▪ For a permit with a compliance schedule requiring one or more submissions that require ADEQ review but do not require a permit modification, the maximum fee for the permit’s entire compliance schedule is: \$100,000 	
APP	For an APP issued on or after July 1, 2011, the fee for a submittal required by a compliance schedule is assessed per submittal and cumulative up to the maximum fee for the lifetime of the APP	\$100,000
APP	Determination of applicability	\$15,000
APP	Reviewing proprietary and other reviewed products under A.A.C. R18-9-A309(E)	\$15,000
AZPDES	Individual permit for municipal separate storm sewer system	\$40,000
AZPDES	Individual permit for wastewater treatment plant (based on gallons of discharge per day) <ul style="list-style-type: none"> ▪ 3,000 to 99,999 \$15,000 ▪ 100,000 to 999,999 \$20,000 ▪ 1,000,000 to 9,999,999 \$30,000 ▪ 10,000,000 or more \$50,000 	
AZPDES	Individual permit for a facility or activity that is not a wastewater treatment plant or a municipal separate storm sewer	\$30,000
AZPDES	Amendment to an individual permit	\$12,500
AZPDES	Approval of a new or revised pretreatment program under AZPDES	\$10,000
AZPDES	Consolidated individual permit for multiple AZPDES individual permits, as allowed under A.A.C. R18-9-B901(C)	Aggregate of the applicable maximum fees
Reclaimed	Reclaimed water individual permit	\$32,000
UIC	Area	\$200,000
UIC	Area Modification / Renewal	\$150,000
UIC	Classes I, II, III, V Individual	\$200,000
UIC	Classes I, II, III, V Modification / Renewal	\$150,000
UIC	Classes VI Individual	No Max
UIC	Classes VI Modification	No Max

Historical Note

Table 1 adopted by final rulemaking at 7 A.A.R. 564, effective January 2, 2001 (Supp. 01-1). Table 1 repealed; new Table 1 adopted by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 (Supp. 11-2). Amended by final rulemaking at 28 A.A.R. 1811 (July 29, 2022), effective September 6, 2022 (Supp. 22-3).

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R18-14-103. Initial Fees

- A. A person shall submit the applicable fee at the time a request for a water quality protection service is submitted to the Department.
- B. For each water quality protection service subject to an hourly rate fee established under R18-14-102:
 - 1. An applicant shall submit a \$2,000 initial fee at the time a request is submitted to the Department for review.
 - 2. If requested by an applicant, the Department may set a lower initial fee when the Department estimates a review fee that is less than the applicable initial fee.
- C. The Department shall not review a request for a water quality protection service if the applicant or permittee has not paid any fee due under this Article, unless the applicant or permittee has an outstanding water quality protection service bill that is under appeal pursuant to R18-14-106.

Historical Note

Adopted effective November 15, 1996 (Supp. 96-4). Amended by final rulemaking at 7 A.A.R. 564, effective January 2, 2001 (Supp. 01-1). Amended by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 (Supp. 11-2).

R18-14-104. Annual Fees for Water Quality Protection Services Subject to Hourly Rate Fee

- A. Annual Registration Fees. The annual registration fee required under A.R.S. § 49-242 is in Table 2.
- B. The Department shall assess an annual fee for an AZPDES-related water quality protection service subject to an hourly rate fee as listed in Table 3.
- C. The Department shall assess an annual fee of \$500 for an individual reclaimed water permit.
- D. The Department shall assess an annual fee and an annual waste disposal fee as applicable to UIC regulated facilities, subject to an hourly rate fee, as listed in Tables 3.1 and 3.2.

Historical Note

Adopted effective November 15, 1996 (Supp. 96-4). Amended by final rulemaking at 7 A.A.R. 564, effective January 2, 2001 (Supp. 01-1). Amended by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 (Supp. 11-2). Tables 2 and 3 removed from this Section to conform with the A.A.C. codification scheme; amended by final rulemaking at 28 A.A.R. 1811 (July 29, 2022), effective September 6, 2022 (Supp. 22-3).

Table 2. APP Annual Registration Fees

Discharge or Influent per Day under the Individual APP or Notice of Disposal (in Gallons)	Annual Registration Fee	Annual Registration Fee if New Facility Under New APP Not Yet Constructed
3,000 to 9,999	\$500	\$250
10,000 to 99,999	\$1,000	\$250
100,000 to 999,999	\$2,500	\$500
1,000,000 to 9,999,999	\$6,000	\$625
10,000,000 or more	\$8,500	\$750

Historical Note

Table 2 made by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 (Supp. 11-2).

Table 3. AZPDES Annual Fees

Permit Type	Annual Fee	Annual Fee if New Facility Under New AZPDES Not Yet Constructed
Municipal separate storm sewer system	\$10,000	N/A
Wastewater treatment plant (based on gallons of discharge per day):		
▪ Less than 99,999	\$250	\$250
▪ 100,000 to 999,999	\$500	\$500
▪ 1,000,000 to 9,999,999	\$2,500	\$625
▪ 10,000,000 or more	\$4,000	\$750
Facility or activity that is not a wastewater treatment plant or municipal separate storm sewer and designated in the permit as either:		
Major	\$2,500	\$625
Minor	\$500	\$500
Pretreatment program	\$3,000	N/A
Consolidated individual permit for multiple AZPDES individual permits, as allowed under A.A.C. R18-9-B901(C)	Aggregate of the applicable annual fees of each individual permit	Aggregate of the applicable annual fees of each individual permit

Historical Note

Table 3 made by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 (Supp. 11-2).

Table 3.1. UIC Annual Fees

Permit Type	Annual Registration Fee	Annual Waste Disposal Fee
Area	\$10,000 (and not subject to any other annual registration fee in Tables 3.1 and 3.2)	N/A
Class I	No Annual Registration Fee	\$0.002/gallon. Minimum Fee: \$10,000/year Maximum Fee: \$25,000/year

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Class II	See Table 3.2	N/A
Class III	See Table 3.2	N/A
Class V "Individual"	See Table 3.2	N/A
Class VI	No Annual Registration Fee	\$0.08/ton Minimum Fee: \$10,000/year

Historical Note

Table 3.1 made by final rulemaking at 28 A.A.R. 1811 (July 29, 2022), effective September 6, 2022 (Supp. 22-3).

Table 3.2. UIC Annual Registration Fees

Design Injection Flow Rate in Gallons per day ^{1, 2}	Annual Registration Fee
3,000 to 9,999	\$600
10,000 to 99,999	\$1,200
100,000 to 999,999	\$3,000
1,000,000 to 9,999,999	\$7,000
10,000,000 or more	\$10,000

¹ A Class II, III or V Individual UIC permittee with multiple wells or multiple permits may consolidate their same-class wells for the purpose of "design injection flow rate in gallons per day" under Table 3.2.

² An Area permit is not subject to Table 3.2.

Historical Note

Table 3.2 made by final rulemaking at 28 A.A.R. 1811 (July 29, 2022), effective September 6, 2022 (Supp. 22-3).

Schedule A. Repealed

Historical Note

Schedule A adopted effective November 15, 1996 (Supp. 96-4). Schedule repealed by final rulemaking at 7 A.A.R. 564, effective January 2, 2001 (Supp. 01-1).

Schedule B. Repealed

Historical Note

Schedule B adopted effective November 15, 1996 (Supp. 96-4). Schedule repealed by final rulemaking at 7 A.A.R. 564, effective January 2, 2001 (Supp. 01-1).

Schedule C. Repealed

Historical Note

Schedule C adopted effective November 15, 1996 (Supp. 96-4). Schedule repealed by final rulemaking at 7 A.A.R. 564, effective January 2, 2001 (Supp. 01-1).

Schedule D. Repealed

Historical Note

Schedule D adopted effective November 15, 1996 (Supp. 96-4). Schedule repealed by final rulemaking at 7 A.A.R. 564, effective January 2, 2001 (Supp. 01-1).

R18-14-105. Fee Assessment and Collection

- A. Billing. The Department shall bill an applicant for water quality protection services subject to an hourly rate no more than monthly, but at least quarterly. The following information shall be included in each bill:
 1. The dates of the billing period;
 2. The date and number of review hours itemized by employee name, position type and specifically describing:
 - a. Each water quality protection service performed,
 - b. Each facility involved and program component, and
 - c. The hourly rate for each water quality protection service performed;
 3. A description and amount of each review-related cost incurred for the project;
 4. The total fees paid to date, the total fees due for the billing period, the date when the fees are due, which shall be

at least 35 days after the date on the bill, and the maximum fee for the project.

- B. Final bill. After the Department makes a final determination whether to grant or deny a request for water quality protection services subject to an hourly rate fee, or when an applicant withdraws or closes the request, the Department shall prepare a final itemized bill of its review.
 1. If the total fee exceeds the amount of the initial fee plus all invoicing, the Department shall issue a final itemized bill for the cost of the water quality protection services up to the applicable maximum fee established under R18-14-102.
 2. If the total fee is less than the initial fee and all paid invoicing charges, the Department shall refund the difference to the applicant.
 3. Fees for water quality protection services shall be paid in U.S. dollars by cash, check, cashier's check, money order, or any other method acceptable to the Department.
 4. The Department shall not release the final permit or approval until the final itemized bill is paid in full.

Historical Note

Adopted effective November 15, 1996 (Supp. 96-4). Amended by final rulemaking at 7 A.A.R. 564, effective January 2, 2001 (Supp. 01-1). Amended by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 (Supp. 11-2).

R18-14-106. Reconsideration of a Bill; Appeal Process

- A. A person may seek review of a bill by filing a written request for reconsideration with the Director.
 1. The request shall specify, in detail, why the bill is in dispute and shall include any supporting documentation.
 2. The written request for reconsideration shall be delivered to the Director in person, by mail, or by facsimile on or before the payment due date or within 35 days of the invoice print date, whichever is greater.
- B. The Director shall make a final decision on the request for reconsideration of the bill and mail a final written decision to the person within 20 working days after the date the Director receives the written request.

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Historical Note

Adopted effective November 15, 1996 (Supp. 96-4).
Amended by final rulemaking at 7 A.A.R. 564, effective January 2, 2001 (Supp. 01-1).

Adopted effective November 15, 1996 (Supp. 96-4).
Amended by final rulemaking at 7 A.A.R. 564, effective January 2, 2001 (Supp. 01-1).

R18-14-107. Effect on County Fees

Nothing in this Chapter affects the authority of county or other local governments to charge fees for implementing delegated Department water quality protection programs in accordance with statutory authority.

Historical Note

R18-14-108. APP Water Quality Protection Services Flat Fees

- A. The Department shall assess a flat fee for an APP water quality protection service listed in this Section.
- B. Type 1 General Permits. No fee is required, except as stated in A.A.C. R18-9-A304(A)(2).
- C. Fees for Type 2 and Type 3 General Permits and related water quality protection services are listed in Table 4. For purposes of this Section, “complex” is defined in A.A.C. R18-1-501(9). “Standard” means any permit that does not meet the definition of complex.

Table 4. Type 2 and 3 General Permit Fees

Permit Description	Permit Fee	Renewal Fee
Standard Type 2	\$1,500	\$500
Complex Type 2	\$3,000	\$1,000
Standard Type 3	\$4,500	\$1,500
Complex Type 3	\$7,500	\$2,500
Amendment to Notice of Intent	Same as applicable renewal fee	N/A
Transfer of permit authorization	\$50	N/A
If a site contains more than one facility covered by the same Type 2 or Type 3 General Permit and each facility is substantially similar in design, construction, and operation, the first facility is paid at the full applicable fee, and each additional facility is:	Half the applicable fee	Half the applicable fee

D. Fees for Type 4 General Permits and related water quality protection services are listed in Table 5.

Table 5. Type 4 General Permit Fees

Water Quality Protection Service	Description	Permit Fee
4.01 General Permit: Sewage Collection Systems	Under each Notice of Intent to Discharge, the fee is assessed on a per-component basis for the components listed below and is assessed cumulatively up to the maximum fee: <ul style="list-style-type: none"> ▪ Maximum fee ▪ Force mains with design flow less than or equal to 10,000 gpd ▪ Each additional increment of 50,000 gpd or less of force mains ▪ Gravity sewer with design flow less than or equal to 10,000 gpd ▪ Each additional increment of 50,000 gpd or less of gravity sewer ▪ Each sewer lift station ▪ Each depressed sewer ▪ Realignment of existing sewer for a contiguous project that is less than 300 linear feet with no change in design flow or pipe size 	\$25,000 \$1,000 \$1,000 \$1,000 \$1,000 \$1,000 \$1,000 \$500
4.01 General Permit courtesy review	If an applicant requests courtesy review, the Department shall approve or deny the request. When determining whether to approve a courtesy review request, the Department shall consider the complexity of the project and the Department’s current work load	One-third applicable fee upon submittal, then balance of fee if Notice of Intent to Discharge is submitted with final documentation within 180 days of first submittal
4.23 General Permit: 3,000 to less than 24,000 Gallons per day Design Flow	<ul style="list-style-type: none"> ▪ Onsite wastewater treatment facility with up to: <ul style="list-style-type: none"> • Three treatment technologies and disposal methods consisting of technologies or designs that are covered under other Type 4 general permits; and • Two onsite wastewater treatment facilities ▪ Maximum fee (cumulative) ▪ Each additional onsite wastewater treatment facility on same Notice of Intent to Discharge up to maximum fee ▪ Each additional treatment technology or disposal method consisting of technologies or designs that are covered under other Type 4 general permits on same Notice of Intent to Discharge up to maximum fee 	\$3,600 \$7,500 \$1,200 \$500
4.23 General Permit annual report	Annual report required under A.A.C. R18-9-E323(G)	\$200

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Water Quality Protection Service	Description	Permit Fee
Type 4 General Permits (4.02 through 4.22)	<ul style="list-style-type: none"> ▪ Maximum fee ▪ First Type 4 general permit ▪ Each additional Type 4 general permit on same Notice of Intent to Discharge 	\$3,700 \$1,200 \$500
Alternative Design under A.A.C. R18-9-A312(G)	A request for an alternative design, installation, or operational feature, per alternative design: <ul style="list-style-type: none"> ▪ Type 4.01 general permit ▪ All other Type 4 general permits 	\$750 \$250
Interceptor under A.A.C. R18-9-A315	A design requiring an interceptor (per interceptor)	\$100
Transfer	Transfer of discharge authorization	\$50
Priority Review	If an applicant requests priority review, the Department shall approve or deny the request. When determining whether to approve a priority review request, the Department shall consider the complexity of the project and the Department's current work load.	Double the Applicable Fee (including any applicable maximum fee)

Historical Note

Adopted effective November 15, 1996 (Supp. 96-4). Section repealed by final rulemaking at 7 A.A.R. 564, effective January 2, 2001 (Supp. 01-1). New Section made by exempt rulemaking at 16 A.A.R. 851, effective July 1, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1505, effective July 1, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 (Supp. 11-2).

R18-14-109. AZPDES Water Quality Protection Services Flat Fees

- A. The Department shall assess a flat fee for an AZPDES water quality protection service, as described in Table 6.
- B. In addition to the requirements in A.A.C. R18-9-A907(B), a draft permit will state the category and fee assigned to the permit and the factors for establishing the fee, according to Table

- 6. Any person may comment on the fee category assignment as part of the public comment period described in A.A.C. R18-9-A908.
- C. Annual Fee. The Department shall bill an annual fee to permittees who have not filed a notice of termination for an applicable general permit.

Table 6. AZPDES Water Quality Protection Services Flat Fees

Category	Factors for Establishing Fees	Initial Fee	Annual Fee
Municipal Separate Storm Sewer System General Permit	The fee is based on the population of the permitted area: <ul style="list-style-type: none"> ▪ Less than or equal to 10,000 ▪ Greater than 10,000 but less than or equal to 100,000 ▪ Greater than 100,000 The fee for a non-traditional municipal separate storm sewer system, such as a hospital, college or military facility	\$2,500 \$5,000 \$7,500 \$5,000	\$2,500 \$5,000 \$7,500 \$5,000
Construction General Permit	The fee is based on the amount of acreage identified in the Notice of Intent: <ul style="list-style-type: none"> ▪ Less than or equal to 1 acre ▪ Greater than 1 acre but less than or equal to 50 acres ▪ Greater than 50 acres Pollution prevention plan review <ul style="list-style-type: none"> ▪ Each additional submittal due to deficiency Waiver If more than one person must apply for general permit coverage of the same facility or discharge activity, each person pays:	\$250 \$350 \$500 \$1,000 \$500 \$750 Fee applicable to the amount of acreage each person controls	\$250 \$350 \$500 N/A N/A N/A Fee applicable to the amount of acreage each person controls
Multi-Sector General Permit	The fee is based on the amount of acreage identified in the Notice of Intent: <ul style="list-style-type: none"> ▪ Less than or equal to 1 acre ▪ Greater than 1 acre but less than or equal to 40 acres ▪ Greater than 40 acres Pollution prevention plan review <ul style="list-style-type: none"> ▪ Each additional submittal due to deficiency Certificate of No Exposure If more than one person must apply for general permit coverage of the same facility or discharge activity, each person pays:	\$350 \$500 \$1,000 \$1,000 \$500 \$1,250 Fee applicable to the amount of acreage each person controls	\$350 \$500 \$1,000 N/A N/A N/A Fee applicable to the amount of acreage each person controls

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Category	Factors for Establishing Fees	Initial Fee	Annual Fee
General Permits for Non-Stormwater Discharges	The fee is based on the Department’s total anticipated staff hours (including permit development, customer service, review of the notice of intent, and annual data review and inspections) divided by the total number of potential permittees over a five-year period:		
	▪ Level 1A		
	• Staff hours: 1,500	\$250	\$250
	• Number of potential permittees: 750		
	▪ Level 1B		
	• Staff hours: 1,500	\$500	\$500
	• Number of potential permittees: 375		
	▪ Level 2		
	• Staff hours: 1,000	\$1,250	\$1,250
	• Number of potential permittees: 100		
▪ Level 3			
• Staff hours: 1,300	\$1,500	\$1,500	
• Number of potential permittees: 100			
▪ Level 4A			
• Staff hours: 1,600	\$2,000	\$2,000	
• Number of potential permittees: 100			
▪ Level 4B			
• Staff hours: 1,900	\$2,500	\$2,500	
• Number of potential permittees: 100			
	Pollution prevention plan review	\$1,000	N/A
	▪ Each additional submittal due to deficiency	\$500	N/A
Emergency Discharge General Permit	Authorization for emergency discharge	\$10,000	N/A
Transfer	Authorization for permit transfer as allowed under A.A.C. R18-9-B905	\$50	N/A
Biosolids Land Applicators	Initial registration	\$500	N/A
	Registration amendment	\$250	N/A
	Annual report based on amount of dry metric tons applied		
	▪ Less than or equal to 7,500 dry metric tons	N/A	\$2,500
	▪ Greater than 7,500 dry metric tons but less than or equal to 15,000 dry metric tons	N/A	\$3,000
	▪ Greater than 15,000 dry metric tons	N/A	\$4,500

Historical Note

New Section made by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 (Supp. 11-2).

R18-14-110. Reclaimed Water Flat Fees

The Department shall assess a flat fee for a reclaimed water quality protection service as listed in Table 7. For purposes of this Section, “complex” is defined in A.A.C. R18-1-501(9). “Standard” means any permit that does not meet the definition of complex.

Historical Note

New Section made by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 (Supp. 11-2).

Table 7. Reclaimed Water General Permit Fees

Permit Description	Permit Fee	Renewal Fee
Standard Type 2	\$600	\$450
Complex Type 2	\$750	\$575
Standard Type 3	\$1,500	\$1,250
Complex Type 3	\$2,000	\$1,500
Amendment to Notice of Intent	Same as applicable renewal fee	N/A
Transfer of permit authorization	\$50	N/A

Historical Note

New Table 7 made by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 (Supp. 11-2).

R18-14-111. UIC Flat Fees

The Department shall assess a flat fee for the following UIC regulated facility services:

1. Well installation in an Area Permit, \$200 per well installation.
2. Class V authorization by rule, \$200 per well inventory.
3. Class V authorization by rule, \$100 per well transfer.

Historical Note

New Section made by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 (Supp. 11-2). Section R18-14-111 renumbered to R18-14-112; new R18-14-111 made by final rulemaking at 28 A.A.R. 1811 (July 29, 2022), effective September 6, 2022 (Supp. 22-3).

R18-14-112. Other Flat Fees

Flat fees. The Department shall assess a flat fee for the following water quality protection services:

1. Dry well registration, \$100 per dry well until:
 - a. The fees in R18-14-111 are applicable, and
 - b. A.R.S Title 49, Chapter 2, Article 8 is removed.
2. Dry well transfer of registration, \$50 per transfer until:
 - a. The fees in R18-14-111 are applicable, and
 - b. A.R.S Title 49, Chapter 2, Article 8 is removed.

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3. Certificate of Approval for Sanitary Facilities for Subdivisions.
 - a. Subdivision with public sewerage system: \$800 for every increment of 150 lots or less;
 - b. Subdivision with individual sewerage system:
 - i. \$500 for less than 10 lots;
 - ii. \$1,000 for greater than 10 lots but less than 50 lots;
 - iii. \$1,000 for each additional increment of 50 lots or less.
 - c. If water from a central system is not provided to the lot, the fee is one and one-half the applicable fee stated in subsection (3)(a) or (b).
 - d. Condominium subdivision: \$1,000 for every increment of 150 units or less.

Historical Note

New Section made by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 (Supp. 11-2). Section R18-14-112 renumbered to R18-14-113; new R18-14-112 renumbered from R18-14-111 and amended by final rulemaking at 28 A.A.R. 1811 (July 29, 2022), effective September 6, 2022 (Supp. 22-3).

R18-14-113. Implementation

The fees in this Article apply on July 1, 2011. For fees related to the AZPDES program:

1. A person shall submit the applicable fee when requesting a water quality protection service as specified in an AZPDES General Permit or in 18 A.A.C. 9, Article 9; and
2. A person is responsible for paying the annual fee for an AZPDES general permit, even if the person filed for coverage before the effective date of these rules.

Historical Note

New Section made by final rulemaking at 17 A.A.R. 568, effective July 1, 2011 (Supp. 11-2). Section R18-14-113 renumbered to R18-14-114; new R18-14-113 renumbered from R18-14-112 by final rulemaking at 28 A.A.R. 1811 (July 29, 2022), effective September 6, 2022 (Supp. 22-3).

R18-14-114. Annual Report

By December 1 of each year, the Department shall publish an accounting of Water Quality Fee Fund revenue and expenditure activity for the prior fiscal year.

Historical Note

New Section R18-14-114 renumbered from R18-14-113 by final rulemaking at 28 A.A.R. 1811 (July 29, 2022), effective September 6, 2022 (Supp. 22-3).

R18-14-115. UIC Fees Review

The Department shall review the revenues derived from the implementation of the UIC program from the date of primacy through June 30, 2025. By September 30, 2025, the Department shall determine the adequacy of the fees in comparison to the relevant data from the time period. The Department shall repeat the review every three years based on the initial review date of June 30, 2025.

Historical Note

New Section R18-14-115 made by final rulemaking at 28 A.A.R. 1811 (July 29, 2022), effective September 6, 2022 (Supp. 22-3).

ARTICLE 2. PUBLIC WATER SYSTEM - DESIGN REVIEW FEES**R18-14-201. Definitions**

In addition to the definitions in A.A.C. R18-1-501, and 18 A.A.C. 4, the following terms apply to this Article:

“Design review” means the process for reviewing an application for an Approval to Construct as prescribed in A.A.C. R18-5-505(B).

“Design review service” means all activities related to processing an application for an Approval to Construct, including reviewing, approving, or denying an application, conducting a pre-application meeting or site visit, or other activity required to review an Approval to Construct application.

“Distribution system” has the same meaning prescribed in A.A.C. R18-5-101.

“Priority Review” means a design review service where a license application is reviewed using not more than 50% of the total review time-frame for an Approval to Construct license application.

“Public water system” has the same meaning prescribed in A.R.S. § 49-352(B).

“Licensing time-frame” means a period of time described and defined in A.R.S. Title 41, Chapter 6, Article 7.1, and 18 A.A.C. 1, Article 5.

“Water treatment plant” has the same meaning prescribed in A.A.C. R18-5-101.

Historical Note

Section made by final rulemaking at 14 A.A.R. 4102, effective December 6, 2008 (Supp. 08-4).

R18-14-202. Flat Rate Fees

- A. The Department shall assess and collect a flat rate fee for design review services for public water systems.
- B. Design criteria for public water systems are specified in 18 A.A.C. 4 and 18 A.A.C. 5.
- C. An applicant shall submit public water system design review fees with an application for an Approval to Construct, as specified in 18 A.A.C. 5, Article 5.
- D. The flat rate fees for a design review service:
 1. Are established in Table 1, are assessed on a per-unit basis where applicable, and are cumulative unless otherwise specified in this Article;
 2. Shall be paid by cash, check, cashier’s check, money order, or any other method acceptable to the Department; and
 3. Shall be paid in full before the Department issues approval of an application.
- E. The Department shall refund 50 percent of the application fee paid by an applicant if, during the administrative completeness review time-frame period, the applicant:
 1. Fails to respond in a reasonably timely manner, as set forth in A.A.C. R18-1-507, to a notice of administrative deficiencies requesting additional information under A.A.C. R18-1-503, and the Department denies the application; or
 2. Withdraws the application.
- F. If an application is denied under A.A.C. R18-1-507 after the end of the administrative completeness review time-frame, the Department shall retain the flat fee paid by the applicant.

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- G. If an applicant requests priority review, the Department shall approve or deny the request. When determining whether to approve a priority review request, the Department shall consider the complexity of the project and the Department’s current work load. If priority review is approved by the Department, the applicant shall pay the priority review fee specified in Table 1.
- H. State agencies are exempt from all fees imposed under this Article pursuant to A.R.S. § 49-353(A)(2)(b).

Historical Note

Section made by final rulemaking at 14 A.A.R. 4102, effective December 6, 2008 (Supp. 08-4).

**Table 1. Design Review Service Fees
Public Water System Design Review Application Types**

	Fees ^{1,2}
Approval to Construct Public Water Supply Distribution System:	
• 150 or fewer service connections	\$900
• 151 to 300 service connections	\$1,400
• 301 to 450 service connections	\$1,900
• 451 to 600 service connections	\$2,400
• 601 to 750 service connections	\$2,900
• Each additional 150 service connections	Add \$500
Water Treatment Plants and Blending Plans (including new source approval if applicable):	
• < 0.1 mgd	\$1,500
• ≥ 0.1 mgd and < 1 mgd	\$2,000
• ≥ 1 mgd and < 5 mgd	\$3,000
• ≥ 5 mgd	\$5,000
Well (including new source approval if applicable)	\$1,250
Storage Tank	\$800
Booster Pump	\$800
Main Line Extension	\$250
Chlorinators/Disinfection Devices	\$250
Extension of Time to Construct ³	50% of the application fee, not to exceed \$500
Priority Review Fee ⁴	Double the Standard Fee

¹ Fees are calculated on a per-unit basis; i.e., a separate fee is assessed for each separate storage tank, booster pump, disinfection device, or main line extension.

² Fees for each application type are cumulative; an applicant must pay the total of all pertinent fees.

³ Extensions of time to construct are issued pursuant to A.A.C. R18-5-505(E); the Section states that an Approval to Construct becomes void if construction is not commenced or completed within a specified time period, unless the Department grants an extension of time.

⁴ Priority Review Projects require Department authorization prior to filing.

Historical Note

Table 1, Design Review Service Fees, made by final rulemaking at 14 A.A.R. 4102, effective December 6, 2008 (Supp. 08-4).

ARTICLE 3. CERTIFIED OPERATOR FEES

R18-14-301. Certified Operator Fees

- A. Definition terms from A.A.C. R18-5-101 apply to this Article.
- B. The Department shall assess and collect a flat rate fee for a certification or renewal under the operator certification program.
- C. A person shall submit the applicable fee when requesting a certification or renewal under 18 A.A.C. 5, Article 1, as described below:
 1. An applicant that seeks new certification shall submit a \$65 fee per certification.
 2. An operator that has not held a lower grade level for the required amount of time requests the Department’s determination on experience and education in order to be admitted to a higher grade certification examination shall submit a fee of \$150 per application.
 3. An applicant that requests a certificate based on reciprocity with another jurisdiction shall submit a fee of \$250 per application.
 4. An operator submitting a certificate renewal shall submit a \$150 fee for each certificate. If the operator has multi-

ple certificates, the first certificate is \$150, and each additional certificate with the same expiration date is \$50.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 2597, effective July 1, 2016 (Supp. 15-4).

R18-14-302. Fee Assessment and Collection

- A. Fees for certification or renewal shall be paid in U.S. dollars by cash, check, cashier’s check, money order, or any other method acceptable to the Department.
- B. The Department shall not accept a request for a certification or renewal without the appropriate fee.
- C. If the Department does not accept an operator certificate renewal form, required according to A.A.C. R18-5-107(B), the certificate expires for failure to renew according to A.A.C. R18-5-108.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 2597, effective July 1, 2016 (Supp. 15-4).

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R18-14-303. Implementation

The fees in this Article apply to any application for a certification or renewal that is submitted on or after July 1, 2016.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 2597, effective July 1, 2016 (Supp. 15-4).