

NOTICES OF FINAL RULEMAKING

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

NOTICE OF FINAL RULEMAKING

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE TRANSACTION PRIVILEGE AND USE TAX SECTION

PREAMBLE

- 1. Sections Affected**
Article 22
R15-5-2213
- Rulemaking Action**
Amend
Amend
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**
Authorizing statutes: A.R.S. §§ 42-1005 and 42-5003
Implementing statute: A.R.S. § 42-5014(B)
- 3. The effective date of the rule:**
October 5, 2001
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 7 A.A.R. 2236, June 1, 2001
Notice of Proposed Rulemaking: 7 A.A.R. 2360, June 15, 2001
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Christie Comanita, Manager, Tax Research and Analysis Section
Address: Department of Revenue
1600 W. Monroe
Phoenix, AZ 85007
Telephone: (602) 542-4672
Fax: (602) 542-4680
E-mail: ComanitaC@revenue.state.az.us
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
A.R.S. § 42-5014 authorizes the Department of Revenue to allow alternative reporting. The statute sets specific thresholds at \$500 estimated annual tax liability for annual filing and \$1,250 estimated annual tax liability for quarterly filing in session law. The Department is amending the current rule to further implement the statute.
- 7. Reference to any study that the agency relied on in its evaluation of or justification for the final rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**
None
- 8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
- 9. The summary of the economic, small business, and consumer impact:**
It is expected that the benefits of the amended rule will be greater than the costs. Benefits will accrue to small businesses in that the frequency of reporting and remitting transaction privilege tax will decrease. However, because

monies are distributed to counties and cities based on monthly collections, the decrease in the number of monthly filers will decrease the amount of money distributed to the counties and cities. Rather than receiving the money on a more even monthly distribution, the counties and cities will receive moderate amounts quarterly and significant amounts annually. This will be offset by a decrease in the cost of processing zero dollar documents and the decrease in the number of reports submitted to the counties and cities. The Department will incur the costs associated with the rulemaking process. Taxpayers meeting the lower liability thresholds will benefit in being allowed to report and remit taxes on a less frequent basis.

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

None, except minor grammatical and stylistic changes requested by G.R.R.C. staff

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

The Department did not receive any written or verbal comments on the rule action after publication of the Notice of Proposed Rulemaking.

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

None

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

None

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

No

15. The full text of the rule follows:

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE

TRANSACTION PRIVILEGE AND USE TAX SECTION

ARTICLE 22. ~~TRANSACTION PRIVILEGE TAX SALES TAX~~ - ADMINISTRATION

Section

R15-5-2213. ~~Quarterly and Annual Basis~~ Alternative Reporting

ARTICLE 22. ~~TRANSACTION PRIVILEGE TAX SALES TAX~~ - ADMINISTRATION

R15-5-2213. ~~Quarterly and Annual Basis~~ Alternative Reporting

- A.** The Department shall authorize taxpayers to report on an annual or quarterly basis, if the taxpayer has established a filing history that shows that the taxpayer is not currently delinquent and that the taxpayer's annual tax liability is between \$500 and \$1250 for quarterly reporting or \$500 or less for annual reporting.
- B.** The Department shall authorize new ~~New~~ businesses that reasonably estimate their annual tax liability for the succeeding 12 months will be between \$500 and \$1,250 to report and remit tax on a quarterly basis ~~shall report monthly for a minimum of 12 consecutive months to establish historical data, enabling the Department to subsequently authorize the reporting and remitting of tax on a quarterly or annual basis according to statutory limits.~~
- C.** A taxpayer shall increase the reporting frequency to monthly and notify the Department of the change in reporting if the taxpayer's annual tax liability equals or exceeds or can reasonably be expected to equal or exceed \$1,250. The taxpayer shall increase the reporting frequency to quarterly and notify the Department of the change in reporting if the taxpayer's annual tax liability exceeds or can reasonably be expected to exceed \$500, but is or will be less than \$1,250. Failure to increase reporting frequency will subject the taxpayer to interest. Failure to increase reporting frequency will also subject the taxpayer to penalties unless the taxpayer can show that the failure was due to reasonable cause and not willful neglect.
- D.** A taxpayer shall begin to report on a monthly basis at anytime during a 12-month period if the annualized tax liability for the taxpayer reporting on an annual or quarterly basis equals or exceeds \$1,250. A taxpayer shall begin to report on a quarterly basis at anytime during a 12-month period if the annualized tax liability for the taxpayer reporting on an annual basis is expected to exceed \$500, but be less than \$1,250.

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY
SAFE DRINKING WATER

PREAMBLE

1. Sections Affected

R18-4-207
R18-4-209
R18-4-217
R18-4-224
R18-4-225
R18-4-226
R18-4-403

Rulemaking Action

Amend
Amend
Amend
Amend
Amend
Amend
Amend

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

Authorizing statutes: A.R.S. §§ 49-353(A)(2) and 49-360(H), as amended by Laws 2001, Chapter 178, § 1
Implementing statute: A.R.S. § 49-360, as amended by Laws 2001, Chapter 178, § 1

3. The effective date of the rules:

October 16, 2001

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

Notice of Rulemaking Docket Opening: 7 A.A.R. 1263, March 16, 2001
Notice of Proposed Rulemaking: 7 A.A.R. 2708, June 29, 2001

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

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

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

Telephone: Jeff Stuck, (602) 207-4617
Moncef Tihami, (602) 207-4425
(In Arizona, call (800) 234-5677)

Fax: (602) 207-4634

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

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

Background

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

A public water system is defined in A.R.S. § 49-352 as a system that provides water for human consumption through pipes or other constructed conveyances and has at least 15 service connections or regularly serves at least 25 persons for at least 60 days a year. In Arizona, there are approximately 1,700 regulated public water systems. Of those regulated water systems, 15 percent of the largest systems provide water to approximately 90 percent of the population. The remaining 85 percent of the water systems serve the remaining 10 percent of the population.

Public water systems serving less than 10,000 persons are required to participate in MAP. Each participating system pays an annual fee into the monitoring assistance fund, which provides for the collection, transportation and analysis of

Arizona Administrative Register
Notices of Final Rulemaking

samples by a contractor or contractors hired by ADEQ. The current fee structure provides for the collection of fees from participating water systems over a three-year period. The systems elect which year to receive the program services. Program fees collected in 1999 were \$867,640 and in 2000 fees generated \$916,697. Over this two-year period, the program has been overfunded by an annual average of \$300,000.

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

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

In December 2000, the Senate Subcommittee on Environment held a public hearing to receive a report from the Department on the status of MAP and receive stakeholder input on the program. All 876 participating water systems were notified of the hearing and were requested to provide input on the program. While some of the larger systems participating in the program indicated that the services provided by the program were of little benefit to them for the cost, most of the participating systems rated the program favorably and made suggestions for improvements. The Department held workshops around the state to explain the rules and to receive comments from stakeholders. After publication of the Notice of Proposed Rulemaking, the Department held three oral proceedings to allow interested parties the opportunity to make oral comments on the record (July 31 in Tucson, August 1 in Phoenix, and August 2 in Flagstaff.)

Purpose

This rulemaking amends 18 A.A.C. 4, Article 2, "Maximum Contaminant Levels and Monitoring Requirements; Monitoring Assistance Program." The amendments are required by S.B. 1365, amending A.R.S. § 49-360, codified at Laws 2001, Chapter 178, § 1. The rulemaking also incorporates changes required to maintain primacy of the MAP, to conform the language to current rulemaking style, and to make other miscellaneous changes, some of which fulfill commitments made in the five-year review report approved at the September 14, 1999 meeting of the Governor's Regulatory Review Council. Following is a summary of the major changes to the MAP effected by Laws 2001, Chapter 178, § 1:

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

Starting January 1, 2002, a water system participating in the MAP will not be able to opt out of the program if the system serves under 10,000 persons. (See comment analysis in item #11 of the Preamble, Summary of Comments and Agency Responses, for discussion of systems that exceed a population of 10,000.)

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

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

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

Changes to rules governing monitoring requirements to specify that monitoring may be done by a contractor on behalf of a water system.

Section-by-section Explanation of the Rules

1. R18-4-207 sets forth monitoring requirements for asbestos; language is added that allows contractors to conduct monitoring on behalf of a public water system.
2. R18-4-209 sets forth monitoring requirements for nitrite; language is added which allows MAP contractors to conduct monitoring on behalf of a public water system.
3. R18-4-217 sets forth maximum contaminant levels (MCLs) and monitoring requirements for radiochemicals; language is added that allows contractors to conduct monitoring on behalf of a public water system.
4. R18-4-224 sets forth general criteria concerning the monitoring assistance program.
5. R18-4-225 sets forth criteria for monitoring assistance program fees.
6. Table A (part of R18-4-225), which currently sets forth a methodology for calculating fees based on meter weights, is being removed.
7. R18-4-226 sets forth criteria for the collection and payment of fees.
8. R18-4-227 sets forth administrative and fiduciary duties of the Department in administering the monitoring assistance fund.
9. R18-4-402 sets forth monitoring requirements for nickel; language is added that allows contractors to conduct monitoring on behalf of a public water system.

Relevant Five-year Review Reports

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

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

None

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

Not applicable

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

This summary economic, small business, and consumer impact statement (EIS) is provided pursuant to A.R.S. §§ 41-1035, 41-1052(C), and 41-1055. The complete Economic, Small Business, and Consumer Impact statement submitted to G.R.R.C. with this Notice of Final Rulemaking is incorporated herein by this reference.

Persons Directly Affected by the Rule:

1. ADEQ is the implementing agency for this rule.
2. All small public water systems participating in MAP.
3. The private MAP Contractor ADEQ hires to run the program.
4. ADHS-certified laboratories that are qualified to carry out analytical testing for surveillance sampling.
5. Residents and nonresidents of Arizona who are served by the public water systems participating in this program.

COST-BENEFIT ANALYSIS

1. Costs and Benefits to ADEQ

ADEQ has three full-time equivalent (FTE) employees devoted to administering the MAP. The program is implemented primarily by staff in the Safe Drinking Water Section's MAP Unit, which consists of one Unit Manager (Grade 22) and two Environmental Program Specialists (Grade 20). The increase from 10 percent to 15 percent of the Monitoring Assistance Fund (MAF) monies allocated to ADEQ by the statutory change enacted by the Legislature this past session is justified both by the numerous oversight and administrative functions performed by the Department to fulfill legislative mandates and run the MAP, and the significant drop in the revenue stream as a result of the reduction in fees.

Since the statute previously limited what ADEQ could receive from the MAF to 10 percent of fee revenues, ADEQ had to subsidize the remaining administrative costs from other fund sources to cover its costs. ADEQ did not take the full 10 percent allotment in the first two years of the program, for the following reasons. First, the top priority for the Department was to ensure the success of the program; the revenues and costs were only estimates, and the Department did not want the program to run short on funds. Second, the Department did not allocate all staffing costs to the program; since several positions did not work exclusively for the program, the time spent on the program by these staff members was not charged to the program to ensure adequate funding for the program in its first few years. Finally, it took longer to get the computer database program for the program up and running than anticipated, and charges incurred prior to the time the database was running were allocated to other sources of funds. The Safe Drinking Water database is a computerized system that handles, among other things, information concerning contaminant sampling and test results done for participating public water systems. All of the amounts paid to the Contractor come from the fees paid by the systems. ADEQ expenditures for its staff is paid partially from fee revenues and partially from federal grants.

ADEQ does not anticipate any surpluses in the projected revenues for the next monitoring cycle. There is approximately \$666,082.30 of surplus monies in the MAF from the previous monitoring cycle that ADEQ intends to use to buy down fees for subsequent years. Based on total revenue projections for the year 2002 through 2004, ADEQ proposes to re-structure the fees to be paid by participating public water systems. Anticipated changes include the addition of asbestos, nitrites and radiochemicals to the list.

The projected budget items for which ADEQ can legally draw on MAF funds are restricted to \$113,000 annually and \$339,000 for the entire monitoring cycle. These are the expenditures for which public water systems pay for through the annual collection of fees. Because the previous fee structure overfunded the MAP program, ADEQ is proposing to reduce the unit fee per service connection by approximately 26 percent from \$3.50 to \$2.57 while adding a newly created annual membership fee of \$250. This fee structure was suggested and supported by stakeholders. ADEQ plans to continue to use federal grants to subsidize any remaining administrative costs needed to administer the MAP program which is not covered by the MAP fees.

Arizona Administrative Register
Notices of Final Rulemaking

ADEQ will also cease to charge fees based on the size of the service connections. Instead, ADEQ will introduce a flat fee which will be applied to each service connection regardless of size. Based on the total number of service connections, the projected annual MAP fees based on the current number of participating water systems and related total number of service connections is estimated to be \$754,000. And, despite the increase in the number of contaminants, ADEQ does not anticipate hiring any new FTEs for the enhanced MAP program.

2. Costs and Benefits to Political Subdivisions of the State

The main political subdivisions of the state affected by this rule are the municipalities or counties that are owners and operators of small public water systems. They are required to participate in the program, just like other small public water systems owned by private sector entities. The current payments from publicly-owned water systems during this monitoring cycle totaled \$793,681.89 (3 x \$264,560.63), with fees ranging from \$350.00 to \$13,562.26. The projected payments for these water systems during the next monitoring cycle is estimated at \$541,535.73 (3 x \$180,511.91) with fees ranging from \$252.57 to \$9,458.31. Therefore, publicly-owned water systems will see an overall decrease in fees of approximately 26 percent, although some systems will see a small increase.

3. Costs and Benefits to Private Businesses, including Small Businesses

a. Privately-owned Public Water Systems

These are 714 privately-owned public water systems referred to in Table 6 above. Their current payments during this monitoring cycle totaled \$2,098,423.74 (3 x \$699,474.58) with fees ranging from \$350.00 to \$13,562.26. The projected payments for these water systems during the next monitoring cycle is estimated at \$1,720,412.16 (3 x \$573,470.72) with fees ranging from \$252.57 to \$9,458.31. Therefore, privately-owned water systems will see an overall decrease in fees of approximately 26 percent, although some systems will see a small increase.

b. Private Sector Contractors

These are those determined by ADEQ to be eligible to bid on the MAP contract. Only one contractor was selected for each calendar year. In 1999, the selected contractor submitted a bid sum of \$461,982.25; in 2000, it was \$530,126.00, and in 2001, \$971,855. Actual payments to the contractors did not necessarily equate to the bid sums, as adjustments were made throughout the length of each contract. These adjustments are directly related to the change in the number of samples collected which was triggered by waivers granted or additional monitoring ADEQ decided to collect in 1999 in an effort to reduce the number of samples required in subsequent years, therefore reducing future MAP contract fees, and other factors, resulted in adjustments that changed the amounts billed and paid by ADEQ.

c. ADHS-Certified Laboratories

These are labs that are certified to do the analytical testing of drinking water samples collected by the ADEQ Contractor. The added costs for these will be included in the contract terms that will be put out to bid. The labs that have done testing for SDWA requirements in the past include Montgomery Watson Laboratories and Aqua Tech environmental Laboratories, Inc. During the next monitoring cycle, it is projected that additional costs of \$484,420 will be incurred by the program for testing the chemicals added to the list by statute. It is anticipated that the frequency of sampling for the existing chemicals (VOCs, SOCs and IOCs) on the list will be reduced by approximately 40 percent in the next monitoring cycle.

4. Costs and Benefits to Residents and Consumers

Under the MAP program, water systems are allowed to pass the MAP costs to consumers. It is unknown to ADEQ how participating water systems bill their customers. And because the fees of the MAP program are decreasing, it is safe to assume that residents will realize some type of saving when the new program commences in January 1, 2001.

The primary benefits of the MAP program is to ensure public health and assist small water systems comply with the monitoring and reporting requirements of the Safe Drinking Water Act. The MAP program makes sure that drinking water is tested regularly to confirm that water quality meets the standards of the Safe Drinking Water Act. Additionally, the MAP program also identifies areas where there are water quality issues and refers them to the compliance Section so that they are addressed in a timely manner. The proposed enhanced MAP program will monitor for chemicals not tested for previously. This will ensure an even greater margin of public health protec-

Arizona Administrative Register
Notices of Final Rulemaking

tion for the residents served by small public water systems and compliance with the monitoring and reporting requirements of the Safe Drinking Water Act.

5. Reduction of Rule Impacts on Small Businesses

All public water systems participating in the MAP program are considered to be small businesses. Since the fees are reduced for all participants in the program, they will see some economic benefits. When evaluating the changes required by the legislature and other factors which influenced this rulemaking, consideration was given to minimizing the potential financial impact on small businesses. The Monitoring Assistance Program was created to assist small water systems to comply with the requirements of the Safe Drinking Water Act; MAP does not apply to large water systems. The authorizing laws do not allow the Department to establish less costly schedules or less stringent deadlines for compliance for small businesses, or to exempt small businesses from any or all MAP requirements.

6. Probable Impact of the Rule on Private and Public Employment

The proposed rule is not anticipated to have a significant impact on either public or private employment. Certainly, public water systems will not need to hire new workers since most of the work is carried out by the contractor, the labs, and ADEQ staff. The contractor (the successful bidder) or a private laboratory might hire one or two employees as a result of the sampling and testing of new chemicals on the list, but this is not possible to verify at this point. The larger and more technically advanced labs have the capacity to absorb the increased work that will be demanded by the enhanced program. Contractors that won the MAP bids in previous years had to hire additional employees to collect the samples and manage the project and this is most likely to happen again when future MAP contracts are awarded.

7. The Probable Effect of the Rule on State Revenues

There will be an increase in the amount ADEQ is authorized to receive from the MAF, from 10 percent to 15 percent of fees deposited to the fund. As indicated above, this sum is expected to increase from \$97,000 to \$113,000. Although the Department will increase its revenues, the projected amount does not cover all of ADEQ's costs; some will continue to be paid for by federal grants.

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

Minor technical and grammatical changes were made in response to suggestions from G.R.R.C. staff.

11. A summary of comments and agency responses:

The Department did not receive any written or oral comments during the official public comment period from June 29, 2001 through August 8, 2001. However, there were several comments received prior to the official comment period, which are discussed in the Concise Explanatory Statement to this rulemaking, incorporated herein by this reference.

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

Not applicable

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

Not applicable

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

No

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

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

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

Section

R18-4-207. Asbestos; Monitoring Requirements

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

- R18-4-217. Radiochemicals; MCLs and Monitoring Requirements
- R18-4-224. The Monitoring Assistance Program
- R18-4-225. Fees for the Monitoring Assistance Program
- R18-4-226. Collection and Payment of Fees
- R18-4-403. Special Monitoring for Nickel

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

R18-4-207. Asbestos; Monitoring Requirements

- A. ~~Each A community water system [CWS] or and nontransient, noncommunity water system [NTNCWS], or a contractor on behalf of a CWS or NTNCWS,~~ shall conduct monitoring to determine compliance with the ~~maximum contaminant level MCL~~ for asbestos. A transient, noncommunity water system is not required to monitor for asbestos.
- B. ~~Each A CWS and or NTNCWS, or a contractor on behalf of a CWS or NTNCWS,~~ shall conduct monitoring for asbestos in the monitoring year designated by the Department during the initial compliance period of each compliance cycle, beginning in the compliance period ~~which that~~ starts on January 1, 1993.
- C. ~~Each If the Department determines that a CWS and or NTNCWS that~~ is vulnerable to asbestos contamination due solely to ~~its~~ source water, ~~the Department shall notify the CWS or NTNCWS in writing that the CWS or NTNCWS, or a contractor on behalf of the CWS or NTNCWS,~~ shall conduct source water monitoring for asbestos at each sampling point as prescribed in R18-4-218. A CWS or NTNCWS, ~~or a contractor on behalf of a CWS or NTNCWS,~~ shall take ~~± one~~ sample for asbestos at each sampling point.
- D. A CWS or NTNCWS, ~~or a contractor on behalf of a CWS or NTNCWS,~~ may composite samples for asbestos as prescribed in R18-4-219.
- E. ~~Each If the Department determines that a CWS and or NTNCWS that~~ is vulnerable to asbestos contamination solely because of corrosion of asbestos-cement pipe in the distribution system, ~~the Department shall notify the CWS or NTNCWS in writing that the CWS or NTNCWS, or a contractor on behalf of the CWS or NTNCWS,~~ shall take a minimum of ~~± one~~ sample at a tap served by asbestos-cement pipe under conditions where asbestos contamination is most likely to occur.
- F. ~~A If the Department determines that a CWS or NTNCWS that~~ is vulnerable to asbestos contamination due ~~both to both~~ its source water ~~supply~~ and corrosion of asbestos-cement pipe, ~~the Department shall notify the CWS or NTNCWS in writing that the CWS or NTNCWS, or a contractor on behalf of the CWS or NTNCWS,~~ shall take ~~± one~~ sample at a tap served by asbestos-cement pipe under conditions where asbestos contamination is most likely to occur.
- ~~G. The Department may accept monitoring data from a sampling point that was collected after January 1, 1990, to satisfy initial monitoring requirements for asbestos provided the data are generally consistent with the requirements prescribed in this Section.~~
- ~~H.G.~~ If the analytical results of an initial sample do not exceed seven MFL ~~[greater than 10 microns], then~~ a CWS or NTNCWS is not required to take another sample at that sampling point until the initial compliance period of the next compliance cycle.
- ~~I.H.~~ If the concentration of asbestos in a sample exceeds seven MFL ~~(greater than 10 microns), then~~ a CWS or NTNCWS, ~~or a contractor on behalf of a CWS or NTNCWS,~~ shall conduct quarterly monitoring at that sampling point, beginning in the quarter immediately following collection of the sample ~~which exceeded that exceeds~~ the ~~maximum contaminant level MCL.~~
 1. A CWS or NTNCWS, ~~or a contractor on behalf of a CWS or NTNCWS,~~ shall continue quarterly monitoring at a groundwater sampling point until ~~a minimum of 2 at least two~~ consecutive quarterly samples are taken ~~and in which~~ the concentration of asbestos in each sample ~~is below does not exceed~~ seven MFL ~~[greater than 10 microns].~~ If the analytical results from ~~2 two or more~~ consecutive quarterly samples are less than seven MFL ~~[greater than 10 microns], then~~ the ~~Department shall give written permission to the public water system to return to base monitoring frequency if the Department determines that the public water system has been reliably and consistently below the MCL for asbestos in previous samples. If the Department gives written permission to return to base monitoring frequency, the public water system is not required to take a repeat sample at the groundwater sampling point until the initial compliance period of the next compliance cycle. The decision by the Department to allow a groundwater system to return to base monitoring frequency shall be in writing.~~
 2. A CWS or NTNCWS, ~~or a contractor on behalf of a CWS or NTNCWS,~~ shall continue quarterly monitoring at a surface water sampling point until ~~a minimum of 4 at least four~~ consecutive quarterly samples are taken and the concentration of asbestos in each sample ~~is below does not exceed~~ seven MFL ~~[greater than 10 microns].~~ If the analytical results from ~~4 four~~ consecutive quarterly samples are less than seven MFL ~~[greater than 10 microns], then~~ the ~~Department shall give written permission to the public water system to return to base monitoring frequency if the Department determines that the public water system has been reliably and consistently below the MCL for asbestos in previous samples. If the Department gives written permission to return to base monitoring frequency, the public water system is not required to take a repeat sample at the surface water sampling point until the initial compliance period~~

Arizona Administrative Register
Notices of Final Rulemaking

of the next compliance cycle. ~~The decision by the Department to allow a CWS or NTNCWS to return to base monitoring frequency shall be in writing.~~

~~J.I.~~ If the results of sampling for asbestos indicate an exceedance of the maximum contaminant level MCL, the Department may require that ± one confirmation sample be collected. The confirmation sample shall be collected at the same sampling point as soon as possible but no later than ± two weeks after the initial sample was taken.

~~K.I.~~ A CWS or NTNCWS is out of compliance Compliance with the maximum contaminant level MCL for asbestos if is determined by the concentration of asbestos in a single sample is greater than 7 MFL except where, unless a confirmation sample is taken. If a confirmation sample is required by the Department taken, then the results of the initial sample and the confirmation sample shall be averaged. The and the resulting average shall be used to determine compliance with the maximum contaminant level MCL for asbestos.

~~L.K.~~ If a water supplier of a CWS or NTNCWS believes that a CWS or NTNCWS is not vulnerable to asbestos contamination of its source water or contamination of its distribution system due to corrosion of asbestos-cement pipe, or both, then a water supplier the water supplier may make a written request for an asbestos monitoring waiver from the Department; the Department may also grant a waiver without a written request. A decision by the Department to grant an asbestos monitoring waiver shall be in writing and shall set forth the grounds for the decision. A water supplier shall provide documentation of analytical results that support the request for a monitoring waiver. If the Department grants a waiver, the CWS or NTNCWS is not required to monitor for asbestos. The Department shall not grant a waiver from initial monitoring requirements for the compliance period which begins January 1, 1993.

1. ~~The Department may~~ Department's determination of whether to grant an asbestos monitoring waiver shall be based on a consideration of the following factors:
 - a. Potential asbestos contamination of the water source water; and
 - b. ~~The use~~ Use of asbestos-cement pipe for distribution of water; and
 - c. Water corrosivity.
2. An asbestos monitoring waiver remains in effect for a compliance cycle. If an asbestos monitoring waiver is not renewed in the ~~4th~~ first year of the initial compliance period of the following compliance cycle, ~~then~~ a CWS or NTNCWS, or a contractor on behalf of a CWS or NTNCWS, shall conduct repeat monitoring for asbestos before the end of the initial compliance period of that compliance cycle.
3. ~~A decision by the Department to grant an asbestos monitoring waiver shall be in writing and shall set forth the grounds for the decision. A water supplier may make a written request for an asbestos monitoring waiver or the waiver may be granted on the Department's initiative. A water supplier shall provide documentation of analytical results which supports the request for a monitoring waiver.~~

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

- A. ~~All~~ A public water systems system, or a contractor on behalf of a CWS or NTNCWS, shall monitor to determine compliance with the MCL for nitrite.
- B. ~~Each~~ A public water system, or a contractor on behalf of a CWS or NTNCWS, shall monitor for nitrite at each sampling point as prescribed in R18-4-218.
- C. A public water system, or a contractor on behalf of a CWS or NTNCWS, may composite ~~nitrite~~ samples for nitrite as prescribed in R18-4-219.
- D. A public water system, or a contractor on behalf of a CWS or NTNCWS, shall take ± one sample at each sampling point during the initial compliance period. ~~Each~~ A public water system, or a contractor on behalf of a CWS or NTNCWS, shall monitor for nitrite in the initial monitoring year designated by the Department within the initial compliance period.
- E. If the analytical result of the initial ~~nitrite~~ sample for nitrite at a sampling point is < less than 0.5 mg/L (as ~~N~~ nitrogen), a public water system is not required to take another nitrite sample at that sampling point until the ~~4th~~ first compliance period of the next compliance cycle.
- F. If the analytical result of the initial ~~nitrite~~ sample for nitrite at a sampling point is ≥ greater than or equal to 0.5 mg/L (as ~~N~~ nitrogen), a public water system, or a contractor on behalf of a CWS or NTNCWS, shall conduct quarterly monitoring at that sampling point for at least 4 four consecutive quarters.
- G. ~~If~~ The Department may reduce the monitoring frequency at a sampling point from quarterly to annually if the concentration of nitrite in 4 four consecutive quarterly samples at a sampling point is < does not exceed one mg/L (as ~~N~~ nitrogen), the Department shall give written permission to the public water system to reduce its monitoring frequency at a sampling point from quarterly to annually if the Department determines that the public water system has been reliably and consistently below the MCL for nitrite in previous samples.
- H. If the Department reduces the monitoring frequency from quarterly to annually, the public water system shall take annual samples during the quarter which that previously yielded the highest analytical result for nitrite. If the Department reduces the monitoring frequency at a sampling point from quarterly to annually and there is a subsequent detection of nitrite at the sampling point in the same monitoring period, and the a concentration that is ≥ 0.5 mg/L but ≤ does not exceed one mg/L (as nitrogen), the detection shall not trigger quarterly monitoring. ~~The Department's decision to reduce monitoring frequency shall be in writing.~~

Notices of Final Rulemaking

~~H.I.~~ The Department shall not accept monitoring data collected before the initial monitoring year to satisfy initial monitoring requirements for nitrite.

~~I.J.~~ The Department shall not grant monitoring ~~Monitoring~~ waivers for nitrite ~~are prohibited~~.

~~J.K.~~ If the concentration of nitrite in a sample exceeds one mg/L (as ~~N nitrogen~~), the ~~water supplier public water system, or a contractor on behalf of a public water system~~, shall take a confirmation sample at the same sampling point within 24 hours of receiving the analytical results of the initial sample. A ~~water supplier public water system~~ that cannot take a confirmation sample within 24 hours shall issue public notice to persons served by the system in accordance with R18-4-105. A ~~water supplier public water system~~ that cannot take a confirmation sample within 24 hours and that issues public notice shall take and complete the analysis of a confirmation sample within two weeks of receiving the analytical results of the initial sample.

~~K.L.~~ Compliance with the MCL for nitrite is based upon the average of the analytical results of the initial sample and the confirmation sample. If a ~~water supplier public water system~~ fails to take the required confirmation sample, compliance is based upon the analytical results from the initial sample.

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

A. Water distributed by a CWS shall not exceed the following MCLs:

1. 5 pCi/l for combined radium-226 and radium-228;
2. 15 pCi/l for gross alpha particle activity, including radium-226 but excluding radon and uranium;
3. ~~The average annual concentration of beta particle and photon radioactivity from man-made radionuclides shall not produce an annual dose equivalent to the total body or any internal organ > 4 millirem / year.~~
Four millirem per year annual dose equivalent to either the total body or to an internal organ (average annual concentration of beta particle and photon radioactivity from man-made radionuclides.)
 - a. Except for Tritium and Strontium-90, the concentration of man-made radionuclides causing 4 millirem total body or organ dose equivalents shall be calculated on the basis of a ~~2~~ two-liter per day drinking water intake using the 168-hour data listed in ~~“Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and in Water for Occupational Exposure,” NBS the National Bureau of Standards Handbook 69, U.S. Department of Commerce, (as amended August 1963 and no future editions), which is incorporated by reference in the definition of “man-made beta particle and photon emitters” in R18-4-101. and on file with the Office of the Secretary of State and the Department.~~ the National Bureau of Standards Handbook 69, U.S. Department of Commerce, (as amended August 1963 and no future editions), which is incorporated by reference in the definition of “man-made beta particle and photon emitters” in R18-4-101.
 - b. ~~The Department assumes that the~~ following average annual concentrations of Tritium and Strontium-90 ~~are assumed to~~ produce a total body or organ dose equivalent of four millirem per year:

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

c. If ~~2~~ two or more radionuclides are present, the sum of their annual dose equivalents to the total body or to any internal organ shall not exceed four millirem/year.

B. A CWS, ~~or a contractor on behalf of a CWS~~, shall monitor for gross alpha particle activity, radium-226, and radium-228 as follows:

1. A CWS, ~~or a contractor on behalf of a CWS~~, shall monitor each sampling point as prescribed in R18-4-218 once every ~~4~~ four years. A CWS, ~~or a contractor on behalf of a CWS~~, shall take ~~4~~ four consecutive quarterly samples at each sampling point for gross alpha particle radioactivity, radium-226, and radium-228 analysis.
2. The Department shall determine compliance with the MCLs in subsections (A)(1) and (A)(2) from the analytical results of a composite sample composed of ~~4~~ four consecutive quarterly samples or the average of the analytical results of ~~4~~ four consecutive quarterly samples, whichever method the public water system chooses.
3. A gross alpha particle activity measurement may be substituted for the required radium-226 and radium-228 analyses ~~provided that if~~ the measured gross alpha particle activity does not exceed five pCi/L at a confidence level of 95 percent (1.65 Fs where Fs is the standard deviation of the net counting rate of the sample).
 - a. If a gross alpha particle activity measurement exceeds five pCi/L, the same sample shall be analyzed for radium-226. If the concentration of radium-226 exceeds three pCi/L, the same sample shall be analyzed for radium-228.
 - b. If a gross alpha particle activity measurement exceeds 15 pCi/L, the same sample shall be analyzed for uranium and the uranium result shall be subtracted from the gross alpha particle activity measurement to determine compliance with subsection (A)(2).
 - c. ~~In localities where radium-228 may be present in drinking water, the Department may~~ The Department shall consider the following criteria in determining whether to require radium-226 and radium-228 analyses:
 - i. ~~Whether if~~ the gross alpha particle activity exceeds two pCi/L, ~~and~~
 - ii. Whether radium-228 may be present in the local drinking water.

Arizona Administrative Register
Notices of Final Rulemaking

- C. If the MCL for gross alpha particle activity or combined radium-226 and radium-228 is exceeded, the CWS, or a contractor on behalf of a CWS, shall monitor quarterly at the sampling point until a monitoring schedule that is a condition of a variance, exemption, compliance agreement, or enforcement action is effective or the annual average concentration no longer exceeds the MCL due to ± one or more of the following:
1. Treatment,
 2. Removal of a source from service, or
 3. ~~An approved~~ A blending plan approved under R18-4-221.
- D. ~~If the Department determines that current monitoring results demonstrate a need for more frequent monitoring, the~~ The Department may shall order a CWS to conduct more frequent monitoring for gross alpha particle activity, radium-226, or radium-228. ~~The Department's determination shall be based on one or more of the following if the Department determines~~ ± of the following:
1. The CWS is in the vicinity of mining or other operations that may contribute alpha particle radioactivity to either surface or groundwater sources of drinking water;
 2. There is possible radiochemical contamination of surface or groundwater sources of drinking water; or
 3. Changes in the distribution system or treatment process occur that may increase the concentration of radioactivity in drinking water; ~~or.~~
- ~~E.~~ 4. The ~~When the concentration of radium-226 exceeds three pCi/L, and the Department determines that annual monitoring is required based on previous monitoring results, the~~ Department may shall order a CWS to conduct annual monitoring for gross alpha particle radioactivity, radium-226, or radium-228 at ~~a~~ one or more sampling point points ~~if the concentration of radium-226 exceeds 3 pCi/L.~~
- ~~E.F.~~ The Department may shall reduce monitoring for gross alpha particle radioactivity, radium-226, or radium-228 as follows:
1. The Department ~~may shall~~ allow a CWS to substitute a single annual sample for the ~~4 four~~ consecutive quarterly samples prescribed in subsection (B) ~~if an~~ annual record establishes that the average annual concentration is less than ~~1/2 one-half~~ the MCLs prescribed in subsection (A).
 2. The Department ~~may shall~~ allow a CWS to stop monitoring for radium-228 if:
 - a. The CWS has monitored radium-228 at least once using the quarterly monitoring procedure prescribed in subsection (B), and
 - b. The radium-226 concentration is ≤ less than three pCi/L.
- ~~F.G.~~ A CWS or a contractor on behalf of a CWS shall take ~~4 four~~ consecutive quarterly samples as prescribed in subsection (B) at the point-of-entry to the distribution system within ~~± one~~ year of the introduction of a new water source.
- ~~G.H.~~ The Department may order a A CWS that uses ~~≥ two~~ two or more sources that are combined before the point-of-entry into the distribution system and that have different concentrations of radioactivity shall ~~to~~ monitor each source and ~~to monitor~~ the blended water at the point-of-entry when ordered to by the Department.
- ~~H.I.~~ A CWS that is a surface water system that serves more than 100,000 persons and any CWS that the Department finds determines is subject to potential health risks from man-made radioactivity shall monitor for gross beta particle radioactivity, Tritium, and Strontium-90 as follows:
1. A CWS that is a surface water system that serves more than 100,000 persons shall monitor at each surface water sampling point as prescribed in R18-4-218. A CWS that the Department determines is subject to potential health risks from man-made radioactivity shall monitor at sampling points designated by the Department.
 2. A CWS or a contractor on behalf of a CWS shall take ~~4 four~~ consecutive quarterly samples at each sampling point for gross beta particle radioactivity, Tritium, and Strontium-90 analysis once every ~~4 four~~ years, unless subsection (H)(3) applies.
 - a. If the average annual concentration of gross beta particle radioactivity ≤ is less than 50 pCi/L, the sample shall be analyzed to determine the concentrations of Tritium and Strontium-90. A CWS is in compliance with the MCLs for man-made radioactivity prescribed in subsection (A)(3) if the average annual concentration of gross beta particle radioactivity is ≤ less than 50 pCi/L, the average annual concentration of Tritium is ≤ less than 20,000 pCi/L, the average annual concentration of Strontium-90 is ≤ less than eight pCi/L, and the sum of the annual dose equivalents for Tritium and Strontium-90 is less than 4 millirem / year.
 - b. If gross beta particle radioactivity ≥ is greater than 50 pCi/L, the sample shall be analyzed to identify the major radioactive constituents present and the appropriate internal organ and total body doses shall be calculated to determine compliance with subsection (A)(3).
 3. A CWS that utilizes water that the Department determines may be contaminated by effluent from a nuclear facility shall monitor for gross beta particle radioactivity, Iodine-131, Strontium-90, and Tritium as follows:
 - a. A CWS shall monitor monthly for gross beta particle radioactivity. Compliance shall be based upon the analysis of a composite sample made up of ~~3 three~~ three monthly samples or the average concentration of ~~3 three~~ three monthly samples.
 - i. If the concentration of gross beta particle radioactivity ≥ is greater than 15 pCi/L, the same sample shall be analyzed for Strontium-89 and Cesium-134. A CWS is in compliance with the MCLs for man-made radioactivity prescribed in subsection (A)(3) if the average concentration of gross beta particle radioactivity is ≤ less

Notices of Final Rulemaking

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

R18-4-224. The Monitoring Assistance Program

- A. A public water system that serves 10,000 or fewer persons shall participate in the monitoring assistance program. Within 60 days ~~of~~ after receiving notice of participation in the monitoring assistance program, a public water system that determines that it serves more than 10,000 persons shall substantiate its determination by submitting that portion of the most recent census provided by the Arizona Department of Economic Security, Research Administration, Population Statistics Unit that supports the public water system's determination. ~~By October 1 of each year, the public water system shall report the population it served as of June 30 of that year.~~
- B. A public water system that ~~serves more than 10,000 persons~~ is not obligated to participate in the monitoring assistance program may elect to participate in the monitoring assistance program for a minimum of 3 years, based upon its compliance period. ~~The if the owner of the public water system:~~
 - 1. ~~shall notify~~ Notifies the Department in writing; ~~of the public water system's intention to participate in the monitoring assistance program, at least 1 year in advance of its assigned monitoring year, unless its assigned monitoring year is 1999.~~
 - 2. Agrees to participate in the monitoring assistance program for a minimum of three years, and
 - 3. Pays the fees required by R18-4-225. Subject to payment of ~~the~~ required fees, the public water system's participation shall begin at the start of ~~its assigned monitoring~~ the next full calendar year of a compliance period.
- C. Under the monitoring assistance program, a contractor shall collect, transport, and analyze water samples from a participating public water system. ~~The contractor, or a party designated by the contractor, shall monitor for all inorganic chemicals listed in R18-4-206, R18-4-401, and R18-4-402; all VOCs listed in R18-4-211 and R18-4-404, and all SOCs listed in R18-4-215 and R18-4-405; the chemicals listed below:~~
 - 1. All inorganic chemicals (IOCs) listed in R18-4-206, R18-4-207, R18-4-209, R18-4-402, and R18-4-403;
 - 2. All volatile organic chemicals (VOCs) listed in R18-4-211;
 - 3. All synthetic organic chemicals (SOCs) listed in R18-4-215; and
 - 4. Radiochemicals required by R18-4-217.
- D. A contractor shall deliver copies of monitoring analysis results to the owner of the public water system and to the Department.
- ~~D.E.A~~ Although a contractor performs the monitoring when a public water system participates in the monitoring assistance program, nothing in this Section changes the party responsible for compliance ~~shall comply~~ with the public notice requirements of R18-4-105.
- ~~E.F.A~~ An owner of a public water system shall notify the Department; by ~~October 1~~ July 1 of each year of:
 - 1. ~~any change in ownership and mailing~~ The owner's name, current mailing address, and phone number;
 - 2. The population currently served by the public water system;

Arizona Administrative Register
Notices of Final Rulemaking

3. The public water system identification number; and
4. The public water system shall notify the Department of the name of the person to whom billing is to be addressed, and number of meters or and service connections of each size that currently in the public water system had on June 30 that year.

G. A public water system that participates in the monitoring assistance program shall not deny a contractor access to or restrict a contractor's access to the public water system or prevent a contractor from collecting a sample covered under the monitoring assistance program.

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

A. ~~The Department shall bill a public water system that serves 10,000 or fewer persons annually. The Department shall assess, and a public water system participating in the monitoring assistance program shall pay, the following annual fees, subject to adjustments referenced in subsection (B):~~

1. ~~An annual fee of \$250; and~~
2. ~~A unit fee of \$2.57 per meter or service connection.~~

B. ~~For the billing year 1999, a public water system with >100 service connections shall use a unit fee of \$3.50 to determine the total fee to be paid under R18-4-225(D). In years 2000 and 2001, the public water system shall pay a unit fee of \$3.50 adjusted on January 1 to reflect the weighted percentage increase, if any, in the contract costs as of the close of the 12 month period ending on December 31 of the previous year.~~

~~If the monitoring assistance fund has a surplus after execution of the previous year's contract, any surplus in excess of two hundred thousand dollars in any year shall be used to reduce future fees for public water systems that paid annual fees in the previous compliance period, in a manner consistent with the program invoicing system. The first compliance period that a public water system participates in the monitoring assistance program, the public water system shall pay the full amount of annual fees due under this Section, not subject to a fee reduction resulting from a surplus in the monitoring assistance fund from a prior compliance period.~~

C. ~~For the billing year 1999, a public water system with fewer than 100 service connections shall pay an annual fee of \$350. For the billing years 2000 and 2001, the public water system shall pay an annual fee of \$350 adjusted on January 1 to reflect the weighted percentage increase, if any, in the contract costs as of the close of the 12 month period ending on December 31 of the previous year.~~

~~If a public water system serving 10,000 or fewer persons at the beginning of a compliance period increases service during the compliance period so that the public water system serves more than 10,000 persons annually, the public water system may elect to cease participation in the monitoring assistance program under the following conditions:~~

1. ~~If the monitoring assistance program has already conducted monitoring for the public water system during the compliance period, the public water system shall remain in the monitoring assistance program, and pay annual fees, for the remainder of the compliance period.~~
2. ~~If the monitoring assistance program has not conducted monitoring for the public water system during the compliance period, the public water system may cease participating in the monitoring assistance program, and if so, the Department shall refund any monitoring fees paid by the public water system during the compliance period.~~

D. ~~The Department shall calculate a total fee to the public water system as follows:~~

1. ~~Multiply the meter weight by the number of meters or service connections of each size that were capable of providing water as of October 1, preceding the billing date;~~
2. ~~Add the results for each category; and~~
3. ~~Multiply the result in subsection (D)(2) by the unit fee.~~

E. ~~A public water system that serves more than 10,000 persons and that chooses to participate in the monitoring assistance program shall participate for the entire compliance period and shall pay fees in accordance with this Section.~~

Table A

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

R18-4-226. Collection and Payment of Fees

A. ~~The Department shall mail an invoice for fees annually to a public water system the owner of a public water system participating in the monitoring assistance program annually. The owner of the public water system shall pay the invoiced amount to the Department, at the address listed on the invoice, by the indicated due date.~~

Notices of Final Rulemaking

- B. The Department ~~may shall~~ make refunds or billing corrections for a public water system that ~~can demonstrate~~ demonstrates an overpayment, or error in the amount, or number, or size of meters billed. The owner of a public water system shall send a written request for a refund or correction to the Department, at the address on the invoice, within 90 days of the invoice date.
- C. The Department may verify the number ~~and size of meters, or if unmetered,~~ and the number of service connections of a participating public water system.
- D. The Department shall not waive ~~program~~ fees prescribed by R18-4-225.
- E. A The owner of a public water system that fails to pay its fees assessed by the Department in a timely manner shall be subject to the penalties listed in A.R.S. § 49-354. Failure to notify the Department of the owner's current mailing address does not relieve the owner of a public water system from liability for penalties.

ARTICLE 4. SPECIAL MONITORING REQUIREMENTS

R18-4-403. Special Monitoring for Nickel

- A. ~~Each~~ A CWS and NTNCWS, or a contractor on behalf of a CWS or NTNCWS, shall monitor for nickel.
- B. ~~Each~~ A CWS and NTNCWS, or a contractor on behalf of a CWS or NTNCWS, shall monitor for nickel at each sampling point as prescribed in R18-4-218.
- C. A CWS or NTNCWS, or a contractor on behalf of a CWS or NTNCWS, may composite samples for nickel as prescribed in R18-4-219.
- D. ~~Each~~ A CWS and NTNCWS, or a contractor on behalf of a CWS or NTNCWS, shall monitor for nickel ~~at the following frequencies as follows:~~
 - 1. ~~Each~~ A CWS and NTNCWS, or a contractor on behalf of a CWS or NTNCWS, shall take one sample at each ground-water sampling point once every three years.
 - 2. ~~Each~~ A CWS and NTNCWS, or a contractor on behalf of a CWS or NTNCWS, shall take one sample at each surface water sampling point annually.
- E. A public water system may request CWS shall reduce a reduction in the required monitoring frequency for nickel when the Department makes one of the following determinations, as follows:
 - 1. Groundwater sampling points: The Department ~~may shall~~ reduce monitoring frequency from once every three years to a less frequent basis if ~~the~~ a CWS or NTNCWS has monitored for nickel at least once every three years for a period of nine years at the groundwater sampling point, and all analytical results were reliably and consistently below 0.1 mg/L in previous samples.
 - 2. Surface water sampling points: The Department ~~may shall~~ reduce monitoring frequency from annually to a less frequent basis if a CWS or NTNCWS has monitored annually at the surface water sampling point for at least three consecutive years and all analytical results for nickel were reliably and consistently below 0.1 mg/L in previous samples.
 - 3. The Department may reduce monitoring frequency for nickel for a term not to exceed ~~9~~ nine years.
 - 4. A If the Department reduces monitoring frequency for nickel, a CWS or NTNCWS, or a contractor on behalf of a CWS or NTNCWS, shall take at least one sample for nickel during the reduced monitoring term.
 - 5. In determining the appropriate reduced monitoring frequency at a sampling point, the Department shall consider the following factors:
 - a. Reported concentrations of nickel from all previous monitoring;
 - b. The degree of variation in the reported concentrations of nickel; and
 - c. Other factors that may affect the concentration of nickel such as changes in groundwater pumping rates, changes in the configuration of the CWS or NTNCWS, or changes in operating procedures, stream flows, or source water characteristics.
 - 6. A decision by the Department to reduce monitoring frequency for nickel at a sampling point shall be in writing and shall set forth the grounds for the decision. A water supplier may make a written request for reduced monitoring or the Department may reduce monitoring on its own. A water supplier shall provide documentation of analytical results that supports a request for reduced monitoring. If a CWS or NTNCWS submits new data or other data relevant to the public water system's appropriate monitoring frequency become available, the Department shall review the data and, if appropriate, revise its determination of monitoring frequency.
 - 7. A CWS or NTNCWS that uses a new source is not eligible for reduced monitoring until ~~3~~ three consecutive rounds of monitoring from the new source have been completed.

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 5. DEPARTMENT OF ENVIRONMENTAL QUALITY
ENVIRONMENTAL REVIEWS AND CERTIFICATION

PREAMBLE

1. Sections Affected

R18-5-101
R18-5-102
R18-5-104
R18-5-112
R18-5-115

Rulemaking Action

Amend
Amend
Amend
Amend
Amend

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

Authorizing statutes: A.R.S. §§ 49-104, 49-202, 49-203, 49-351, 49-352, 49-353, 49-361

Implementing statute: A.R.S. § 49-352

3. The effective date of the rules:

October 16, 2001

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

Notice of Rulemaking Docket Opening: 7 A.A.R. 2776, June 29, 2001

Notice of Proposed Rulemaking: 7 A.A.R. 2719, June 29, 2001

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

Name: Jeffrey W. Stuck, Manager, Drinking Water Section, or
Anthony J. Bode, Manager, Program Development and Outreach, Drinking Water Section

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

Telephone: Jeff Stuck (602) 207-4617
Tony Bode (602) 207-4648
In Arizona: (800) 234-5677

Fax: (602) 207-4634

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

This rulemaking concerns the Department's operator certification program, 18 A.A.C. 5, Article 1.

The primary purpose of the rulemaking is make a few minor amendments to the operator certification rules, which were recently amended, effective February 16, 2001. The changes are being implemented primarily in order to satisfy primacy requirements of the U.S. Environmental Protection Agency (E.P.A.), which interpreted one of the recent changes to be less stringent than the previous rule. By making the changes, Arizona's continued primacy of the operator certification program will be ensured. The Department is also taking advantage of the opportunity to clarify the language in several other Sections of Article 1.

The Department held workshops around the state to explain the rules and to receive comments from stakeholders. After publication of the Notice of Proposed Rulemaking, the Department held three oral proceedings to allow interested parties the opportunity to make oral comments on the record (July 31 in Tucson, August 1 in Phoenix, and August 2 in Flagstaff.)

Section-by-section Explanation of the Rules

R18-5-101 sets forth definitions for 18 A.A.C. 5, Article 1.

R18-5-102 sets forth the scope of applicability of 18 A.A.C. 5, Article 1.

R18-5-104 sets forth general requirements for facility owners and operators.

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

Arizona Administrative Register
Notices of Final Rulemaking

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

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

None

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

Not applicable

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

A. Identification of Rule

18 A.A.C. 5, Article 1, "Classification of Treatment Plants and Certification of Operators." This economic, small business, and consumer impact statement (EIS) is provided pursuant to A.R.S. §§ 41-1035, 41-1052(C), and 41-1055.

B. Summary

The primary purpose of this rulemaking is to implement minor changes to 18 A.A.C. 5, Article 1, concerning drinking water and waste water operator certification. The primary impetus for this rulemaking is to avoid a potential cost to the state, which is the primary economic benefit of the rule. The potential cost at issue is a federal incentive created by 42 U.S.C. § 300j-12(a)(1)(ii), which states that the Administrator of the U.S. Environmental Protection Agency must withhold 20 percent of each state capitalization grant unless the state has met the requirements of 42 U.S.C. § 300g-8, relating to operator certification.

After the amendments to the operator certification rules became effective in February 2001, EPA staff perceived the change to R18-5-112(D)(4)(c) to constitute a "backsliding," i.e. that the change resulted in less stringent standards for operators; the Department took a more global view of the operator certification program, and felt that the standards were more stringent overall. In order to avoid the potential loss of this funding, the Department is amending subsection R18-5-112(D)(4)(c), returning the particular exam qualifications to their status prior to the recent rule change.

C. Analysis of Probable Benefits and Probable Costs

The changes to the operator certification rules will have little to no discernable economic impact on the Department, other public agencies, state revenues, private businesses, consumers, small businesses, or private employment. In addition, the state will incur normal rule development costs incidental to rulemaking, including review by the Governor's Regulatory Review Council and the cost of publication by the Office of the Secretary of State. There are some potential costs, however.

First, the change to R18-5-112(D)(4)(c) could result in a delay of one year for an operator without previous experience as an operator to obtain a Grade 4 operator's license (the rule now requires two years, rather than one year, of qualifying experience for this category of applicant; this is actually a return to the experience historically required until the recent rule change effective earlier this year). There are currently 1,174 licensed Grade 3 operators in Arizona. Most of these are not going to be affected by the rule change, since most operators would qualify under one of the other two subsections of R18-5-112(D)(4). However, since there is usually a pay increase associated with increased qualifications, including higher grades of operator certification, this could result in a delayed increase in rate of pay for those operators who might be affected by this rule.

There is also a small change to R18-5-115(B)(2)(b), which contains one of the criteria for grading water distribution systems. Previously, this subsection stated that no points would be added for Grade 1 small systems that serve fewer than 500 persons; it is being changed from 500 persons to 501 persons. This will have the effect of allowing a system that serves exactly 500 persons to qualify as a Grade 1 system; these are simple systems that are not complicated enough to require a Grade 2 operator. This change also keeps our terminology consistent with common use of the term "small system" in the safe drinking water community, in particular EPA has guidelines for system size; literature often frequently refers to water systems that serve communities with populations of 500 or fewer people.

The Department has made a good faith effort to estimate potential costs and benefits under this rule, but data were limited. Nonetheless, under A.R.S. § 41-1052(G), if an agency makes an effort and explains the methodology that generated the impacts, the rule may not be invalidated after it is made, upon grounds that the contents of the EIS are insufficient or inaccurate, or that it was erroneously approved by the Governor's Regulatory Review Council. Finally, ADEQ could not find any alternative methods that would be less intrusive or less costly to implement the rule objectives.

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

The Department decided not to make any changes to R18-5-105, R18-5-106, or R18-5-112(D)(3)(b).

11. A summary of comments and agency responses:

The Department did not receive any written or verbal comments on the rule action after publication of the Notice of Proposed Rulemaking.

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

Not applicable

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

Not applicable

14. Were these rules previously adopted as emergency rules?

No

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

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

ARTICLE 1. CLASSIFICATION OF TREATMENT PLANTS AND CERTIFICATION OF OPERATORS

Section

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

ARTICLE 1. CLASSIFICATION OF TREATMENT PLANTS AND CERTIFICATION OF OPERATORS

R18-5-101. Definitions

The terms in this Article have the following meanings:

“Certified operator” or “operator” No change

“Collection system” No change

“Department” No change

“Director” No change

“Direct responsible charge” No change

“Distribution system” No change

“Facility” No change

“Industrial waste” No change

“Onsite operator” No change

“Onsite representative” No change

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

“Operator” No change

“PDH” No change

“Population equivalent” No change

“Professional development hour” No change

“Public water system” No change

“Qualifying discipline” No change

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

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

“Remote operator” No change

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

“Validated examination” No change

“Wastewater” No change

“Wastewater treatment plant” No change

“Water treatment plant” No change

R18-5-102. Applicability

A. No change

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

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

R18-5-104. General Requirements

A. No change

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

B. If the owner of a facility replaces a ~~designated~~ an operator in direct responsible charge with another operator, the facility owner shall notify the Department in writing within ten days of the replacement.

C. No change

D. No change

E. No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
8. No change
 - a. No change
 - b. No change
 - c. No change

R18-5-112. Experience and Education

A. No change

1. No change
2. No change
3. No change.

B. No change

C. No change

D. An applicant shall meet the following requirements for admission to a certification examination:

1. For Grade 1, high school graduation or the equivalent.

Arizona Administrative Register
Notices of Final Rulemaking

2. For Grade 2, at least:
 - a. High school graduation or the equivalent and one year of qualifying experience as a Grade 1 operator or the equivalent of a Grade 1 operator in another jurisdiction;
 - b. Two years of post-secondary education in a qualifying discipline and one year of qualifying experience, including six months as a Grade 1 operator or the equivalent of a Grade 1 operator in another jurisdiction; or
 - c. A bachelor's degree in a qualifying discipline and six months of qualifying experience.
3. For Grade 3, at least:
 - a. High school graduation or the equivalent and two years of qualifying experience, including one year as a Grade 2 operator or the equivalent of a Grade 2 operator in another jurisdiction;
 - b. Two years of post-secondary education in a qualifying discipline, and 18 months of qualifying experience as a Grade 2 operator or the equivalent of a Grade 2 operator in another jurisdiction; or
 - c. A bachelor's degree in a qualifying discipline and one year of qualifying experience.
4. For Grade 4, at least:
 - a. High school graduation or the equivalent and three years of qualifying experience, including one year as a Grade 3 operator or the equivalent of a Grade 3 operator in another jurisdiction;
 - b. Two years of post-secondary education in a qualifying discipline and 30 months of qualifying experience, including one year as a Grade 3 operator or the equivalent of a Grade 3 operator in another jurisdiction; or
 - c. A bachelor's degree in a qualifying discipline, and ~~one year~~ two years of qualifying experience.

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

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