

CITIZENS CLEAN ELECTIONS COMMISSION

Title 2, Chapter 20

Amend: R2-20-305, R2-20-306



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: June 6, 2023

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 15, 2023

SUBJECT: CITIZENS CLEAN ELECTIONS COMMISSION
Title 2, Chapter 20

Amend: R2-20-305, R2-20-306

Summary:

This regular rulemaking from the Citizens Clean Election Commission (Commission) seeks to amend two (2) rules in Title 2, Chapter 20, Article 3 related to Standard of Conduct for Commissioners and Employees. Specifically, the Commission indicates it is seeking to amend these rules to clarify how a person may report a suspected violation and how the Commission will process such reports.

1. Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?

The Commission cites both general and specific statutory authority for these rules. Specifically, the Commission cites A.R.S. § 16-956(C) which states the Commission "may adopt rules to carry out the purposes of this article and to govern procedures of the commission."

2. Do the rules establish a new fee or contain a fee increase?

This rulemaking does not establish a new fee or contain a fee increase.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The Commission indicates it did not review or rely on any study relevant to the proposed amended rules.

4. **Summary of the agency's economic impact analysis:**

The Commission indicates this rulemaking presents minimal economic impact. The Commission states, because the rulemaking simply clarifies statutory requirements and processes that already exist, there is little to no economic, small business, or consumer impact, other than the cost to the Commission to prepare the rule package.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Commission believes this is the least intrusive and least costly method to achieve the underlying regulatory objective.

6. **What are the economic impacts on stakeholders?**

People affected by the rulemaking include members of the Clean Elections Commission and its staff members, other persons with business or potential business before the Commission, and persons who are agents of any of the aforementioned are directly affected. As a result, the rulemaking has no economic impact on private and public employment, private and public employment, businesses, state agencies, or political subdivisions. Small businesses are affected only in the sense that the rulemaking provides a clear mechanism for complaints against Commissioners to be received, processed, and resolved.

7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

The Commission indicates there were no changes between the Notice of Proposed Rulemaking published in the Administrative Register and the Notice of Final Rulemaking now before the Council.

8. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

The Commission indicates it did not receive any public comments related to this rulemaking.

9. Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. The rules do not require a permit, license, or agency authorization.

10. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

The Commission indicates there are no corresponding federal laws applicable to the subject of this rulemaking.

11. Conclusion

This regular rulemaking from the Commission seeks to amend two (2) rules in Title 2, Chapter 20, Article 3 related to Standard of Conduct for Commissioners and Employees. Specifically, the Commission indicates it is seeking to amend these rules to clarify how a person may report a suspected violation and how the Commission will process such reports.

The Commission is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.

April 11, 2023

Ms. Nicole Sornsin, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 402
Phoenix, AZ 85007

Re: A.A.C. Title 2. Administration
Chapter 20. Citizens Clean Elections Commission

Dear Ms. Sornsin:

The attached final rule package is submitted for review and approval by the Council. The following information is provided for Council's use in reviewing the rule package:

1. Close of record date: The rulemaking record was closed on February 23, 2023 following a period for public comment and an oral proceeding.
2. Relation of the rulemaking to a five-year-review report: This rulemaking does not relate to a Five-year Review Report.
3. New fee or fee increase: This rulemaking does not establish a new fee or increase an existing fee.
4. Immediate effective date: An immediate effective date is not requested.
5. Certification regarding studies: I certify that the Commission did not rely on any studies for this rulemaking.
8. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that the rules in this rulemaking will not require a state agency to employ a new full-time employee. No notification was provided to JLBC.
9. List of documents enclosed:
 - a. Cover letter signed by the Commission's Executive Director;
 - b. Notice of Final Rulemaking including the preamble, table of contents for the rulemaking, and rule text; and
 - c. Economic, Small Business, and Consumer Impact Statement.

Sincerely,



Tom Collins
Executive Director

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

PREAMBLE

1. Articles, Parts, and Sections Affected

Rulemaking Action

R2-20-305

Amend

R2-20-306

Amend

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

Authorizing statute: A.R.S. §§ 16-956(A)(6) and (A)(7)

Implementing statutes: A.R.S. § 16-956(C)

3. The effective date for the rules:

As specified under A.R.S. § 41-1032(A), the rule will be effective 60 days after the rule package is filed with the Office of the Secretary of State.

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

Not applicable.

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

Not applicable.

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

Notice of Rulemaking Docket Opening: 29 A.A.R. 249, January 20, 2023

Notice of Proposed Rulemaking: 29 A.A.R. 219, January 20, 2023

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

Name: Tom Collins, Executive Director

Address: Citizens Clean Elections Commission

1802 W. Jackson St.
Phoenix, AZ 85007
Telephone: (602) 364-3477
E-Mail: ccec@azcleaselections.gov
Web site: www.azcleaselections.gov

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

The Commission needs to amend its rules to clarify how a person may report a suspected violation and how the Commission will process such reports.

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

No study was reviewed.

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

Not applicable.

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

There is little to no economic, small business, or consumer impact, other than the cost to the Commission to prepare the rule package, because the rulemaking simply clarifies statutory requirements and processes that already exist. Thus, the economic impact is minimized.

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

There were no changes between the proposed rulemaking and the final rulemaking.

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

The Commission held an Oral Proceeding on February 23, 2023 and no comments were received.

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

None.

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

Not applicable.

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

Not applicable.

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

No analysis was submitted.

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

No materials are incorporated by reference.

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

Not applicable.

15. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

ARTICLE 3. STANDARD OF CONDUCT FOR COMMISSIONERS AND EMPLOYEES

Section

R2-20-305. Reporting Suspected Violations

R2-20-306. Disciplinary and Other Remedial Action

ARTICLE 3. STANDARD OF CONDUCT FOR COMMISSIONERS AND EMPLOYEES

R2-20-305. Reporting Suspected Violations

- A. ~~Commissioners and employees~~ Persons who have information; ~~which~~ that causes them to believe that there has been a violation of a statute or a rule set forth in this Article or that a Commissioner should not participate in a Commission decision, shall report promptly, in writing, such ~~incident~~ information to the Commission's Chair or Executive Director.
- B. When information made available to the Commission under subsection (A) indicates a conflict between the interests of a Commissioner or employee and the performance of his or her Commission duties, the Commissioner or employee shall be provided notice of the conflict issue and an opportunity to explain the conflict or appearance of conflict in writing. In the case of a Commissioner, the response shall be due five days from the issuance of the notice. The Commission's Chair or Executive Director may decline to require a response if the claim is clearly meritless and, in such event, no response is required. In such cases, the Commission's Chair or Executive Director shall state in writing why the claim is clearly meritless and provide the writing to the person who provided the information and the Commissioner.

R2-20-306. Disciplinary and Other Remedial Action

- A. A violation of this Article by an employee or Commissioner may be cause for remedial action or, if the matter involves a Commission employee, disciplinary action, which may be in addition to any penalty or enforcement mechanism provided by law.
- B. When the Commission's Executive Director determines that an employee may have or appears to have a conflict of interest, the Commission's Executive Director may question the employee in the matter and gather other information. The Commission's Executive

Director and the employee's supervisor shall discuss with the employee possible ways of eliminating the conflict or appearance of conflict. If the Commission's Executive Director, after consultation with the employee's supervisor, concludes that remedial action should be taken, he or she shall refer a statement to the Commission containing his or her recommendation for such action. The Commission, after consideration of the employee's explanation and the results of any investigation, may direct appropriate remedial action as it deems necessary.

C. Remedial action pursuant to subsection (B) of this Section may include, but is not limited to:

1. Changes in assigned duties;
2. Divestment by the employee of his or her conflicting interest;
3. Disqualification for particular action;
- or 4. Disciplinary action.

D. When the matter involves a Commissioner, the Commission's Chair and Executive Director may conduct an appropriate investigation or gather relevant information for consideration by the Commission. After review of relevant information and a response from the Commissioner, the Commission's Chair and Executive Director shall ensure that the matter is made part of the agenda for a Commission meeting for discussion and possible action no later than the next regular Commission meeting, unless there is less than one week before that meeting, in which case, the matter shall be scheduled at the next subsequent meeting. The Commission's Chair may call for an interim meeting regarding the matter at the discretion of the Commission's Chair.

E. After consideration of the relevant information and a Commissioner's response at an open meeting, the Commission may vote on an action for proper remedial action.

Remedial action may include, but is not limited to:

1. An expression of the majority opinion of the Commissioners about voluntary remedial action the Commissioner at issue should take to resolve the conflict issues and ensure the appropriate level of impartiality in Commission proceedings; or
2. Disqualification of the Commissioner from participation in discussion or votes on any matter for which the Commissioner has, in the determination of a majority of the other non-disqualified Commissioners, a disqualifying conflict.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT¹

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

1. Identification of the rulemaking:

The Commission needs to amend its rules to clarify how a person may report a suspected violation and how the Commission will process such reports.

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

The Executive Director is not aware of any current conduct that the rule change addresses. Rather the Commission undertook of its own accord a review of its ethical rules, codified at Article 3 of Title 2, Chapter 20 of the Arizona Administrative Code. That review indicated that, while the rules, in the agency's view, properly set for the process for employee discipline, the Article did not provide a clean mechanism for review of Commissioner conduct.

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:

The Commission adopted Article 3 of its current rules in 2001. As the rules have stated since that time,

“[t]he Commission is committed to implementing the Act in an honest, independent, and impartial fashion and to seeking to uphold public confidence in the integrity of the electoral system. To ensure public trust in the fairness and

¹ If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).

integrity of the Arizona elections process, all Commissioners and employees must observe the highest standards of conduct.

A.A.C. R2-20-301(A).

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

To the extent there is currently conduct that implicates Article 3 rules, the rules are designed to bring about two outcomes. First, by providing a process for ensuring complaints against commissioners, if any, are dealt with fairly and transparently, these rules may bring that conduct to light. Second, by bringing such conduct, if any, to light a addressing it should ensure that such conduct ceases and serve as a future deterrent.

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

This economic, small business, and consumer impact statement includes a cost-benefit analysis of the rule, including the conclusions that the probable benefits outweigh the probable costs. It also states that there is little discernable impact on small businesses, public and private employment, or state revenues. Finally, the statement concludes that it is the least costly, least intrusive means to fulfill the rule's purpose.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Thomas M. Collins, Esq.
Executive Director
Arizona Citizens Clean Elections Commission
1110 W. Washington, STE. 250
Phoenix, AZ 85007

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

Each member of the Clean Elections Commission and its staff members. Other persons with business or potential business before the Commission including: Candidates for state and legislative office, Political Parties, and Political Committees are directly affected, Organizations that have tax status under Section 501(a) of the internal revenue code and are either (a) authorized to make candidate related expenditures or, (b) make such expenditures are directly affected. Finally, persons who are agents of any of the above are directly affected.

5. Cost-benefit analysis:

- a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

No state agencies are directly affected by the rulemaking and no new FTEs are required.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:

No political subdivision of this state is directly affected by the implementation and enforcement of this amended rule.

- c. Costs and benefits to businesses directly affected by the rulemaking:

No businesses are directly affected by this rulemaking. If some businesses were directly or indirectly to report conduct of a Commissioner, the rule would provide an vehicle to do so. No direct process currently exists.

6. Impact on private and public employment:

There is no impact of private and public employment.

7. Impact on small businesses²:

a. Identification of the small business subject to the rulemaking:

Small businesses subject to this rulemaking may include political committees and nonprofits that make expenditures and those that serve as agents of those entities or others subject to enforcement of substantive law.

b. Administrative and other costs required for compliance with the rulemaking:

The Commission does not anticipate administrative or other costs for compliance with these procedural amendments. The amendments are intended to provide a clear mechanism for a complaints against Commissioners to be received, processed and resolved.

c. Description of methods that may be used to reduce the impact on small businesses:

The agency is open to any of the methods prescribed in section 41-1035.

None of them apply to these amendments.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

The amendments do not impact private or public employment among any person directly affected by the amendments.

9. Probable effects on state revenues:

² Small business has the meaning specified in A.R.S. § 41-1001(20).

The amendments have no probable impact on state revenues.

10. Less intrusive or less costly alternative methods considered:

The Commission believes this is the least intrusive and least costly method. The amendments, by creating a director process to submit, process and resolve complaints against members of the Commission should lower costs. Absent such a process, affected parties are left with indirect costs such as identifying another appropriate agency to which to make a complaint and monitoring that agency to see if any action can or will be taken on such a complaint.

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TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

Authority: A.R.S. § 16-956(A)(7)

Supp. 22-1

Editor's Note: The Office of the Secretary of State, Administrative Rules Division, complied with its legal obligation to publish the Notice of Rule Expiration filed for Sections R2-20-109 and R2-20-111 under A.R.S. § 41-1011(C) and 41-1056(G) and (J)(2) in Supp. 17-2, version 2. As a courtesy to the Commission, the Office also published R2-20-109 and R2-20-111 as adopted and made by the Commission because it stated the Governor's Regulatory Review Council did not have the authority to file such a notice. On December 14, 2017, the Commission "re-adopted" rules in the disputed Sections of R2-20-109 and R2-20-111; therefore, our Division has removed the expired rule Sections as published in Supp. 17-2, version 2. The Office will not interpret the legality of any actions made by the Commission or the Council as to whether the rules in R2-20-109 and R2-20-111 were effective at 23 A.A.R. 1761 or expired at 23 A.A.R. 1757 between the dates of June 7, and December 14, 2017. Those interested in that issue should consult counsel.

Editor's Note: The Citizen's Clean Elections Commission has filed a Notice of Public Information with the Office of the Secretary of State (Office) stating the Governor's Regulatory Review Council (G.R.R.C.) "cannot effectively repeal the rules" in this Chapter. The Notice also states, "persons subject to the Act and Rules are advised that it is the Commission's position [sic] that an action of G.R.R.C.... cannot relieve them of their obligations under the Act and Rules." [published at 23 A.A.R. 1761]

The Office has received a Notice of Rule Expiration from the G.R.R.C. stating R2-20-109 and R2-20-111 have automatically expired [published at 23 A.A.R. 1757]. Under A.R.S. § 41-1056(G), our Office publishes filed G.R.R.C. notices and has included the rule expiration in this Chapter. Since the Office is merely the publisher, it has not, nor will it interpret the legality of the G.R.R.C. authority to "effectively repeal rules."

Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 02-1).

Editor's Note: This Chapter contains rules that were adopted under an exemption from the rulemaking provisions of the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 16-956(D). Exemption from A.R.S. Title 41, Chapter 6 means that these rules were not certified by the Attorney General or the Governor's Regulatory Review Council. Because this Chapter contains rules that are exempt from the regular rulemaking process, the Chapter is printed on blue paper. The rules affected by this exemption appear throughout this Chapter.

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ARTICLE 1. GENERAL PROVISIONS

R2-20-101. Definitions

In addition to the definitions provided in A.R.S. § 16-961, the following shall apply to the Chapter, unless the context otherwise requires:

1. "Act" means the Citizens Clean Elections Act set forth in the Arizona Revised Statutes, Title 16, Chapter 6, Article 2.
2. "Audit" means a written report pertaining to an examination of a candidate's campaign finances that is reviewed by the Commission in accordance with A.A.C. Title 2, Chapter 20, Article 4.
3. "Campaign account" means an account at a financial institution designated by a political committee that is used solely for political campaign purposes.
4. "Candidate" means a natural person who receives or gives consent for receipt of a contribution for the person's nomination for or election to any office in this state, and includes the person's campaign committee, the political committee designated and authorized by the person, or any agents or personnel of the person. When not otherwise specified by statute or these rules, "Candidate" includes a Candidate for Statewide Office or a Legislative Candidate.
5. "Candidate for Statewide Office" means:
A natural person seeking the office of governor, attorney general, secretary of state, treasurer, superintendent of public instruction, or mine inspector.
6. "Current campaign account" means a campaign account used solely for election campaign purposes in the present election cycle.
7. "Direct campaign purpose" includes, but is not limited to, materials, communications, transportation, supplies and expenses used toward the election of a candidate. This does not include the candidate's personal appearance, support, or support of a candidate's family member.
8. "Early contributions" means private contributions that are permitted pursuant to A.R.S. § 16-945.
9. "Examination" means an inspection by the Commission or agent of the Commission of a candidate's books, records, accounts, receipts, disbursements, debts and obligations, bank account records, and campaign finance reports related to the candidate's campaign, which may include fieldwork, or a visit to the campaign headquarters, to ensure compliance with campaign finance laws and rules.
10. "Executive Director" means the highest ranking Commission staff member, who is appointed pursuant to A.R.S. § 16-955(J) and is responsible for directing the day-to-day operations of the Commission.
11. "Expressly advocates" means:
 - a. Conveying a communication containing a phrase such as "vote for," "elect," "re-elect," "support," "endorse," "cast your ballot for," "(name of candidate) in (year)," "(name of candidate) for (office)," "vote against," "defeat," "reject," or a campaign slogan or words that in context can have no reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates.
 - b. Making a general public communication, such as in broadcast medium, newspaper, magazine, billboard, or direct mailer referring to one or more clearly identified candidates and targeted to the electorate of that candidate(s) that in context can have no reasonable meaning other than to advocate the election or defeat of the candidate(s), as evidenced by factors such as the presentation of the candidate(s) in a favorable or unfavorable light, the targeting, placement, or timing of the communication, or the inclusion of statements of the candidate(s) or opponents.
 - c. A communication within the scope of subsection (10)(b) shall not be considered as one that "expressly advocates" merely because it presents information about the voting record or position on a campaign issue of three or more candidates, so long as it is not made in coordination with a candidate, political party, agent of the candidate or party, or a person who is coordinating with a candidate or candidate's agent.
12. "Extension of credit" means the delivery of goods or services or the promise to deliver goods or services to a candidate in exchange for a promise from the candidate to pay for such goods or services at a later date.
13. "Family member" means parent, grandparent, aunt, uncle, child or sibling of the candidate or the candidate's spouse, including the spouse of any of the listed family members, regardless of whether the relation is established by marriage or adoption.
14. "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.
15. "Fixed Asset" means tangible property usable in a capacity that will benefit the candidate for a period of more than one year from the date of acquisition.
16. "Fund" means the Citizens Clean Elections Fund established pursuant to A.R.S. § 16-949(D).
17. "Future campaign account" means a campaign account that is used solely for campaign election purposes in an election that does not include the present or prior primary or general elections.
18. "Independent candidate" means a candidate who is registered as an independent or with no party preference or who is registered with a political party that is not eligible for recognition on the ballot.
19. "Legislative Candidate" means:
A natural person seeking the office of state senator or state representative.
20. "Officeholder" means a person who has been elected to a statewide office or the legislature in the most recent election, as certified by the Secretary of State, or who is appointed to or otherwise fills a vacancy in such office.
21. "Person," unless stated otherwise, or having context requiring otherwise, means:
A corporation, company, partnership, firm, association or society, as well as a natural person.
22. "Prior campaign account" means a campaign account used solely for campaign election purposes in a prior election.
23. "Public funds" includes all funds deposited into the Citizens Clean Elections Fund and all funds disbursed by the Commission to a participating candidate.

24. "Solicitor" means a person who is eligible to be registered to vote in this state and seeks qualifying contributions from qualified electors of this state.
25. "Unopposed" means in reference to state senate candidates and statewide candidates other than Corporation Commission, that the candidate is opposed by no candidates who will appear on the ballot. In reference to candidates for the House of Representatives and Corporation Commission, "unopposed" means that no more candidates will appear on the ballot than the number of seats available for the office sought.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 19 A.A.R. 3515, effective September 27, 2013 (Supp. 13-4). Amended by final exempt rulemaking at 23 A.A.R. 113, effective December 15, 2016 (Supp. 16-4). Amended by final rulemaking at 28 A.A.R. 491 (March 4, 2022), with an immediate effective date of February 7, 2022 (Supp. 22-1).

R2-20-102. Repealed

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Repealed by exempt rulemaking at 19 A.A.R. 3518, effective September 27, 2013 (Supp. 13-4).

R2-20-103. Communications: Time and Method

- A. General rule: in computing any period of time prescribed or allowed by the Act or these rules, unless otherwise specified, days are calculated by calendar days, and the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. The term "legal holiday" includes New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday for employees of the state.
- B. Special rule for periods less than seven days: when the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.
- C. Whenever the Commission or any person has the right or is required to do some act within a prescribed period after the service of any paper by or upon the Commission by regular mail, three calendar days shall be added to the prescribed period.
- D. Whenever the Commission or any person is required to do some act within a prescribed period after the service of paper by or upon the Commission by overnight delivery, the time period shall begin on the date the recipient signs for the overnight delivery.
- E. The Commission shall use the address of the candidate that is provided on the application for certification filed pursuant to A.R.S. § 16-947. A candidate may designate in writing for the Commission to send written correspondence to a person other than the candidate.
- F. If possible, the Commission shall furnish a copy of all communications electronically.
- G. Delivery of subpoenas, orders and notifications to a natural person may be made by handing a copy to the person, or leaving a copy at his or her office with the person in charge thereof, by leaving a copy at his or her dwelling place or usual place of abode with a person of suitable age and discretion residing therein, by mailing a copy by overnight delivery to his or her last known address, or by any other method whereby actual notice is given.
- H. When the person to be served is not an individual, delivery of subpoenas, orders and notifications may be made by mailing a copy by overnight delivery to the person at its place of business or by handing a copy to a registered agent for service, or to any officer, director, or agent in charge of any office of such person, or by mailing a copy by overnight delivery to such representative at his or her last known address, or by any other method whereby actual notice is given.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2).

R2-20-104. Certification as a Participating Candidate

- A. A nonparticipating candidate who accepts contributions up to the limits authorized by A.R.S. § 16-941(B), but later chooses to run as a participating candidate, shall:
 1. Make the change to participating candidate status during the exploratory and qualifying periods only;
 2. Return the amount of each contribution in excess of the individual contribution limit for participating candidates;
 3. Return all Political Action Committee (PAC) monies received;
 4. Not have made expenditures exceeding the early contribution limit, or have spent any part of a contribution exceeding the early contribution limit;
 5. Comply with all provisions of A.R.S. § 16-941 and Commission rules.
 6. Return all contributions received from another candidate's candidate committee.
- B. Money from prior election. If a nonparticipating candidate has a cash balance remaining in the campaign account from the prior election cycle, the candidate may seek certification as a participating candidate in the current election after:
 1. Transferring money from the prior campaign account to the candidate's current election campaign account. The amount transferred shall not exceed the permitted personal monies, early contributions, and debt-retirement contributions, as defined in A.R.S. § 16-945(C), and shall contain contributions received from individuals only;
 2. Spending the money lawfully prior to April 30 of an election year in a way that does not constitute a direct campaign purpose and does not meet the definition of "expenditure" under A.R.S. § 16-901(24); and the event or item purchased is completed or otherwise used and depleted prior to April 30 of an election year;
 3. Remitting the money to the Fund;
 - or
 4. Holding the money in the prior election campaign account, not to be used during the current election, except as provided pursuant to this Section.

- C. Application for certification as a participating candidate. Pursuant to A.R.S. § 16-947, a candidate seeking certification shall file with the Secretary of State a Commission-approved application and a campaign finance report reflecting all campaign activity to date. In the application, a candidate shall certify under oath that the candidate:
1. Agrees to use all Clean Elections funding for direct campaign purposes only;
 2. Has filed a campaign finance report, showing all campaign activity to date in the current election cycle;
 3. Will comply with all requirements of the Act and Commission rules;
 4. Is subject to all enforcement actions by the Commission as authorized by the Act and Commission rules;
 5. Has the burden of proving that expenditures made by or on behalf of the candidate are for direct campaign purposes;
 6. Will keep and furnish to the Commission all documentation relating to expenditures, receipts, funding, books, records (including bank records for all accounts), and supporting documentation and other information that the Commission may request;
 7. Will permit an audit or examination by the Commission of all receipts and expenditures including those made by the candidate. The candidate shall also provide any material required in connection with an audit, investigation, or examination conducted by the Commission. The candidate shall facilitate the audit by making available in one central location, such as the Commission's office space, records and such personnel as are necessary to conduct the audit or examination, and shall pay any amounts required to be repaid;
 8. Will submit the name and mailing address of the person who is entitled to receive primary and general election funding on behalf of the candidate and the name and address of the campaign depository designated by the candidate. Changes in the information required by this subsection shall not be effective until submitted to the Commission in a letter signed or submitted electronically, by the candidate or the committee treasurer;
 9. Will pay any civil penalties included in a conciliation agreement or otherwise imposed against the candidate;
 10. Will timely file all campaign finance reports with the Secretary of State in an electronic format; and
 11. Will file an amended application for certification reporting any change in the information prescribed in the application for certification within five days after the change.
- D. If certified as a participating candidate, the candidate shall:
1. Only accept early contributions from individuals during the exploratory and qualifying periods in accordance with A.R.S. § 16-945. No contributions may be accepted from political action committees, political parties or corporations;
 2. Not accept any private contributions, other than early contributions and a limited number of \$5 qualifying contributions;
 3. Make expenditures of personal monies of no more than the amounts prescribed in A.R.S. § 16-941(A)(2) for legislative candidates and for statewide office candidates;
 4. Conduct all campaign activity through a single campaign account. A participating candidate shall only deposit early contributions, qualifying contributions and Clean Elections funds into the candidate's current campaign account. The campaign account shall not be used for any non-direct campaign purpose as provided in Article 7 of these rules;
 5. Attend a Commission sponsored candidate training class within 60 days of being certified or within 60 days of the beginning of the qualifying period if the candidate is certified before the beginning of the qualifying period. If the candidate is unable to attend a training class, the candidate shall:
 - a. Notify the Commission that the candidate is unable to attend a training class. The Commission then will send that person the Commission training materials; and
 - b. The candidate shall sign and send to the Commission a statement certifying that he or she has received and reviewed the Commission training materials; and
 6. Limit campaign expenditures. Prior to qualifying for Clean Elections funding, a candidate shall not incur debt, or make an expenditure in excess of the amount of cash on hand. Upon approval for funding by the Secretary of State, a candidate may incur debt, or make expenditures, not to exceed the sum of the cash on hand and the applicable spending limit.
- E. Loans. A participating candidate may accept an individual contribution as a loan or may loan his or her campaign committee personal monies during the exploratory and qualifying periods only. The total sum of the contribution received or personal funds and loans shall not exceed the expenditure limits set forth in A.R.S. § 16-941(A)(1) and (2). If the loan is to be repaid, the loans shall be repaid promptly upon receipt of Clean Elections funds if the participating candidate qualifies for Clean Elections funding. Loans from a financial institution or bank, to a candidate used for the purpose of influencing that candidate's election shall be considered personal monies and shall not exceed the personal monies expenditure limits set forth in A.R.S. § 16-941(A)(2).
- F. A participating candidate may raise early contributions for election to one office and choose to run for election to another office.
- G. Contributions to officeholder expense accounts are subject to the restrictions of A.R.S. § 41-1234.01, contributions prohibited during session; exceptions.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 9 A.A.R. 3506, effective April 2, 2002 (Supp. 03-3). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by exempt rulemaking at 13 A.A.R. 3597, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 15 A.A.R. 1420, effective April 30, 2010 (Supp. 09-3). Subsection R2-20-104(C)(8) amended by exempt rulemaking at 19 A.A.R. 1685, effective October 6, 2011; Subsection R2-20-104(D)(5) amended by exempt rulemaking at 19 A.A.R. 1685, effective May 23, 2013 (Supp. 13-2). Amended by final exempt rulemaking at 23 A.A.R. 115, effective December 15, 2016 (Supp. 16-4).

R2-20-105. Certification for Funding

- A. After a candidate is certified as a participating candidate, pursuant to A.R.S. § 16-947, in accordance with the procedure set forth in R2-20-104, that candidate may collect qualifying contributions only during the qualifying period.
- B. A participating candidate must submit to the Secretary of State, a list of names of persons who made qualifying contributions, an application for funding prescribed by the Secretary of State, the minimum number of original reporting slips, and an amount equal to the sum of the qualifying contributions collected pursuant to A.R.S. § 16-950 no later than one week after the end of the qualifying period. Any and all expenses associated with obtaining the qualifying contributions, including credit card processing fees must be paid for from the candidate's early contributions or personal monies. A candidate may develop his or her own three-part reporting slip for qualifying contributions, or one that is photocopied or computer reproduced, if the form substantially complies with the form prescribed by the Commission. The candidate must comply with the Act and ensure that the original qualifying slip is tendered to the Secretary of State, a copy remains with the candidate, and that a copy is given to the contributor.

- C. A candidate may accept electronic \$5 qualifying contributions for the elected office sought by the candidate. The Secretary of State's secured internet portal must be used to collect electronic \$5 qualifying. A \$5 contribution must accompany every \$5 qualifying contribution form and must be submitted via the Secretary of State's portal using a private electronic payment service, specified by the Secretary of State's Office, bank account, credit or debit card. A non-refundable transaction fee may be assessed on electronic \$5 qualifying contribution transactions. The transaction fee is not a contribution to the candidate's campaign and is paid by the contributor. If excess funds are accumulated by the candidate's campaign based on the transaction fee then all excess funds must be given to the Commission and must be entered into the candidate's campaign finance report in a manner that indicates the transaction fees have been accumulated and transferred.
- D. A solicitor who seeks signatures and qualifying contributions on behalf of a participating candidate shall provide his or her residential address, typed or printed name and signature on each reporting slip. The solicitor shall also sign a sworn statement on the contribution slip avowing that the contributor signed the slip, that the contributor contributed the \$5, that based on information and belief, the contributor's name and address are correctly stated and that each contributor is a qualified elector of this state. If a contribution is received unsolicited, the candidate or contributor may sign the qualifying contribution form as the solicitor and is accountable for all of the responsibilities of a solicitor. Nothing in this rule shall prohibit the use of direct mail or the internet to obtain qualifying contributions as long as an original signature is provided on the qualifying contribution form. The candidate may sign the qualifying contribution form as the solicitor and is accountable for all of the responsibilities of a solicitor. For qualifying contributions received in accordance with subsection (C) of this Section, the residential address and signature of the solicitor is not required.
- E. The Secretary of State has the authority to approve or deny a candidate for Clean Elections funding, pursuant to A.R.S. § 16-950(C) based upon the verification of the qualifying contribution forms by the appropriate county recorder. The county recorder shall disqualify any qualifying contribution forms that are:
 - 1. Unsigned by the contributor;
 - 2. Undated; or
 - 3. That the recorder is unable to verify as matching signature of a person who is registered to vote, on the date specified inside the electoral district the candidate is seeking.
- F. The Secretary of State will notify the candidate and the Commission regarding the approval or denial of Clean Elections funds. A candidate who is denied Clean Elections funding after all of the slips are verified is eligible to submit supplemental qualifying contribution forms for one additional opportunity to be approved for funding pursuant to subsection (G) of this rule.
- G. The amount equal to the sum of the qualifying contributions collected and tendered to the Secretary of State pursuant to A.R.S. § 16-950(B) will be deposited into the fund, and the amount tendered will not be returned to a candidate if a candidate is denied Clean Elections funding.
- H. In accordance with the procedure set forth at A.R.S. § 16-950(C), if the Secretary of State determines that the result of the five percent random sample is less than 110 percent of the slips needed to qualify for funding, then the Secretary of State shall send all of the slips for verification. If the county recorder has verified all of the candidate's signature slips and there is an insufficient number of valid qualifying contribution slips to qualify the candidate for funding, the candidate may make only one supplemental filing of additional qualifying contribution slips and qualifying contributions to the Secretary of State if all of the following apply:
 - 1. The candidate files at least the minimum number of additional slips needed to qualify for funding;
 - 2. The slips are not receipts for duplicate contributions from individuals who have previously contributed to that candidate; and
 - 3. The period for filing qualifying contributions slips has not expired.
- I. The Secretary of State shall forward facsimiles of all of the supplemental qualifying contribution slips to the appropriate county recorders for the county of the contributors' addresses as shown on the contribution slips. The county recorder shall verify all of the supplemental slips within 10 business days after receipt of the facsimiles and shall provide a report to the Secretary of State identifying as disqualified any slips that are unsigned by the contributor or undated or that the recorder is unable to verify as matching the signature of a person who is registered to vote, on the date specified on the slip, inside the electoral district of the office the candidate is seeking. On receipt of the report of the county recorder on all supplemental slips, the Secretary of State shall calculate the candidate's total number of valid qualifying contribution slips and shall approve or deny the candidate for funds.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 9 A.A.R. 3506, effective April 30, 2002 (Supp. 03-3). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 16 A.A.R. 1200, effective February 28, 2008 (Supp. 10-2). Subsection R2-20-105(C) amended by exempt rulemaking at 19 A.A.R. 1688, effective October 6, 2011; Subsection R2-20-105(J) amended by exempt rulemaking at 19 A.A.R. 1688, effective May 23, 2013 (Supp. 13-2). Amended by final exempt rulemaking at 23 A.A.R. 117, effective January 1, 2017 (Supp. 16-4).

R2-20-106. Distribution of Funds to Certified Candidates

- A. Before the initial disbursement of funds, the Commission shall review the candidate's funding application and all relevant facts and circumstances and:
 - 1. Verify that the number of signatures on the candidate's nominating petitions equals or exceeds the number required pursuant to A.R.S. § 16-322 as follows:
 - a. If the application is submitted before the March 1 voter registration list is determined, the Commission shall verify that the number of signatures on the candidate's nominating petitions equals or exceeds 115 percent of the number required pursuant to A.R.S. § 16-322 based on the prior election voter registration list as determined by the Secretary of State; or
 - b. If the application is submitted after the current year March 1 voter registration list is determined, the Commission shall verify that the number of signatures on the candidate's nominating petitions is equal to or greater than the number required pursuant to A.R.S. § 16-322.
 - 2. Determine that the required number of qualifying contributions have been received and paid to the Secretary of State for deposit in the Fund; and
 - 3. Determine whether the candidate is opposed in the election.
- B. In making the determinations described in subsection (A)(3), the Commission shall consider all relevant facts and circumstances, and it shall not be bound by election formalities such as the filing of nominating petitions by others in determining whether an applicant is opposed. Among other evidence the Commission may consider is the existence of exploratory committees or filings made to organize campaign committees of opponents and other like indicia.
- C. The Commission may review and affirm or change its determination that the candidate is or is not opposed until the ballot for the election is established.

- D. Within seven days after a primary election and before the Secretary of State completes the canvass, the Commission shall disburse funds for general election campaigns to the participating candidates who received the greatest number of votes at each primary election, provided that the candidate with the highest number of votes out of the total number of votes, has at least two percentage points greater than the candidate with the next highest votes based on the unofficial results as of that date. In a legislative race for the Arizona House of Representatives, the Commission shall disburse funds for general election campaigns to participating candidates with the highest or second highest number of votes cast, provided such candidate received votes totaling at least two percentage points, of the total ballots cast, larger than the vote total cast for the candidate with the third highest vote total.
- E. Promptly after the Secretary of State completes the canvass, the Commission shall disburse funds for general election campaigns to all eligible participating candidates to whom payment has not been made. If a participating candidate has received funds from the Commission pursuant to subsection (D) and the canvass or recount determines that the candidate is not eligible to appear on the general election ballot, the participating candidate shall return all unused funds to the Fund within 10 days after such determination is made. That candidate shall make no expenditures from general election funds from the date of the canvass.
- F. The Commission may refuse to distribute funds to participating candidates in cases in which the Commission finds evidence of fraud or illegal activity committed by the participating candidate.
- G. Pursuant to A.R.S. § 16-953, a participating candidate shall return to the Fund:
 - 1. All primary election funds not committed to expenditures (1) during the primary election period; and (2) for goods or services directed to the primary election. A candidate shall not be deemed to have violated A.R.S. § 16-953(A) or this subsection on account of failure to use all materials purchased with primary election funds prior to the primary election, provided such candidate exercises good faith and diligent efforts to comply with the requirement that goods and services purchased with primary election funds be directed to the primary election. Subject to A.R.S. § 16-953(A) and this subsection, a candidate may continue to use goods purchased with primary election funds during the general election period.
 - 2. All general funds not committed to expenditures (1) during the general election period; and (2) for goods or services directed to the general election.
- H. All funds returned to the Commission pursuant to subsection (G) of this rule, shall be returned to the Fund by a cashier's check drawn on the candidate's campaign bank account. Any fee associated with the issuance of a cashier's check shall be deemed a direct campaign expenditure and reported on the candidate's campaign finance report.
- I. If a participating candidate does not account for any outstanding expenditures in the amount of the funds returned to the Commission, the participating candidate must reconcile the outstanding expenditures with personal monies. Once funds have been returned to the Commission, no further reimbursements from the Clean Elections Fund shall be permitted. Participating candidates may not exceed the primary or general election spending limits.
- J. Commission staff may waive the return of funds if:
 - 1. The Commission staff determines the amount to be returned is de minimus;
 - 2. The Commission staff determines the cost of recovery exceeds the amount of the return;
 - 3. The funds to be returned shall not exceed \$25; and
 - 4. The Commission is notified of any waiver of the return of funds.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by final exempt rulemaking at 24 A.A.R. 107, effective December 14, 2017 (Supp. 17-4).

R2-20-107. Candidate Debates

- A. The Commission shall sponsor debates among statewide and legislative office candidates prior to the primary and general elections. Except as set forth in the subsection below, the Commission shall not be required to sponsor a debate if there is no participating candidate in the election for a particular office.
- B. In the primary election period, the Commission shall sponsor political party primary election debates for every office in which:
 - 1. There are more candidates appearing on the ballot than there are seats available for the political party's nomination for general election candidates, and
 - 2. At least one of the candidates is a participating candidate.
- C. The following candidates will not be invited to participate in debates as follows:
 - 1. In the primary election, write-in candidates for the primary election, independent candidates, no party affiliation or unrecognized party candidates.
 - 2. In the general election, write-in candidates.
- D. In the event that there is no participating candidate in a primary or general election but there is an election involving candidates who are not unopposed, a candidate may request that the Commission sponsor a debate pursuant to this rule. If the requesting candidate is the sole participant in the debate the format shall be as prescribed in R2-20-107(K).
 - 1. A nonparticipating candidate who requests a debate pursuant to this rule shall complete and return the invitation form sent to the candidate by the Commission by the deadline identified on the form. Forms received by the Commission past the deadline may still be considered at the discretion of the Commission. Commission staff shall notify all invited candidates if a debate will be sponsored by the Commission and which candidates will participate.
 - 2. If a candidate requests that the Commission sponsor a debate and fails or refuses to attend the debate, or a candidate agrees to participate in a debate and subsequently fails or refuses to attend the debate sponsored by the Commission, each candidate who fails or refuses to attend the debate shall reimburse the Commission for the cost of debate preparations not to exceed \$10,000 for a non-participating candidate for the legislature and \$25,000 for a non-participating candidate for statewide office. In the event that a candidate requests a general election debate or agrees to participate in a general election debate but does not advance to the general election, the candidate shall not be liable for the reimbursement.
- E. Pursuant to A.R.S. § 16-956(A)(2), all participating candidates certified pursuant to A.R.S. § 16-947 shall attend and participate in the debates sponsored by the Commission. No proxies or representatives are permitted to participate for any candidate and no statements may be read on behalf of an absent candidate.
- F. Unless exempted, if a participating candidate fails to participate in any Commission-sponsored debate, the participating candidate shall be fined \$500.00. For purposes of this Section, each primary or general election shall be considered a separate election.
- G. A participating candidate may request to be exempt from participating in a required debate by doing the following:
 - 1. Submit a written request to the Commission at least one week prior to the scheduled debate, and

2. State the reasons and circumstances justifying the request for exemption.
- H. After examining the request to be exempt, the Commission will exempt a candidate from participating in a debate if at least three Commissioners determine that the circumstances are:
 1. Beyond the control of the candidate; or
 2. Of such nature that a reasonable person would find the failure to attend justifiable or excusable.
- I. A participating candidate who fails to participate in a required debate may submit a request for excused absence to the Commission.
 1. The candidate's request for excused absence shall:
 - a. State the reason the candidate failed to participate in the debate, and
 - b. State the reason the candidate failed to request an exemption in advance, and
 - c. Be submitted to the Commission no later than five business days after the date of the debate the candidate failed to attend.
 2. After examining the request for excused absence, the Commission may excuse a candidate from the penalties imposed if at least three Commissioners determine that the circumstances were:
 - a. Beyond the control of the candidate; or
 - b. Of such nature that a reasonable person would find the failure to attend justifiable or excusable.
- J. When a participating candidate is not opposed in the general election, the candidate shall be exempt from participating in a Commission-sponsored debate for the general election.
- K. In the event that a participating candidate is opposed in the primary election or general election but is the only candidate taking part in a primary election period or general election period debate, as applicable, the debate will be held and will consist of a 30-minute question and answer session for the single participating candidate. If more than one candidate takes part in the debate, regardless of participation status, the debate will be held in accordance with the procedures established by the Commission staff.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). New Section made by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 19 A.A.R. 1690, effective October 6, 2011 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 4213, effective November 21, 2013 (Supp. 13-4). Amended by final exempt rulemaking at 21 A.A.R. 1627, effective July 23, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 23 A.A.R. 119, effective December 15, 2016 (Supp. 16-4).

R2-20-108. Termination of Participating Candidate Status

- A. A candidate may voluntarily request termination of his or her participating candidate status at any time prior to notification by the Commission that such candidate has qualified for Clean Elections funding. To withdraw from participating candidate status, a candidate shall send a letter to the Commission stating the candidate's intent to withdraw and the reason for the withdrawal. The candidate shall not accept any private monies until the withdrawal is approved by the Commission. The Commission shall act on the withdrawal request within seven days. If the Commission takes no action within the seven-day time period, the withdrawal is automatic.
- B. A candidate's participating candidate status shall automatically terminate if:
 1. The candidate fails to make such submissions to the Secretary of State as prescribed in R2-20-105(B) within seven days after the end of the qualifying period, or
 2. The candidate is denied Clean Elections funding by the Secretary of State and the candidate is ineligible to make a supplemental filing with the Secretary of State in accordance with R2-20-105(G).
- C. A candidate whose participating candidate status has been terminated in accordance with this Section shall be ineligible to receive Clean Elections funding for that election cycle unless he/she reapplies for certification and is in compliance with R2-20-104(A) and (C).
- D. In the event that a candidate who has collected qualifying contributions decides not to seek certification as a participating candidate, the candidate shall return all qualifying contributions received from contributors who have not given written permission to use their qualify contributions as campaign contributions. Written permission may include a check box on the original \$5 form that authorizes a candidate to treat the qualifying contribution as a general campaign contribution if he or she decides not to participate in the Clean Elections system. If a good faith attempt to return the funds to the contributor is unsuccessful, the contributions shall be submitted to the Fund.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 17 A.A.R. 1950, effective August 25, 2011 (Supp. 11-3).

Revised Editor's Note: The Office will not interpret the legality of any actions made by the Commission or the Governor's Regulatory Review Council as to whether the rules in R2-20-109 and R2-20-111 were effective at 23 A.A.R. 1761 or expired at 23 A.A.R. 1757 between the dates of June 7, and December 14, 2017. Those interested in that issue should consult counsel.

R2-20-109. Independent Expenditure Reporting Requirements

- A. In accordance with A.R.S. § 16-958(E), all persons obligated to file any campaign finance report under any provisions of Chapter 6, Article 2 of the Arizona Revised Statutes shall file such reports using the Secretary of State's Internet-based finance-reporting system, except if:
 1. Expressly provided otherwise by another Commission rule; or
 2. That system, or the necessary function on the system, is unavailable, in which case the executive director shall implement a suitable process.
- B. Independent Expenditure Reporting Requirements.
 1. Any person making independent expenditures cumulatively exceeding the amount prescribed in A.R.S. § 16-941(D) in an election cycle shall file campaign finance reports in accordance with A.R.S. § 16-958 and Commission rules.
 2. Any person who fails to file a timely campaign finance report pursuant to A.R.S. § 16-941(D), A.R.S. § 16-958, shall be subject to a civil penalty as prescribed in A.R.S. § 16-942(B). Subsection R2-20-109(B)(4) does not apply to reports pursuant to A.R.S. §§ 16-

941(D) and 16-958 or this subsection. Any expenditure advocating against one or more candidates shall be considered an expenditure on behalf of any opposing candidate or candidates. Penalties shall be assessed as follows:

- a. For an election involving a candidate for statewide office, the civil penalty shall be \$300 per day.
 - b. For an election involving a legislative candidate, the civil penalty shall be \$100 per day.
 - c. The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten (10%) percent of the applicable adjusted primary election spending limit or adjusted general election spending limit.
 - d. The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.
 - e. Penalties imposed pursuant to this subsection shall not exceed twice the amount of expenditures not reported.
3. A.R.S. § 16-942(B) applies to any entity including political committees that accepts contributions or makes expenditures on behalf of any candidate regardless of any other contributions taken or expenditures made and fails to timely file a campaign finance report under Chapter 6 of Title 16, Arizona Revised Statutes. Any expenditure advocating against one or more candidates shall be considered an expenditure on behalf of any opposing candidate or candidates. Penalties shall be assessed as follows:
- a. For an election involving a candidate for statewide office, the civil penalty shall be \$300 per day.
 - b. For an election involving a legislative candidate, the civil penalty shall be \$100 per day.
 - c. The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten (10%) percent of the applicable adjusted primary election spending limit or adjusted general election spending limit.
 - d. The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.
 - e. Penalties imposed pursuant to this subsection shall not exceed twice the amount of expenditures not reported.
4. For purposes of A.A.C. R2-20-109(B)(3):
- a. Subject to A.R.S. § 16-901(43) and notwithstanding any rule to the contrary of that section, an entity shall not be found to have the predominant purpose of influencing elections unless, a preponderance of the evidence establishes that during a two-year legislative election cycle, the total reportable contributions made by the entity, in any combination, in a calendar year exceeds \$1,000 and is more than fifty percent (50%) of the entity's total spending during the election cycle.
 - i. For purposes of this provision, a "reportable contribution" or "reportable expenditure" shall be limited to a contribution or expenditure, as defined in title 16 of the Arizona revised statutes, that must be reported to the Arizona secretary of state, the Arizona citizens clean elections commission, or local filing officer in Arizona. A contribution or expenditure that must be reported to the federal election commission or to the election authority of any other state, but not to the Arizona secretary of state, the Arizona citizens clean elections commission or a local filing officer in Arizona, shall not be considered a reportable contribution or reportable expenditure.
 - ii. For purposes of this provision, "total spending" shall not include volunteer time or fundraising and administrative expenses but shall include all other spending by the organization.
 - iii. For purposes of this provision, grants to other organizations shall be treated as follows:
 - (1) A grant made to a political committee or an organization organized under section 527 of the internal revenue code shall be counted in total spending and as a reportable contribution or reportable expenditure, unless expressly designated for use outside Arizona or for federal elections, in which case such spending shall be counted in total spending but not as a reportable contribution or reportable expenditure.
 - (2) If the entity making a grant takes reasonable steps to ensure that the transferee does not use such funds to make a reportable contribution or reportable expenditure, such a grant shall be counted in total spending but not as a reportable contribution or reportable expenditure.
 - iv. If the entity making a grant earmarks the grant for reportable contributions or reportable expenditures, knows the grant will be used to make reportable contributions or reportable expenditures, knows that a recipient will likely use a portion of the grant to make reportable contributions or reportable expenditures, or responds to a solicitation for reportable contributions or reportable expenditures, the grant shall be counted in total spending and the relevant portion of the grant as set forth in subsection (v) of this section shall count as a reportable contribution or reportable expenditure.
 - v. Notwithstanding subsections (iii) and (iv) the amount of a grant counted as a reportable contribution or reportable expenditure shall be limited to the lesser of the grant or the following:
 - (1) The amount that the recipient organization spends on reportable contributions and reportable expenditures, plus
 - (2) The amount that the recipient organization gives to third parties but not more than the amount that such third parties fund reportable contributions or reportable expenditures.
 - b. Notwithstanding section a above, the commission may nonetheless determine that an entity is not a political committee if, taking into account all the facts and circumstances of grants made by an entity, it is not persuaded that the preponderance of the evidence establishes that the entity is a political committee as defined in title 16 of Arizona Revised Statutes.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 13 A.A.R. 3597, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 16 A.A.R. 152, effective January 29, 2010 (Supp. 10-1). Subsections R2-20-109(A), (A)(4), and (B) through (E) amended by exempt rulemaking at 19 A.A.R. 2923, effective October 6, 2011; Subsections R2-20-109(A) and (C)(2) amended by exempt rulemaking at 19 A.A.R. 2923, effective August 29, 2013; Subsection R2-20-109(C)(3) amended by exempt rulemaking at 19 A.A.R. 2923, effective January 1, 2014 (Supp. 13-3). Amended by exempt rulemaking at 19 A.A.R. 3519, effective September 27, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1329, effective May 22, 2014 (Supp. 14-2). Amended by exempt rulemaking at 20 A.A.R. 2804, effective September 11, 2014 (Supp. 14-3). Subsection R2-20-109(D) amended by final exempt rulemaking at 21 A.A.R. 3168 effective October 29, 2015; subsection R2-20-109(F) amended by final exempt rulemaking at 21 A.A.R. 3168 effective October 30, 2015 (Supp. 15-4). Amended by exempt rulemaking at 22 A.A.R. 2892, effective January 1, 2017 (Supp. 16-3). Amended by final exempt rulemaking at 23 A.A.R. 121, effective January 1, 2017 (Supp. 16-4). Section retained at the request of the Commission at 23 A.A.R. 1761 (Supp. 17-2, version 2). The Commission adopted and unanimously voted to reenact and republish this Section that was "currently in effect" for the purpose of public notice and clarity at 24 A.A.R.

R2-20-110. Participating Candidate Reporting Requirements

- A.** All participating candidates shall file campaign finance reports that include all receipts and disbursements for their current campaign account as follows:
1. Expenditures for consulting, advising, or other such services to a candidate shall include a detailed description of what is included in the service, including an allocation of services to a particular election. When appropriate, the Commission may treat such expenditures as though made during the general election period.
 2. If a participating candidate makes an expenditure on behalf of the campaign using personal funds, the candidate's campaign shall reimburse the candidate within seven calendar days of the expenditure. After the 7 day period has passed, the expenditure shall be deemed an in-kind contribution subject to all applicable limits.
 3. A candidate may authorize an agent to purchase goods or services on behalf of such candidate, provided that:
 - a. Expenditures shall be reported as of the date that the agent promises, agrees, contracts or otherwise incurs an obligation to pay for the goods or services;
 - b. The candidate shall have sufficient funds in the candidate's campaign account to pay for the amount of such expenditure at the time it is made and all other outstanding obligations of the candidate's campaign committee; and
 - c. Within seven calendar days of the date upon which the amount of the expenditure is known, the candidate shall pay such amount from the candidate's campaign account to the agent who purchases the goods or services.
 4. A joint expenditure is made when two or more candidates agree to share the cost of goods or services. Candidates may make a joint expenditure on behalf of one or more other campaigns, but must be authorized in advance by the other candidates involved in the expenditure, and must be reimbursed within seven days. Participating candidates may participate in joint expenditures for the cost of goods and services with one or more candidates, subject to the following:
 - a. Joint expenditures must be allocated fairly among candidates. An allocated share of a joint expenditure paid by one candidate pursuant to such an agreement must be reimbursed within seven days.
 - b. Any violator of part (a) shall be liable for a penalty pursuant to R2-20-222, in addition to penalties prescribed by any other law.
 - c. If a fairly allocated share of any joint expenditure is not reimbursed to a candidate, the unreimbursed amount of the joint expenditure fairly allocated to that candidate shall be deemed a contribution to that candidate by the campaign committee of the candidate obligated to reimburse the share.
 - d. If a fairly allocated share of any joint expenditure is not reimbursed to a participating candidate, the candidate obligated to reimburse the share shall reimburse the fund for the unreimbursed amount of the joint expenditure fairly allocated to the obligated candidate, in addition to any penalty specified by law.
 - e. A candidate's payment for an advertisement, literature, material, campaign event or other activity shall be considered a joint expenditure including, but not limited to, the following criteria:
 - i. The activity includes express advocacy of the election or defeat of more than 2 candidates;
 - ii. The purpose of the material or activity is to promote or facilitate the election of a second candidate;
 - iii. The use and prominence of a second candidate or his or her name or likeness in the material or activity;
 - iv. The material or activity includes an expression by a second candidate of his or her view on issues brought up during the election campaign;
 - v. The timing of the material or activity in relation to the election of a second candidate;
 - vi. The distribution of the material or the activity is targeted to a second candidate's electorate; or
 - vii. The amount of control a second candidate has over the material or activity.
 5. For the purposes of the Act and Commission rules, a candidate or campaign shall be deemed to have made an expenditure as of the date upon which the candidate or campaign promises, agrees, contracts or otherwise incurs an obligation to pay for goods or services.
- B.** Timing of reporting expenditures.
1. Except as set forth in subsection (A)(2) above, a participating candidate shall report a contract, promise or agreement to make an expenditure resulting in an extension of credit as an expenditure, in an amount equal to the full future payment obligation, as of the date the contract, promise or agreement is made.
 2. In the alternative to reporting in accordance with subsection (A)(1) above, a participating candidate may report a contract, promise or agreement to make an expenditure resulting in an extension of credit as follows:
 - a. For a month-to-month or other such periodic contract or agreement that is terminable by a candidate at will and without any termination penalty or payment, the candidate may report an expenditure, in an amount equal to each future periodic payment, as of the date upon which the candidate's right to terminate the contract or agreement and avoid such future periodic payment elapses.
 - b. For a contract, promise or agreement to provide goods or services during the general election period that is contingent upon a candidate advancing to the general election period, the candidate may report an expenditure, in an amount equal to the general election period payment obligation, as of the date upon which such contingency is satisfied.
 - c. For a contract, promise or agreement to pay rent, utility charges or salaries payable to individuals employed by a candidate's campaign committee as staff, the candidate may report an expenditure, in an amount equal to each periodic payment, as of the date that is the sooner of (i) the date upon which payment is made; or (ii) the date upon which payment is due.
- C.** Reports and Refunds of Excess Monies by Participating Candidates.
1. In addition to any campaign finance report required by Chapter 6 of Title 16, Arizona Revised Statutes, participating candidates shall file the following campaign finance reports and dispose of excess monies as follows:
 - a. Prior to filing the application for funding pursuant to A.R.S. § 16-950, participating candidates shall file a campaign finance report with the names of the persons who have made qualifying contributions to the candidate.
 - b. At the end of the qualifying period, a participating candidate shall file a campaign finance report consisting of all early contributions received, including personal monies and the expenditures of such monies.
 - i. The campaign finance report shall be filed with the Secretary of State no later than five days after the last day of the qualifying period and shall include all campaign activity through the last day of the qualifying period.
 - ii. If the campaign finance report shows any amount of unspent monies, the participating candidate, within five days after filing the campaign finance report, shall remit all unspent contributions to the Fund, pursuant to A.R.S. § 16-945(B). Any unspent personal monies shall be returned to the candidate or the candidates' family member within five days.

2. Each participating candidate shall file a campaign finance report consisting of all expenditures made in connection with an election, all contributions received in the election cycle in which such election occurs, and all payments made to the Clean Elections Fund. If the campaign finance report shows any amount unspent, the participating candidate, within five days after filing the campaign finance report, shall send a check from the candidate's campaign account to the Commission in the amount of all unspent monies to be deposited in the Fund.
 - a. The campaign finance report for the primary election shall be filed within five days after the primary election day and shall reflect all activity through the primary election day.
 - b. The campaign finance report for the general election shall be filed within five days after the general election day and shall reflect all activity through the general election day.
3. In the event that a participating candidate purchases goods or services from a subcontractor or other vendor through an agent pursuant to subsection (A)(3), the candidate's campaign finance report shall include the same detail as required in A.R.S. § 16-948(C) for each such subcontractor or other vendor. Such detail is also required when petty cash funds are used for such expenditures.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 19 A.A.R. 1693, effective May 23, 2013 (Supp. 13-2). Amended by final exempt rulemaking at 21 A.A.R. 1629, effective July 23, 2015 (Supp. 15-3). Section R2-20-110 renumbered to Section R2-20-114; new Section R2-20-110 made by exempt rulemaking at 22 A.A.R. 2897, effective January 1, 2017 (Supp. 16-3). Amended by final exempt rulemaking at 23 A.A.R. 124, effective January 1, 2017 (Supp. 16-4).

Revised Editor's Note: The Office will not interpret the legality of any actions made by the Commission or the Governor's Regulatory Review Council as to whether the rules in R2-20-109 and R2-20-111 were effective at 23 A.A.R. 1761 or expired at 23 A.A.R. 1757 between the dates of June 7, and December 14, 2017. Those interested in that issue should consult counsel.

R2-20-111. Non-participating Candidate Reporting Requirements

and Contribution Limits

- A. Any person may file a complaint with the Commission alleging that any non-participating candidate or that candidate's campaign committee has failed to comply with or violated A.R.S. § 16-941(B). Complaints shall be processed as prescribed in Article 2 of these rules. In addition to those penalties outlined in R2-20-222(B), a non-participating candidate or candidate's campaign committee violating A.R.S. § 16-941(B) shall be subject to penalties prescribed in A.R.S. § 16-941(B) and A.R.S. § 16-942(B) and (C) as applicable:
- B. Penalties under A.R.S. § 16-942(B):
 1. For an election involving a candidate for statewide office, the civil penalty shall be \$300 per day.
 2. For an election involving a legislative candidate, the civil penalty shall be \$100 per day.
 3. The penalties in (B)(1) and (B)(2) shall be doubled if the amount not reported for a particular election cycle exceeds ten percent (10%) of the applicable one of the adjusted primary election spending limit or adjusted general election spending limit.
 4. The dollar amounts in items (B)(1) and (B)(2), and the spending limits in item (B)(3) are subject to adjustment of A.R.S. § 16-959.
- C. Penalties under A.R.S. § 16-942(C): Where a campaign finance report filed by a non-participating candidate or that candidate's campaign committee indicates a violation of A.R.S. § 16-941(B) that involves an amount in excess of ten percent (10%) of the sum of the adjusted primary election spending limit and the adjusted general election spending limits specified by A.R.S. § 16-961(G) and (H) as adjusted pursuant to A.R.S. § 16-959, that violation shall result in disqualification of a candidate or forfeiture of office.
- D. Penalties under A.R.S. § 16-941(B): Regardless of whether or not there is a violation of a reporting requirement, a person who violates A.R.S. § 16-941(B) is subject to a civil penalty of three times the amount of money that has been received, expended, or promised in violation of A.R.S. § 16-941(B) or three times the value in money for an equivalent of money or other things of value that have been received, expended, or promised in violation of A.R.S. § 16-941(B).
- E. The twenty percent reduction in A.R.S. § 16-941(B) applies to all campaign contributions limits on contributions that are permitted to be accepted by nonparticipating candidates.
- F. Contribution limits as adjusted by A.R.S. § 16-931 shall be the base level contribution limits subject to reduction pursuant to A.R.S. § 16-941(B).

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 13 A.A.R. 3597, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by final exempt rulemaking at 21 A.A.R. 1631, effective July 23, 2015 (Supp. 15-3). Section R2-20-111 renumbered to R2-20-115 at 22 A.A.R. 2904; new Section R2-20-111 made by exempt rulemaking at 22 A.A.R. 2899 effective January 1, 2017 (Supp. 16-3). Amended by final exempt rulemaking at 23 A.A.R. 126, effective January 1, 2017 (Supp. 16-4). Section retained at the request of the Commission at 23 A.A.R. 1761 (Supp. 17-2, version 2). The Commission unanimously adopted and voted to reenact and republish this Section that was "currently in effect" for the purpose of public notice and clarity, with amendments at 24 A.A.R. 111, effective December 14, 2017 (Supp. 17-4).

R2-20-112. Political Party Exceptions

The provisions of A.R.S. § 16-911(B)(4) shall apply to a candidate, whether participating or nonparticipating, who becomes a nominee as defined in A.R.S. § 16-901(38).

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). New Section made by exempt rulemaking at 13 A.A.R. 3597, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1423, effective October 22, 2009 (Supp. 09-3). Amended by final exempt rulemaking at 23 A.A.R. 128, effective January 1, 2017 (Supp. 16-4).

R2-20-113. Candidate Statement Pamphlet

- A. The Commission shall publish a candidate statement pamphlet in both the primary and general elections as required by A.R.S. § 16-956(A)(1). Commission staff shall send invitations for submission of a 200 word statement to every statewide and legislative candidate who has qualified for the ballot. Statements submitted for the primary candidate statement pamphlet shall be used for the general candidate statement pamphlet unless otherwise stated by the candidate.
- B. The following candidates will not be invited to submit a statement for the candidate statement pamphlet:
 - 1. In the primary election: write-in candidates for the primary election, independent candidates, no party affiliation or unrecognized party candidates.
 - 2. In the general election: write in candidates.

Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 13 A.A.R. 3597, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 15 A.A.R. 1423, effective October 22, 2009 (Supp. 09-3). Amended by exempt rulemaking at 15 A.A.R. 1567, effective September 2, 2009 (Supp. 09-3). Amended by exempt rulemaking at 16 A.A.R. 1200, effective January 8, 2010 (Supp. 10-2). Repealed by exempt rulemaking at 19 A.A.R. 1694, effective October 6, 2011 (Supp. 13-2). New Section made by final exempt rulemaking at 21 A.A.R. 1633, effective July 23, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 2118, effective July 29, 2019 (Supp. 19-3). Amended by final rulemaking at 26 A.A.R. 335, effective February 4, 2020; amendments made to subsection (A) were originally codified in Supp. 19-3 at 25 A.A.R. 2118 (Supp. 20-1).

R2-20-114. Candidate Campaign Bank Account

- A. Each participating candidate shall designate a single campaign bank account for conducting campaign financial activity. During an election cycle, each participating candidate shall conduct all campaign financial activities through a single, current election campaign bank account and any petty cash accounts as are permitted by law.
- B. A participating candidate may maintain a campaign bank account other than the current election campaign bank account described in subsection (A) if the other campaign bank account is for a campaign in a prior election cycle in which the candidate was not a participating candidate.
- C. During the exploratory period, a candidate may receive debt-retirement contributions for a campaign during a prior election cycle if the funds are deposited in the bank account for that prior campaign. A candidate shall not deposit debt-retirement contributions into the current election campaign bank account.

Historical Note

New Section R2-20-114 renumbered from R2-20-110 by exempt rulemaking at 22 A.A.R. 2897 and 22 A.A.R. 2902, effective January 1, 2017 (Supp. 16-3).

R2-20-115. Books and Records Requirements

- A. All candidates shall maintain, at a single location within the state, the books and records of financial transactions, and other information required by A.R.S. § 16-904.
- B. All candidates shall ensure that the books and records of accounts and transactions of the candidate are recorded and preserved as follows:
 - 1. The treasurer of a candidate's campaign committee is the custodian of the candidate's books and records of accounts and transactions, and shall keep a record of all of the following:
 - a. All contributions or other monies received by or on behalf of the candidate.
 - b. The identification of any individual or political committee that makes any contribution together with the date and amount of each contribution and the date of deposit into the candidate's campaign bank account.
 - c. Cumulative totals contributed by each individual or political committee.
 - d. The name and address of every person to whom any expenditure is made, and the date, amount and purpose or reason for the expenditure.
 - e. All periodic bank statements or other statements for the candidate's campaign bank account.
 - f. In the event that the campaign committee uses a petty cash account the candidate's campaign finance report shall include the same detail for each petty cash expenditure as required in A.R.S. § 16-948(C) for each vendor.
 - 2. No expenditure may be made for or on behalf of a candidate without the authorization of the treasurer or his or her designated agent.
 - 3. Unless specified by the contributor or contributors to the contrary, the treasurer shall record a contribution made by check, money order or other written instrument as a contribution by the person whose signature or name appears on the bottom of the instrument or who endorses the instrument before delivery to the candidate. If a contribution is made by more than one person in a single written instrument, the treasurer shall record the amount to be attributed to each contributor as specified.
 - 4. All contributions other than in-kind contributions and qualifying contributions must be made by a check drawn on the account of the actual contributor or by a money order or a cashier's check containing the name of the actual contributor or must be evidenced by a written receipt with a copy of the receipt given to the contributor and a copy maintained in the records of the candidate.
 - 5. The treasurer shall preserve all records set forth in subsection (B) and copies of all campaign finance reports required to be filed for three years after the filing of the campaign finance report covering the receipts and disbursements evidenced by the records.
 - 6. If requested by the attorney general, the county, city or town attorney or the filing officer, the treasurer shall provide any of the records required to be kept pursuant to this Section.
- C. Any request to inspect a candidate's records under A.R.S. § 16-958(F) shall be sent to the candidate, with a copy to the Commission, 10 or more days before the proposed date of the inspection. If the request is made within two weeks before the primary or general election, the request shall be delivered at least two days before the proposed date of inspection. Every request shall state with reasonable particularity the records sought.
 - 1. The inspection shall occur at a location agreed upon by the candidate and the person making the request. If no agreement can be reached, the inspection shall occur at the Commission office. The inspection shall occur during the Commission's regular business hours and shall be limited to a two-hour time period.
 - 2. The requesting party may obtain copies of records for a reasonable fee. The Commission shall not be responsible for making copies. The person in possession of the records shall produce copies within a reasonable time of the receipt of the copying request.

- and fees.
3. The Commission will not permit public inspection of records if it determines that the inspection is for harassment purposes.
 4. If a person who requests to inspect a candidate's records under A.R.S. § 16-958(F) is denied such a request, the requesting party may notify the Commission. The Commission may enforce the public inspection request by issuing a subpoena pursuant to A.R.S. § 16-956(B) for the production of any books, papers, records, or other items sought in the public inspection request. The subpoena shall order the candidate to produce:
 - a. All papers, records, or other items sought in the public inspection request;
 - b. No later than two business days after the date of the subpoena; and
 - c. To the Commission's office during regular business hours.
 5. Any person who believes that a candidate or a candidate's campaign committee has not complied with this Section may appeal to Superior Court.

Historical Note

New Section R2-20-115 renumbered from R2-20-111 by exempt rulemaking at 22 A.A.R. 2899 and 22 A.A.R. 2904, effective January 1, 2017 (Supp. 16-3).

ARTICLE 2. COMPLIANCE AND ENFORCEMENT PROCEDURES

R2-20-201. Scope

These rules provide procedures for processing possible violations of the Citizens Clean Elections Act.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-202. Initiation of Compliance Matters

Compliance matters may be initiated by a complaint or on the basis of information ascertained by the Commission in the normal course of carrying out its statutory responsibilities.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-203. Complaints

- A. Any person who believes that a violation of any statute or rule over which the Commission has jurisdiction has occurred or is about to occur may file a complaint in writing to the Executive Director.
- B. A complaint shall conform to the following:
 1. Provide the full name and address of the complainant; and
 2. Contents of the complaint shall be sworn to and signed in the presence of a notary public and shall be notarized.
- C. All statements made in a complaint are subject to the statutes governing perjury. The complaint shall differentiate between statements based upon personal knowledge and statements based upon information and belief.
- D. The complaint shall conform to the following provisions:
 1. Clearly identify as a respondent each person or entity who is alleged to have committed a violation;
 2. Statements which are not based upon personal knowledge shall be accompanied by an identification of the source of information which gives rise to the complainant's belief in the truth of such statements;
 3. Contain a clear and concise recitation of the facts which describe a violation of a statute or rule over which the Commission has jurisdiction; and
 4. Be accompanied by any documentation supporting the facts alleged if such documentation is known of, or available to, the complainant.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

R2-20-204. Initial Complaint Processing; Notification

- A. Upon receipt of a complaint, the Administrative Counsel shall review the complaint for substantial compliance with the technical requirements of R2-20-203, and, if it complies with those requirements, shall within five days after receipt notify each respondent that the complaint has been filed, advise each respondent of Commission compliance procedures, and provide each respondent a copy of the complaint.
- B. If a complaint does not comply with the requirements of R2-20-203, the Administrative Counsel shall so notify the complainant and any person or entity identified therein as respondent, within the five-day period specified in subsection (A), that no action should be taken on the basis of that complaint. A copy of the complaint shall be provided with the notification to each respondent.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by final exempt rulemaking at 21 A.A.R. 1634, effective July 23, 2015 (Supp. 15-3).

R2-20-205. Opportunity for No Action on Complaint-generated Matters

- A. A respondent shall be afforded an opportunity to demonstrate that no action should be taken on the basis of a complaint by submitting, within 5 days from receipt of a written copy of the complaint, a letter or memorandum setting forth reasons why the Commission should take no action.
- B. The Commission shall not take any action, or make any finding, against a respondent other than action dismissing the complaint, unless it has considered such response or unless no such response has been served upon the Commission within the 5 day period specified in subsection A.
- C. The respondent's response shall be sworn to and signed in the presence of a notary public and shall be notarized. The respondent's failure to respond in accordance with subsection A within 5 days of receiving the written copy of the complaint may be viewed as an admission to the allegations made in the complaint for purposes of the reason to believe finding pursuant to A.A.C. R2-20-206.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by final exempt rulemaking at 21 A.A.R. 1636, effective July

R2-20-206. Executive Director's Recommendation on Complaint-generated Matters

- A. Following either the expiration of the 5 day period specified by A.A.C. R2-20-205 or the receipt of a response as specified by A.A.C. R2-20-205(A), whichever occurs first, the Executive Director:
1. May recommend to the Commission whether it should find reason to believe that a respondent has committed or is about to commit a violation of a statute or rule over which the Commission has jurisdiction;
 2. May recommend that the Commission find that there is no reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has been committed or is about to be committed, or that the Commission otherwise dismiss a complaint without regard to the provisions of A.A.C. R2-20-205(A); or
 3. May close the complaint generated matter without a reason to believe recommendation from the Executive Director based upon Respondent complying with the statute or rule on which the complaint is founded and in such case shall notify the Commission.
- B. Neither the complainant nor the respondent has the right to appeal the Executive Director's recommendation made pursuant to subsection (A) because the recommendation is not an appealable agency action.
- C. If the complaint relates to a violation of A.R.S. § 16-941(B) by a non-participating candidate or that candidate's campaign committee, the Executive Director shall not proceed pursuant to R2-20-206(A) or R2-20-207(A), without first receiving Commission approval to initiate an inquiry.
- D. The respondent shall not have the right to appeal the Commission's decision to authorize an inquiry pursuant to subsection (C) because the Commission's decision whether or not to authorize an inquiry is not an appealable agency action.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by exempt rulemaking at 20 A.A.R. 1332, effective May 22, 2014 (Supp. 14-2). Amended by final exempt rulemaking at 21 A.A.R. 1638, effective July 23, 2015 (Supp. 15-3).

R2-20-207. Internally Generated Matters; Referrals

- A. On the basis of information ascertained by the Commission in the normal course of carrying out its statutory responsibilities, or on the basis of a referral from an agency of the state, the Executive Director may recommend in writing that the Commission find reason to believe that a person or entity has committed or is about to commit a violation of a statute or rule over which the Commission has jurisdiction.
- B. If the Commission finds reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur, the Executive Director shall notify the respondent of the Commission's decision and shall include a copy of a staff report setting forth the legal basis and the alleged facts which support the Commission's action.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 13 A.A.R. 3524, effective January 1, 2008 (Supp. 07-3).

R2-20-208. Complaint Processing; Notification

- A. If the Commission, either after reviewing a complaint-generated recommendation as described in R2-20-206 and any response of a respondent submitted pursuant to R2-20-205, or after reviewing an internally-generated recommendation as described in R2-20-207, determines by an affirmative vote of at least three of its members that it has reason to believe that a respondent has violated a statute or rule over which the Commission has jurisdiction, the Commission shall notify such respondent of the Commission's finding, setting forth the sections of the statute or rule alleged to have been violated and the alleged factual basis supporting the finding. In accordance with A.R.S. § 16-957(A), the Commission shall serve on the respondent an order requiring compliance within 14 days. During that period, the respondent may provide any explanation to the Commission, comply with the order, or enter into a public administrative settlement with the Commission.
- B. If the Commission finds no reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred, or otherwise terminates its proceedings, the Executive Director shall so notify both the complainant and respondent.
- C. The complainant may bring an action in Superior Court in accordance with A.R.S. § 16-957(C) if the Commission finds there is no reason to believe a violation of a statute or rule over which the Commission has jurisdiction has occurred or otherwise terminates its proceedings.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1).

R2-20-209. Investigation

- A. The Executive Director or any other person designated by the Executive Director shall conduct an investigation in any case in which the Commission finds reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur.
- B. The investigation may include, but is not limited to, field investigations, audits, and other methods of information gathering.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section amended by final rulemaking at 26 A.A.R. 111, with a immediate effective of December 12, 2019 (Supp. 19-4). Amended by final rulemaking at 26 A.A.R. 542, effective March 9, 2020; the amendments to subsections (A) and (B) were originally codified in Supp. 19-4 at 26 A.A.R. 1111 (Supp. 20-1).

R2-20-210. Written Questions Under Order

The Commission may issue an order requiring any person to submit sworn, written answers to written questions and may specify a date by which such answers must be submitted to the Commission.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3).

R2-20-211. Subpoenas and Subpoenas Duces Tecum; Depositions

- A. The Commission may authorize its Executive Director or Assistant Attorney General to issue subpoenas requiring the attendance and testimony of any person by deposition and to issue subpoenas duces tecum for the production of documentary or other tangible evidence in connection with a deposition or otherwise.
- B. If the Commission orders oral testimony to be taken by deposition or for documents to be produced, the subpoena shall so state and shall advise the deponent or person subpoenaed that all testimony will be under oath. The Commission may authorize its Executive Director to take a deposition and have the power to administer oaths.
- C. The deponent shall have the opportunity to review and sign depositions taken pursuant to this rule.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 13 A.A.R. 3524, effective January 1, 2008 (Supp. 07-3).

R2-20-212. Repealed

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

R2-20-213. Motions to Quash or Modify a Subpoena

- A. Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than five days after the date of receipt of such subpoena, apply to the Commission to quash or modify such subpoena, accompanying such application with a brief statement of the reasons therefore.
- B. The Commission may deny the application, quash the subpoena or modify the subpoena.
- C. The person subpoenaed and the Executive Director may agree to change the date, time, or place of a deposition or for the production of documents without affecting the force and effect of the subpoena, but such agreements shall be confirmed in writing.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 13 A.A.R. 3524, effective January 1, 2008 (Supp. 07-3).

R2-20-214. The Probable Cause to Believe Recommendation; Briefing Procedures

- A. Upon completion of the investigation conducted pursuant to R2-20-209, the Executive Director shall prepare a brief setting forth his or her position on the factual and legal issues of the case and containing a recommendation on whether the Commission should find probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur.
- B. The Executive Director shall notify each respondent of the recommendation and enclose a copy of his or her brief.
- C. Within five days from receipt of the Executive Director's brief, the respondent may file a brief with the Commission setting forth the respondent's position on the factual and legal issues of the case.
- D. After reviewing the respondent's brief, the Executive Director shall promptly advise the Commission in writing whether he or she intends to proceed with the recommendation or to withdraw the recommendation from Commission consideration.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1).

R2-20-215. Probable Cause to Believe Finding

- A. If the Commission, after having found reason to believe and after following the procedures set forth in R2-20-214, determines by an affirmative vote of at least three of its members that there is probable cause to believe that a respondent has violated a statute or rule over which the Commission has jurisdiction, the Commission shall authorize the Executive Director to so notify the respondent by an order, that states the nature of the violation, pursuant to A.R.S. § 16-957.
- B. If the Commission finds no probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or otherwise orders a termination of Commission proceedings, it shall authorize the Executive Director to notify both respondent and complainant by letter that the proceeding has ended. The Executive Director's letter also will inform the parties that the Commission is not precluded from taking action on this matter in the future if evidence is discovered which may alter the decision of the Commission.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3). Amended by exempt rulemaking at 13 A.A.R. 3524, effective January 1, 2008 (Supp. 07-3).

R2-20-216. Conciliation

- A. Upon a Commission finding of probable cause to believe that the respondent has violated a statute or rule over which the Commission has jurisdiction, the Executive Director shall attempt to settle the matter as authorized by A.R.S. § 16-957(A) by informal methods of administrative settlement or conciliation, and shall attempt to reach a tentative conciliation agreement with the respondent.
- B. A conciliation agreement pursuant to subsection (A) of this Section is not binding upon either party unless and until it is signed by the respondent and by the Executive Director upon approval by the affirmative vote of at least three members of the Commission.
- C. If a conciliation agreement is reached between the Commission and the respondent, the Executive Director shall send a copy of the signed agreement to both complainant and respondent.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3).

R2-20-217. Enforcement Proceedings

- A. Upon a finding of probable cause that the alleged violator remains out of compliance, the Executive Director may recommend to the Commission that the Commission authorize the issuance of an order and assessment of civil penalties pursuant to A.R.S. § 16-957(B).
- B. The Commission may, by an affirmative vote of at least three of its members, authorize the Executive Director to issue an order and assess civil penalties pursuant to A.R.S. § 16-957(B).

- C. Subsections (A) and (B) of this rule shall not preclude the Commission, upon request of a respondent, from entering into a conciliation agreement pursuant to R2-20-216 even after the Commission authorizes the Executive Director to issue an order and assess civil penalties pursuant to subsection (B). Any conciliation agreement reached under this subsection is subject to the provisions of R2-20-216(B) and shall have the same force and effect as a conciliation agreement reached under R2-20-216(D).

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1).

R2-20-218. Repealed

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

R2-20-219. Repealed

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3).

R2-20-220. Ex Parte Communications

- A. In order to avoid the possibility of prejudice, real or apparent, to the public interest in enforcement actions pending before the Commission pursuant to its compliance procedures, except to the extent required for the disposition of ex parte matters as required by law (for example, during the normal course of an investigation or a conciliation effort), no interested person outside the agency shall make or cause to be made to any Commissioner or any member of any Commission staff any ex parte communication relative to the factual or legal merits of any enforcement action, nor shall any Commissioner or member of the Commission's staff make or entertain any such ex parte communications.
- B. This rule shall apply from the time a complaint is filed with the Commission or from the time that the Commission determines on the basis of information ascertained in the normal course of its statutory responsibilities that it has reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or may occur, and remains in force until the Commission has finally concluded all action with respect to the matter in question.
- C. Nothing in this Section shall be construed to prohibit contact between a respondent or respondent's attorney and any attorney or the Administrative Counsel or the Assistant Attorney General in the course of representing the Commission or the respondent with respect to an enforcement proceeding or civil action. No statement made by a Commission attorney or staff member shall bind or estop the Commission.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-221. Representation by Counsel; Notification

- A. If a respondent wishes to be represented by counsel with regard to any matter pending before the Commission, respondent shall so advise the Commission by sending a letter of representation signed by the respondent, which letter shall state the following:
1. The name, address, and telephone number of the counsel; and
 2. A statement authorizing such counsel to receive any and all notifications and other communications from the Commission on behalf of respondent.
- B. Upon receipt of a letter of representation, the Commission shall have no contact with respondent except through the designated counsel unless authorized in writing by respondent. The Commission will send a copy of this letter to the respondent's attorney.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-222. Civil Penalties

- A. If the Commission has reason to believe by a preponderance of the evidence that a participating candidate is not in compliance with the Act or Commission rules, then in addition to other penalties under law, the Commission may decertify a candidate, deny or suspend funding, order repayment of funds, or impose a penalty not to exceed \$1,000 for a participating candidate for the legislature and 5,000 for a participating candidate for statewide office.
- B. If the Commission has reason to believe by a preponderance of the evidence that a person other than a participating candidate is not in compliance with the Act or Commission rules, then in addition to other penalties under law, the Commission may impose a penalty not to exceed \$1,000.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 13 A.A.R. 3524, effective January 1, 2008 (Supp. 07-3). Amended by exempt rulemaking at 19 A.A.R. 1697, effective May 23, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3524, effective September 27, 2013 (Supp. 13-4).

R2-20-223. Notice of Appealable Agency Action

If the Commission makes a probable cause finding pursuant to R2-20-215 or decides to initiate an enforcement proceeding pursuant to R2-20-217, the Assistant Attorney General (AAG) shall draft and serve notice of an appealable agency action pursuant to A.R.S. § 41-1092.03 and § 41-1092.04 on the respondent. The notice shall identify the following:

1. The statute or rule violated and specific facts constituting the violation;
2. A description of the respondent's right to request a hearing and to request an informal settlement conference; and
3. A description of what the respondent may do if the respondent wishes to remedy the situation without appealing the Commission's decision.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by final exempt rulemaking at 21 A.A.R. 2921, effective July 1, 2011; filed in the Office October 27, 2015 (Supp. 15-4).

R2-20-224. Request for an Administrative Hearing

- A. The respondent must file a request for a hearing with the Commission within 30 days of receipt of the notice prescribed in R2-20-223.
- B. If the respondent requests a hearing, the AAG shall notify the Office of Administrative Hearings (OAH) of the appeal and shall coordinate a hearing date with the Commission's AAG and Commission staff that may be called as witnesses and OAH. The hearing must be held within 60 days after the notice of appeal is filed with the Commission.
- C. The AAG shall prepare and serve a notice of hearing on all parties to the appeal at least 30 days before the hearing date, unless an expedited hearing is requested and granted. The notice of hearing shall be drafted in accordance with A.R.S. § 41-1092.05(D).

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-225. Informal Settlement Conference

- A. If the respondent requests an informal settlement conference, the informal settlement conference shall be held within 15 days after the Commission receives the request. A request for an informal settlement conference shall be in writing and must be filed with the Commission no later than 20 days before the hearing date. A person with the authority to act on behalf of the Commission must represent the Commission at the conference. The AAG shall attend the settlement conference, but shall not be the individual authorized to act on behalf of the Commission.
- B. The Commission representative shall notify the appellant in writing that the 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 waive their right to object to the participation of the agency representative in the final administrative decision.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-226. Administrative Hearing

- A. If the matter continues to a hearing, the hearing shall be held in accordance with A.R.S. § 41-1092.07. The Administrative Law Judge (ALJ) must issue a written recommended decision within 20 days after the hearing is concluded.
- B. If the enforcement action occurs within six months of the primary or general election, the Commission will request an expedited review of the matter.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-227. Review of Administrative Decision by Commission

- A. Within 30 days after the date OAH sends a copy of the ALJ's decision to the Commission, the Commission may review the ALJ's decision and accept, reject or modify the decision.
- B. If the Commission declines to review the ALJ's decision, the Commission shall serve a copy of the decision on all parties. If the Commission modifies or rejects the decision, the Commission shall file with OAH and serve on all parties, a copy of the ALJ's decision with the rejection or modification and a written justification setting forth the reasons for the rejection or modification. If the Commission accepts, rejects or modifies the decision, the Commission's decision will be certified as final.
- C. If the Commission does not accept, reject or modify the decision within 30 days after OAH sends the ALJ's decision to the Commission, the ALJ's decision will be certified as final.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-228. Judicial Review

A party may appeal a final administrative decision pursuant to A.R.S. § 12-901 et seq. (Judicial Review of Administrative Decisions). A party does not have the right to judicial review unless that party first exhausts its administrative remedies by going through the above steps. After a hearing has been held and a final administrative decision has been entered pursuant to § 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.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-229. Repealed**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

R2-20-230. Repealed**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

R2-20-231. Repealed**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1).

ARTICLE 3. STANDARD OF CONDUCT FOR COMMISSIONERS AND EMPLOYEES**R2-20-301. Purpose and Applicability**

- A. The Commission is committed to implementing the Act in an honest, independent, and impartial fashion and to seeking to uphold public confidence in the integrity of the electoral system. To ensure public trust in the fairness and integrity of the Arizona elections process, all Commissioners and employees must observe the highest standards of conduct. This Article prescribes standards of ethical conduct for Commissioners and employees of the Commission relating to conflicts of interest arising from outside employment, private businesses, professional activities, political activities, and financial interests. The avoidance of misconduct and conflicts of interest on the part of the Commissioners and the employees through informed judgment is indispensable to the maintenance of these prescribed ethical standards. Attainment of these goals necessitates strict and absolute fairness and impartiality in the administration of the law.
- B. This Article applies to all persons included within the terms “employee” and “Commissioner” of the Commission.
- C. These Standards of Conduct shall be construed in accordance with any applicable laws, regulations, and agreements between the Commission and a labor organization.
- D. Pursuant to A.R.S. § 16-955(I), for three years after a Commissioner completes his or her tenure, Commissioners shall not seek or hold any public office, serve as an officer of any political committee, or employ or be employed as a lobbyist.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-302. Definitions

The following terms apply in all Citizens Clean Elections Act matters:

- 1. “Commission” means the Citizens Clean Elections Commission of Arizona.
- 2. “Commissioner” means a voting member of the Commission, appointed pursuant to A.R.S. § 16-955.
- 3. “Conflict of interest” means a situation in which a Commissioner’s or an employee’s private interest is or appears to be inconsistent with the efficient and impartial conduct of his or her official duties and responsibilities.
- 4. “Employee” means an employee or staff member of the Commission.
- 5. “Former employee” means one who was, and is no longer, an employee of the Commission.
- 6. “Official responsibility” means the direct administrative or operating authority, whether intermediate or final, to approve, disapprove, or otherwise direct Commission action. Official responsibility may be exercised alone or with others and either personally or through subordinates.
- 7. “Outside employment” or “outside activity” means any work, service or other activity performed by a Commissioner or employee other than in the performance of the Commissioner’s or employee’s official employment duties. It includes such activities as writing and editing, publishing, teaching, lecturing, consulting, self-employment, and other services or work performed, with or without compensation.
- 8. “Person” means an individual, corporation, company, association, firm, partnership, society, joint stock company, political committee, or other group, organization, or institution.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-303. Notification to Commissioners and Employees

The Executive Director shall provide to each Commissioner and employee of the Commission, upon commencement of his or her term or employment and at least annually thereafter, a copy of this Article and such other information regarding standards of conduct as the Commission and/or applicable law may prescribe.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 13 A.A.R. 3527, effective January 1, 2008 (Supp. 07-3).

R2-20-304. Interpretation and Advisory Service

Commissioners or employees seeking advice and guidance on questions of conflict of interest and on other matters covered by this Article shall consult with the Commission’s Chair or Executive Director. The Commission’s Chair or Executive Director shall be consulted prior to the undertaking of any action that might violate this Article governing the conduct of Commissioners or employees.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 13 A.A.R. 3527, effective January 1, 2008 (Supp. 07-3).

R2-20-305. Reporting Suspected Violations

- A. Commissioners and employees who have information, which causes them to believe that there has been a violation of a statute or a rule set forth in this Article, shall report promptly, in writing, such incident to the Commission’s Chair or Executive Director.
- B. When information available to the Commission indicates a conflict between the interests of a Commissioner or employee and the performance of his or her Commission duties, the Commissioner or employee shall be provided an opportunity to explain the conflict or appearance of conflict in writing.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-306. Disciplinary and Other Remedial Action

- A. A violation of this Article by an employee may be cause for disciplinary action, which may be in addition to any penalty prescribed by law.
- B. When the Commission’s Executive Director determines that an employee may have or appears to have a conflict of interest, the Commission’s Executive Director may question the employee in the matter and gather other information. The Commission’s Executive Director and the employee’s supervisor shall discuss with the employee possible ways of eliminating the conflict or appearance of conflict. If the Commission’s Executive Director, after consultation with the employee’s supervisor, concludes that remedial action should be taken, he or she shall refer a statement to the Commission containing his or her recommendation for such action. The Commission, after consideration of the employee’s explanation and the results of any investigation, may direct appropriate remedial action as it deems necessary.
- C. Remedial action pursuant to subsection (B) of this Section may include, but is not limited to:
 - 1. Changes in assigned duties;

2. Divestment by the employee of his or her conflicting interest;
3. Disqualification for particular action; or
4. Disciplinary action.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-307. General Prohibited Conduct

- A.** A Commissioner or employee shall avoid any action whether or not specifically prohibited by this Section that might result in, or create the appearance of:
 1. Using public office for unlawful private gain;
 2. Giving favorable or unfavorable treatment to any person or organization due to any partisan or political consideration;
 3. Impeding Commission efficiency or economy;
 4. Losing impartiality.
 5. Making a Commission decision without Commission approval; or
 6. Adversely affecting the confidence of the public in the integrity of the Commission.
- B.** A Commissioner or employee of the Commission shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:
 1. Has, or is seeking to obtain, contractual or other business or financial relations with the Commission;
 2. Conducts operations or activities that are regulated or examined by the Commission; or
 3. Has an interest that may be substantially affected by the performance or nonperformance of the Commissioner or employee's official duty.
- C.** Subsection (B) of this Section shall not apply in the following circumstances:
 1. When circumstances make it clear that obvious family or personal relationships, rather than the business of the persons concerned, are the motivating factors;
 2. To the acceptance of food, refreshments, and accompanying entertainment of nominal value in the ordinary course of a social occasion or a luncheon or dinner meeting or other function where a Commissioner or an employee is properly in attendance;
 3. To the acceptance of unsolicited advertising or promotional material or other items of nominal value such as pens, pencils, note pads, calendars; and
 4. To the acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities, such as home mortgage loans.
- D.** A Commissioner or an employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself or herself. However, this subsection does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as birthday, holiday, marriage, illness, or retirement.
- E.** This Section does not preclude a Commissioner or employee from receipt of reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this Article for which no state payment or reimbursement is made. However, this Section does not allow a Commissioner or employee to be reimbursed, or payment to be made on his or her behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow a Commissioner or employee to be reimbursed by a person for travel on official business under Commission orders when reimbursement is prescribed by statute.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-308. Outside Employment or Activities

- A.** A Commissioner or employee shall not engage in outside employment that is incompatible with the full discharge of his or her duties as a Commissioner or employee.
- B.** Incompatible outside employment or other activities by Commissioners or employees include, but are not limited to:
 1. Outside employment or other activities that involve illegal activities;
 2. Outside employment or other activities that would give rise to a real or apparent conflict of interest situation even though no violation of a specific statutory provision was involved;
 3. Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances where acceptance may result in, or create the appearance of, a conflict of interest;
 4. Outside employment or other activities that might bring discredit upon the state or Commission;
 5. Outside employment or other activities that establish relationships or property interests that may result in a conflict between the Commissioner's or the employee's private interests and official duties;
 6. Outside employment or other activities which would involve any contractor or subcontractor connected with any work performed for the Commission or would involve any person or organization in a position to gain advantage in its dealings with the state through the Commissioner's or employee's exercise of his or her official duties;
 7. Outside employment or other activities that may be construed by the public to be the official acts of the Commission. In any permissible outside employment, care shall be taken to ensure that names and titles of Commissioners and employees are not used to give the impression that the activity is officially endorsed or approved by the Commission or is part of the Commission's activities;
 8. Outside employment or other activities which would involve use by a Commissioner or employee of his or her official duty time; use of official facilities, including office space, machines, or supplies, at any time; or use of the services of other employees during their official duty hours;
 9. Outside employment or other activities which impair the Commissioner's or employee's mental or physical capacities to perform Commission duties and responsibilities in an acceptable manner; or
 10. Use of information obtained as a result of state employment that is not freely available to the general public or would not be made available upon request. However, written authorization for the use of any such information may be given when the Commission determines that such use would be in the public interest.
- C.** Commissioners and employees shall not receive any salary or anything of monetary value from a private source as compensation for the Commissioner's or employee's services to the state.
- D.** Commissioners and employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law or this Article. However, Commissioners and employees shall not, either with or without compensation, engage in teaching or writing that is dependent

on information obtained as a result of his or her Commission employment, except when that information has been made available to the public or will be made available on request, or when the Commission gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.

- E. This Section does not preclude a Commissioner or employee from participating in the activities of or acceptance of an award for meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit, educational, recreational, public service, or civic organization.
- F. An employee who intends to engage in outside employment shall obtain the approval of the Executive Director. The request shall include the name of the person, group, or organization for whom the work is to be performed, the nature of the services to be rendered, the proposed hours of work, or approximate dates of employment, and the employee's certification as to whether the outside employment (including teaching, writing, or lecturing) will depend in any way on information obtained as a result of the employee's official position. The employee will receive, from the Executive Director, written notice of approval or disapproval of any written request. A record of the decision shall be placed in each employee's official personnel folder.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-309. Financial Interests

- A. Commissioners and employees shall not engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through the Commissioner's or employee's duties or employment.
- B. Commissioners and employees shall not have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with the Commissioner's or employee's official duties and responsibilities, except in cases where the Commissioner or employee makes full disclosure, and disqualifies himself or herself from participating in any decisions, approval, disapproval, recommendation, the rendering of advice, investigation, or in any proceeding of the Commission in which the financial interest is or appears to be affected. Full disclosure by a Commissioner or employee will require that individual to submit a written statement to the Executive Director or Chair disclosing the particular financial interest which conflicts substantially, or appears to conflict substantially, with the Commissioner's or employee's duties and responsibilities.
- C. Commissioners and employees shall disqualify themselves from a proceeding in which the Commissioner's or employee's impartiality might reasonably be questioned, such as in a situation where the Commissioner or employee knows that he or she, or his or her family member, has an interest in the subject matter in controversy or is a party to the proceeding, or has any other interest that could be substantially affected by the outcome of the proceeding.
- D. This Section does not preclude a Commissioner or employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Commission, as long as the Commissioner's or employee's financial interest does not conflict with official Commission duties.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-310. Political and Organization Activity

- A. Due to the Commission's role in the political process, the following restrictions on political activities are required:
 - 1. Commissioners and employees shall not advocate for the election or defeat of a candidate, nor make contributions to a candidate, political party, or political committee subject to the jurisdiction of the Commission. Commissioners and employees, however, are not prohibited from signing candidate nomination petitions;
 - 2. Commissioners and employees shall not provide volunteer or paid services for a candidate, political party, or political committee subject to the jurisdiction of the Commission; and
 - 3. Commissioners and employees shall not display partisan buttons, badges, or other insignia on Commission premises.
- B. Employees on leave, leave without pay, or on furlough or terminal leave, even though the employees' resignations have been accepted, are subject to the restrictions of this Section. A separated employee who has received a lump-sum payment for annual leave, however, is not subject to the restrictions during the period covered by the lump-sum payment or thereafter, provided he or she does not return to state employment during that period. An employee is not permitted to take a leave of absence to work with a political candidate, committee, or organization or become a candidate for office despite any understanding that he or she will resign his or her position if nominated or elected.
- C. A Commissioner or employee is accountable for political activity by another person acting as his or her agent or under the Commissioner's or employee's direction or control if the Commissioner or employee is thus accomplishing what he or she may not lawfully do directly and openly.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-311. Membership in Associations

Commissioners or employees who are members of nongovernmental associations or organizations shall avoid activities on behalf of those associations or organizations that are incompatible with their official positions.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-312. Use of State Property

A Commissioner or employee shall not directly or indirectly use, or allow the use of, state property of any kind, including property leased to the state, for other than officially approved activities. Commissioners and employees have a positive duty to protect and conserve state property including equipment, supplies, and other property entrusted or issued to him or her.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

ARTICLE 4. AUDITS

R2-20-401. Purpose and Scope

This article prescribes procedures for conducting examinations and audits of participating candidates' campaign finances.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

Amended by exempt rulemaking at 19 A.A.R. 1699, effective October 6, 2011 (Supp. 13-2).

R2-20-402. General

The Commission may conduct an examination and audit of the receipts, disbursements, debts and obligations of each candidate. In addition, the Commission may conduct other examinations and audits as it deems necessary to carry out the provisions of the Act and regulations. Information obtained pursuant to any audit and examination may be used by the Commission as the basis, or partial basis, for its repayment determinations.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

R2-20-402.01. Audits of Participating Legislative Candidates

To ensure compliance with the Act and Commission rules, the Commission shall conduct audits of all participating legislative candidates after each election. Candidates who win their primary election will not be subject to an audit until after the general election. Audits shall include the review of campaign finance reports for the entire election cycle and related documentation in accordance with procedures established by the Commission. The Commission may hire independent accounting firms to carry out the audits.

Historical Note

New Section made by exempt rulemaking at 13 A.A.R. 3529, effective January 1, 2008 (Supp. 07-3). Amended by exempt rulemaking at 19 A.A.R. 1700, effective October 6, 2011 (Supp. 13-2). Amended by final exempt rulemaking at 21 A.A.R. 1640, effective July 23, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 23 A.A.R. 130, effective December 15, 2016 (Supp. 16-4).

Amended by final exempt rulemaking at 23 A.A.R. 2944, effective September 28, 2017 (Supp. 17-4).

R2-20-402.02. Audits of Participating Statewide Candidates

All participating statewide candidates shall be audited after each primary election period and each general election period.

Historical Note

New Section made by final exempt rulemaking at 23 A.A.R. 131, effective December 15, 2016 (Supp. 16-4).

R2-20-403. Conduct of Fieldwork

- A. The Commission will provide the candidate two days notice of the Commission's intention to commence fieldwork on the audit and examination. The Commission will conduct fieldwork at a site provided by the candidate. During or after fieldwork, the Commission may request additional or updated information, which expands the coverage dates of information previously provided. During or after fieldwork, the Commission may also request additional information that was created by or becomes available to the candidate that is of assistance in the Commission's audit. The candidate shall produce the additional or updated information no later than two days after service of the Commission's request.
- B. On the date scheduled for the commencement of fieldwork, the candidate shall facilitate the examination or audit by making records available in one central location, such as the Commission's office space, or shall provide the Commission with office space and records. The candidate shall be present at the site of the fieldwork. The candidate shall be familiar with the candidate's records and shall be available to the Commission to answer questions and to aid in locating records.
- C. If the candidate fails to provide adequate office space, personnel or records, the Commission may seek judicial intervention to enforce the request or assess other penalties.
- D. If, in the course of the examination or audit process, a dispute arises over the documentation sought, the candidate may seek review by the Commission of the issues raised. To seek review, the candidate shall submit a written statement within five days after the disputed Commission request is made, describing the dispute and indicating the candidate's proposed alternatives.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

R2-20-404. Preliminary Audit Report

- A. After the completion of fieldwork, the auditors may prepare a written preliminary audit report, which will be provided to the candidate after it is reviewed by the Executive Director. The preliminary audit report may include:
 1. An evaluation of procedures and systems employed by the candidate to comply with applicable provisions of the Act and Commission rules,
 2. The accuracy of statements and campaign finance reports filed with the Secretary of State by the candidate, and
 3. Preliminary findings.
- B. The candidate may submit in writing within 10 days after receipt of the preliminary audit report, legal and factual materials disputing or commenting on the proposed findings contained in the preliminary audit report. In addition, the candidate shall submit any additional documentation requested by the Commission.
- C. If the preliminary audit report cannot be completed, the Commission shall notify the candidate in writing that the audit report will not be completed.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

Amended by exempt rulemaking at 16 A.A.R. 1200, effective February 28, 2008 (Supp. 10-2).

R2-20-405. Final Audit Report

- A. Before voting on whether to approve and issue a final audit report, the Commission will consider any written legal and factual materials timely submitted by the candidate in accordance with R2-20-404. The Commission-approved final audit report may address issues other than those contained in the preliminary audit report.
- B. The final audit report may identify issues that warrant referral for possible enforcement proceedings.
- C. Addenda to the final audit report may be approved and issued by the Commission from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based on follow-up fieldwork conducted, or information ascertained by

the Commission in the normal course of carrying out its responsibilities. The procedures set forth in R2-20-404 and subsections (A) and (B) will be followed in preparing such addenda.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

R2-20-406. Release of Audit Report

- A. The Commission will consider the final audit report specified in R2-20-405 in an open meeting. The Commission will provide the candidate with copies of the final audit report to be considered in an open meeting 24 hours prior to the public meeting.
- B. Following Commission approval of the final audit report, the report will be forwarded to the candidate within five days after the public meeting.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

ARTICLE 5. RULEMAKING

R2-20-501. Purpose and Scope

This Article prescribes the procedures for the submission, consideration, and disposition of rulemaking petitions filed with the Commission, establishes the conditions under which the Commission may identify and respond to petitions for rulemaking, and informs the public of the procedures the agency follows in response to such petitions.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-502. Procedural Requirements

- A. Any interested person may file with the Commission a written petition for the issuance, amendment, or repeal of an administrative rule implementing any of the Citizens Clean Elections Act.
- B. The petition shall:
 - 1. Include the name and address of the petitioner or agent. An authorized agent of the petitioner may submit the petition, but the agent shall disclose the identity of his or her principal;
 - 2. Identify itself as a petition for the issuance, amendment, or repeal of a rule;
 - 3. Identify the specific Section of the regulations to be affected;
 - 4. Set forth the factual and legal grounds on which the petitioner relies, in support of the proposed action; and
 - 5. Be addressed and submitted to the Commission.
- C. The petition may include draft regulatory language that would effectuate the petitioner's proposal.
- D. The Commission may, in its discretion, treat a document that fails to conform to the format requirements of subsection (B) of this Section as a basis for rulemaking addressing issues raised in a petition.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-503. Processing of Petitions

- A. Within 10 days of receiving a petition, the Commission shall send a letter to the petitioner acknowledging the receipt of the petition and informing the petitioner that the Commission will review and decide whether to deny or accept the petition. To assist in determining whether a rulemaking proceeding should be initiated, the Commission may publish a Notice of Availability on the Commission web site or otherwise post notice, stating that the petition is available for public inspection in the Commission's Office and that statements in support of or in opposition to the petition may be filed within a stated period after publication of the Notice of Availability.
- B. If the Commission decides a public hearing on the petition would help determine whether to commence a rulemaking proceeding, it will publish an appropriate notice of the hearing on the Commission web site or otherwise post notice, to notify interested persons and to invite their participation in the hearing.
- C. The Commission will consider all comments regarding whether rulemaking proceedings should be initiated.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-504. Disposition of Petitions

- A. After considering the comments and any other information relevant to the subject matter of the petition, the Commission will decide whether to initiate rulemaking based on the filed petition.
- B. If the Commission decides to initiate rulemaking proceedings, it shall file a Notice of Proposed Rulemaking and the proposed rule, in the format prescribed in A.R.S. § 41-1022, with the Secretary of State's office for publication in the Arizona Administrative Register. After the Commission approves the proposed rule, the Commission will accept public comments on the proposed rule for 60 days. After consideration of the comments received in the 60-day comment period, the Commission may adopt the rule in open meeting.
- C. If the Commission decides not to initiate rulemaking, it will give notice of this action by publishing a Notice of Disposition on the Commission web site, or otherwise post notice, and by sending a letter to the petitioner. The Notice of Disposition will include a brief statement of the grounds for the Commission's decision.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-505. Commission Considerations

The Commission's decision on the petition for rulemaking may include, but will not be limited to, the following considerations:

- 1. The Commission's statutory authority;
- 2. Policy considerations;
- 3. The desirability of proceeding on a case-by-case basis;
- 4. The necessity or desirability of statutory revision;
- 5. Available agency resources; and

6. Substantive policy statements.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-506. Administrative Record

- A. The Commission record for the petition process consists of the following:
 1. The petition, including all attachments on which it relies, filed by the petitioner;
 2. Written comments on the petition that have been circulated to and considered by the Commission, including attachments submitted as a part of the comments;
 3. Agenda documents, in the form they are circulated to and considered by the Commission in the course of the petition process;
 4. All notices published on the Commission web site and in the Arizona Administrative Register, including the Notice of Availability and Notice of Disposition;
 5. The transcripts or audiotapes of any public hearing on the petition;
 6. All correspondence between the Commission and the petitioner, other commentators and state agencies pertaining to Commission consideration of the petition; and
 7. The Commission's decision on the petition, including all documents identified or filed by the Commission as part of the record relied on in reaching its final decision.
- B. The administrative record specified in subsection (A) of this Section is the exclusive record for the Commission's decision.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

ARTICLE 6. EX PARTE COMMUNICATIONS

R2-20-601. Purpose and Scope

This Article prescribes procedures for handling ex parte communications made regarding Commission audits, investigations, and litigation. Rules governing such communications made in connection with Commission enforcement actions are found at R2-20-220.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-602. Definitions

- A. "Ex parte communication" means any written or oral communication, by any person outside the agency to any Commissioner or any employee, which imparts information or argument regarding prospective Commission action or potential action concerning:
 1. Any ongoing audit;
 2. Any pending investigation; or
 3. Any litigation matter.
- B. "Ex parte communication" does not include the following communications:
 1. Public statements by any person in a public forum; or
 2. Statements or inquiries by any person limited to the procedural status of an open proceeding involving a Commission audit, investigation, or litigation matter.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-603. Audits, Investigations, and Litigation

- A. In order to avoid the possibility of prejudice, real or apparent, in Commission decision making, no person outside the Commission shall make, or cause to be made, to any Commissioner or employee, any ex parte communication regarding any audit undertaken by the Commission or any pending or prospective Commission decision regarding any investigation or litigation, including whether to initiate, settle, appeal, or any other decision concerning an investigation or litigation matter.
- B. A Commissioner or employee who receives an oral ex parte communication concerning any matters addressed in subsection (A) of this Section shall attempt to prevent the communication. If unsuccessful in preventing the communication, the Commissioner or employee shall advise the person making the communication that he or she will not consider the communication and shall, as soon after the communication as is reasonably possible, but no later than three business days after the communication, or prior to the next Commission discussion of the matter, whichever is earlier, prepare a statement setting forth the substance and circumstances of the communication, and deliver the statement to the Executive Director for placement in the applicable case file.
- C. A Commissioner or employee who receives a written ex parte communication concerning any matters addressed in subsection (A) of this Section shall, as soon after the communication as is reasonably possible but no later than three business days after the communication, or prior to the next Commission discussion of the matter, whichever is earlier, deliver a copy of the communication to the Executive Director for placement in the applicable case file.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

R2-20-604. Sanctions

Any person who becomes aware of a possible violation of this Article shall notify the Executive Director in writing of the facts and circumstances of the alleged violation. The Executive Director shall recommend to the Commission the appropriate action to be taken. The Commission shall determine the appropriate action by at least three votes.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

ARTICLE 7. USE OF FUNDS AND REPAYMENT

R2-20-701. Purpose and Scope

Notwithstanding any other provision of the rules to the contrary, a participating candidate shall not make any payment to a private organization that is exempt under section 501(a) of the internal revenue code and that is eligible to engage in activities to influence the

outcome of a candidate election, nor make any payment directly or indirectly to a political party; and subject to the foregoing, may spend clean elections monies only for reasonable and necessary expenses that are directly related to the campaign of that participating candidate.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by final rulemaking at 26 A.A.R. 886, with an immediate effective date of February 27, 2020; the same amendments were filed and codified by final rulemaking at 26 A.A.R. 1259, with an immediate effective date of June 4, 2020 (Supp. 20-2).

R2-20-702. Use of Campaign Funds

- A. A participating candidate shall use funds in the candidate's current campaign account to pay for goods and services for direct campaign purposes only. Funds shall be disbursed and reported in accordance with A.R.S. § 16-948(C).
- B. Participating candidates may purchase fixed assets with a value not to exceed \$800. Fixed assets, including accessories, purchased with campaign funds that can be used for non-campaign purposes with a value of \$200 or more shall be turned into the Commission no later than 14 days after the primary election or the general election if the candidate was successful in the primary. For purposes of determining whether a fixed asset is valued at \$200 or more, the value shall include any accessories purchased for use with the fixed asset in question. A candidate may elect to keep an item by reimbursing the Commission for 80 percent of the original purchase price including the cost of accessories.
- C. During the primary election period, a participating candidate shall not make any expenditure greater than the difference between:
 - 1. The sum of early contributions received plus public funds disbursed through the primary election period; less
 - 2. All other expenditures made during and for the exploratory, qualifying and primary election periods.
- D. During the general election period, a participating candidate shall not make any expenditure greater than the difference between:
 - 1. The amount of public funds disbursed during and for the general election period; less
 - 2. All other expenditures made during and for the general election period.
- E. Transportation expenses.
 - 1. Except as otherwise provided in this subsection (D), the costs of transportation relating to the election of a participating statewide or legislative office candidate shall not be considered a direct campaign expense and shall not be reported by the candidate as expenditures or as in-kind contributions.
 - 2. If a participating candidate travels for campaign purposes in a privately owned automobile, the candidate may:
 - a. Use campaign funds to reimburse the owner of the automobile at a rate not to exceed the state mileage reimbursement rate in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure and reported in the reporting period in which the expenditure was incurred. If a candidate chooses to use campaign funds to reimburse, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement was made. This subsection applies to candidate owned automobiles in addition to any other automobile.
 - b. Use campaign funds to pay for direct fuel purchases for the candidate's automobile only and shall be reported. If a candidate chooses to use campaign funds for direct fuel purchases, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement could have been made.
 - 3. Use of airplanes.
 - a. If a participating candidate travels for campaign purposes in a privately owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the owner of the airplane at a rate of \$150 per hour of flying time, in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure. If the owner of the airplane is unwilling or unable to accept reimbursement, the participating candidate shall remit to the fund an amount equal to \$150 per hour of flying time.
 - b. If a participating candidate travels for campaign purposes in a state-owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the state for the portion allocable to the campaign in accordance with subsection 3a, above. The portion of the trip attributable to state business shall not be reimbursed. If payment to the State is not possible, the payment shall be remitted to the Clean Elections Fund.
 - 4. If a participating candidate rents a vehicle or purchases a ticket or fare on a commercial carrier for campaign purposes, the actual costs of such rental (including fuel costs), ticket or fare shall be considered a direct campaign expense and shall be reported as an expenditure.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed; new Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 13 A.A.R. 3606, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1423, effective October 22, 2009 (Supp. 09-3). Amended by exempt rulemaking at 17 A.A.R. 1267, effective April 12, 2011 (Supp. 11-2). Since language in subsections R2-20-702(C)(3)(d)(i) and (ii) and R2-20-702(C)(4) and (5) are substantively identical, the Commission requested to remove the redundant language in R2-20-702(C)(3)(d)(i) and (ii) under A.R.S. § 41-1011(C), Office File No. M11-345, filed October 3, 2011 (Supp. 11-2). Amended by exempt rulemaking at 19 A.A.R. 1702, effective October 6, 2011 (Supp. 13-2). Amended by exempt rulemaking at 22 A.A.R. 2906, effective January 1, 2017 (Supp. 16-3). Amended by exempt rulemaking at 23 A.A.R. 2342, effective January 1, 2018 (Supp. 17-3). Amended by final rulemaking at 25 A.A.R. 2120, effective July 29, 2019 (Supp. 19-3). Amended by final rulemaking at 26 A.A.R. 309, with an immediate effective date of January 23, 2020 (Supp. 20-1). Amended by final rulemaking at 26 A.A.R. 1132, with an immediate effective date of May 11, 2020 (Supp. 20-2).

R2-20-702.01. Use of Assets

A participating candidate may use assets such as signs, pamphlets, and office equipment from a prior election cycle only after the candidate's current campaign pays for the assets in an amount equal to the fair market value of the assets, which amount shall in no event be less than one-fifth (1/5) the original purchase price of such assets. If the candidate was a participating candidate during the prior election cycle, the cash payment shall be made to the Fund. If the candidate was not a participating candidate during the prior election cycle, the cash payment shall be made to the prior campaign. If the prior campaign account of a nonparticipating candidate is closed, the payment shall be made to the candidate.

Notwithstanding any other provision of the rules to the contrary, a participating candidate shall not make any payment to a private organization that is exempt under section 501(a) of the internal revenue code and that is eligible to engage in activities to influence the

outcome of a candidate election, nor make any payment directly or indirectly to a political party.

Historical Note

New Section made by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by exempt rulemaking at 13 A.A.R. 3606, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by final rulemaking at 26 A.A.R. 887, with an immediate effective date of March 9, 2020; the same amendments were filed and codified by final rulemaking at 26 A.A.R. 1261, with an immediate effective date of June 4, 2020 (Supp. 20-2).

R2-20-703. Documentation for Direct Campaign Expenditures

- A.** In addition to the general books and records requirements prescribed in R2-20-111, participating candidates shall comply with the following requirements:
1. All participating candidates shall have the burden of proving that expenditures made by the candidate were for direct campaign purposes. The candidate shall obtain and furnish to the Commission on request any evidence regarding direct campaign expenses made by the candidate as provided in subsection (A)(2).
 2. All participating candidates shall retain records with respect to each expenditure and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years, and shall present these records to the Commission on request.
 3. All participating candidates shall maintain a list of all fixed assets whose purchase price exceeded \$200 when acquired by the campaign. The list shall include a brief description of each fixed asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition.
- B.** Upon written request from a candidate, the Commission shall determine whether a planned campaign expenditure or fund-raising activity is permissible under the Act. To make a request, a candidate shall submit a written description of the planned expenditure or activity to the Commission. The Commission shall inform the candidate whether an enforcement action will be necessary if the candidate carries out the planned expenditure or activity. The Commission shall ensure that the candidate can rely on a "no action" letter. A "no action" letter applies only to the candidate who requested it.
- C.** Any expenditure made by the candidate or the candidate's committee that cannot be documented as a direct expenditure shall promptly be repaid to the Fund with the candidate's personal monies.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed; new Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by final exempt rulemaking at 21 A.A.R. 1641, effective July 23, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 23 A.A.R. 133, effective January 1, 2017 (Supp. 16-4).

R2-20-703.01. Campaign Consultants

- A.** For purposes of this rule "Campaign Consultant" means any person paid by a participating candidate's campaign or who provides services that are ordinarily charged to a person, except services provided for in A.R.S. § 16-911(6)(b).
- B.** A participating candidate may engage campaign consultants.
- C.** A participating candidate may only advance a campaign consultant for services such as consulting, communications, field employees, canvassers, mailers, auto-dialers, telephone town halls, electronic communications and other advertising purchases and other campaign service if an itemized invoice identifying the value of the services is provided directly to that particular candidate at the time of the advance payment.
1. Providing payment for such services as described in subsection (C) of this rule in the absence of an itemized invoice or advance payment for such services shall be deemed not to be a direct campaign expenditure.
 2. A participating candidate may advance payment for postage upon the receipt of a written estimate and so long as any balance is returned to the candidate if the advance exceeds the actual cost of postage.
 3. A participating candidate may advance payment for advertising that customarily requires pre-payment upon the receipt of a written estimate and so long as any balance is returned to the candidate if the advance exceeds the actual cost of the advertisement.
- D.** The Commission shall be included in the mail batch for all mailers and invitations. The Commission shall also be provided with documentation from the mail house, printer or other original source, showing the number of mailers printed and the number of households to which a mailer was sent. Failure to provide this information within 7 days after the mailer has been mailed may be considered as evidence the mailer was not for direct campaign purposes.
- E.** Notwithstanding any other provision of the rules to the contrary, a participating candidate shall not make any payment to a private organization that is exempt under section 501(a) of the internal revenue code and that is eligible to engage in activities to influence the outcome of a candidate election, nor make any payment directly or indirectly to a political party.

Historical Note

New Section made by exempt rulemaking at 23 A.A.R. 2344, effective July 20, 2017 (Supp. 17-3). Amended by final rulemaking at 26 A.A.R. 889, with an immediate effective date of March 16, 2020; the same amendments were filed and codified by final rulemaking at 26 A.A.R. 1263, with an immediate effective date of June 4, 2020 (Supp. 20-2).

R2-20-704. Repayment

- A.** In general, the Commission may determine that a participating candidate who has received payments from the Fund must repay the Fund as determined by the Commission.
1. A candidate who has received payments from the Fund shall pay the Fund any amounts that the Commission determines to be repayable. In making repayment determinations, the Commission may utilize information obtained from audits and examinations or otherwise obtained by the Commission in carrying out its responsibilities.
 2. The Commission will notify the candidate of any repayment determinations made under this Section as soon as possible.
 3. Once the candidate receives notice of the Commission's repayment determination, the candidate should give preference to the repayment over all other outstanding obligations of the candidate, except for any taxes owed by the candidate.
 4. Repayments may be made only from the following sources: personal funds of the candidate, funds in the candidate's current election campaign account, and any additional funds raised subject to the limitations and prohibitions of the Act.

5. The Commission may withhold the portion of funds required to be repaid from future payments to a participating candidate if the Commission has made a repayment determination.
- B.** The Commission may determine that a participating candidate who has received payments from the Fund must repay the Fund under any of the following circumstances:
 1. Payments in excess of candidate's entitlement. If the Commission determines that any portion of the payments made to the candidate was in excess of the aggregate payments to which such candidate was entitled, it will so notify the candidate, and such candidate shall pay to the Fund an amount equal to such portion.
 2. Use of funds not for direct campaign expenses. If the Commission determines that any amount of any payment to an eligible candidate from the Fund was used for purposes other than direct campaign purposes described in R2-20-702, it will notify the candidate of the amount so used, and such candidate shall pay to the Fund an amount equal to such amount.
 3. Expenditures that were not documented in accordance with campaign finance reporting requirements, expended in violation of state or federal law, or used to defray expenses resulting from a violation of state or federal law, such as the payment of fines or penalties.
 4. Surplus. If the Commission determines that a portion of payments from the Fund remains unspent after all direct campaign expenses have been paid, it shall so notify the candidate, and such candidate shall pay the Fund that portion of surplus funds.
 5. Income on investment or other use of payments from the Fund. If the Commission determines that a candidate received any income as a result of an investment or other use of payments from the Fund, it shall so notify the candidate, and such candidate shall pay to the Fund an amount equal to the amount determined to be income, less any federal, state or local taxes on such income.
 6. Unlawful acceptance of contributions by an eligible candidate. If the Commission determines that a participating candidate accepted contributions, other than early contributions or qualifying contributions, it shall notify the candidate of the amount of contributions so accepted, and the candidate shall pay to the Fund an amount equal to such amount, plus any civil penalties assessed.
- C.** Repayment determination procedures. The Commission's repayment determination will be made in accordance with the following procedures:
 1. Repayment determination. The Commission will send a repayment determination pursuant to Article 2, Compliance and Enforcement Procedures, and will set forth the legal and factual reasons for such determination, as well as the evidence upon which any such determination is based. The candidate shall repay, in accordance with subsection (D), the amount that the Commission has determined to be repayable.
 2. Administrative review of repayment determination. If a candidate disputes the Commission's repayment determination, he or she may request an administrative appeal of the determination in accordance with A.R.S. § 41-1092 et. seq.
- D.** Repayment period.
 1. Within 30 days of service of the notice of the Commission's repayment determination, the candidate shall repay the amounts the Commission has determined must be repaid. Upon application by the candidate, the Commission may grant an extension of time in which to make repayment.
 2. If the candidate requests an administrative appeal of the Commission's repayment determination of this Section, the time for repayment will be suspended until the Commission has concluded its review of the Administrative Law Judge's (ALJ) decision. Within 30 days after service of the notice of the Commission's review of the ALJ's decision, the candidate shall repay the amounts that the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 30 days in which to make repayment.
 3. Interest shall be assessed on all repayments made after the initial 30-day repayment period or the 30-day repayment period established by this Section. The amount of interest due shall be the greater of:
 - a. An amount calculated in accordance with A.R.S. § 44-1201(A); or
 - b. The amount actually earned on the funds set aside or to be repaid under this Section.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed; new Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by final exempt rulemaking at 21 A.A.R. 1643, effective July 23, 2015 (Supp. 15-3). Amended by final rulemaking at 25 A.A.R. 2122, effective July 29, 2019 (Supp. 19-3). Amended by final rulemaking at 26 A.A.R. 337, effective February 4, 2020; the amendment to subsection (A)(2) was originally codified in Supp. 19-3 at 25 A.A.R. 2020 (Supp. 20-1).

R2-20-705. Additional Audits or Repayment Determinations

- A.** The Commission may conduct an additional audit or examination of any candidate in any case in which the Commission finds reason to believe that a violation of a statute or regulation over which the Commission has jurisdiction has occurred or is about to occur.
- B.** The Commission may make additional repayment determinations after it has made an initial repayment determination pursuant to R2-20-704. The Commission may make additional repayment determinations where there exist facts not used as the basis for any previous determination. Any such additional repayment determination will be made in accordance with the provisions of this Article.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed; new Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

R2-20-706. Repealed

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

R2-20-707. Repealed

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

R2-20-708. Repealed

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

R2-20-709. Repealed

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

R2-20-710. Repealed

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

16-940. Findings and declarations

(Caution: 1998 Prop. 105 applies)

A. The people of Arizona declare our intent to create a clean elections system that will improve the integrity of Arizona state government by diminishing the influence of special-interest money, will encourage citizen participation in the political process, and will promote freedom of speech under the U.S. and Arizona Constitutions. Campaigns will become more issue-oriented and less negative because there will be no need to challenge the sources of campaign money.

B. The people of Arizona find that our current election-financing system:

1. Allows Arizona elected officials to accept large campaign contributions from private interests over which they have governmental jurisdiction;
2. Gives incumbents an unhealthy advantage over challengers;
3. Hinders communication to voters by many qualified candidates;
4. Effectively suppresses the voices and influence of the vast majority of Arizona citizens in favor of a small number of wealthy special interests;
5. Undermines public confidence in the integrity of public officials;
6. Costs average taxpayers millions of dollars in the form of subsidies and special privileges for campaign contributors;
7. Drives up the cost of running for state office, discouraging otherwise qualified candidates who lack personal wealth or access to special-interest funding; and
8. Requires that elected officials spend too much of their time raising funds rather than representing the public.

16-941. Limits on spending and contributions for political campaigns

(Caution: 1998 Prop 105 applies)

A. Notwithstanding any law to the contrary, a participating candidate:

1. Shall not accept any contributions, other than a limited number of five-dollar qualifying contributions as specified in section 16-946 and early contributions as specified in section 16-945, except in the emergency situation specified in section 16-954, subsection F.

2. Shall not make expenditures of more than a total of five hundred dollars of the candidate's personal monies for a candidate for the legislature or more than one thousand dollars for a candidate for statewide office.

3. Shall not make expenditures in the primary election period in excess of the adjusted primary election spending limit.

4. Shall not make expenditures in the general election period in excess of the adjusted general election spending limit.

5. Shall comply with section 16-948 regarding campaign accounts and section 16-953 regarding returning unused monies to the citizens clean elections fund described in this article.

B. Notwithstanding any law to the contrary, a nonparticipating candidate shall not accept contributions in excess of an amount that is twenty per cent less than the limits specified in section 16-905, subsections A through E, as adjusted by the secretary of state pursuant to section 16-905, subsection H. Any violation of this subsection shall be subject to the civil penalties and procedures set forth in section 16-905, subsections J through M and section 16-924.

C. Notwithstanding any law to the contrary, a candidate, whether participating or nonparticipating:

1. If specified in a written agreement signed by the candidate and one or more opposing candidates and filed with the citizens clean elections commission, shall not make any expenditure in the primary or general election period exceeding an agreed-upon amount lower than spending limits otherwise applicable by statute.

2. Shall continue to be bound by all other applicable election and campaign finance statutes and rules, with the exception of those provisions in express or clear conflict with this article.

D. Notwithstanding any law to the contrary, any person who makes independent expenditures related to a particular office cumulatively exceeding five hundred dollars in an election cycle, with the exception of any expenditure listed in section 16-920 and any independent expenditure by an organization arising from a communication directly to the organization's members, shareholders, employees, affiliated persons and subscribers, shall file reports with the secretary of state in accordance with section 16-958 so indicating, identifying the office and the candidate or group of candidates whose election or defeat is being advocated and stating whether the person is advocating election or advocating defeat.

16-942. Civil penalties and forfeiture of office

(Caution: 1998 Prop. 105 applies)

A. The civil penalty for a violation of any contribution or expenditure limit in section 16-941 by or on behalf of a participating candidate shall be ten times the amount by which the expenditures or contributions exceed the applicable limit.

B. In addition to any other penalties imposed by law, the civil penalty for a violation by or on behalf of any candidate of any reporting requirement imposed by this chapter shall be one hundred dollars per day for candidates for the legislature and three hundred dollars per day for candidates for statewide office. The penalty imposed by this subsection shall be doubled if the amount not reported for a particular election cycle exceeds ten percent of the adjusted primary or general election spending limit. No penalty imposed pursuant to this subsection shall exceed twice the amount of expenditures or contributions not reported. The candidate and the candidate's campaign account shall be jointly and severally responsible for any penalty imposed pursuant to this subsection.

C. Any campaign finance report filed indicating a violation of section 16-941, subsections A or B or section 16-941, subsection C, paragraph 1 involving an amount in excess of ten percent of the sum of the adjusted primary election spending limit and the adjusted general election spending limit for a particular candidate shall result in disqualification of a candidate or forfeiture of office.

D. Any participating candidate adjudged to have committed a knowing violation of section 16-941, subsection A or subsection C, paragraph 1 shall repay from the candidate's personal monies to the fund all monies expended from the candidate's campaign account and shall turn over the candidate's campaign account to the fund.

E. All civil penalties collected pursuant to this article shall be deposited into the fund.

16-943. Criminal violations and penalties

(Caution: 1998 Prop. 105 applies)

A. A candidate, or any other person acting on behalf of a candidate, who knowingly violates section 16-941 is guilty of a class 1 misdemeanor.

B. Any person who knowingly pays any thing of value or any compensation for a qualifying contribution as defined in section 16-946 is guilty of a class 1 misdemeanor.

C. Any person who knowingly provides false or incomplete information on a report filed under section 16-958 is guilty of a class 1 misdemeanor.

16-945. Limits on early contributions

(Caution: 1998 Prop 105 applies)

A. A participating candidate may accept early contributions only from individuals and only during the exploratory period and the qualifying period, subject to the following limitations:

1. Notwithstanding any law to the contrary, no contributor shall give, and no participating candidate shall accept, contributions from a contributor exceeding one hundred dollars during an election cycle.
2. Notwithstanding any law to the contrary, early contributions to a participating candidate from all sources for an election cycle shall not exceed, for a candidate for governor, forty thousand dollars or, for other candidates, ten per cent of the sum of the original primary election spending limit and the original general election spending limit.
3. Qualifying contributions specified in section 16-946 shall not be included in determining whether the limits in this subsection have been exceeded.

B. Early contributions specified in subsection A of this section and the candidate's personal monies specified in section 16-941, subsection A, paragraph 2 may be spent only during the exploratory period and the qualifying period. Any early contributions not spent by the end of the qualifying period shall be paid to the fund.

C. If a participating candidate has a debt from an election campaign in this state during a previous election cycle in which the candidate was not a participating candidate, then, during the exploratory period only, the candidate may accept, in addition to early contributions specified in subsection A of this section, contributions subject to the limitations in section 16-941, subsection B, or may exceed the limit on personal monies in section 16-941, subsection A, paragraph 2, provided that such contributions and monies are used solely to retire such debt.

16-946. Qualifying contributions

(Caution: 1998 Prop 105 applies)

A. During the qualifying period, a participating candidate may collect qualifying contributions, which shall be paid to the fund.

B. To qualify as a qualifying contribution, a contribution must be:

1. Made by a qualified elector as defined in section 16-121, who at the time of the contribution is registered in the electoral district of the office the candidate is seeking and who has not given another qualifying contribution to that candidate during that election cycle.
2. Made by a person who is not given anything of value in exchange for the qualifying contribution.

3. In the sum of five dollars, exactly.

4. Received unsolicited during the qualifying period or solicited during the qualifying period by a person who is not employed or retained by the candidate and who is not compensated to collect contributions by the candidate or on behalf of the candidate.

5. If made by check or money order, made payable to the candidate's campaign committee, or if in cash, deposited in the candidate's campaign committee's account.

6. Accompanied by a three-part reporting slip that includes the printed name, registration address and signature of the contributor, the name of the candidate for whom the contribution is made, the date and the printed name and signature of the solicitor. An electronic signature as defined in section 41-351 is deemed to comply with this paragraph.

C. A copy of the reporting slip shall be given as a receipt to the contributor, and another copy shall be retained by the candidate's campaign committee. Delivery of an original reporting slip to the secretary of state shall excuse the candidate from disclosure of these contributions on campaign finance reports filed under article 1 of this chapter.

16-947. Certification as a participating candidate

(Caution: 1998 Prop 105 applies)

A. A candidate who wishes to be certified as a participating candidate shall file, before the end of the qualifying period, an application with the secretary of state, in a form specified by the citizens clean elections commission.

B. The application shall identify the candidate, the office that the candidate plans to seek and the candidate's party, if any, and shall contain the candidate's signature, under oath, certifying that:

1. The candidate has complied with the restrictions of section 16-941, subsection A during the election cycle to date.

2. The candidate's campaign committee and exploratory committee have filed all campaign finance reports required under article 1 of this chapter during the election cycle to date and that they are complete and accurate.

3. The candidate will comply with the requirements of section 16-941, subsection A during the remainder of the election cycle and, specifically, will not accept private contributions.

C. The commission shall act on the application within one week. Unless, within that time, the commission denies an application and provides written reasons that all or part of a certification in subsection B of this section is incomplete or untrue, the candidate shall be certified as a participating candidate. If the commission denies an application for failure to file all complete and accurate campaign

finance reports or failure to make the certification in subsection B, paragraph 3 of this section, the candidate may reapply within two weeks of the commission's decision by filing complete and accurate campaign finance reports and another sworn certification.

D. A candidate shall be denied certification if that candidate was removed from office by the commission or if the candidate is delinquent in payment of a debt to the commission. If the debt is paid in full or if the candidate is current on a payment agreement with the commission, the candidate may apply for certification as a participating candidate and is eligible to be certified if otherwise qualified by law.

16-948. Controls on participating candidates' campaign accounts

(Caution: 1998 Prop. 105 applies)

A. A participating candidate shall conduct all financial activity through a single campaign account of the candidate's campaign committee. A participating candidate shall not make any deposits into the campaign account other than those permitted under section 16-945 or 16-946.

B. A candidate may designate other persons with authority to withdraw monies from the candidate's campaign account. The candidate and any person so designated shall sign a joint statement under oath promising to comply with the requirements of this title.

C. The candidate or a person authorized under subsection B of this section shall pay monies from a participating candidate's campaign account directly to the person providing goods or services to the campaign and shall identify, on a report filed pursuant to article 1.4 of this chapter, the full name and street address of the person and the nature of the goods and services and compensation for which payment has been made. The following payments made directly or indirectly from a participating candidate's campaign account are unlawful contributions:

1. A payment made to a private organization that is exempt under section 501(a) of the internal revenue code and that is eligible to engage in activities to influence the outcome of a candidate election.

2. A payment made directly or indirectly to a political party.

D. Notwithstanding subsection C of this section, a campaign committee may establish one or more petty cash accounts, which in aggregate shall not exceed one thousand dollars at any time. No single expenditure shall be made from a petty cash account exceeding one hundred dollars.

E. Monies in a participating candidate's campaign account shall not be used to pay fines or civil penalties, for costs or legal fees related to representation before the commission, or for defense of any enforcement action under this chapter. Nothing in this subsection shall prevent a participating candidate from having a legal defense fund.

F. A participating candidate shall not use clean elections monies to purchase goods or services that bear a distinctive trade name, trademark or trade dress item, including a logo, that is owned by a business or other entity that is owned by that participating candidate or in which the candidate has a controlling interest. The use of goods or services that are prohibited by this subsection is deemed to be an unlawful in-kind contribution to the participating candidate.

16-949. Controls on spending from citizens clean elections fund

(Caution: 1998 Prop 105 applies)

A. The commission shall not spend, on all costs incurred under this article during a particular calendar year, more than five dollars times the number of Arizona resident personal income tax returns filed during the previous calendar year. The commission may exceed this limit during a calendar year, provided that it is offset by an equal reduction of the limit during another calendar year during the same four-year period beginning January 1 immediately after a gubernatorial election.

B. The commission may use up to ten per cent of the amount specified in subsection A of this section for reasonable and necessary expenses of administration and enforcement, including the activities specified in section 16-956, subsection A, paragraphs 3 through 7 and subsections B and C. Any portion of the ten per cent not used for this purpose shall remain in the fund.

C. The commission may apply up to ten per cent of the amount specified in subsection A of this section for reasonable and necessary expenses associated with public education regarding participation as a candidate or a contributor, or regarding the functions, purpose and technical aspects of the act. Reasonable and necessary expenditures made pursuant to section 16-956 are not included in this subsection.

D. The commission may spend monies in the fund for the reasonable and necessary expenses to implement the act but shall not use monies in the fund to promote the benefits of the clean elections act. Expenditures made pursuant to subsection C of this section or in section 16-956, subsection A are deemed not to constitute promoting the benefits of the clean elections act. Expenditures pursuant to this subsection shall not be included in the limits prescribed in subsection C of this section.

E. The state treasurer shall administer a citizens clean elections fund from which costs incurred under this article shall be paid. The auditor general shall review the monies in, payments into and expenditures from the fund no less often than every four years.

16-950. Qualification for clean elections funding

(Caution: 1998 Prop 105 applies)

A. A candidate who has made an application for certification may also apply, in accordance with subsection B of this section, to receive funds from the citizens clean elections fund, instead of receiving private contributions.

B. To receive any clean elections funding, the candidate must present to the secretary of state no later than one week after the end of the qualifying period a list of names of persons who have made qualifying contributions pursuant to section 16-946 on behalf of the candidate. The list shall be divided by county. At the same time, the candidate must tender to the secretary of state the original reporting slips identified in section 16-946, subsection C for persons on the list and an amount equal to the sum of the qualifying contributions collected. The secretary of state shall deposit the amount into the fund.

C. The secretary of state shall select at random a sample of five per cent of the number of nonduplicative names on the list for a candidate for a statewide office and twenty per cent of the number of nonduplicative names on the list for a candidate for legislative office and shall forward facsimiles of the selected reporting slips to the county recorders for the counties of the addresses specified in the selected slips. Within ten days, the county recorders shall provide a report to the secretary of state identifying as disqualified any slips that are unsigned or undated or that the recorder is unable to verify as matching a person who is registered to vote in the electoral district of the office the candidate is seeking on the date specified on the slip. The secretary of state shall multiply the number of slips not disqualified by twenty for statewide candidates, and shall multiply the number of slips not disqualified by five for legislative candidates, and if the result is greater than one hundred ten per cent of the quantity required, shall approve the candidate for funds, and if the result is less than one hundred ten per cent of the quantity required, the secretary of state shall forward facsimiles of all of the slips to the county recorders for verification, and the county recorders shall check all slips in accordance with the process above. A county recorder shall not check slips already verified. A county recorder shall report verified totals daily to the secretary of state until a determination is made that a sufficient number of verified slips has been submitted. If a sufficient number of verified slips has been submitted to one or more county recorders, the county recorders may stop the verification process.

D. To qualify for clean elections funding, a candidate must have been approved as a participating candidate pursuant to section 16-947 and have obtained the following number of qualifying contributions:

1. For a candidate for legislature, two hundred.
2. For candidate for mine inspector, five hundred.
3. For a candidate for treasurer, superintendent of public instruction or corporation commission, one thousand five hundred.
4. For a candidate for secretary of state or attorney general, two thousand five hundred.
5. For a candidate for governor, four thousand.

E. To qualify for clean elections funding, a candidate must have met the requirements of this section and either be an independent candidate or meet the following standards:

1. To qualify for funding for a party primary election, a candidate must have properly filed nominating papers and nominating petitions with signatures pursuant to chapter 3, articles 2 and 3 of this title in

the primary of a political organization entitled to continued representation on the official ballot in accordance with section 16-804.

2. To qualify for clean elections funding for a general election, a candidate must be a party nominee of such a political organization.

16-951. Clean elections funding

(Caution: 1998 Prop 105 applies)

A. At the beginning of the primary election period, the commission shall pay from the fund to the campaign account of each candidate who qualifies for clean elections funding:

1. For a candidate who qualifies for clean elections funding for a party primary election, an amount equal to the original primary election spending limit.
2. For an independent candidate who qualifies for clean elections funding, an amount equal to seventy percent of the sum of the original primary election spending limit and the original general election spending limit.
3. For a qualified participating candidate who is unopposed for an office in that candidate's primary, in the primary of any other party and by any opposing independent candidate, an amount equal to five dollars times the number of qualifying contributions for that candidate certified by the commission.

B. At any time after the first day of January of an election year, any candidate who has met the requirements of section 16-950 may sign and cause to be filed a nomination paper in the form specified by section 16-311, subsection A, with a nominating petition and signatures, instead of filing such papers after the earliest time set for filing specified by that subsection. Upon such filing and verification of the signatures, the commission shall pay the amount specified in subsection A of this section immediately, rather than waiting for the beginning of the primary election period.

C. At the beginning of the general election period, the commission shall pay from the fund to the campaign account of each candidate who qualifies for clean elections funding for the general election, except those candidates identified in subsection A, paragraph 2 or subsection D of this section, an amount equal to the original general election spending limit.

D. At the beginning of the general election period, the commission shall pay from the fund to the campaign account of a qualified participating candidate who has not received funds pursuant to subsection A, paragraph 3 of this section and who is unopposed by any other party nominee or any opposing independent candidate an amount equal to five dollars times the number of qualifying contributions for that candidate certified by the commission.

E. The special original general election spending limit, for a candidate who has received funds pursuant to subsection A, paragraphs 2 or 3 or subsection D of this section, shall be equal to the amount that the commission is obligated to pay to that candidate.

16-952. One-party-dominant legislative district

(Caution: 1998 Prop 105 applies)

Upon applying for clean elections funding pursuant to section 16-950, a participating candidate for the legislature in a one-party-dominant legislative district who is qualified for clean elections funding for the party primary election of the dominant party may choose to reallocate a portion of funds from the general election period to the primary election period. At the beginning of the primary election period, the commission shall pay from the fund to the campaign account of a participating candidate who makes this choice an extra amount equal to fifty per cent of the original primary election spending limit, and the original primary election spending limit for the candidate who makes this choice shall be increased by the extra amount. If a participating candidate who makes this choice becomes qualified for clean elections funding for the general election, the amount the candidate receives at the beginning of the general election period shall be reduced by the extra amount received at the beginning of the primary election period, and the original general election spending limit for that candidate shall be reduced by the extra amount. For the purpose of this subsection, a one-party-dominant legislative district is a district in which the number of registered voters registered in the party with the highest number of registered voters exceeds the number of registered voters registered to each of the other parties by an amount at least as high as ten per cent of the total number of voters registered in the district. The status of a district as a one-party-dominant legislative district shall be determined as of the beginning of the qualifying period.

16-953. Return of monies to the citizens clean elections fund

(Caution: 1998 Prop. 105 applies)

A. At the end of the primary election period, a participating candidate who has received monies pursuant to section 16-951, subsection A, paragraph 1 shall return to the fund all monies in the candidate's campaign account above an amount sufficient to pay any unpaid bills for expenditures made during the primary election period and for goods or services directed to the primary election.

B. At the end of the general election period, a participating candidate shall return to the fund all monies in the candidate's campaign account above an amount sufficient to pay any unpaid bills for expenditures made before the general election and for goods or services directed to the general election.

C. A participating candidate shall pay all uncontested and unpaid bills referenced in this section no later than thirty days after the primary or general election. A participating candidate shall make monthly reports to the commission concerning the status of the dispute over any contested bills. Any monies in a candidate's campaign account after payment of bills shall be returned promptly to the fund.

D. If a participating candidate is replaced pursuant to section 16-343, and the replacement candidate files an oath with the secretary of state certifying to section 16-947, subsection B, paragraph 3, the campaign account of the participating candidate shall be transferred to the replacement candidate and the commission shall certify the replacement candidate as a participating candidate without requiring compliance with section 16-950 or the remainder of section 16-947. If the replacement candidate does not file such an oath, the campaign account shall be liquidated and all remaining monies returned to the fund.

E. If a participating candidate who has received monies pursuant to section 16-951, subsection A, paragraph 1 does not qualify for the ballot for the primary election, the participating candidate shall:

1. Return to the fund all monies in the candidate's campaign account above the amount sufficient to pay any unpaid bills for expenditures made before the date the candidate failed to qualify for the primary ballot.

2. Return to the commission, within fourteen days, all remaining assets purchased with public funds in that election cycle, including all political signs. The disqualified participating candidate is not required to return political signs purchased in a previous election cycle.

3. Repay any monies paid to a family member unless the participating candidate demonstrates that the payment made was for goods or services actually provided before disqualification of the candidate and the payment was for fair market value. For the purposes of this paragraph, "family member" means a parent, grandparent, spouse, child or sibling of the candidate or a parent or spouse of any of those persons.

16-954. Disposition of excess monies

(Caution: 1998 Prop 105 applies)

A. Beginning January 1, 1999, an additional surcharge of ten per cent shall be imposed on all civil and criminal fines and penalties collected pursuant to section 12-116.01 and shall be deposited into the fund.

B. At least once per year, the commission shall project the amount of monies that the fund will collect over the next four years and the time such monies shall become available. Whenever the commission determines that the fund contains more monies than the commission determines that it requires to meet current debts plus expected expenses, under the assumption that expected expenses will be at the expenditure limit in section 16-949, subsection A, and taking into account the projections of collections, the commission shall designate such monies as excess monies and so notify the state treasurer, who shall thereupon transfer the excess monies to the general fund.

C. At least once per year, the commission shall project the amount of clean elections funding for which all candidates will have qualified pursuant to this article for the following calendar year. By the end of each year, the commission shall announce whether the amount that the commission plans to spend the following year pursuant to section 16-949, subsection A exceeds the projected amount of clean elections funding. If the commission determines that the fund contains insufficient monies or the spending cap would be exceeded were all candidates' accounts to be fully funded, the commission may include in the announcement specifications for decreases in the following parameters, based on the commission's projections of collections and expenses for the fund, including that the fund will provide monies under section 16-951 as a fraction of the amounts there specified.

D. If the commission cannot provide participating candidates with all monies specified under sections 16-951 and 16-952, as decreased by any announcement pursuant to subsection C of this section, the commission shall allocate any reductions in payments proportionately among candidates entitled to monies and shall declare an emergency. Upon declaration of an emergency, a participating candidate may accept private contributions to bring the total monies received by the candidate from the fund and from such private contributions up to the adjusted spending limits, as decreased by any announcement made pursuant to subsection C of this section.

16-955. Citizens clean election commission; structure

(Caution: 1998 Prop. 105 applies)

A. The citizens clean elections commission is established consisting of five members. No more than two members of the commission shall be members of the same political party. No more than two members of the commission shall be residents of the same county. No one shall be appointed as a member who does not have a registration pursuant to chapter 1 of this title that has been continuously recorded for at least five years immediately preceding appointment with the same political party or as an independent.

B. The candidates for vacant commissioner positions shall be persons who are committed to enforcing this article in an honest, independent and impartial fashion and to seeking to uphold public confidence in the integrity of the electoral system. Each candidate shall be a qualified elector who has not, in the previous five years in this state, been appointed to, been elected to or run for any public office, including precinct committeeman, or served as an officer of a political party.

C. Initially, the commission on appellate court appointments shall nominate five slates, each having three candidates, before January 1, 1999. No later than February 1, 1999, the governor shall select one candidate from one of the slates to serve on the commission for a term ending January 31, 2004. Next, the highest-ranking official holding a statewide office who is not a member of the same political party as the governor shall select one candidate from another one of the slates to serve on the commission for a term ending January 31, 2003. Next, the second-highest-ranking official holding a statewide office who is a member of the same political party as the governor shall select one candidate from one of the three remaining slates to serve on the commission for a term ending January 31, 2002. Next, the second-highest-ranking official holding a statewide office who is not a member of the same political party as the governor shall select one candidate from one of the two remaining slates to serve

on the commission for a term ending January 31, 2001. Finally, the third-highest-ranking official holding a statewide office who is a member of the same political party as the governor shall elect one candidate from the last slate to serve on the commission for a term ending January 31, 2000. For the purposes of this section, the ranking of officials holding statewide office shall be governor, secretary of state, attorney general, treasurer, superintendent of public instruction, corporation commissioners in order of seniority, mine inspector, senate majority and minority leaders and house majority and minority leaders.

D. One commissioner shall be appointed for a five-year term beginning February 1 of every year beginning with the year 2000. Before February 1 of each year beginning in the year 2000, the governor and the highest-ranking official holding a statewide office who is not a member of the same political party as the governor shall alternate filling such vacancies. The vacancy in the year 2000 shall be filled by the governor.

E. Members of the commission may be removed by the governor, with concurrence of the senate, for substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of office or violation of this section, after written notice and opportunity for a response.

F. If a commissioner does not complete the commissioner's term of office for any reason, a replacement shall be selected within thirty days after the vacancy occurs. The highest-ranking official holding a statewide office who is a member of the political party of the official who nominated the commissioner who vacated office shall nominate the replacement, who shall serve as commissioner for the unexpired portion of the term. A vacancy or vacancies shall not impair the right of the remaining members to exercise all of the powers of the board.

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

H. The commissioners shall elect a chair to serve for each calendar-year period from among their members whose terms expire after the conclusion of that year. Three commissioners shall constitute a quorum.

I. A member of the commission shall serve no more than one term and is not eligible for reappointment. No commissioner, during the commissioner's tenure or for three years thereafter, shall seek or hold any other public office, serve as an officer of any political committee or employ or be employed as a lobbyist.

J. The commission shall appoint an executive director who shall not be a member of the commission and who shall serve at the pleasure of the commission. The executive director is eligible to receive compensation set by the board within the range determined under section 38-611. The executive director, subject to title 41, chapter 4, articles 5 and 6, shall employ, determine the conditions of employment and specify the duties of administrative, secretarial and clerical employees as the director deems necessary.

16-956. [Voter education and enforcement duties](#)

(Caution: 1998 Prop. 105 applies)

A. The commission shall:

1. Develop a procedure for publishing a document or section of a document having a space of predefined size for a message chosen by each candidate. For the document that is delivered before the primary election, the document shall contain the names of every candidate for every statewide and legislative district office in that primary election without regard to whether the candidate is a participating candidate or a nonparticipating candidate. For the document that is delivered before the general election, the document shall contain the names of every candidate for every statewide and legislative district office in that general election without regard to whether the candidate is a participating candidate or a nonparticipating candidate. The commission shall deliver one copy of each document to every household that contains a registered voter. For the document that is delivered before the primary election, the delivery may be made over a period of days but shall be sent in time to be delivered to households before the earliest date for receipt by registered voters of any requested early ballots for the primary election. The commission may deliver the second document over a period of days but shall send the second document in order to be delivered to households before the earliest date for receipt by registered voters of any requested early ballots for the general election. The primary election and general election documents published by the commission shall comply with all of the following:

(a) For any candidate who does not submit a message pursuant to this paragraph, the document shall include with the candidate's listing the words "no statement submitted".

(b) The document shall have printed on its cover the words "citizens clean elections commission voter education guide" and the words "primary election" or "general election" and the applicable year. The document shall also contain at or near the bottom of the document cover in type that is no larger than one-half the size of the type used for "citizens clean elections commission voter education guide" the words "paid for by the citizens clean elections fund".

(c) In order to prevent voter confusion, the document shall be easily distinguishable from the publicity pamphlet that is required to be produced by the secretary of state pursuant to section 19-123.

2. Sponsor debates among candidates, in such manner as determined by the commission. The commission shall require participating candidates to attend and participate in debates and may specify by rule penalties for nonparticipation. The commission shall invite and permit nonparticipating candidates to participate in debates.

3. Prescribe forms for reports, statements, notices and other documents required by this article. The commission shall not require a candidate to use a reporting system other than the reporting system jointly approved by the commission and the office of the secretary of state.

4. Prepare and publish instructions setting forth methods of bookkeeping and preservation of records to facilitate compliance with this article and explaining the duties of persons and committees under this article.

5. Produce a yearly report describing the commission's activities and any recommendations for changes of law, administration or funding amounts and accounting for monies in the fund.

6. Adopt rules to implement the reporting requirements of section 16-958, subsections D and E.

7. Enforce this article, ensure that money from the fund is placed in candidate campaign accounts or otherwise spent as specified in this article and not otherwise, monitor reports filed pursuant to this chapter and financial records of candidates as needed and ensure that money required by this article to be paid to the fund is deposited in the fund. The commission shall not take action on any external complaint that is filed more than ninety days after the postelection report is filed or ninety days after the completion of the canvass of the election to which the complaint relates, whichever is later.

B. The commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of the commission's duties or the exercise of its powers.

C. The commission may adopt rules to carry out the purposes of this article and to govern procedures of the commission. The commission shall propose and adopt rules in public meetings, with at least sixty days allowed for interested parties to comment after the rules are proposed. The commission shall also file the proposed rule in the format prescribed in section 41-1022 with the secretary of state's office for publication in the Arizona administrative register. After consideration of the comments received in the sixty day comment period, the commission may adopt the rule in an open meeting. Any rules given final approval in an open meeting shall be filed in the format prescribed in section 41-1022 with the secretary of state's office for publication in the Arizona administrative register. Any rules adopted by the commission shall only be applied prospectively from the date the rule was adopted.

D. Rules adopted by the commission are not effective until January 1 in the year following the adoption of the rule, except that rules adopted by unanimous vote of the commission may be made immediately effective and enforceable.

E. If, in the view of the commission, the action of a particular candidate or committee requires immediate change to a commission rule, a unanimous vote of the commission is required. Any rule change made pursuant to this subsection that is enacted with less than a unanimous vote takes effect for the next election cycle.

F. Based on the results of the elections in any quadrennial election after 2002, and within six months after such election, the commission may adopt rules changing the number of qualifying contributions required for any office from those listed in section 16-950, subsection D by no more than twenty percent of the number applicable for the preceding election.

16-957. Enforcement procedure

(Caution: 1998 Prop. 105 applies)

A. If the commission finds that there is reason to believe that a person has violated any provision of this article, the commission shall serve on that person an order stating with reasonable particularity the nature of the violation and requiring compliance within fourteen days. During that period, the alleged

violator may provide any explanation to the commission, comply with the order, or enter into a public administrative settlement with the commission.

B. Upon expiration of the fourteen days, if the commission finds that the alleged violator remains out of compliance, the commission shall make a public finding to that effect and issue an order assessing a civil penalty in accordance with section 16-942, unless the commission publishes findings of fact and conclusions of law expressing good cause for reducing or excusing the penalty. The violator has fourteen days from the date of issuance of the order assessing the penalty to appeal to the superior court as provided in title 12, chapter 7, article 6.

C. Any candidate in a particular election contest who believes that any opposing candidate has violated this article for that election may file a complaint with the commission requesting that action be taken pursuant to this section. If the commission fails to make a finding under subsection A of this section within thirty days after the filing of such a complaint, the candidate may bring a civil action in the superior court to impose the civil penalties prescribed in this section.

16-958. Manner of filing reports

(Caution: 1998 Prop 105 applies)

A. Any person who has previously reached the dollar amount specified in section 16-941, subsection D for filing an original report shall file a supplemental report each time previously unreported independent expenditures specified by that subsection exceeds one thousand dollars. Such reports shall be filed at the times specified in subsection B of this section and shall identify the dollar amount being reported, the candidate and the date, and no other detail is required in reports made pursuant to this section.

B. Any person who must file an original report pursuant to section 16-941, subsection D or who must file a supplemental report for previously unreported amounts pursuant to subsection A of this section shall file as follows:

1. Before the beginning of the primary election period, the person shall file a report on the first of each month, unless the person has not reached the dollar amount for filing an original or supplemental report on that date.
2. Thereafter, except as stated in paragraph 3 of this subsection, the person shall file a report on any Tuesday by which the person has reached the dollar amount for filing an original or supplemental report.
3. During the last two weeks before the primary election and the last two weeks before the general election, the person shall file a report within one business day of reaching the dollar amount for filing an original or supplemental report.

C. Any filing under this article on behalf of a candidate may be made by the candidate's campaign committee. All candidates shall deposit any check received by and intended for the campaign and made

payable to the candidate or the candidate's campaign committee, and all cash received by and intended for the campaign, in the candidate's campaign account before the due date of the next report specified in subsection B of this section. No candidate or person acting on behalf of a candidate shall conspire with a donor to postpone delivery of a donation to the campaign for the purpose of postponing the reporting of the donation in any subsequent report.

D. The secretary of state shall immediately notify the commission of the filing of each report under this section and deliver a copy of the report to the commission, and the commission shall promptly mail or otherwise deliver a copy of each report filed pursuant to this section to all participating candidates opposing the candidate identified in section 16-941, subsection D.

E. Any report filed pursuant to this section or section 16-916, subsection A, paragraph 1 or subsection B shall be filed in electronic format. The secretary of state shall distribute computer software to political committees to accommodate such electronic filing.

F. During the primary election period and the general election period, all candidates shall make available for public inspection all bank accounts, campaign finance reports and financial records relating to the candidate's campaign, either by immediate disclosure through electronic means or at the candidate's campaign headquarters, in accordance with rules adopted by the commission.

16-959. Inflationary and other adjustments of dollar values

(Caution: 1998 Prop 105 applies)

A. Every two years, the secretary of state shall modify the dollar values specified in the following parts of this article, in the manner specified by section 16-905, subsection H, to account for inflation: section 16-941, subsection A, paragraph 2 or subsection D; section 16-942, subsection B; section 16-945, subsection A, paragraphs 1 and 2; section 16-948, subsection C; section 16-955, subsection G; and section 16-961, subsections G and H. In addition, the secretary of state shall make a similar inflation adjustment by modifying the dollar values in section 16-949, subsection A to reflect cumulative inflation since the enactment of this article. In addition, every two years, the secretary of state shall change the dollar values in section 16-961, subsections G and H in proportion to the change in the number of Arizona resident personal income tax returns filed during the previous calendar year.

B. Based on the results of the elections in any quadrennial election after 2002, and within six months after such election, the commission may adopt rules in a public meeting reallocating funds available to all candidates between the primary and general elections by selecting a fraction for primary election spending limits that is between one-third and one-half of the spending limits for the election as a whole. For each office, the primary election spending limit shall be modified to be the sum of the primary and general spending limits times the selected fraction, and the general election spending limit shall be modified to be the same sum times one less the selected fraction.

16-960. Severability

(Caution: 1998 Prop. 105 applies)

If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. In any court challenge to the validity of this article, the commission and Arizonans for clean elections shall have standing to intervene.

16-961. Definitions

(Caution: 1998 Prop 105 applies)

A. The terms "candidate's campaign committee," "contribution," "expenditures," "exploratory committee," "independent expenditure," "personal monies," "political committee" and "statewide office" are defined in section 16-901.

B. 1. "Election cycle" means the period between successive general elections for a particular office.

2. "Exploratory period" means the period beginning on the day after a general election and ending the day before the start of the qualifying period.

3. "Qualifying period" means the period beginning on the first day of August in a year preceding an election and ending one week before the primary election.

4. "Primary election period" means the nine-week period ending on the day of the primary election.

5. "General election period" means the period beginning on the day after the primary election and ending on the day of the general election.

6. For any recall election, the qualifying period shall begin when the election is called and last for thirty days, there shall be no primary election period and the general election period shall extend from the day after the end of the qualifying period to the day of the recall election. For recall elections, any reference to "general election" in this article shall be treated as if referring to the recall election.

C. 1. "Participating candidate" means a candidate who becomes certified as a participating candidate pursuant to section 16-947.

2. "Nonparticipating candidate" means a candidate who does not become certified as a participating candidate pursuant to section 16-947.

3. Any limitation of this article that is applicable to a participating candidate or a nonparticipating candidate shall also apply to that candidate's campaign committee or exploratory committee.

D. "Commission" means the citizens clean elections commission established pursuant to section 16-955.

E. "Fund" means the citizens clean elections fund defined by this article.

F. 1. "Party nominee" means a person who has been nominated by a political party pursuant to section 16-301 or 16-343.

2. "Independent candidate" means a candidate who has properly filed nominating papers and nominating petitions with signatures pursuant to section 16-341.

3. "Unopposed" means with reference to an election for:

(a) A member of the house of representatives, opposed by no more than one other candidate who has qualified for the ballot and who is running in the same district.

(b) A member of the corporation commission, opposed by a number of candidates who have qualified for the ballot that is fewer than the number of corporation commission seats open at that election and for which the term of office ends on the same date.

(c) All other offices, opposed by no other candidate who has qualified for the ballot and who is running in that district or running for that same office and term.

G. "Primary election spending limits" means:

1. For a candidate for the legislature, twelve thousand nine hundred twenty-one dollars.

2. For a candidate for mine inspector, forty-one thousand three hundred forty-nine dollars.

3. For a candidate for treasurer, superintendent of public instruction or the corporation commission, eighty-two thousand six hundred eighty dollars.

4. For a candidate for secretary of state or attorney general, one hundred sixty-five thousand three hundred seventy-eight dollars.

5. For a candidate for governor, six hundred thirty-eight thousand two hundred twenty-two dollars.

H. "General election spending limits" means amounts fifty per cent greater than the amounts specified in subsection G of this section.

I. 1. "Original" spending limit means a limit specified in subsections G and H of this section, as adjusted pursuant to section 16-959, or a special amount expressly set for a particular candidate by a provision of this title.

2. "Adjusted" spending limit means an original spending limit as further adjusted pursuant to section 16-952.

16-971. Definitions

(Caution: 1998 Prop. 105 applies)

In this chapter, unless the context otherwise requires:

1. "Business income" means:

(a) Monies received by a person in commercial transactions in the ordinary course of the person's regular trade, business or investments.

(b) Membership or union dues that do not exceed \$5,000 from any one person in a calendar year.

2. "Campaign media spending":

(a) Means spending monies or accepting in-kind contributions to pay for any of the following:

(i) A public communication that expressly advocates for or against the nomination, or election of a candidate.

(ii) A public communication that promotes, supports, attacks or opposes a candidate within six months preceding an election involving that candidate.

(iii) A public communication that refers to a clearly identified candidate within ninety days before a primary election until the time of the general election and that is disseminated in the jurisdiction where the candidate's election is taking place.

(iv) A public communication that promotes, supports, attacks or opposes the qualification or approval of any state or local initiative or referendum.

(v) A public communication that promotes, supports, attacks or opposes the recall of a public officer.

(vi) An activity or public communication that supports the election or defeat of candidates of an identified political party or the electoral prospects of an identified political party, including partisan voter registration, partisan get-out-the-vote activity or other partisan campaign activity.

(vii) Research, design, production, polling, data analytics, mailing or social media list acquisition or any other activity conducted in preparation for or in conjunction with any of the activities described in items (i) through (vi) of this subdivision.

(b) Does not include spending monies or accepting in-kind contributions for any of the following:

(i) A news story, commentary or editorial by any broadcasting station, cable television operator, video service provider, programmer or producer, newspaper, magazine, website or other periodical publication that is not owned or operated by a candidate, a candidate's spouse or a candidate committee, political party or political action committee.

(ii) A nonpartisan activity intended to encourage voter registration and turnout.

(iii) Publishing a book or producing a documentary, if the publication or production is for distribution to the general public through traditional distribution mechanisms or if a fee is required to purchase the book or view the documentary.

(iv) Primary or nonpartisan debates between candidates or between proponents and opponents of a state or local initiative or referendum and announcements of those debates.

3. "Candidate" has the same meaning as in section 16-901.

4. "Candidate committee" has the same meaning as in section 16-901.

5. "Commission" means the citizens clean elections commission.

6. "Contribution" means money, donation, gift, loan or advance or other thing of value, including goods and services.

7. "Covered person"

(a) Means any person whose total campaign media spending or acceptance of in-kind contributions to enable campaign media spending, or a combination of both, in an election cycle is more than \$50,000 in statewide campaigns or more than \$25,000 in any other type of campaigns. For the purposes of this chapter, the amount of a person's campaign media spending includes campaign media spending made by entities established, financed, maintained or controlled by that person.

(b) Does not include:

(i) Individuals who spend only their own personal monies for campaign media spending.

(ii) Organizations that spend only their own business income for campaign media spending.

(iii) A candidate committee.

(iv) A political action committee or political party that receives not more than \$20,000 in contributions, including in-kind contributions, from any one person in an election cycle.

8. "Election cycle" means the time beginning the day after general election day in even-numbered years and continuing through the end of general election day in the next even-numbered year.

9. "Expressly advocates" has the same meaning as in section 16-901.01.

10. "Identity" means:

(a) In the case of an individual, the name, mailing address, occupation and employer of the individual

(b) In the case of any other person, the name, mailing address, federal tax status and state of incorporation, registration or partnership, if any.

11. "In-kind contribution" means a contribution of goods, services or anything of value that is provided without charge or at less than the usual and normal charge.

12. "Original monies" means business income or an individual's personal monies.

13. "Person" includes both a natural person and an entity such as a corporation, limited liability company, labor organization, partnership or association, regardless of legal form.

14. "Personal monies"

(a) Means any of the following:

(i) Any asset of an individual that, at the time the individual engaged in campaign media spending or transferred monies to another person for such spending, the individual had legal control over and rightful title to.

(ii) Income received by an individual or the individual's spouse, including salary and other earned income from bona fide employment, dividends and proceeds from the individual's personal investments or bequests to the individual, including income from trusts established by bequests.

(iii) A portion of assets that are jointly owned by the individual and the individual's spouse equal to the individual's share of the asset under the instrument of conveyance or ownership. If no specific share is indicated by an instrument of conveyance or ownership, the value is one-half the value of the property or asset.

(b) Does not mean any asset or income received from any person for the purpose of influencing any election.

15. "Political action committee" has the same meaning as in section 16-901.

16. "Political party" has the same meaning as in section 16-901.

17. "Public communication"

(a) Means a paid communication to the public by means of broadcast, cable, satellite, internet or another digital method, newspaper, magazine, outdoor advertising facility, mass mailing or another mass distribution, telephone bank or any other form of general public political advertising or marketing, regardless of medium.

(b) Does not include communications between an organization and its employees, stockholders or bona fide members.

18. "Traceable monies" means:

(a) Monies that have been given, loaned or promised to be given to a covered person and for which no donor has opted out of their use or transfer for campaign media spending pursuant to section 16-972.

(b) Monies used to pay for in-kind contributions to a covered person to enable campaign media spending.

19. "Transfer records" means a written record of the identity of each person that directly or indirectly contributed or transferred more than \$2,500 of original monies used for campaign media spending, the amount of each contribution or transfer and the person to whom those monies were transferred.

[16-972. Campaign media spending; transfer records; written notice; donor opt-out; disclosure of previous records](#)

(Caution: 1998 Prop. 105 applies)

A. A covered person must maintain transfer records. The covered person must maintain these records for at least five years and provide the records on request to the commission.

B. Before the covered person may use or transfer a donor's monies for campaign media spending, the donor must be notified in writing that the monies may be so used and must be given an opportunity to opt out of having the donation used or transferred for campaign media spending. The notice under this subsection must:

1. Inform donors that their monies may be used for campaign media spending and that information about donors may have to be reported to the appropriate government authority in this state for disclosure to the public.
2. Inform donors that they can opt out of having their monies used or transferred for campaign media spending by notifying the covered person in writing within twenty-one days after receiving the notice.
3. Comply with rules adopted by the commission pursuant to this chapter to ensure that the notice is clearly visible and that it accomplishes the purposes of this section.

C. The notice required by this section may be provided to the donor before or after the covered person receives a donor's monies, but the donor's monies may not be used or transferred for campaign media spending until at least twenty-one days after the notice is provided or until the donor provides written consent pursuant to this section, whichever is earlier.

D. Any person that donates to a covered person more than \$5,000 in traceable monies in an election cycle must inform that covered person in writing, within ten days after receiving a written request from the covered person, of the identity of each other person that directly or indirectly contributed more than \$2,500 in original monies being transferred and the amount of each other person's original monies being transferred. If the original monies were previously transferred, the donor must disclose all such previous transfers of more than \$2,500 and identify the intermediaries. The donor must maintain these records for at least five years and provide the records on request to the commission.

E. Any person that makes an in-kind contribution to a covered person of more than \$5,000 in an election cycle to enable campaign media spending must inform that covered person in writing, at the time the in-kind contribution is made or promised to be made, of the identity of each other person that directly or indirectly contributed or provided more than \$2,500 in original monies used to pay for the

in-kind contribution and the amount of each other person's original monies so used. If the original monies were previously transferred, the in-kind donor must disclose all such previous transfers of more than \$2,500 and identify the intermediaries. The in-kind donor must maintain these records for at least five years and provide the records on request to the commission.

16-973. [Disclosure reports: exceptions](#)

(Caution: 1998 Prop. 105 applies)

A. Within five days after first spending monies or accepting in-kind contributions totaling \$50,000 or more during an election cycle on campaign media spending in statewide campaigns or \$25,000 or more during the election cycle in any other type of campaigns, a covered person shall file with the secretary of state an initial report that discloses all of the following:

1. The identity of the person that owns or controls the traceable monies.
2. The identity of any entity established, financed, maintained or controlled by the person that owns or controls the traceable monies and that maintains its own transfer records and that entity's relationship to the covered person.
3. The name, mailing address and position of the individual who is the custodian of the transfer records.
4. The name, mailing address and position of at least one individual who controls, directly or indirectly, how the traceable monies are spent.
5. The total amount of traceable monies owned or controlled by the covered person on the date the report is made.
6. The identity of each donor of original monies who contributed, directly or indirectly, more than \$5,000 of traceable monies or in-kind contributions for campaign media spending during the election cycle to the covered person and the date and amount of each of the donor's contributions.
7. The identity of each person that acted as an intermediary and that transferred, in whole or in part, traceable monies of more than \$5,000 from original sources to the covered person and the date, amount and source, both original and intermediate, of the transferred monies.
8. The identity of each person that received from the covered person disbursements totaling \$10,000 or more of traceable monies during the election cycle and the date and purpose of each disbursement, including the full name and office sought of any candidate or a description of any ballot proposition that was supported, opposed or referenced in a public communication that was paid for, in whole or in part, with the disbursed monies.
9. The identity of any person whose total contributions of traceable monies to the covered person constituted more than half of the traceable monies of the covered person at the start of the election cycle.

B. After a covered person makes an initial report, each time the covered person spends monies or accepts in-kind contributions totaling an additional \$25,000 or more during an election cycle on campaign media spending in statewide campaigns or an additional \$15,000 or more on campaign media spending during an election cycle in any other type of campaigns, that covered person shall file with the secretary of state within three days after spending monies or accepting the in-kind contribution a report that discloses any information that has changed since the most recent report was made pursuant to this section.

C. When the information required pursuant to subsection A, paragraphs 1 through 4 of this section has changed since it was previously reported, the changed information shall be reported to the secretary of state within twenty days, except that there is no obligation to report changes that occur more than one year after the most recent report should have been filed pursuant to this section.

D. To determine the sources, intermediaries and amounts of indirect contributions received, a covered person may rely on the information it received pursuant to section 16-972, unless the covered person knows or has reason to know that the information relied on is false or unreliable.

E. When a covered person transfers more than \$5,000 in traceable monies to another covered person, or after receiving the required notice under section 16-972, subsection B, fails to opt out of having previously transferred monies used for campaign media spending, a transfer record must be provided to the recipient covered person that identifies each person that directly or indirectly contributed more than \$2,500 of the original monies being transferred, the amount of each person's original monies being transferred, and any other person that previously transferred the original monies.

F. Notwithstanding any other provision of this section, the identity of an original source that is otherwise protected from disclosure by law or a court order or that demonstrates to the satisfaction of the commission that there is a reasonable probability that public knowledge of the original source's identity would subject the source or the source's family to a serious risk of physical harm shall not be disclosed or included in a disclaimer.

G. This section does not require public disclosure of or a disclaimer regarding the identity of an original source that contributes, directly or through intermediaries, \$5,000 or less in monies or in-kind contributions during an election cycle to a covered person for campaign media spending.

H. All disclosure reports made pursuant to this section shall be made electronically to the secretary of state and to any other body as directed by law. Officials shall promptly make the information public and provide it to the commission electronically. All disclosure reports are subject to penalty of perjury.

I. Except as provided in subsection J of this section, a political action committee or political party that is a covered person may satisfy the timing requirements for reporting in this section by filing the periodic campaign finance reports as required by law for political action committees and political parties, provided that the disclosures required by this section are included in those periodic reports, including the requirement to identify the original sources of traceable monies who gave, directly or indirectly, and any intermediaries who transferred, directly or indirectly, more than \$5,000 in traceable monies to the covered person during the election cycle.

J. If a political action committee or political party that is a covered person spends monies or accepts in-kind contributions within 20 days of an election that would require a report under this section, it shall file a report pursuant to this section within 3 days of that spending or in-kind contribution.

16-974. Citizens clean elections commission: powers and duties; rules

(Caution: 1998 Prop. 105 applies)

A. The commission is the primary agency authorized to implement and enforce this chapter. The commission may do any of the following:

1. Adopt and enforce rules.
2. Issue and enforce civil subpoenas, including third-party subpoenas.
3. Initiate enforcement actions.
4. Conduct fact-finding hearings and investigations.
5. Impose civil penalties for noncompliance, including penalties for late or incomplete disclosures and for any other violations of this chapter.
6. Seek legal and equitable relief in court as necessary.
7. Establish the records persons must maintain to support their disclosures.
8. Perform any other act that may assist in implementing this chapter.

B. If the commission imposes a civil penalty on a person and that person does not timely seek judicial review, the commission may file a certified copy of its order requiring payment of the civil penalty with the clerk of the superior court in any county of this state. The clerk shall treat the commission order in the same manner as a judgment of the superior court. A commission order filed pursuant to this subsection has the same effect as a judgment of the superior court and may be recorded, enforced or satisfied in the same manner. A filing fee is not required for an action filed under this subsection.

C. The commission shall establish disclaimer requirements for public communications by covered persons. A political action committee that complies with these requirements need not separately comply with the requirements prescribed in section 16-925, subsection B. Public communications by covered persons shall state, at a minimum, the names of the top three donors who directly or indirectly made the three largest contributions of original monies during the election cycle to the covered person. If it is not technologically possible for a public communication disseminated on the internet or by social media message, text message or short message service to provide all the information required by this subsection, the public communication must provide a means for viewers to obtain, immediately and easily, the required information without having to receive extraneous information.

D. The commission's rules and any commission enforcement actions pursuant to this chapter are not subject to the approval of or any prohibition or limit imposed by any other executive or legislative governmental body or official. Notwithstanding any law to the contrary, rules adopted pursuant to this chapter are exempt from title 41, chapters 6 and 6.1.

E. The commission shall establish a process to reimburse the secretary of state and any other agency that incurs costs to implement or enforce this chapter.

F. The commission may adjust the contribution and expenditure thresholds in this chapter to reflect inflation.

16-975. Structured transactions prohibited

(Caution: 1998 Prop. 105 applies)

A person may not structure or assist in structuring, or attempt or assist in an attempt to structure any solicitation, contribution, donation, expenditure, disbursement or other transaction to evade the reporting requirements of this chapter or any rule adopted pursuant to this chapter.

16-976. Penalties; separate account; use of monies; surcharge

(Caution: 1998 Prop. 105 applies)

A. The civil penalty for any violation of this chapter shall be at least the amount of the undisclosed or improperly disclosed contribution and not more than three times that amount. For violations of section 16-975, the relevant amount for the purposes of calculating the civil penalty is the amount determined by the commission to constitute a structured transaction.

B. Civil penalties collected for violations of this chapter shall be deposited in a separate account in the citizens clean elections fund established pursuant to chapter 6, article 2 of this title and used to defray the costs of implementing and enforcing this chapter. Any monies in this account that are not used to implement and enforce this chapter may be used for other commission-approved purposes.

C. An additional surcharge of one percent shall be imposed on civil and criminal penalties and the proceeds deposited in the account in the citizens clean elections fund established pursuant to subsection B of this section. The surcharge shall be suspended for one to three years at a time if the commission determines that, during that period, it can perform the actions required by this chapter without the monies from the surcharge.

16-977. Complaints; investigations; civil action

(Caution: 1998 Prop. 105 applies)

A. Any qualified voter in this state may file a verified complaint with the commission against a person that fails to comply with the requirements of this chapter or rules adopted pursuant to this chapter. The complaint must state the factual basis for believing that there has been a violation of this chapter or rules adopted pursuant to this chapter.

B. If the commission determines that the complaint, if true, states the factual basis for a violation of this chapter or rules adopted pursuant to this chapter, the commission shall investigate the allegations and provide the alleged violator with an opportunity to be heard.

C. If the commission dismisses at any time the complaint or takes no substantive enforcement action within ninety days after receiving the complaint, the complainant may bring a civil action against the commission to compel it to take enforcement action, and the court shall review de novo whether the commission's dismissal or failure to act was reasonable. In any matter in which the civil penalty for the alleged violation could be greater than \$50,000, any claim or defense by the commission of prosecutorial discretion is not a basis for dismissing or failing to act on the complaint. A court may award the prevailing party in a civil action under this subsection its reasonable attorneys' fees.

16-978. Legislative, county and municipal provisions

(Caution: 1998 Prop. 105 applies)

A. Nothing in this act prevents the legislature, a county board of supervisors or a municipal government from enacting or enforcing additional or more stringent disclosure provisions for campaign media spending than those contained in this chapter. Additional or more stringent disclosure requirements for campaign media spending further the purposes of this chapter.

B. To the extent the provisions of this chapter conflict with any state law, this chapter governs.

16-979. Legal defense; standing; legal counsel

(Caution: 1998 Prop. 105 applies)

A. A political action committee formed to support the voters' right to know act or any of that committee's officers may intervene as of right in any legal action brought to challenge the validity of this chapter or any of its provisions.

B. The commission has standing to defend this chapter on behalf of this state in any legal action brought to challenge the validity of this chapter or any of its provisions.

C. Notwithstanding any law, the commission has exclusive and independent authority to select legal counsel to represent the commission regarding its duties under this chapter and to defend this chapter if its validity is challenged.

C-2

**BOARD OF EXAMINERS OF NURSING CARE INSTITUTIONS,
ADMINISTRATORS, AND ASSISTED LIVING FACILITY MANAGERS**

Title 4, Chapter 33

Amend: R4-33-601, R4-33-602, R4-33-603, R4-33-604, R4-33-605, R4-33-701,
R4-33-702, R4-33-703, R4-33-703.1, R4-33-704, R4-33-705, R4-33-706



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: Jun 6, 2023

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 3, 2023

SUBJECT: BOARD OF EXAMINERS OF NURSING CARE INSTITUTIONS,
ADMINISTRATORS, AND ASSISTED LIVING FACILITY MANAGERS
Title 4, Chapter 33

Amend: R4-33-601, R4-33-602, R4-33-603, R4-33-604, R4-33-605, R4-33-701,
R4-33-702, R4-33-703, R4-33-703.1, R4-33-704, R4-33-705, R4-33-706

Summary:

This regular rulemaking from the Board of Examiners of Nursing Care Institutions, Administrators, and Assisted Living Facility Managers (Board) seeks to amend twelve (12) rules in Title 4, Chapter 33 related to assisted living facility manager training programs and assisted living facility caregiver training programs.

The Board is required to prescribe standards for assisted living facility training programs. During the 2020 pandemic lockdown, the Board allowed owners of assisted living facility training programs to deviate from the rule requirement regarding hours of classroom instruction and distance learning. Based on examination results and requests from the owners, the Board has determined the distinction between classroom instruction and distance learning can be eliminated.

This rulemaking is not related to a prior five year review report.

1. **Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

The Board cites both general and specific statutory authority for these rules

2. **Do the rules establish a new fee or contain a fee increase?**

The Board indicates that the rules do not establish a new fee or contain a fee increase.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The Board indicates it did not review or rely on any study in conducting this rulemaking.

4. **Summary of the agency's economic impact analysis:**

The Board believes the rulemaking will have a positive economic impact for owners of assisted living facility training programs who will be able to rely on technology-based instruction to implement training programs. The Board states that the rulemaking may change the nature of an instructor's responsibilities but should have no economic impact on the instructor. Stakeholders include the Board, owners of assisted living facility training programs, and instructors in the training programs. There are currently 60 approved assisted living facility training programs, 16 are for managers and 44 are for caregivers.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Board states that the rulemaking, which eliminates an unnecessary burden, is neither intrusive nor costly. The Board indicates that no alternative was considered.

6. **What are the economic impacts on stakeholders?**

The Board indicates that during the 2020 pandemic lockdown and in response to the Governor's emergency order, the Board allowed owners of assisted living facility training programs to deviate from the rule requirement regarding hours of instruction in a classroom or using technology for both managers and caregiver training programs. They state that during that period 60 to 70 percent of training programs were conducted using technology. Because the emergency period ended, the training programs have reverted, as specified in rule, to providing a maximum of 20 hours of training using technology. The Board believes that the use of technology did not negatively affect the rate at which students passed the final examination on first taking. As a result, the Board has determined the restriction of hours on training by technology is an unnecessary burden for owners of the training programs.

The Board is the only state agency affected by the rulemaking and no political subdivisions are directly affected by the rulemaking. The rulemaking results in no new administrative or other costs associated with compliance. The Board states that because all

owners of assisted living facility training programs are small businesses, it is not possible to reduce the impacts of the rulemaking on small businesses. Additionally, the Board has done the rulemaking in response to requests from owners to eliminate an unnecessary regulatory burden.

7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

The Board indicates that the final rules are not a substantial change, considered as a whole, from the proposed rules and any supplemental proposals.

8. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

The Board indicates it received no written public comments regarding the rulemaking. They do state however that several individuals attended the oral proceeding on February 6, 2023, and indicated they hoped the rulemaking would move forward quickly.

9. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Board indicates that the rules do not require a general permit pursuant to ARS § 41-1037 as the Board is required to prescribe standards for assisted living facility training programs and reviews initial and renewal applications for these programs. Because this determination must be made on a case-by-case basis, a general permit is not applicable.

10. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

The Board indicates that no federal law applies to the subject matter of this rule.

11. **Conclusion**

This regular rulemaking from the Board of Examiners of Nursing Care Institutions, Administrators, and Assisted Living Facility Managers seeks to amend twelve (12) rules in Title 4, Chapter 33 related to assisted living facility manager training programs and assisted living facility caregiver training programs.

The Department is seeking an immediate effective date pursuant to A.R.S. § 41-1032(A)(4) because the rules provide a benefit to the public and a penalty is not associated with a violation of the rules and Council staff recommends approval of this rulemaking.



**BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND
ASSISTED LIVING FACILITY MANAGERS**

Katie Hobbs
Governor

1740 West Adams, Suite 2490 Phoenix, Arizona 85007
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Email: information@aznciaboard.us | Website: nciaboard.az.gov

Jack Confer
Executive Director

March 30, 2023

VIA ELECTRONIC MAIL

Ms. Nicole Sornsin, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 305
Phoenix, AZ 85007

**Re: A.A.C. Title 4. Professions and Occupations Chapter 33. Board of Examiners of Nursing
Care Institution Administrators and Assisted Living Facility Managers**

Dear Ms. Sornsin:

The attached final rule package is submitted for review and approval by the Council. The following information is provided for Council's use in reviewing the rule package:

- A. Close of record date: The rulemaking record was closed on February 7, 2023, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).

The approval required under A.R.S. § 41-1039(A) was provided by Brian Norman of the Governor's Office in an e-mail dated October 6, 2022. Approval to submit the rulemaking to the Council was provided by Policy Advisor Zaida Dedolph Piccoro in an email dated March 29, 2023.

- B. Relation of the rulemaking to a five-year-review report: The rulemaking does not relate to a five-year-review report.
- C. New fee: The rulemaking does not establish a new fee.
- D. Fee increase: The rulemaking does not increase an existing fee.
- E. Immediate effective date: An immediate effective date is requested under A.R.S. § 41-1032(A)(4) because the rules provide a benefit to the public and a penalty is not associated with a violation of the rules.
- F. Certification regarding studies: I certify that the preamble accurately discloses the Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.
- G. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that none of the rules in this

rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.

H. List of documents enclosed:

1. Cover letter signed by the Executive Director;
2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
3. Economic, Small Business, and Consumer Impact Statement

Respectfully,

Jack Confer
Executive Director

NOTICE OF FINAL RULEMAKING
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 33. BOARD OF EXAMINERS OF NURSING CARE INSTITUTION
ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS
PREAMBLE

- | <u>1. Articles, Parts, and Sections Affected</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| R4-33-601 | Amend |
| R4-33-602 | Amend |
| R4-33-603 | Amend |
| R4-33-604 | Amend |
| R4-33-605 | Amend |
| R4-33-701 | Amend |
| R4-33-702 | Amend |
| R4-33-703 | Amend |
| R4-33-703.1 | Amend |
| R4-33-704 | Amend |
| R4-33-705 | Amend |
| R4-33-706 | Amend |
- 2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**
- Authorizing statute: A.R.S. § 36-446.03(A)
- Implementing statute: A.R.S. §§ 36-446 (4) and 36-446.03(O)
- 3. The effective date for the rules:**
- Under A.R.S. § 41-1032(A)(4), the rules will be effective when filed with the Office of the Secretary of State because the rules provide a benefit to the public and a penalty is not associated with a violation of the rules.
- a. If the agency selected a date earlier than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**
- The Board respectfully requests an immediate effective date under A.R.S. § 41-1032(A)(4). The rules provide a benefit to owners of assisted living facility training programs by allowing them to

provide training by classroom instruction or distance learning. Any combination of the instruction methods is acceptable so it is not possible to violate the rules.

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

Not applicable

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

Notice of Rulemaking Docket Opening: 28 A.A.R. 3852, December 16, 2022

Notice of Proposed Rulemaking: 28 A.A.R. 3809, December 16, 2022

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

Name: John Confer, Executive Director

Address: Board of Examiners for Nursing Care Administrators and Assisted Living Facility
Managers

1740 West Adams Street, Suite 2490

Phoenix, AZ 85007

Telephone: (602) 364-2374

E-mail: john.confer@aznciaboard.us

Website: nciaboard.az.gov

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

During the 2020 pandemic lockdown, the Board allowed owners of assisted living facility training programs to deviate from the rule requirement regarding hours of classroom instruction and distance learning. The deviation applied to training programs for both managers and caregivers. Based on examination results and requests from owners of assisted living facility training programs, the Board has determined the distinction between classroom instruction and distance learning can be eliminated.

An exemption from A.R.S. § 41-1039 was provided for this rulemaking by Brian Norman, of the governor's office, in an e-mail dated November 17, 2022. Approval to submit the rulemaking for approval by GRRC was provided by Policy Advisor Zaida Dedolph Piccoro in an email dated March 29, 2023.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or

review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Board did not review or rely on a study in its evaluation of or justification for any rule in the rulemaking.

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

Not applicable

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

The rulemaking will have a positive economic impact for owners of assisted living facility training programs who will be able to rely more on technology-based instruction to implement training programs. The rulemaking may negatively impact individuals who have previously benefited from providing classroom instruction in the training programs.

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

No changes were made between the proposed and final notices of rulemaking.

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

The Board received no written public comments regarding the rulemaking. Several individuals attended the oral proceeding on February 6, 2023, and indicated they hoped the rulemaking would move forward quickly.

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

None

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

The Board is required under A.R.S. § 36-446.03(P) to prescribe standards for assisted living facility training programs. This rulemaking prescribes those standards. Under A.R.S. § 36-446.03(B)(11) and (12), the Board is required to review initial and renewal applications for assisted living facility training programs. The review determines whether the training program complies with the prescribed standards. Because this determination must be made on a case-by-case basis, a general permit is not applicable.

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

No federal law applies to the subject matter of this rulemaking.

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

No analysis was submitted.

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

None

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

No rule in this rulemaking was previously made, amended, or repeals as an emergency rule.

- 15. The full text of the rules follows:**

TITLE 4. PROFESSIONS AND OCCUPATIONS

**CHAPTER 33. BOARD OF EXAMINERS FOR NURSING CARE ADMINISTRATORS AND
ASSISTED LIVING FACILITY MANAGERS**

ARTICLE 6. ASSISTED LIVING FACILITY MANAGER TRAINING PROGRAMS

Section

R4-33-601. Definitions

R4-33-602. Minimum Standards for Assisted Living Facility Manager Training Program

R4-33-603. Curriculum for Assisted Living Facility Manager Training Program

R4-33-604. Application for Approval of an Assisted Living Facility Manager Training Program

R4-33-605. Renewal of Approval of an Assisted Living Facility Manager Training Program

ARTICLE 7. ASSISTED LIVING FACILITY CAREGIVER TRAINING PROGRAMS

Section

R4-33-701. Definitions

R4-33-702. Minimum Standards for Assisted Living Facility Caregiver Training Program

R4-33-703. Curriculum for Assisted Living Facility Caregiver Training Program

R4-33-703.1. Minimum Standards and Curriculum for an Assisted Living Facility Caregiver Medication
Management Training Program

R4-33-704. Application for Approval of an Assisted Living Facility Caregiver Training Program

R4-33-705. Renewal of Approval of an Assisted Living Facility Caregiver Training Program

R4-33-707. Minimum Standards for Assisted Living Facility On-the-job Caregiver Training Program

ARTICLE 6. ASSISTED LIVING FACILITY MANAGER TRAINING PROGRAMS

R4-33-601. Definitions

“Owner” means the person responsible for ensuring ~~that~~ an assisted living facility training program complies with this Article.

“Instruction,” as used in this Article, means the act of teaching knowledge and skills in a classroom or through the use of technology.

“Resident” means an individual who lives in an assisted living facility.

“Student cohort” means a group of individuals who begin participation in an assisted living facility training program at the same time.

R4-33-602. Minimum Standards for Assisted Living Facility Manager Training Program

A. Organization and administration. The owner of an assisted living facility manager training program shall:

1. Provide the Board with a written description of the training program that includes:
 - a. Length of the training program in hours and days, and
 - b. Educational goals that demonstrate the training program is consistent with state requirements;
2. Execute a written agreement with each assisted living facility at which students enrolled in the training program receive training that includes the following information:
 - a. The rights and responsibilities of both the facility and the training program,
 - b. The role and authority of the governing bodies of both the facility and the training program, and
 - c. A termination clause that provides time for students enrolled in the training program to complete training at the facility upon termination of the agreement;
3. Develop and adhere to written policies and procedures regarding:
 - a. Attendance. Ensure that a student receives at least 40 hours of instruction;
 - b. Grading. Require a student to attain at least 75 percent on each theoretical examination or 75 percent on a comprehensive theoretical examination;
 - c. Reexamination. Inform students that a reexamination:
 - i. Addresses the same competencies examined in the original examination,
 - ii. Contains items different from those on the original examination, and
 - iii. Is documented in the student’s record;
 - d. Student records. Include the following information:

- i. Records maintained,
 - ii. Retention period for each record,
 - iii. Location of records,
 - iv. Documents required under subsections (E)(1) and (E)(2), and
 - v. Procedure for accessing records and who is authorized to access records;
 - e. Student fees and financial aid, if any;
 - f. Withdrawal and dismissal;
 - g. Student grievances including a chain of command for disputing a grade;
 - h. Admission requirements including any criminal background or drug testing required;
 - i. Criteria for training program completion; and
 - j. Procedure for documenting that a student has received notice of Board requirements for certification, including the fingerprint clearance card requirement, before the student is enrolled;
4. Date each policy and procedure developed under subsection (A)(3), review within one year from the date made and every year thereafter, update if necessary, and date the policy or procedure at the time of each review;
 5. Provide each student who completes the training program with evidence of completion, within 15 days of completion, which includes the following:
 - a. Name of the student;
 - b. Name and ~~classroom~~ location of the training program;
 - c. Number of ~~classroom~~ instruction hours in the training program;
 - d. Date on which the training program was completed;
 - e. Board's approval number of the training program; and
 - f. Signature of the training program owner, administrator, or instructor;
 6. Provide the Board, within 15 days of completion, the following information regarding each student who completed the training program:
 - a. Student's name, date of birth, Social Security number, address, and telephone number;
 - b. Student's examination scores as provided by the examining entity;
 - c. Name and ~~classroom~~ location of the training program;
 - d. Number of ~~classroom~~ instruction hours in the training program;
 - e. Date on which the training program was completed; and
 - f. Board's approval number of the training program; and
 7. Execute and maintain under subsections (E)(1) and (E)(2) the following documents for each student:

- a. A skills checklist containing documentation the student achieved competency in the assisted living facility manager skills listed in R4-33-603(C), and
 - b. An evaluation form containing the student's responses to questions about the quality of the ~~classroom~~ instructional experiences provided by the training program.
- B.** Program administrator responsibilities. The owner of an assisted living facility manager training program shall ensure that a program administrator performs the following responsibilities:
 1. Supervises and evaluates the training program,
 2. Uses only instructors who are qualified under subsection (C), and
 3. Makes the written policies and procedures required under subsection (A)(3) available to each student on or before the first day of the training program;
- C.** The owner of an assisted living facility manager training program shall ensure that a program instructor:
 1. Is a certified assisted living facility manager who:
 - a. Holds an assisted living facility manager certificate that is in good standing and issued under A.R.S. Title 36, Chapter 4;
 - b. Has held the assisted living facility manager certificate referenced in subsection (C)(1)(a) for at least five years;
 - c. Has not been subject to any disciplinary action against the assisted living facility manager certificate during the last five years; and
 - d. Has at least three years' experience within the last five years as an assisted living facility manager of record immediately before becoming a training program instructor;
 2. Performs the following responsibilities:
 - a. Plans each learning experience,
 - b. Accomplishes educational goals of the training program and lesson objectives,
 - c. Enforces a grading policy that meets the requirement specified in subsection (A)(3)(b),
 - d. Requires satisfactory performance of all critical elements of each assisted living facility manager skill specified under R4-33-603(C),
 - e. Prevents a student from performing an activity unless the student has received instruction and been found able to perform the activity competently,
 - f. Is present ~~in the classroom~~ during all instruction,
 - g. Supervises health-care professionals who assist in providing training program instruction, and
 - h. Ensures that a health-care professional who assists in providing training program instruction:
 - i. Is licensed or certified as a health-care professional,
 - ii. Has at least one year of experience in the field of licensure or certification, and

- iii. Teaches only a learning activity that is within the scope of practice of the field of licensure or certification.
- D.** Instructional and educational resources. The owner of an assisted living facility manager training program shall provide or provide access to the following instructional and educational resources adequate to implement the training program for all students and staff:
- 1. Current reference materials related to the level of the curriculum;
 - 2. Equipment, including computers, in good working condition to simulate facility management;
 - 3. Audio-visual equipment and media; and
 - 4. Designated space that provides a clean, distraction-free, learning environment for accomplishing educational goals of the training program;
- E.** The owner of an assisted living facility manager training program shall:
- 1. Maintain the following training program records for three years:
 - a. Curriculum and course schedule for each student cohort;
 - b. Results of state-approved written and manual skills testing;
 - c. Evaluation forms completed by students, a summary of the evaluation forms for each student cohort, and measures taken, if any, to improve the training program based on student evaluations; and
 - d. Copy of all Board reports, applications, or correspondence related to the training program; and
 - 2. Maintain the following student records for three years:
 - a. Name, date of birth, and Social Security number;
 - b. Completed skills checklist;
 - c. Attendance record including a record of any make-up class sessions;
 - d. Score on each test, quiz, and examination and, if applicable, whether a test, quiz, or examination was retaken; and
 - e. Copy of the certificate of completion issued to the student as required under subsection (A)(5);
- F.** Examination and evaluation requirements. The owner of an assisted living facility manager training program shall ensure that each student in the training program:
- 1. Takes an examination that covers each of the subjects listed in R4-33-603(C) and passes each examination using the standard specified in subsection (A)(3)(b);
 - 2. Is evaluated and determined to possess the practical skills listed in R4-33-603(C);
 - 3. Passes, using the standard specified in subsection (A)(3)(b), a final examination approved by the Board and given by a Board-approved provider; and

4. Does not take the final examination referenced in subsection (F)(3) more than two times. If a student fails the final examination referenced in subsection (F)(3) two times, the student is able to obtain evidence of completion only by taking the assisted living facility manager training program again;
- G.** Periodic evaluation. The owner of an assisted living facility manager training program shall allow a representative of the Board or a state agency designated by the Board to conduct:
1. An onsite scheduled evaluation:
 - a. Before initial approval of the training program as specified under R4-33-604(D),
 - b. Before renewal of the training program approval as specified under R4-33-605, and
 - c. During a time of correction as specified under R4-33-606(B); and
 2. An onsite unscheduled evaluation of the training program if the evaluation is in response to a complaint or reasonable cause, as determined by the Board; and
- H.** Notice of change. The owner of an assisted living facility manager training program shall provide the documentation and information specified regarding the following changes within 10 days after making the change:
1. New training program administrator. Name and license number;
 2. New instructor. Name, license number, and evidence of being qualified under subsection (C)(1);
 3. Decrease in number of training program hours. Description of and reason for the change, a revised curriculum outline, and revised course schedule;
 4. Change in ~~classroom~~ location at which instruction is provided. Address and description of new location ~~and description of the new classroom~~; and
 5. For a training program that is based within an assisted living facility:
 - a. Change in name of the facility. Former and new name of the assisted living facility; and
 - b. Change in ownership of the facility. Names of the former and current owners of the assisted living facility.

R4-33-603. Curriculum for Assisted Living Facility Manager Training Program

- A.** The owner of an assisted living facility manager training program shall ensure that the training program consists of at least 40 hours of ~~classroom~~ instruction.
- B.** The owner of an assisted living facility manager training program shall provide a written curriculum plan to each student that includes overall educational goals and for each required subject:
1. Measurable learner-centered objectives,
 2. Outline of the material to be taught,
 3. Time allotted to each unit of instruction, and

4. Learning activities or reading assignments.
- C. The owner of an assisted living facility manager training program shall ensure that the training program includes instruction regarding each of the following subjects:
 1. Resident services management. Developing policies and procedures regarding:
 - a. Resident rights and confidentiality;
 - b. Developing, implementing, and updating resident service plans;
 - c. Resident agreements;
 - d. Providing social and recreational services;
 - e. Maintaining resident records and managing documentation systems;
 - f. Managing ancillary services;
 - g. Responding to and reporting specific incidents, accidents, and emergencies involving residents;
 - h. Managing dining services to meet resident needs;
 - i. Preventing abuse, neglect, and exploitation;
 - j. Accepting and retaining residents; and
 - k. Developing systems for managing residents with dementia, Alzheimer's ~~Disease~~ disease, or difficult behaviors;
 2. Personnel management.
 - a. Complying with federal, state and local laws relating to hiring personnel;
 - b. Developing and implementing systems related to qualifying, orienting, training, and other recurring personnel requirements; and
 - c. Evaluating personnel;
 3. Medication management.
 - a. Developing and evaluating policies and procedures for:
 - i. Medication management including medical restraints; and
 - ii. Non-medication intervention; and
 - b. Developing systems for:
 - i. Receiving and documenting doctors' orders;
 - ii. Ordering, refilling, and storing medications; and
 - iii. Recordkeeping related to receipt and administration of medication; and
 4. Legal management.
 - a. Board-prescribed requirements for certification and re-certification,
 - b. Delegation,
 - c. Ethics,

- d. Advanced directives and do-not-resuscitate orders,
 - e. Standards of conduct under R4-33-407,
 - f. Department of Health Services compliance and complaint inspections:
 - i. Statement of deficiencies,
 - ii. Plan for correction, and
 - iii. Enforcement action; and
 - g. Risk management and quality improvement;
5. Financial management.
- a. Developing and implementing policies, procedures, and practices that comply with:
 - i. State and local laws; and
 - ii. Generally accepted accounting principles regarding accounts receivable, accounts payable, payroll, resident funds, and refunds;
 - b. Developing, implementing, and evaluating facility budgeting including revenues, expenses, capital expenditures, and long-term projections; and
 - c. Maintaining appropriate insurance coverage; and
6. Physical environment management.
- a. Complying with federal, state, and local laws regarding:
 - i. Occupational Safety and Health Administration,
 - ii. Americans with Disabilities Act, and
 - iii. Fire and safety requirements for assisted living facilities;
 - b. Preparedness for and prevention of fire, emergencies, and disasters;
 - c. Resident safety and security including evacuation, relocation, and transportation; and
 - d. Daily and preventative maintenance plans for buildings, equipment, and grounds.
- D.** The owner of an assisted living facility manager training program shall ensure that the training program provides a student with at least:
- 1. Eight hours of ~~classroom~~ instruction and skills practice in each of the subjects identified in subsections (C)(1) through (C)(4), and
 - 2. Four hours of ~~classroom~~ instruction and skills practice in each of the subjects identified in subsections (C)(5) and (C)(6).
- E.** The owner of an assisted living facility manager training program shall ensure that the training program uses textbooks that are relevant to the subjects being taught and have been published within the last five years.

R4-33-604. Application for Approval of an Assisted Living Facility Manager Training Program

- A. The owner of an assisted living facility manager training program shall ensure that no training is provided until the program is approved by the Board.
- B. To obtain approval of an assisted living facility manager training program, the owner of the training program shall submit to the Board an application packet that contains the following:
1. Name, address, telephone number, and e-mail address of the owner;
 2. Name, address, telephone and fax numbers, and web site of the training program;
 3. Form of business organization under which the training program is operated and a copy of the establishing documents and organizational chart;
 4. A statement of whether the training program is based within an assisted living facility or other location;
 5. Name, telephone number, and license or certificate number of the program administrator required under R4-33-602(B);
 6. Name, telephone number, and certificate number of each program instructor and evidence that each program instructor is qualified under R4-33-602(C);
 7. A statement of whether the training program is accredited and if so, name of the accrediting body and date of last review;
 8. For all assisted living facilities at which the training program will provide ~~classroom~~ instruction:
 - a. Name, address, and telephone number of the assisted living facility;
 - b. Name and telephone number of a contact person at the assisted living facility;
 - c. License number of the assisted living facility issued by the Department of Health Services;
 - d. A statement of whether the license of the assisted living facility is in good standing; and
 - e. Date and results of the most recent compliance inspection conducted by the Department of Health Services;
 9. Evidence of compliance with R4-33-602 and R4-33-603, including the following:
 - a. Written training program description, consistent with R4-33-602(A)(1), and an implementation plan that includes timelines;
 - b. Description of ~~classroom~~ instructional facilities, equipment, and ~~instructional~~ tools available, consistent with R4-33-602(D);
 - c. Written curriculum, consistent with R4-33-603(B);
 - d. Skills checklist used to verify whether a student has acquired the necessary assisted living facility manager skills, consistent with R4-33-602(A)(7)(a);
 - e. Evaluation form required under R4-33-602(A)(7)(b) to enable students to assess the quality of the ~~classroom~~ instructional experience provided by the training program;
 - f. Evidence of completion issued to a student under R4-33-602(A)(5);

- g. Name of textbook used, author, publication date, and publisher;
 - h. Name of any technology-based materials used, producer of the material, and date produced;
and
 - ~~h.i.~~ Copy of written policies and procedures required under R4-33-602(A)(3);
 - 10. Signature of the owner of the training program; and
 - 11. The fee prescribed under R4-33-104(C)(1).
- C.** The owner of an assisted living facility manager training program shall ensure that the application materials submitted under subsection (B) are printed on only one side of white, letter-sized paper, and are not bound in any manner.
- D.** After review of the materials submitted under subsection (B), the Board shall schedule an onsite evaluation of the training program and take one of the following actions:
- 1. If requirements are met, approve the training program for one year; or
 - 2. If requirements are not met, deny approval of the training program.
- E.** The owner of an assisted living facility manager training program that is denied approval by the Board may request a hearing regarding the denial by filing a written request with the Board within 30 days after service of the Board's order denying approval of the training program. The Board shall conduct hearings under A.R.S. Title 41, Chapter 6, Article 10.

R4-33-605. Renewal of Approval of an Assisted Living Facility Manager Training Program

- A.** The approval of an assisted living facility manager training program expires one year from the date of approval. If the approval of an assisted living facility manager training program expires, the owner of the training program shall immediately stop all training program activity.
- B.** To renew approval of an assisted living facility manager training program, the owner of the training program shall submit to the Board, no fewer than 60 and no more than 120 days before expiration of the current approval, an application packet that contains the following:
- 1. Name, address, e-mail, and telephone number of the owner;
 - 2. Name, address, telephone and fax numbers, and ~~web site~~ website of the training program;
 - 3. Name, telephone number, and license number of the program administrator required under R4-33-602(B);
 - 4. Name, telephone number, and license number of each program instructor and evidence that each program instructor is qualified under R4-33-602(C);
 - 5. Written training program description, consistent with R4-33-602(A)(1);
 - 6. Written curriculum, consistent with R4-33-603(B);
 - 7. Since the time the training program was last approved:

- a. Number of student-cohort classes to which training was provided,
 - b. Number of students who completed the training program,
 - c. Results obtained on the Board-approved written and skills examinations for each student, and
 - d. Percentage of students who passed the examinations on the first attempt;
8. For an assisted living facility at which the training program has started to provide ~~classroom~~ instruction since the training program was last approved, the information required under R4-33-604(B)(8);
 9. Evaluation form required under R4-33-602(A)(7)(b) to enable students to assess the quality of the ~~classroom~~ instructional experience provided by the training program;
 10. Summary of evaluations for each student cohort, required under R4-33-602(E)(1)(c), and measures taken, if any, to improve the training program based on student evaluations;
 11. Evidence of completion issued to a student under R4-33-602(A)(5);
 12. Name of textbook used, author, publication date, and publisher;
 13. Copy of written policies and procedures required under R4-33-602(A)(3);
 14. Signature of the owner of the program; and
 15. The fee prescribed under R4-33-104(C)(2).
- C.** After review of the materials submitted under subsection (B), the Board shall ensure that the training program is evaluated at either an onsite or telephonic meeting. The program owner shall ensure that the program owner, program administrator, and all instructors are available to participate in the evaluation meeting.
- D.** The Board shall ensure that each training program receives an onsite evaluation at least every four years. An onsite evaluation includes visiting each assisted living facility at which the training program provides ~~classroom~~ instruction.
- E.** If the Board approves a training program following an onsite evaluation, no deficiencies were identified during the onsite evaluation, and no complaints are filed with the Board, the Board shall evaluate the training program under subsection (C) using a telephonic meeting for at least two years.
- F.** After conducting the evaluation required under subsection (C), the Board shall:
1. Renew approval of a training program that the Board determines complies with R4-33-602 and R4-33-603, or
 2. Issue a notice of deficiency under R4-33-606 to the owner of a training program that the Board determines does not comply with R4-33-602 or R4-33-603.
- G.** The owner of an assisted living facility manager training program that is issued a notice of deficiency by the Board under subsection (F)(2) may request a hearing regarding the deficiency notice by filing a

written request with the Board within 30 days after service of the Board's order. The Board shall conduct hearings under A.R.S. Title 41, Chapter 6, Article 10.

ARTICLE 7. ASSISTED LIVING FACILITY CAREGIVER TRAINING PROGRAMS

R4-33-701. Definitions

In addition to the definitions in R4-33-601, the following definitions apply in this Article:

1. "CMA" means certified medication assistant, an LNA certified by the Arizona Board of Nursing under A.R.S. § 32-1650.02.
2. "CNA" means certified nursing assistant, an individual licensed by the Arizona Board of Nursing under A.R.S. § 32-1645.
3. "DCW" means direct-care worker, an individual who meets the standards and requirements specified in Section 1240(A) of the Arizona Health Care Cost Containment System policy manual.
4. ~~"Distance learning" means the use of technology to teach students who may or may not be physically present in a classroom.~~ "Instruction," as used in this Article, means the act of teaching knowledge and skills in a classroom or through the use of technology.
5. "LNA" means licensed nursing assistant, an individual licensed by the Arizona Board of Nursing under A.R.S. § 32-1645.
6. "Skills training" means experiential learning focused on acquiring the ability to provide caregiving services to residents.

R4-33-702. Minimum Standards for Assisted Living Facility Caregiver Training Program

A. Organization and administration. The owner of an assisted living facility caregiver training program shall:

1. Provide the Board with a written description of the training program that includes:
 - a. Length of the training program in hours:
 - i. Number of hours of ~~classroom~~ instruction, and
 - ii. Number of hours of skills training, and
 - iii. ~~Number of hours of distance learning, and~~
 - b. Educational goals that demonstrate the training program is consistent with state requirements;
2. Develop and adhere to written policies and procedures regarding:
 - a. Attendance. Ensure that a student receives at least 62 hours of instruction;

- b. Grading. Require a student to attain at least 75 percent on each knowledge examination or 75 percent on a comprehensive knowledge examination;
 - c. Reexamination. Inform students that a reexamination:
 - i. Addresses the same competencies examined in the original examination,
 - ii. Contains items different from those on the original examination, and
 - iii. Is documented in the student's record;
 - d. Student records. Include the following information:
 - i. Records maintained,
 - ii. Retention period for each record,
 - iii. Location of records,
 - iv. Documents required under subsections (G)(1) and (G)(2), and
 - v. Procedure for accessing records and who is authorized to access records;
 - e. Student fees and financial aid, if any;
 - f. Withdrawal and dismissal;
 - g. Student grievances including a chain of command for disputing a grade;
 - h. Admission requirements including any criminal background or drug testing required;
 - i. Criteria for training program completion; and
 - j. Procedure for documenting that a student has received notice of the fingerprint clearance card requirement before the student is enrolled;
3. Date each policy and procedure developed under subsection (A)(2), review within one year from the date made and every year thereafter, update if necessary, and date the policy or procedure at the time of each review;
 4. Provide each student who completes the training program with evidence of completion, within 15 days of completion, which includes the following:
 - a. Name of the student;
 - b. Name and ~~classroom~~ instruction location of the training program;
 - c. Total number of hours in the training program devoted to instruction;
 - ~~e.d.~~ Number of ~~classroom~~, hours in the training program devoted to skills training, and distance learning hours in the training program;
 - ~~d.e.~~ Date on which the training program was completed;
 - ~~e.f.~~ Board's approval number of the training program; and
 - ~~f.g.~~ Signature of the training program owner, administrator, or instructor;
 5. Provide the Board, within 15 days of completion, the following information regarding each student who completed the training program:

- a. Student's name, date of birth, Social Security number, address, and telephone number;
 - b. Student's examination score as provided by a Board-approved provider;
 - c. Name and ~~classroom~~ instruction location of the training program;
 - d. ~~Number~~ Total number of ~~classroom~~ instruction hours in the training program;
 - e. ~~Number of distance learning hours in the training program;~~
 - ~~f.e.~~ f. Number of skills training hours in the training program;
 - ~~g.f.~~ g. Date on which the training program was completed; and
 - ~~h.g.~~ h. Board's approval number of the training program; and
6. Execute and maintain under subsections (G)(1) and (G)(2) the following documents for each student:
- a. A skills checklist containing documentation the student achieved competency in the assisted living facility caregiver skills listed in R4-33-703(C),
 - b. A copy of the current food-handler's card issued to the student by the county in which the student lives, and
 - c. An evaluation form containing the student's responses to questions about the quality of the instructional experiences provided by the training program.
- B.** Program administrator responsibilities. The owner of an assisted living facility caregiver training program shall ensure that a program administrator performs the following responsibilities:
1. Supervises and evaluates the training program,
 2. Uses only instructors who are qualified under subsection (C), and
 3. Makes the written policies and procedures required under subsection (A)(2) available to each student on or before the first day of the training program;
- C.** The owner of an assisted living facility caregiver training program shall ensure that a program instructor is qualified under subsection (C)(1), (C)(2), or (C)(3):
1. Is a certified assisted living facility manager:
 - a. Holds an assisted living facility manager certificate that is in good standing and issued under A.R.S. Title 36, Chapter 4;
 - b. Has held the assisted living facility manager certificate referenced in subsection (C)(1)(a) for at least two years;
 - c. Has not been subject to disciplinary action against the assisted living facility manager certificate during the last two years; and
 - d. Has at least two years' experience within the last five years as an assisted living facility manager of record immediately before becoming a training program instructor;
 2. Is a licensed health professional:

- a. Holds a license that is in good standing and issued under A.R.S. Title 32, Chapter, 13, 15, 17, or 25;
 - b. Has held the health professional license referenced in subsection (C)(2)(a) for at least two years;
 - c. Has not been subject to disciplinary action against the health professional license during the last two years; and
 - d. Has at least two years' experience within the last five years in management, operation, or training in assisted living immediately before becoming a training program instructor; or
3. Other qualified individual:
- a. Holds at least a baccalaureate degree in a health-related field from an accredited college or university;
 - b. Has not been subject to disciplinary action against any professional or occupational license or certificate during the last two years; and
 - c. Has at least two years' experience within the last five years in management, operation, or training in assisted living immediately before becoming a training program instructor.
- D.** The owner of an assisted living facility caregiver training program shall ensure that a program instructor performs the following responsibilities:
1. Plans each learning experience,
 2. Accomplishes educational goals of the training program and lesson objectives,
 3. Enforces a grading policy that meets the requirement specified in subsection (A)(2)(b),
 4. Requires satisfactory performance of all critical elements of each assisted living facility caregiver skill specified under R4-33-703(C),
 5. Prevents a student from performing an activity unless the student has received instruction and been found able to perform the activity competently,
 6. Is present ~~in the classroom~~ during all instruction,
 - ~~7. Uses a maximum of 20 hours of distance learning,~~
 - ~~8.~~7. Supervises health professionals who assist in providing training program instruction, and
 - ~~9.~~8. Ensures that a health professional who assists in providing training program instruction:
 - a. Is licensed or certified as a health professional,
 - b. Has at least one year of experience in the field of licensure or certification, and
 - c. Teaches only a learning activity that is within the scope of practice of the field of licensure or certification.
- E.** Skill training requirements. The owner of an assisted living facility caregiver training program shall:
1. Provide each student with at least 12 hours of instructor-supervised skills training, and

2. Ensure that each student develops skill proficiency in the subjects listed in R4-33-703(C).
- F.** Instructional and educational resources. The owner of an assisted living facility caregiver training program shall provide, or provide access to, the following instructional and educational resources adequate to implement the training program for all students and staff:
1. Current reference materials related to the level of the curriculum;
 2. Equipment in functional condition for simulating resident care, including:
 - a. Patient bed, over-bed table, and nightstand;
 - b. Privacy curtain and call bell;
 - c. Thermometers, stethoscopes, including a teaching stethoscope, blood-pressure cuff, and balance scale;
 - d. Hygiene supplies, elimination equipment, drainage devices, and linens;
 - e. Hand-washing equipment and clean gloves; and
 - f. Wheelchair, gait belt, walker, anti-embolic hose, and cane;
 3. Computer in good working condition;
 4. Audio-visual equipment and media; and
 5. Designated space that provides a clean, distraction-free, learning environment for accomplishing educational goals of the training program;
- G.** Records. The owner of an assisted living facility caregiver training program shall:
1. Maintain the following training program records for three years:
 - a. Curriculum and course schedule for each student cohort;
 - b. Results of state-approved written examination and skills checklist;
 - c. Evaluation forms completed by students, a summary of the evaluation forms for each student cohort, and measures taken, if any, to improve the training program based on student evaluations; and
 - d. Copy of all Board reports, applications, or correspondence related to the training program; and
 2. Maintain the following student records for three years:
 - a. Name, date of birth, and Social Security number;
 - b. Completed skills checklist;
 - c. Attendance record including a record of any make-up class sessions;
 - d. Score on each test, quiz, and examination and, if applicable, whether a test, quiz, or examination was retaken;
 - e. Documentation from the program instructor indicating the:
 - i. Number of skills training hours completed by the student,

- ii. Student performance during the skills training, and
 - iii. Verification of ~~distance learning~~ total number of instruction hours completed by the student; and
- f. Copy of the evidence of completion issued to the student as required under subsection (A)(4);
- H.** Examination and evaluation requirements for students. The owner of an assisted living facility caregiver training program shall ensure each student in the training program:
 - 1. Takes an examination that covers each of the subjects listed in R4-33-703(C) and passes each examination using the standard specified in subsection (A)(2)(b);
 - 2. Is evaluated and determined to possess the practical skills listed in R4-33-703(C);
 - 3. Passes, using the standard specified in subsection (A)(2)(b), a final examination approved by the Board and given by a Board-approved provider; and
 - 4. Does not take the final examination referenced in subsection (H)(3) more than three times. If a student fails the final examination referenced in subsection (H)(3) three times, the student is able to obtain evidence of completion only by taking the assisted living facility caregiver training program again;
- I.** Examination passing standard. The owner of an assisted living facility caregiver training program shall attain an annual first-time passing rate of 70 percent for all students who take the examination specified under subsection (H)(3). The Board may waive this requirement for a program if fewer than 10 students took the examination during the year.
- J.** Periodic evaluation. The owner of an assisted living facility caregiver training program shall allow a representative of the Board or a state agency designated by the Board to conduct:
 - 1. A scheduled evaluation:
 - a. Before initial approval of the training program as specified under R4-33-704(D),
 - b. Before renewal of the training program approval as specified under R4-33-705(C), and
 - c. During a time of correction as specified under R4-33-706(B); and
 - 2. An onsite unscheduled evaluation of the training program if the evaluation is in response to a complaint or reasonable cause, as determined by the Board;
- K.** Notice of change. The owner of an assisted living facility caregiver training program shall provide the documentation and information specified regarding the following changes within 10 days after making the change:
 - 1. New training program administrator. Name and license number;
 - 2. New instructor. Name, license number, and evidence of being qualified under subsection (C);
 - 3. Decrease in number of training program hours. Description of and reason for the change, a revised curriculum outline, and revised course schedule;

4. Change in ~~classroom~~ location at which instruction is provided. Address and description of new location ~~and description of the new classroom~~; and
 5. For a training program that is based within an assisted living facility:
 - a. Change in name of the facility. Former and new name of the assisted living facility; and
 - b. Change in ownership of the facility. Names of the former and current owners of the assisted living facility.
- L.** Medication management training program. The owner of an assisted living facility caregiver training program may provide a medication management training program for a student who, at the time of admission, is in good standing and a CNA, LNA, or DCW. The owner shall ensure the medication management training program provides the ~~classroom~~ instruction listed in subsection R4-33-703(C)(14) and meets the standards in R4-33-703.1.

R4-33-703. Curriculum for Assisted Living Facility Caregiver Training Program

- A.** The owner of an assisted living facility caregiver training program shall ensure that the training program consists of at least 62 hours ~~of instruction~~ including:
1. Fifty hours of ~~classroom~~ instruction, ~~of which a maximum of 20 hours may be provided by distance learning~~, and
 2. Twelve hours of instructor-supervised skills training.
- B.** The owner of an assisted living facility caregiver training program shall provide a written curriculum plan to each student that includes overall educational goals and for each required subject:
1. Measurable learner-centered objectives,
 2. Outline of the material to be taught,
 3. Time allotted to each unit of instruction, and
 4. Learning activities or reading assignments.
- C.** The owner of an assisted living facility caregiver training program shall ensure the training program includes ~~classroom~~ instruction and skills training regarding each of the following subjects:
1. Orientation to and overview of the assisted living facility caregiver training program (at least one ~~classroom~~ hour of instruction).
 - a. Levels of care within an assisted living facility, and
 - b. Impact of each level of care on residents;
 2. Legal and ethical issues and resident rights (at least two ~~classroom~~ hours of instruction).
 - a. Confidentiality (HIPAA);
 - b. Ethical principles;
 - c. Resident rights specified in R9-10-710;

- d. Abuse, neglect, and exploitation;
 - e. Mandatory reporting; and
 - f. Do-not-resuscitate order and advanced directives;
3. Communication and interpersonal skills (at least two ~~classroom~~ hours of instruction).
- a. Components of effective communication,
 - b. Styles of communication,
 - c. Attitude in communication,
 - d. Barriers to effective communication:
 - i. Culture,
 - ii. Language, and
 - iii. Physical and mental disabilities, and
 - e. Techniques of communication;
4. Job management skills (at least one ~~classroom~~ hour of instruction).
- a. Stress management, and
 - b. Time management;
5. Service plans (at least two ~~classroom~~ hours of instruction). Developing, using, and maintaining resident service plans;
6. Infection control (at least three ~~classroom~~ hours of instruction).
- a. Common types of infectious diseases,
 - b. Preventing infection,
 - c. Controlling infection:
 - i. Washing hands,
 - ii. Using gloves, and
 - iii. Disposing of sharps and other waste;
7. Nutrition and food preparation (at least two ~~classroom~~ hours of instruction).
- a. Basic nutrition;
 - b. Menu planning and posting;
 - c. Procuring, handling, and storing food safely; and
 - d. Special diets;
8. Fire, safety, and emergency procedures (at least two ~~classroom~~ hours of instruction).
- a. Emergency planning,
 - b. Medical emergencies,
 - c. Environmental emergencies,
 - d. Fire safety,

- e. Fire drills and evacuations, and
 - f. Fire-code requirements;
9. Home environment and maintenance (at least two ~~classroom~~ hours of instruction).
- a. Housekeeping,
 - b. Laundry, and
 - c. Physical plant;
10. Basic caregiver skills (at least eight ~~classroom~~ hours of instruction).
- a. Taking vital signs and measuring height and weight;
 - b. Maintaining a resident's environment;
 - c. Observing and reporting pain;
 - d. Assisting with diagnostic tests;
 - e. Providing assistance to residents with drains and tubes;
 - f. Recognizing and reporting abnormal changes to a supervisor;
 - g. Applying clean bandages;
 - h. Providing peri-operative care;
 - i. Assisting ambulation of residents including transferring and using assistive devices;
 - j. Bathing, caring for skin, and dressing;
 - k. Caring for teeth and dentures;
 - l. Shampooing and caring for hair;
 - m. Caring for nails;
 - n. Toileting, caring for perineum, and caring for ostomy;
 - o. Feeding and hydration including proper feeding techniques and use of assistive devices in feeding;
 - p. Preventing pressure sores; and
 - q. Maintaining and treating skin;
11. Mental health and social service needs (at least three ~~classroom~~ hours of instruction).
- a. Modifying the caregiver's behavior in response to resident behavior,
 - b. Understanding the developmental tasks associated with the aging process,
 - c. Responding to resident behavior,
 - d. Promoting resident dignity,
 - e. Providing culturally sensitive care,
 - f. Caring for the dying resident, and
 - g. Interacting with the resident's family;
12. Care of the cognitively impaired resident (at least four ~~classroom~~ hours of instruction).

- a. Anticipating and addressing the needs and behaviors of residents with dementia or Alzheimer's disease,
 - b. Communicating with cognitively impaired residents,
 - c. Understanding the behavior of cognitively impaired residents, and
 - d. Reducing the effects of cognitive impairment;
13. Skills for basic restorative services (at least two ~~classroom~~ hours of instruction).
- a. Understanding body mechanics;
 - b. Assisting resident self-care;
 - c. Using assistive devices for transferring, walking, eating, and dressing;
 - d. Assisting with range-of-motion exercises;
 - e. Providing bowel and bladder training;
 - f. Assisting with care for and use of prosthetic and orthotic devices; and
 - g. Facilitating family and group activities; and
14. Medication management (at least 16 ~~classroom~~ hours of instruction).
- a. Determining whether a resident needs assistance with medication administration and if so, the nature of the assistance;
 - b. Assisting a resident to self-administer medication;
 - c. Observing, documenting, and reporting changes in resident condition before and after medication is administered;
 - d. Knowing the rights of a resident regarding medication administration;
 - e. Knowing classifications of and responses to medications;
 - f. Taking, reading, and implementing a physician's medication and treatment orders;
 - g. Storing medication properly and securely;
 - h. Documenting medication and treatment services;
 - i. Maintaining records of medication and treatment services;
 - j. Using medication organizers properly;
 - k. Storing and documenting use of narcotic drugs and controlled substances;
 - l. Understanding how metabolism and physical conditions affect medication absorption;
 - m. Knowing the proper administration of all forms of medication;
 - n. Using drug-reference guides (Physician's Desk Reference); and
 - o. Preventing, identifying, documenting, reporting, and responding to medication errors.
- D.** The owner of an assisted living facility caregiver training program shall ensure that the training program provides a student with at least the number of:

1. ~~Provides a student with at least the number of classroom hours~~ Hours of instruction specified in subsection (C); and
 2. ~~Subject to the limitations specified, uses distance learning for a maximum of 20 hours only for the classroom hours specified in subsections (C)(1) through (C)(9), (C)(11) and (C)(12):~~
 - a. ~~Only one of the classroom hours specified in subsection (C)(6) may be taught by distance learning; and~~
 - b. ~~Only two of the classroom hours specified in subsection (C)(12) may be taught by distance learning.~~
- 3.2. ~~Provides a student with at least the number of skills~~ Instructor-supervised skills training hours specified in subsection ~~(A)(2)~~ (A).
- E. The owner of an assisted living facility caregiver training program shall ensure that the training program uses textbooks that are relevant to the subjects being taught and have been published within the last five years.
- F. The owner of an assisted living facility caregiver training program shall ensure that any distance learning provided uses materials that are relevant to the subjects being taught and have been produced within the last five years.

R4-33-703.1. Minimum Standards and Curriculum for an Assisted Living Facility Caregiver Medication Management Training Program

- A. An assisted living facility caregiver medication management training program may be established by:
1. The owner or manager of an assisted living facility, or
 2. The owner of an assisted living facility caregiver training program.
- B. A person under subsection (A) may offer an assisted living facility caregiver medication management training program to:
1. A CNA who is in good standing and whose certification by the Arizona Board of Nursing under A.R.S. § 32-1645 is verified;
 2. An LNA who is in good standing and whose licensure by the Arizona Board of Nursing under A.R.S. § 32-1645 is verified; and
 3. A DCW who is in good standing and whose training, including training about caregiving fundamentals and aging and physical disabilities, and testing record is verified through the AHCCCS online database.

- C. A person under subsection (A) that offers an assisted living facility caregiver medication management training program to individuals specified under subsection (B) shall ensure the assisted living facility caregiver medication management training program:
1. Consists of at least the 16 ~~classroom~~ hours of instruction specified under R4-33-703(C)(14);
 2. ~~Is not taught by distance learning;~~
 3. 2. Is taught by a health professional who holds a license in good standing and issued under A.R.S. Title 32, Chapter 13, 15, 17, 18, or 25; and
 4. 3. Requires passing an examination regarding assisted living facility caregiver medication management, using the standard specified in R4-33-702(A)(2)(b), that is approved by the Board and given by a Board-approved provider. An individual under subsection (B) shall pass the required examination in no more than three attempts. After failing three times, the individual may take the assisted living facility caregiver medication management program again.
- D. In addition to complying with subsection (C), a person under subsection (A) shall ensure each individual under subsection (B) who participates in an assisted living facility caregiver medication management training program:
1. Receives notice, before participating in the training program, of:
 - a. The fingerprint clearance card requirement, and
 - b. The need to obtain a food-handler's card from the county in which the individual lives.
 2. Provides written documentation, which is dated and signed, indicating the person under subsection (A) complied with subsection (D)(1). The person under subsection (A) shall maintain the written documentation under R4-33-702(G)(2).
- E. In addition to complying with subsection (C), a person under subsection (A) that offers an assisted living facility caregiver medication management training program to individuals specified under subsection (B) shall comply with the following subsections of R4-33-702:
1. (A)(4)(a), (b), and (d) through (f);
 2. (A)(5)(a) through (d), (g), and (h);
 3. (A)(6)(b) and (c);
 4. (G)(1)(b) through (d);
 5. (G)(2)(a), (c), (d), and (f);
 6. (I) and
 7. (J).

R4-33-704. Application for Approval of an Assisted Living Facility Caregiver Training Program

- A. The owner of an assisted living facility caregiver training program shall ensure no training is provided until the program is approved by the Board.
- B. To obtain approval of an assisted living facility caregiver training program, the owner of the training program shall submit to the Board an application packet that contains the following:
1. Name, address, telephone number, and e-mail address of the owner;
 2. Name, address, telephone and fax numbers, and ~~web site~~ website of the training program;
 3. Form of business organization under which the training program is operated and a copy of the establishing documents and organizational chart;
 4. A statement of whether the training program is based within an assisted living facility or other location;
 5. Name, telephone number, e-mail address, and license or certificate number of the program administrator required under R4-33-702(B);
 6. Name, telephone number, e-mail address, and license number of each program instructor and evidence each program instructor is qualified under R4-33-702(C);
 7. A statement of whether the training program is accredited and if so, name of the accrediting body and date of last review;
 8. For all assisted living facilities at which the training program will provide instruction:
 - a. Name, address, and telephone number of the assisted living facility;
 - b. Name, e-mail address, and telephone number of a contact person at the assisted living facility;
 - c. License number of the assisted living facility issued by the Department of Health Services;
 - d. A statement of whether the license of the assisted living facility is in good standing; and
 - e. Date and results of the most recent compliance inspection conducted by the Department of Health Services;
 9. Evidence of compliance with R4-33-702 and R4-33-703, including the following:
 - a. Written training program description, consistent with R4-33-702(A)(1), and an implementation plan that includes timelines;
 - b. Description of ~~classroom~~ instructional facilities, equipment, and ~~instructional~~ tools available, consistent with R4-33-702(F);
 - c. Written curriculum, consistent with R4-33-703(C);
 - d. Skills checklist used to verify whether a student has acquired the necessary assisted living facility caregiver skills, consistent with R4-33-702(A)(6)(a);
 - e. Evaluation form required under R4-33-702(A)(6)(c) to enable students to assess the quality of the instructional experience provided by the training program;

- f. Evidence of completion issued to a student under R4-33-702(A)(4);
 - g. Name of textbook used, author, publication date, and publisher;
 - h. Name of any ~~distance learning~~ technology-based materials used, producer of the material, and date produced; and
 - i. Copy of written policies and procedures required under R4-33-702(A)(2);
10. Signature of the owner of the training program; and
11. The fee prescribed under R4-33-104(D)(1).
- C.** The owner of an assisted living facility caregiver training program shall ensure the application materials submitted under subsection (B) are printed on only one side of white, letter-sized paper, and are not bound in any manner.
- D.** After review of the materials submitted under subsection (B), the Board shall schedule an onsite evaluation of the training program and take one of the following actions:
- 1. If requirements are met, approve the training program for one year; or
 - 2. If requirements are not met, deny approval of the training program.
- E.** The owner of an assisted living facility caregiver training program denied approval by the Board may request a hearing regarding the denial by filing a written request with the Board within 30 days after service of the Board's order denying approval of the training program. The Board shall conduct hearings under A.R.S. Title 41, Chapter 6, Article 10.

R4-33-705. Renewal of Approval of an Assisted Living Facility Caregiver Training Program

- A.** The approval of an assisted living facility caregiver training program expires one year from the date of approval. If the approval of the training program expires, the owner of the training program shall immediately stop all training program activity.
- B.** To renew approval of an assisted living facility caregiver training program, the owner of the training program shall submit to the Board, no fewer than 60 and no more than 120 days before expiration of the current approval, an application packet that contains the following:
- 1. Name, address, telephone number, and e-mail address of the owner;
 - 2. Name, address, telephone and fax numbers, and ~~web site~~ website of the training program;
 - 3. Name, telephone number, e-mail address, and license number of the program administrator required under R4-33-702(B);
 - 4. Name, telephone number, e-mail address, and license number of each program instructor and evidence each program instructor is qualified under R4-33-702(C);
 - 5. Written training program description, consistent with R4-33-702(A)(1);
 - 6. Written curriculum, consistent with R4-33-703(C);

7. Since the time the training program was last approved:
 - a. Number of student-cohort classes to which training was provided,
 - b. Number of students who completed the training program,
 - c. Results obtained on the Board-approved written examination and skills checklist for each student, and
 - d. Percentage of students who passed the examination on the first attempt;
 8. For an assisted living facility at which the training program has started to provide instruction since the training program was last approved, the information required under R4-33-704(B)(8);
 9. Evaluation form required under R4-33-702(A)(6)(c) to enable students to assess the quality of the instructional experience provided by the training program;
 10. Summary of evaluations for each student cohort, required under R4-33-702(G)(1)(c), and measures taken, if any, to improve the training program based on student evaluations;
 11. Evidence of completion issued to a student under R4-33-702(A)(4);
 12. Name of textbook used, author, publication date, and publisher;
 13. Name of any ~~distance learning~~ technology-based materials used, producer of the material, and date produced;
 14. Copy of written policies and procedures required under R4-33-702(A)(2);
 15. Signature of the owner of the training program; and
 16. The fee prescribed under R4-33-104(D)(2).
- C.** After review of the materials submitted under subsection (B), the Board shall ensure the training program is evaluated at either an onsite or telephonic meeting. The program owner shall ensure the program owner, program administrator, and all instructors are available to participate in the evaluation meeting.
- D.** The Board shall ensure each training program receives an onsite evaluation at least every four years. An onsite evaluation includes visiting each assisted living facility at which the training program provides instruction.
- E.** If the Board approves a training program following an onsite evaluation, no deficiencies were identified during the onsite evaluation, and no complaints are filed with the Board, the Board shall evaluate the training program under subsection (C) using a telephonic meeting for at least two years.
- F.** After conducting the evaluation required under subsection (C), the Board shall:
1. Renew approval of a training program the Board determines complies with R4-33-702 and R4-33-703, or
 2. Issue a notice of deficiency under R4-33-706 to the owner of a training program the Board determines does not comply with R4-33-702 or R4-33-703.

- G.** The owner of an assisted living facility training program issued a notice of deficiency by the Board under subsection (F)(2) may request a hearing regarding the deficiency notice by filing a written request with the Board within 30 days after service of the Board's order. The Board shall conduct hearings under A.R.S. Title 41, Chapter 6, Article 10.

R4-33-707. Minimum Standards for an Assisted Living Facility On-the-job Caregiver Training Program

A. In this Section:

1. "Direct supervision" has the same meaning as specified at A.R.S. § 36-446.16(C).
2. "Five years of experience," as used in A.R.S. § 36-446.16(A)(1)(a)(v), means a certified assisted living facility manager has been the manager of record for at least five years at an assisted living facility.
3. "Manager of record" means a certified assisted living facility manager for whom notice of appointment is provided under R4-33-410.
4. "OTJ" means on-the-job, a form of training that provides an employee with knowledge and skills essential to adequate job performance.

B. Before implementing an OTJ training program, the owner of the assisted living facility at which the OTJ training program will be implemented shall apply to the Board to have the OTJ training program approved.

C. To apply for Board approval under subsection (B), the owner of the assisted living facility shall submit an application packet that contains:

1. Name, address, telephone number, and e-mail address of the owner of the assisted living facility;
2. Name, telephone number, e-mail address, and certificate number of the assisted living facility manager of record;
3. A statement of who will be responsible for providing oversight of the OTJ training program. If oversight will be provided by someone other than the owner or manager of record, the name, telephone number, e-mail address, and occupational license number of the individual who will be responsible;
4. License number of the assisted living facility at which the OTJ training program will be provided;
5. A written description of the OTJ training program that includes:
 - a. A statement of pre-requisites for being employed by the assisted living facility and becoming a participant in the OTJ training program including any criminal background or drug testing required;

- b. An acknowledgment that the OTJ training program will be provided only to individuals who:
 - i. Are employed at the assisted living facility;
 - ii. Are being paid and receiving the same benefits as other caregivers employed at the assisted living facility;
 - iii. Have a valid fingerprint clearance card; and
 - iv. Have a current food-handler's card issued by the county in which the individual lives;
 - c. A statement of whether any hours of the OTJ training program will involve classroom instruction and if so, the number of hours and curriculum subjects, as specified in R4-33-703(C), that will be taught by classroom instruction;
 - d. An acknowledgment that ~~none of the~~ all hours of the OTJ training program will be taught ~~by distance learning~~ only to students who are physically present at the assisted living facility;
 - e. An acknowledgment that the OTJ training program will consist of at least 62 hours of training covering all the curriculum subjects specified in R4-33-703(C); and
 - f. An acknowledgment that the OTJ training program complies with A.R.S. § 36-446.16(A)(1)(v) regarding direct supervision of the OTJ training program by the manager of record.
6. A copy of the license or certificate, as specified in A.R.S. § 36-446.16(A)(1), of each health professional who will provide direct supervision of the OTJ training program;
 7. A copy of written policies and procedures regarding:
 - a. Ensuring each individual in the OTJ training program receives at least 62 hours of training covering all the curriculum subjects specified in R4-33-703(C);
 - b. Examining and evaluating each individual as specified in R4-33-702(H);
 - c. Maintaining records of the OTJ training provided to each individual as specified in R4-33-702(A)(2)(d);
 - d. Termination of or quitting by an individual participating in the OTJ training program;
 - e. Criteria for completing the OTJ training program and procedure for ensuring each individual in the OTJ training program is informed of the criteria; and
 - f. Frequency and documentation of updating the written policies and procedures;
 8. A copy of a skills checklist used to verify that each individual in the OTJ training program acquires the skills listed in R4-33-703(C) and necessary to function competently as an assisted living facility caregiver;
 9. A copy of the evidence of completion provided within 15 days to each individual who completes the OTJ training program;

10. A copy of the written information provided to each individual in the OTJ training program regarding how and to whom to submit a complaint regarding a grade, quality of training, failure to comply with this Section, discrimination, termination, or other issue;
 11. The fee specified at R4-33-104(D); and
 12. Signature of the owner of the assisted living facility at which the OTJ training program will be provided attesting that the information provided is complete and accurate.
- D.** After receiving Board approval of the OTJ training program, the owner of the assisted living facility for which the approval was provided shall ensure the following responsibilities are performed:
1. Within 15 days after an individual completes the OTJ training program, provide to the Board the information specified in R4-33-702(A)(5)(a), (b), (g), and (h); and
 2. Maintain the following records in the caregiver's permanent employee file:
 - a. A copy of the caregiver's fingerprint clearance card and food-handler's card required under subsection (C)(5);
 - b. Written documentation, signed by and with the license number of the health professional providing direct supervision, of each hour of OTJ training provided to the caregiver;
 - c. A copy of the caregiver's completed skills checklist required under subsection (C)(8);
 - d. Results of the state-approved written examination taken by the caregiver showing the caregiver achieved the grade specified in R4-33-702(A)(2)(b);
 - e. Copy of the evidence of completion issued to the caregiver with the caregiver's signed and dated acknowledgment of receipt; and
 - f. A copy of any complaint submitted by the caregiver and records showing how the complaint was resolved.
- E.** The owner of an assisted living facility with a Board-approved OTJ training program shall allow the Board to conduct periodic evaluation, as described in R4-33-702(J), of the OTJ training program.
- F.** The approval of an OTJ training program expires one year after the date of approval. If the approval expires, the owner of the assisted living facility shall ensure the OTJ training program ceases. To renew approval of the OTJ training program, the owner of the assisted living facility shall submit to the Board a renewal application packet, which is available on the Board's ~~web site~~ website, and the fee specified under R4-33-104(D).
- G.** The provisions of R4-33-706 are applicable to an OTJ training program.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT¹

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 33. BOARD OF EXAMINERS OF NURSING CARE INSTITUTION

ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS

1. Identification of the rulemaking:

During the 2020 pandemic lockdown and in response to the Governor's emergency order, the Board allowed owners of assisted living facility training programs to deviate from the rule requirement regarding hours of instruction in a classroom or using technology. The deviation applied to training programs for both managers and caregivers. Based on examination results and requests from owners of assisted living facility training programs, the Board has determined the distinction between instruction in a classroom and using technology can be eliminated.

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

Until the rulemaking is completed, the distinction between hours of instruction in a classroom or using technology will remain as an unnecessary regulatory burden for assisted living facility training programs for managers and caregivers.

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:

It's not good government for an agency to impose unnecessary burdens on the way in which businesses choose to operate.

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

When the rulemaking is completed, owners of training programs will be free to provide programs using instruction in a classroom, technology, or any combination of the two.

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

The rulemaking will have a positive economic impact for owners of assisted living facility training programs who will be able to rely more on technology-based instruction to implement training programs. The rulemaking may change the nature of an instructor's responsibilities but should have no economic impact on an instructor.

¹ If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: John Confer, Executive Director

Address: Board of Examiners for Nursing Care Administrators and Assisted Living
Facility Managers
1740 West Adams Street, Suite 2490
Phoenix, AZ 85007

Telephone: (602) 364-2374

E-mail: john.confer@aznciaboard.us

Website: nciaboard.az.gov

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

Owners of assisted living facility training programs, instructors in the training programs, and the Board will be directly affected by, bear the costs of, and directly benefit from the rulemaking.

There are currently 60 approved assisted living facility training programs, 16 are for managers and 44 are for caregivers. During the 2020 pandemic lockdown and in response to the Governor's emergency order, the Board allowed owners of assisted living facility training programs to deviate from the rule requirement regarding hours of instruction in a classroom or using technology for both manager and caregiver training programs. During that emergency period, approximately 60 to 70 percent of training programs were conducted using technology. Because the emergency period ended, the training programs have reverted, as specified in rule, to providing a maximum of 20 hours of training using technology. However, as the following data show, use of technology did not negatively affect the rate at which students passed the final examination on first taking. As a result, the Board has determined the restriction on hours of training by technology is an unnecessary burden for owners of the training programs.

Caregiver First-time Pass Rate

	2018	2019	2020	2021	2022
Students tested	2209	2538	2446	2439	2465
Pass rate	80%	81%	81%	83%	85%

Manager First-time Pass Rate

	2018	2019	2020	2021	2022
Students tested	331	387	407	383	360
Pass rate	83%	80%	83%	85%	82%

An increased use of technology will enable owners of assisted living facility training programs to reach students in more remote areas and will benefit those students unable or unwilling to commute to in-person classes. This may expand the availability of critically needed managers and caregivers.

The Board does not have data regarding the number of instructors providing instruction in assisted living facility training programs. Because an instructor is required to be present during all instruction, including that provided using technology (See R4-33-602(C)(2)(f) and (R4-33-702(D)(6))), it is likely the rulemaking will not have an economic impact on instructors. Even if a course is offered exclusively using technology, an instructor is required to be available to answer student questions and offer assistance preparing for examinations.

The Board incurred the cost of completing this rulemaking and will incur the cost of implementing it. The Board benefits from removing an unnecessary regulatory burden.

5. Cost-benefit analysis:

- a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

The Board is the only state agency directly affected by the rulemaking. Its costs and benefits are discussed in item 4.

b. Costs and benefits to political subdivisions directly affected by the rulemaking:

No political subdivision is directly affected by the rulemaking.

c. Costs and benefits to businesses directly affected by the rulemaking:

Owners of assisted living facility training programs are businesses directly affected by the rulemaking. Their costs and benefits are discussed in item 4.

6. Impact on private and public employment:

There will be no impact on public employment.

7. Impact on small businesses²:

a. Identification of the small business subject to the rulemaking:

Owners of assisted living facility training programs are small businesses subject to the rulemaking.

b. Administrative and other costs required for compliance with the rulemaking:

The rulemaking results in no new administrative or other costs associated with compliance. There are, however, numerous existing administrative and other costs such as:

- Adhering to Board established standards for training programs;
- Using the Board established curriculum;
- Submitting an application for approval of a training program;
- Renewing the approval of a training program annually; and
- Paying a fee for both initial and renewal approval.

c. Description of methods that may be used to reduce the impact on small businesses:

Because all owners of assisted living facility training programs are small businesses, it is not possible to reduce the impact of the rulemaking on small businesses.

Additionally, the Board has done the rulemaking in response to requests from owners to eliminate an unnecessary regulatory burden.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

No private person or consumer is directly affected by the rulemaking.

9. Probable effects on state revenues:

The rulemaking will have no effect on state revenues.

10. Less intrusive or less costly alternative methods considered:

The rulemaking, which eliminates an unnecessary regulatory burden, is neither intrusive nor costly. No alternative was considered.

² Small business has the meaning specified in A.R.S. § 41-1001(23).

§ R4-33-601. Definitions

"Owner" means the person responsible for ensuring that an assisted living facility training program complies with this Article.

"Resident" means an individual who lives in an assisted living facility.

"Student cohort" means a group of individuals who begin participation in an assisted living facility training program at the same time.

History:

New Section made by final rulemaking at 19 A.A.R. 1619, effective August 4, 2013 (Supp. 13-2).

**§ R4-33-602. Minimum Standards for Assisted Living Facility
Manager Training Program**

A. Organization and administration. The owner of an assisted living facility manager training program shall:

1. Provide the Board with a written description of the training program that includes:

a. Length of the training program in hours and days, and

b. Educational goals that demonstrate the training program is consistent with state requirements;

2. Execute a written agreement with each assisted living facility at which students enrolled in the training program receive training that includes the following information:

a. The rights and responsibilities of both the facility and the training program,

b. The role and authority of the governing bodies of both the facility and the training program, and

c. A termination clause that provides time for students enrolled in the training program to complete training at the facility upon termination of the agreement;

3. Develop and adhere to written policies and procedures regarding:

a. Attendance. Ensure that a student receives at least 40 hours of instruction;

b. Grading. Require a student to attain at least 75 percent on each theoretical examination or 75 percent on a comprehensive theoretical examination;

c. Reexamination. Inform students that a reexamination:

i. Addresses the same competencies examined in the original examination,

ii. Contains items different from those on the original examination, and

iii. Is documented in the student's record;

d. Student records. Include the following information:

i. Records maintained,

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- ii. Retention period for each record,
- iii. Location of records,
- iv. Documents required under subsections (E)(1) and (E)(2), and
- v. Procedure for accessing records and who is authorized to access records;
- e. Student fees and financial aid, if any;
- f. Withdrawal and dismissal;
- g. Student grievances including a chain of command for disputing a grade;
- h. Admission requirements including any criminal background or drug testing required;
- i. Criteria for training program completion; and
- j. Procedure for documenting that before a student is enrolled, the student has received notice of Board requirements for certification, including:
 - i. The fingerprint clearance card requirement;
 - ii. The full set of fingerprints and state and federal criminal history records check requirement; and
 - iii. The disqualification of a conviction for a felony involving violence or financial fraud.
- 4. Date each policy and procedure developed under subsection (A)(3), review within one year from the date made and every year thereafter, update if necessary, and date the policy or procedure at the time of each review;
- 5. Provide each student who completes the training program with evidence of completion, within 15 days of completion, which includes the following:
 - a. Name of the student;
 - b. Name and classroom location of the training program;
 - c. Number of classroom hours in the training program;
 - d. Date on which the training program was completed;
 - e. Board's approval number of the training program; and
 - f. Signature of the training program owner, administrator, or instructor;

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6. Provide the Board, within 15 days of completion, the following information regarding each student who completed the training program:

- a. Student's name, date of birth, Social Security number, address, and telephone number;
- b. Student's examination scores as provided by the examining entity;
- c. Name and classroom location of the training program;
- d. Number of classroom hours in the training program;
- e. Date on which the training program was completed; and
- f. Board's approval number of the training program; and

7. Execute and maintain under subsections (E)(1) and (E)(2) the following documents for each student:

a. A skills checklist containing documentation the student achieved competency in the assisted living facility manager skills listed in R4-33-603(C), and

b. An evaluation form containing the student's responses to questions about the quality of the classroom experiences provided by the training program.

B. Program administrator responsibilities. The owner of an assisted living facility manager training program shall ensure that a program administrator performs the following responsibilities:

1. Supervises and evaluates the training program,
2. Uses only instructors who are qualified under subsection (C), and
3. Makes the written policies and procedures required under subsection (A)(3) available to each student on or before the first day of the training program;

C. The owner of an assisted living facility manager training program shall ensure that a program instructor:

1. Is a certified assisted living facility manager who:
 - a. Holds an assisted living facility manager certificate that is in good standing and issued under A.R.S. Title 36, Chapter 4;

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- b. Has held the assisted living facility manager certificate referenced in subsection (C)(1)(a) for at least five years;
 - c. Has not been subject to any disciplinary action against the assisted living facility manager certificate during the last five years; and
 - d. Has at least three years' experience within the last five years as an assisted living facility manager of record immediately before becoming a training program instructor;
2. Performs the following responsibilities:
- a. Plans each learning experience,
 - b. Accomplishes educational goals of the training program and lesson objectives,
 - c. Enforces a grading policy that meets the requirement specified in subsection (A)(3)(b),
 - d. Requires satisfactory performance of all critical elements of each assisted living facility manager skill specified under R4-33-603(C),
 - e. Prevents a student from performing an activity unless the student has received instruction and been found able to perform the activity competently,
 - f. Is present in the classroom during all instruction,
 - g. Supervises health-care professionals who assist in providing training program instruction, and
 - h. Ensures that a health-care professional who assists in providing training program instruction:
 - i. Is licensed or certified as a health-care professional,
 - ii. Has at least one year of experience in the field of licensure or certification, and
 - iii. Teaches only a learning activity that is within the scope of practice of the field of licensure or certification.
- D. Instructional and educational resources. The owner of an assisted living facility manager training program shall provide or provide access to the following instructional and educational resources adequate to implement the training program for all students and staff:

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1. Current reference materials related to the level of the curriculum;
 2. Equipment, including computers, in good working condition to simulate facility management;
 3. Audio-visual equipment and media; and
 4. Designated space that provides a clean, distraction-free, learning environment for accomplishing educational goals of the training program;
- E. The owner of an assisted living facility manager training program shall:
1. Maintain the following training program records for three years:
 - a. Curriculum and course schedule for each student cohort;
 - b. Results of state-approved written and manual skills testing;
 - c. Evaluation forms completed by students, a summary of the evaluation forms for each student cohort, and measures taken, if any, to improve the training program based on student evaluations; and
 - d. Copy of all Board reports, applications, or correspondence related to the training program; and
 2. Maintain the following student records for three years:
 - a. Name, date of birth, and Social Security number;
 - b. Completed skills checklist;
 - c. Attendance record including a record of any make-up class sessions;
 - d. Score on each test, quiz, and examination and, if applicable, whether a test, quiz, or examination was retaken; and
 - e. Copy of the certificate of completion issued to the student as required under subsection (A)(5);
- F. Examination and evaluation requirements. The owner of an assisted living facility manager training program shall ensure that each student in the training program:
1. Takes an examination that covers each of the subjects listed in R4-33-603(C) and passes each examination using the standard specified in subsection (A)(3)(b);

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2. Is evaluated and determined to possess the practical skills listed in R4-33-603(C);

3. Passes, using the standard specified in subsection (A)(3)(b), a final examination approved by the Board and given by a Board-approved provider; and

4. Does not take the final examination referenced in subsection (F)(3) more than two times. If a student fails the final examination referenced in subsection (F)(3) two times, the student is able to obtain evidence of completion only by taking the assisted living facility manager training program again;

G. Periodic evaluation. The owner of an assisted living facility manager training program shall allow a representative of the Board or a state agency designated by the Board to conduct:

1. An onsite scheduled evaluation:

a. Before initial approval of the training program as specified under R4-33-604(D),

b. Before renewal of the training program approval as specified under R4-33-605, and

c. During a time of correction as specified under R4-33-606(B); and

2. An onsite unscheduled evaluation of the training program if the evaluation is in response to a complaint or reasonable cause, as determined by the Board; and

H. Notice of change. The owner of an assisted living facility manager training program shall provide the documentation and information specified regarding the following changes within 10 days after making the change:

1. New training program administrator. Name and license number;

2. New instructor. Name, license number, and evidence of being qualified under subsection (C)(1);

3. Decrease in number of training program hours. Description of and reason for the change, a revised curriculum outline, and revised course schedule;

4. Change in classroom location. Address of new location and description of the new classroom; and

5. For a training program that is based within an assisted living facility:

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- a. Change in name of the facility. Former and new name of the assisted living facility; and
- b. Change in ownership of the facility. Names of the former and current owners of the assisted living facility.

History:

New Section made by final rulemaking at 19 A.A.R. 1619, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 29 A.A.R. 642, effective 2/13/2023.

**§ R4-33-603. Curriculum for Assisted Living Facility Manager
Training Program**

A. The owner of an assisted living facility manager training program shall ensure that the training program consists of at least 40 hours of classroom instruction.

B. The owner of an assisted living facility manager training program shall provide a written curriculum plan to each student that includes overall educational goals and for each required subject:

1. Measurable learner-centered objectives,
2. Outline of the material to be taught,
3. Time allotted to each unit of instruction, and
4. Learning activities or reading assignments.

C. The owner of an assisted living facility manager training program shall ensure that the training program includes instruction regarding each of the following subjects:

1. Resident services management. Developing policies and procedures regarding:
 - a. Resident rights and confidentiality;
 - b. Developing, implementing, and updating resident service plans;
 - c. Resident agreements;
 - d. Providing social and recreational services;
 - e. Maintaining resident records and managing documentation systems;
 - f. Managing ancillary services;
 - g. Responding to and reporting specific incidents, accidents, and emergencies involving residents;
 - h. Managing dining services to meet resident needs;
 - i. Preventing abuse, neglect, and exploitation;
 - j. Accepting and retaining residents; and

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- k. Developing systems for managing residents with dementia, Alzheimer's Disease, or difficult behaviors;
- 2. Personnel management.
 - a. Complying with federal, state and local laws relating to hiring personnel;
 - b. Developing and implementing systems related to qualifying, orienting, training, and other recurring personnel requirements; and
 - c. Evaluating personnel;
- 3. Medication management.
 - a. Developing and evaluating policies and procedures for:
 - i. Medication management including medical restraints; and
 - ii. Non-medication intervention; and
 - b. Developing systems for:
 - i. Receiving and documenting doctors' orders;
 - ii. Ordering, refilling, and storing medications; and
 - iii. Recordkeeping related to receipt and administration of medication; and
- 4. Legal management.
 - a. Board-prescribed requirements for certification and re-certification,
 - b. Delegation,
 - c. Ethics,
 - d. Advanced directives and do-not-resuscitate orders,
 - e. Standards of conduct under R4-33-407,
 - f. Department of Health Services compliance and complaint inspections:
 - i. Statement of deficiencies,
 - ii. Plan for correction, and
 - iii. Enforcement action; and

g. Risk management and quality improvement;

5. Financial management.

a. Developing and implementing policies, procedures, and practices that comply with:

i. State and local laws; and

ii. Generally accepted accounting principles regarding accounts receivable, accounts payable, payroll, resident funds, and refunds;

b. Developing, implementing, and evaluating facility budgeting including revenues, expenses, capital expenditures, and long-term projections; and

c. Maintaining appropriate insurance coverage; and

6. Physical environment management.

a. Complying with federal, state, and local laws regarding:

i. Occupational Safety and Health Administration,

ii. Americans with Disabilities Act, and

iii. Fire and safety requirements for assisted living facilities;

b. Preparedness for and prevention of fire, emergencies, and disasters;

c. Resident safety and security including evacuation, relocation, and transportation; and

d. Daily and preventative maintenance plans for buildings, equipment, and grounds.

D. The owner of an assisted living facility manager training program shall ensure that the training program provides a student with at least:

1. Eight hours of classroom instruction and skills practice in each of the subjects identified in subsections (C)(1) through (C)(4), and

2. Four hours of classroom instruction and skills practice in each of the subjects identified in subsections (C)(5) and (C)(6).

E. The owner of an assisted living facility manager training program shall ensure that the training program uses textbooks that are relevant to the subjects being taught and have been published within the last five years.

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Facility Manager Training Program (Arizona Administrative Code
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History:

New Section made by final rulemaking at 19 A.A.R. 1619, effective August 4, 2013 (Supp. 13-2).

**§ R4-33-604. Application for Approval of an Assisted Living
Facility Manager Training Program**

A. The owner of an assisted living facility manager training program shall ensure that no training is provided until the program is approved by the Board.

B. To obtain approval of an assisted living facility manager training program, the owner of the training program shall submit to the Board an application packet that contains the following:

1. Name, address, telephone number, and e-mail address of the owner;
2. Name, address, telephone and fax numbers, and web site of the training program;
3. Form of business organization under which the training program is operated and a copy of the establishing documents and organizational chart;
4. A statement of whether the training program is based within an assisted living facility or other location;
5. Name, telephone number, and license or certificate number of the program administrator required under R4-33- 602(B);
6. Name, telephone number, and certificate number of each program instructor and evidence that each program instructor is qualified under R4-33-602(C);
7. A statement of whether the training program is accredited and if so, name of the accrediting body and date of last review;
8. For all assisted living facilities at which the training program will provide classroom instruction:
 - a. Name, address, and telephone number of the assisted living facility;
 - b. Name and telephone number of a contact person at the assisted living facility;
 - c. License number of the assisted living facility issued by the Department of Health Services;
 - d. A statement of whether the license of the assisted living facility is in good standing; and

- e. Date and results of the most recent compliance inspection conducted by the Department of Health Services;
 - 9. Evidence of compliance with R4-33-602 and R4-33-603, including the following:
 - a. Written training program description, consistent with R4-33-602(A)(1), and an implementation plan that includes timelines;
 - b. Description of classroom facilities, equipment, and instructional tools available, consistent with R4-33-602(D);
 - c. Written curriculum, consistent with R4-33-603(B);
 - d. Skills checklist used to verify whether a student has acquired the necessary assisted living facility manager skills, consistent with R4-33-602(A)(7)(a);
 - e. Evaluation form required under R4-33-602(A)(7)(b) to enable students to assess the quality of the classroom experience provided by the training program;
 - f. Evidence of completion issued to a student under R4-33-602(A)(5);
 - g. Name of textbook used, author, publication date, and publisher; and
 - h. Copy of written policies and procedures required under R4-33-602(A)(3);
 - 10. Signature of the owner of the training program; and
 - 11. The fee prescribed under R4-33-104(C)(1).
- C. The owner of an assisted living facility manager training program shall ensure that the application materials submitted under subsection (B) are printed on only one side of white, letter-sized paper, and are not bound in any manner.
- D. After review of the materials submitted under subsection (B), the Board shall schedule an onsite evaluation of the training program and take one of the following actions:
- 1. If requirements are met, approve the training program for one year; or
 - 2. If requirements are not met, deny approval of the training program.
- E. The owner of an assisted living facility manager training program that is denied approval by the Board may request a hearing regarding the denial by

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filing a written request with the Board within 30 days after service of the Board's order denying approval of the training program. The Board shall conduct hearings under A.R.S. Title 41, Chapter 6, Article 10.

History:

New Section made by final rulemaking at 19 A.A.R. 1619, effective August 4, 2013 (Supp. 13-2).

**§ R4-33-605. Renewal of Approval of an Assisted Living Facility
Manager Training Program**

A. The approval of an assisted living facility manager training program expires one year from the date of approval. If the approval of an assisted living facility manager training program expires, the owner of the training program shall immediately stop all training program activity.

B. To renew approval of an assisted living facility manager training program, the owner of the training program shall submit to the Board, no fewer than 60 and no more than 120 days before expiration of the current approval, an application packet that contains the following:

1. Name, address, e-mail, and telephone number of the owner;
2. Name, address, telephone and fax numbers, and web site of the training program;
3. Name, telephone number, and license number of the program administrator required under R4-33-602(B);
4. Name, telephone number, and license number of each program instructor and evidence that each program instructor is qualified under R4-33-602(C);
5. Written training program description, consistent with R4-33-602(A)(1);
6. Written curriculum, consistent with R4-33-603(B);
7. Since the time the training program was last approved:
 - a. Number of student-cohort classes to which training was provided,
 - b. Number of students who completed the training program,
 - c. Results obtained on the Board-approved written and skills examinations for each student, and
 - d. Percentage of students who passed the examinations on the first attempt;
8. For an assisted living facility at which the training program has started to provide classroom instruction since the training program was last approved, the information required under R4-33-604(B)(8);
9. Evaluation form required under R4-33-602(A)(7)(b) to enable students to assess the quality of the classroom experience provided by the training program;

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10. Summary of evaluations for each student cohort, required under R4-33-602(E)(1)(c), and measures taken, if any, to improve the training program based on student evaluations;

11. Evidence of completion issued to a student under R4-33-602(A)(5);

12. Name of textbook used, author, publication date, and publisher;

13. Copy of written policies and procedures required under R4-33-602(A)(3);

14. Signature of the owner of the program; and

15. The fee prescribed under R4-33-104(C)(2).

C. After review of the materials submitted under subsection (B), the Board shall ensure that the training program is evaluated at either an onsite or telephonic meeting. The program owner shall ensure that the program owner, program administrator, and all instructors are available to participate in the evaluation meeting.

D. The Board shall ensure that each training program receives an onsite evaluation at least every four years. An onsite evaluation includes visiting each assisted living facility at which the training program provides classroom instruction.

E. If the Board approves a training program following an onsite evaluation, no deficiencies were identified during the onsite evaluation, and no complaints are filed with the Board, the Board shall evaluate the training program under subsection (C) using a telephonic meeting for at least two years.

F. After conducting the evaluation required under subsection (C), the Board shall:

1. Renew approval of a training program that the Board determines complies with R4-33-602 and R4-33-603, or

2. Issue a notice of deficiency under R4-33-606 to the owner of a training program that the Board determines does not comply with R4-33-602 or R4-33-603.

G. The owner of an assisted living facility manager training program that is issued a notice of deficiency by the Board under subsection (F)(2) may request a hearing regarding the deficiency notice by filing a written request

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with the Board within 30 days after service of the Board's order. The Board shall conduct hearings under A.R.S. Title 41, Chapter 6, Article 10.

History:

New Section made by final rulemaking at 19 A.A.R. 1619, effective August 4, 2013 (Supp. 13-2).

§ R4-33-701. Definitions

In addition to the definitions in R4-33-601, the following definitions apply in this Article:

1. "CMA" means certified medication assistant, an LNA certified by the Arizona Board of Nursing under A.R.S. §32-1650.02.
2. "CNA" means certified nursing assistant, an individual licensed by the Arizona Board of Nursing under A.R.S. §32-1645.
3. "DCW" means direct-care worker, an individual who meets the standards and requirements specified in Section 1240(A) of the Arizona Health Care Cost Containment System policy manual.
4. "Distance learning" means the use of technology to teach students who may or may not be physically present in a classroom.
5. "LNA" means licensed nursing assistant, an individual licensed by the Arizona Board of Nursing under A.R.S. §32-1645.
6. "Skills training" means experiential learning focused on acquiring the ability to provide caregiving services to residents.

History:

New Section made by final rulemaking at 19 A.A.R. 1619, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 24 A.A.R. 2734, effective 11/10/2018.

**§ R4-33-702. Minimum Standards for Assisted Living Facility
Caregiver Training Program**

A. Organization and administration. The owner of an assisted living facility caregiver training program shall:

1. Provide the Board with a written description of the training program that includes:

a. Length of the training program in hours:

i. Number of hours of classroom instruction,

ii. Number of hours of skills training, and

iii. Number of hours of distance learning, and

b. Educational goals that demonstrate the training program is consistent with state requirements;

2. Develop and adhere to written policies and procedures regarding:

a. Attendance. Ensure that a student receives at least 62 hours of instruction;

b. Grading. Require a student to attain at least 75 percent on each knowledge examination or 75 percent on a comprehensive knowledge examination;

c. Reexamination. Inform students that a reexamination:

i. Addresses the same competencies examined in the original examination,

ii. Contains items different from those on the original examination, and

iii. Is documented in the student's record;

d. Student records. Include the following information:

i. Records maintained,

ii. Retention period for each record,

iii. Location of records,

iv. Documents required under subsections (G)(1) and (G)(2), and

v. Procedure for accessing records and who is authorized to access records;

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- e. Student fees and financial aid, if any;
 - f. Withdrawal and dismissal;
 - g. Student grievances including a chain of command for disputing a grade;
 - h. Admission requirements including any criminal background or drug testing required;
 - i. Criteria for training program completion; and
 - j. Procedure for documenting that a student has received notice of the fingerprint clearance card requirement before the student is enrolled;
3. Date each policy and procedure developed under subsection (A)(2), review within one year from the date made and every year thereafter, update if necessary, and date the policy or procedure at the time of each review;
4. Provide each student who completes the training program with evidence of completion, within 15 days of completion, which includes the following:
- a. Name of the student;
 - b. Name and classroom location of the training program;
 - c. Number of classroom, skills training, and distance learning hours in the training program;
 - d. Date on which the training program was completed;
 - e. Board's approval number of the training program; and
 - f. Signature of the training program owner, administrator, or instructor;
5. Provide the Board, within 15 days of completion, the following information regarding each student who completed the training program:
- a. Student's name, date of birth, Social Security number, address, and telephone number;
 - b. Student's examination score as provided by a Board-approved provider;
 - c. Name and classroom location of the training program;
 - d. Number of classroom hours in the training program;
 - e. Number of distance learning hours in the training program;

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- f. Number of skills training hours in the training program;
 - g. Date on which the training program was completed; and
 - h. Board's approval number of the training program; and
6. Execute and maintain under subsections (G)(1) and (G)(2) the following documents for each student:
- a. A skills checklist containing documentation the student achieved competency in the assisted living facility caregiver skills listed in R4-33-703(C),
 - b. A copy of the current food-handler's card issued to the student by the county in which the student lives, and
 - c. An evaluation form containing the student's responses to questions about the quality of the instructional experiences provided by the training program.
- B. Program administrator responsibilities. The owner of an assisted living facility caregiver training program shall ensure that a program administrator performs the following responsibilities:
- 1. Supervises and evaluates the training program,
 - 2. Uses only instructors who are qualified under subsection (C), and
 - 3. Makes the written policies and procedures required under subsection (A)(2) available to each student on or before the first day of the training program;
- C. The owner of an assisted living facility caregiver training program shall ensure that a program instructor is qualified under subsection (C)(1), (C)(2), or (C)(3):
- 1. Is a certified assisted living facility manager:
 - a. Holds an assisted living facility manager certificate that is in good standing and issued under A.R.S. Title 36, Chapter 4;
 - b. Has held the assisted living facility manager certificate referenced in subsection (C)(1)(a) for at least two years;
 - c. Has not been subject to disciplinary action against the assisted living facility manager certificate during the last two years; and

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- d. Has at least two years' experience within the last five years as an assisted living facility manager of record immediately before becoming a training program instructor;
2. Is a licensed health professional:
 - a. Holds a license that is in good standing and issued under A.R.S. Title 32, Chapter, 13, 15, 17, or 25;
 - b. Has held the health professional license referenced in subsection (C)(2)(a) for at least two years;
 - c. Has not been subject to disciplinary action against the health professional license during the last two years; and
 - d. Has at least two years' experience within the last five years in management, operation, or training in assisted living immediately before becoming a training program instructor; or
3. Other qualified individual:
 - a. Holds at least a baccalaureate degree in a health-related field from an accredited college or university;
 - b. Has not been subject to disciplinary action against any professional or occupational license or certificate during the last two years; and
 - c. Has at least two years' experience within the last five years in management, operation, or training in assisted living immediately before becoming a training program instructor.
- D. The owner of an assisted living facility caregiver training program shall ensure that a program instructor performs the following responsibilities:
 1. Plans each learning experience,
 2. Accomplishes educational goals of the training program and lesson objectives,
 3. Enforces a grading policy that meets the requirement specified in subsection (A)(2)(b),
 4. Requires satisfactory performance of all critical elements of each assisted living facility caregiver skill specified under R4-33-703(C),

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5. Prevents a student from performing an activity unless the student has received instruction and been found able to perform the activity competently,
 6. Is present in the classroom during all instruction,
 7. Uses a maximum of 20 hours of distance learning,
 8. Supervises health professionals who assist in providing training program instruction, and
 9. Ensures that a health professional who assists in providing training program instruction:
 - a. Is licensed or certified as a health professional,
 - b. Has at least one year of experience in the field of licensure or certification, and
 - c. Teaches only a learning activity that is within the scope of practice of the field of licensure or certification.
- E. Skill training requirements. The owner of an assisted living facility caregiver training program shall:
1. Provide each student with at least 12 hours of instructor-supervised skills training, and
 2. Ensure that each student develops skill proficiency in the subjects listed in R4-33-703(C).
- F. Instructional and educational resources. The owner of an assisted living facility caregiver training program shall provide, or provide access to, the following instructional and educational resources adequate to implement the training program for all students and staff:
1. Current reference materials related to the level of the curriculum;
 2. Equipment in functional condition for simulating resident care, including:
 - a. Patient bed, over-bed table, and nightstand;
 - b. Privacy curtain and call bell;
 - c. Thermometers, stethoscopes, including a teaching stethoscope, blood-pressure cuff, and balance scale;

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- d. Hygiene supplies, elimination equipment, drainage devices, and linens;
- e. Hand-washing equipment and clean gloves; and
- f. Wheelchair, gait belt, walker, anti-embolic hose, and cane;

3. Computer in good working condition;

4. Audio-visual equipment and media; and

5. Designated space that provides a clean, distraction-free, learning environment for accomplishing educational goals of the training program;

G. Records. The owner of an assisted living facility caregiver training program shall:

1. Maintain the following training program records for three years:

a. Curriculum and course schedule for each student cohort;

b. Results of state-approved written examination and skills checklist;

c. Evaluation forms completed by students, a summary of the evaluation forms for each student cohort, and measures taken, if any, to improve the training program based on student evaluations; and

d. Copy of all Board reports, applications, or correspondence related to the training program; and

2. Maintain the following student records for three years:

a. Name, date of birth, and Social Security number;

b. Completed skills checklist;

c. Attendance record including a record of any make-up class sessions;

d. Score on each test, quiz, and examination and, if applicable, whether a test, quiz, or examination was retaken;

e. Documentation from the program instructor indicating the:

i. Number of skills training hours completed by the student,

ii. Student performance during the skills training, and

iii. Verification of distance learning hours completed by the student; and

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f. Copy of the evidence of completion issued to the student as required under subsection (A)(4);

H. Examination and evaluation requirements for students. The owner of an assisted living facility caregiver training program shall ensure each student in the training program:

1. Takes an examination that covers each of the subjects listed in R4-33-703(C) and passes each examination using the standard specified in subsection (A)(2)(b);
2. Is evaluated and determined to possess the practical skills listed in R4-33-703(C);
3. Passes, using the standard specified in subsection (A)(2)(b), a final examination approved by the Board and given by a Board-approved provider; and
4. Does not take the final examination referenced in subsection (H)(3) more than three times. If a student fails the final examination referenced in subsection (H)(3) three times, the student is able to obtain evidence of completion only by taking the assisted living facility caregiver training program again;

I. Examination passing standard. The owner of an assisted living facility caregiver training program shall attain an annual first-time passing rate of 70 percent for all students who take the examination specified under subsection (H)(3). The Board may waive this requirement for a program if fewer than 10 students took the examination during the year.

J. Periodic evaluation. The owner of an assisted living facility caregiver training program shall allow a representative of the Board or a state agency designated by the Board to conduct:

1. A scheduled evaluation:
 - a. Before initial approval of the training program as specified under R4-33-704(D),
 - b. Before renewal of the training program approval as specified under R4-33-705(C), and
 - c. During a time of correction as specified under R4-33-706(B); and

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2. An onsite unscheduled evaluation of the training program if the evaluation is in response to a complaint or reasonable cause, as determined by the Board;

K. Notice of change. The owner of an assisted living facility caregiver training program shall provide the documentation and information specified regarding the following changes within 10 days after making the change:

1. New training program administrator. Name and license number;
2. New instructor. Name, license number, and evidence of being qualified under subsection (C);
3. Decrease in number of training program hours. Description of and reason for the change, a revised curriculum outline, and revised course schedule;
4. Change in classroom location. Address of new location, if applicable, and description of the new classroom; and
5. For a training program that is based within an assisted living facility:
 - a. Change in name of the facility. Former and new name of the assisted living facility; and
 - b. Change in ownership of the facility. Names of the former and current owners of the assisted living facility.

L. Medication management training program. The owner of an assisted living facility caregiver training program may provide a medication management training program for a student who, at the time of admission, is in good standing and a CNA, LNA, or DCW.

The owner shall ensure the medication management training program provides

the classroom instruction listed in subsection R4-33-703(C)(14) and meets the standards in R4-33-703.1.

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History:

New Section made by final rulemaking at 19 A.A.R. 1619, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 24 A.A.R. 2734, effective 11/10/2018. Amended by final rulemaking at 26 A.A.R. 1465, effective 9/5/2020.

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Living Facility Caregiver Training Program (Arizona
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**§ R4-33-703. Curriculum for Assisted Living Facility Caregiver
Training Program**

A. The owner of an assisted living facility caregiver training program shall ensure that the training program consists of at least 62 hours of instruction including:

1. Fifty hours of classroom instruction, of which a maximum of 20 hours may be provided by distance learning, and
2. Twelve hours of instructor-supervised skills training.

B. The owner of an assisted living facility caregiver training program shall provide a written curriculum plan to each student that includes overall educational goals and for each required subject:

1. Measurable learner-centered objectives,
2. Outline of the material to be taught,
3. Time allotted to each unit of instruction, and
4. Learning activities or reading assignments.

C. The owner of an assisted living facility caregiver training program shall ensure the training program includes classroom instruction and skills training regarding each of the following subjects:

1. Orientation to and overview of the assisted living facility caregiver training program (at least one classroom hour).
 - a. Levels of care within an assisted living facility, and
 - b. Impact of each level of care on residents;
2. Legal and ethical issues and resident rights (at least two classroom hours).
 - a. Confidentiality (HIPAA);
 - b. Ethical principles;
 - c. Resident rights specified in R9-10-710;
 - d. Abuse, neglect, and exploitation;
 - e. Mandatory reporting; and

- f. Do-not-resuscitate order and advanced directives;
- 3. Communication and interpersonal skills (at least two classroom hours).
 - a. Components of effective communication,
 - b. Styles of communication,
 - c. Attitude in communication,
 - d. Barriers to effective communication:
 - i. Culture,
 - ii. Language, and
 - iii. Physical and mental disabilities, and
 - e. Techniques of communication;
- 4. Job management skills (at least one classroom hour).
 - a. Stress management, and
 - b. Time management;
- 5. Service plans (at least two classroom hours). Developing, using, and maintaining resident service plans;
- 6. Infection control (at least three classroom hours).
 - a. Common types of infectious diseases,
 - b. Preventing infection,
 - c. Controlling infection:
 - i. Washing hands,
 - ii. Using gloves, and
 - iii. Disposing of sharps and other waste;
- 7. Nutrition and food preparation (at least two classroom hours).
 - a. Basic nutrition;
 - b. Menu planning and posting;

- c. Procuring, handling, and storing food safely; and
- d. Special diets;
- 8. Fire, safety, and emergency procedures (at least two classroom hours).
 - a. Emergency planning,
 - b. Medical emergencies,
 - c. Environmental emergencies,
 - d. Fire safety,
 - e. Fire drills and evacuations, and
 - f. Fire-code requirements;
- 9. Home environment and maintenance (at least two classroom hours).
 - a. Housekeeping,
 - b. Laundry, and
 - c. Physical plant;
- 10. Basic caregiver skills (at least eight classroom hours).
 - a. Taking vital signs and measuring height and weight;
 - b. Maintaining a resident's environment;
 - c. Observing and reporting pain;
 - d. Assisting with diagnostic tests;
 - e. Providing assistance to residents with drains and tubes;
 - f. Recognizing and reporting abnormal changes to a supervisor;
 - g. Applying clean bandages;
 - h. Providing peri-operative care;
 - i. Assisting ambulation of residents including transferring and using assistive devices;
 - j. Bathing, caring for skin, and dressing;

- k. Caring for teeth and dentures;
 - l. Shampooing and caring for hair;
 - m. Caring for nails;
 - n. Toileting, caring for perineum, and caring for ostomy;
 - o. Feeding and hydration including proper feeding techniques and use of assistive devices in feeding;
 - p. Preventing pressure sores; and
 - q. Maintaining and treating skin;
11. Mental health and social service needs (at least three classroom hours).
- a. Modifying the caregiver's behavior in response to resident behavior,
 - b. Understanding the developmental tasks associated with the aging process,
 - c. Responding to resident behavior,
 - d. Promoting resident dignity,
 - e. Providing culturally sensitive care,
 - f. Caring for the dying resident, and
 - g. Interacting with the resident's family;
12. Care of the cognitively impaired resident (at least four classroom hours).
- a. Anticipating and addressing the needs and behaviors of residents with dementia or Alzheimer's disease,
 - b. Communicating with cognitively impaired residents,
 - c. Understanding the behavior of cognitively impaired residents, and
 - d. Reducing the effects of cognitive impairment;
13. Skills for basic restorative services (at least two classroom hours).
- a. Understanding body mechanics;
 - b. Assisting resident self-care;

- c. Using assistive devices for transferring, walking, eating, and dressing;
 - d. Assisting with range-of-motion exercises;
 - e. Providing bowel and bladder training;
 - f. Assisting with care for and use of prosthetic and orthotic devices; and
 - g. Facilitating family and group activities; and
14. Medication management (at least 16 classroom hours).
- a. Determining whether a resident needs assistance with medication administration and if so, the nature of the assistance;
 - b. Assisting a resident to self-administer medication;
 - c. Observing, documenting, and reporting changes in resident condition before and after medication is administered;
 - d. Knowing the rights of a resident regarding medication administration;
 - e. Knowing classifications of and responses to medications;
 - f. Taking, reading, and implementing a physician's medication and treatment orders;
 - g. Storing medication properly and securely;
 - h. Documenting medication and treatment services;
 - i. Maintaining records of medication and treatment services;
 - j. Using medication organizers properly;
 - k. Storing and documenting use of narcotic drugs and controlled substances;
 - l. Understanding how metabolism and physical conditions affect medication absorption;
 - m. Knowing the proper administration of all forms of medication;
 - n. Using drug-reference guides (Physician's Desk Reference); and
 - o. Preventing, identifying, documenting, reporting, and responding to medication errors.

D. The owner of an assisted living facility caregiver training program shall ensure that the training program:

1. Provides a student with at least the number of classroom hours specified in subsection (C);
2. Subject to the limitations specified, uses distance learning for a maximum of 20 hours only for the classroom hours specified in subsections (C)(1) through (C)(9), (C)(11) and (C)(12):
 - a. Only one of the classroom hours specified in subsection (C)(6) may be taught by distance learning; and
 - b. Only two of the classroom hours specified in subsection (C)(12) may be taught by distance learning.
3. Provides a student with at least the number of skills training hours specified in subsection (A)(2).

E. The owner of an assisted living facility caregiver training program shall ensure that the training program uses textbooks that are relevant to the subjects being taught and have been published within the last five years.

F. The owner of an assisted living facility caregiver training program shall ensure that any distance learning provided uses materials that are relevant to the subjects being taught and have been produced within the last five years.

History:

New Section made by final rulemaking at 19 A.A.R. 1619, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 24 A.A.R. 2734, effective 11/10/2018.

Ariz. Admin. Code R4-33-703.1 Minimum Standards and Curriculum for an Assisted Living Facility Caregiver Medication Management Training Program (Arizona Administrative Code (2023 Edition))

§ R4-33-703.1. Minimum Standards and Curriculum for an Assisted Living Facility Caregiver Medication Management Training Program

A. An assisted living facility caregiver medication management training program may be established by:

1. The owner or manager of an assisted living facility, or
2. The owner of an assisted living facility caregiver training program.

B. A person under subsection (A) may offer an assisted living facility caregiver medication management training program to:

1. A CNA who is in good standing and whose certification by the Arizona Board of Nursing under A.R.S. § 32-1645 is verified;
2. An LNA who is in good standing and whose licensure by the Arizona Board of Nursing under A.R.S. § 32-1645 is verified; and
3. A DCW who is in good standing and whose training, including training about caregiving fundamentals and aging and physical disabilities, and testing record is verified through the AHCCCS online database.

C. A person under subsection (A) that offers an assisted living facility caregiver medication management training program to individuals specified under subsection (B) shall ensure the assisted living facility caregiver medication management training program:

1. Consists of at least the 16 classroom hours specified under R4-33-703(C)(14);
2. Is not taught by distance learning;
3. Is taught by a health professional who holds a license in good standing and issued under A.R.S. Title 32, Chapter 13, 15, 17, 18, or 25; and
4. Requires passing an examination regarding assisted living facility caregiver medication management, using the standard specified in R4-33-702(A)(2)(b), that is approved by the Board and given by a Board-approved provider. An individual under subsection (B) shall pass the required examination in no more than three attempts. After failing three times, the individual may take the assisted living facility caregiver medication management program again.

**Ariz. Admin. Code R4-33-703.1 Minimum Standards and
Curriculum for an Assisted Living Facility Caregiver Medication
Management Training Program (Arizona Administrative Code
(2023 Edition))**

D. In addition to complying with subsection (C), a person under subsection (A) shall ensure each individual under subsection (B) who participates in an assisted living facility caregiver medication management training program:

1. Receives notice, before participating in the training program, of:
 - a. The fingerprint clearance card requirement, and
 - b. The need to obtain a food-handler's card from the county in which the individual lives.
2. Provides written documentation, which is dated and signed, indicating the person under subsection (A) complied with subsection (D)(1). The person under subsection (A) shall maintain the written documentation under R4-33-702(G)(2).

E. In addition to complying with subsection (C), a person under subsection (A) that offers an assisted living facility caregiver medication management training program to individuals specified under subsection (B) shall comply with the following subsections of R4-33-702:

1. (A)(4)(a), (b), and (d) through (f);
2. (A)(5)(a) through (d), (g), and (h);
3. (A)(6)(b) and (c);
4. (G)(1)(b) through (d);
5. (G)(2)(a), (c), (d), and (f);
6. (I) and
7. (J).

History:

Adopted by final rulemaking at 24 A.A.R. 2734, effective 11/10/2018.

Amended by final rulemaking at 26 A.A.R. 1465, effective 9/5/2020.

**§ R4-33-704. Application for Approval of an Assisted Living
Facility Caregiver Training Program**

A. The owner of an assisted living facility caregiver training program shall ensure no training is provided until the program is approved by the Board.

B. To obtain approval of an assisted living facility caregiver training program, the owner of the training program shall submit to the Board an application packet that contains the following:

1. Name, address, telephone number, and e-mail address of the owner;
2. Name, address, telephone and fax numbers, and web site of the training program;
3. Form of business organization under which the training program is operated and a copy of the establishing documents and organizational chart;
4. A statement of whether the training program is based within an assisted living facility or other location;
5. Name, telephone number, e-mail address, and license or certificate number of the program administrator required under R4-33-702(B);
6. Name, telephone number, e-mail address, and license number of each program instructor and evidence each program instructor is qualified under R4-33-702(C);
7. A statement of whether the training program is accredited and if so, name of the accrediting body and date of last review;
8. For all assisted living facilities at which the training program will provide instruction:
 - a. Name, address, and telephone number of the assisted living facility;
 - b. Name, e-mail address, and telephone number of a contact person at the assisted living facility;
 - c. License number of the assisted living facility issued by the Department of Health Services;
 - d. A statement of whether the license of the assisted living facility is in good standing; and
 - e. Date and results of the most recent compliance inspection conducted by the Department of Health Services;

**Ariz. Admin. Code R4-33-704 Application for Approval of an
Assisted Living Facility Caregiver Training Program (Arizona
Administrative Code (2023 Edition))**

9. Evidence of compliance with R4-33-702 and R4-33-703, including the following:

a. Written training program description, consistent with R4-33-702(A)(1), and an implementation plan that includes timelines;

b. Description of classroom facilities, equipment, and instructional tools available, consistent with R4-33-702(F);

c. Written curriculum, consistent with R4-33-703(C);

d. Skills checklist used to verify whether a student has acquired the necessary assisted living facility caregiver skills, consistent with R4-33-702(A)(6)(a);

e. Evaluation form required under R4-33-702(A)(6)(c) to enable students to assess the quality of the instructional experience provided by the training program;

f. Evidence of completion issued to a student under R4-33-702(A)(4);

g. Name of textbook used, author, publication date, and publisher;

h. Name of any distance learning materials used, producer of the material, and date produced; and

i. Copy of written policies and procedures required under R4-33-702(A)(2);

10. Signature of the owner of the training program; and

11. The fee prescribed under R4-33-104(D)(1).

C. The owner of an assisted living facility caregiver training program shall ensure the application materials submitted under subsection (B) are printed on only one side of white, letter-sized paper, and are not bound in any manner

D. After review of the materials submitted under subsection (B), the Board shall schedule an onsite evaluation of the training program and take one of the following actions:

1. If requirements are met, approve the training program for one year; or

2. If requirements are not met, deny approval of the training program.

E. The owner of an assisted living facility caregiver training program denied approval by the Board may request a hearing regarding the denial by filing

**Ariz. Admin. Code R4-33-704 Application for Approval of an
Assisted Living Facility Caregiver Training Program (Arizona
Administrative Code (2023 Edition))**

a written request with the Board within 30 days after service of the Board's order denying approval of the training program The Board shall conduct hearings under A.R.S. Title 41, Chapter 6, Article 10.

History:

New Section made by final rulemaking at 19 A.A.R. 1619, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 24 A.A.R. 2734, effective 11/10/2018.

**§ R4-33-705. Renewal of Approval of an Assisted Living Facility
Caregiver Training Program**

A. The approval of an assisted living facility caregiver training program expires one year from the date of approval. If the approval of the training program expires, the owner of the training program shall immediately stop all training program activity.

B. To renew approval of an assisted living facility caregiver training program, the owner of the training program shall submit to the Board, no fewer than 60 and no more than 120 days before expiration of the current approval, an application packet that contains the following:

1. Name, address, telephone number, and e-mail address of the owner;
2. Name, address, telephone and fax numbers, and web site of the training program;
3. Name, telephone number, e-mail address, and license number of the program administrator required under R4-33-702(B);
4. Name, telephone number, e-mail address, and license number of each program instructor and evidence each program instructor is qualified under R4-33-702(C);
5. Written training program description, consistent with R4-33-702(A)(1);
6. Written curriculum, consistent with R4-33-703(C);
7. Since the time the training program was last approved:
 - a. Number of student-cohort classes to which training was provided,
 - b. Number of students who completed the training program,
 - c. Results obtained on the Board-approved written examination and skills checklist for each student, and
 - d. Percentage of students who passed the examination on the first attempt;
8. For an assisted living facility at which the training program has started to provide instruction since the training program was last approved, the information required under R4-33-704(B)(8);
9. Evaluation form required under R4-33-702(A)(6)(c) to enable students to assess the quality of the instructional experience provided by the training program;

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Living Facility Caregiver Training Program (Arizona
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10. Summary of evaluations for each student cohort, required under R4-33-702(G)(1)(c), and measures taken, if any, to improve the training program based on student evaluations;

11. Evidence of completion issued to a student under R4-33-702(A)(4);

12. Name of textbook used, author, publication date, and publisher;

13. Name of any distance learning materials used, producer of the material, and date produced;

14. Copy of written policies and procedures required under R4-33-702(A)(2);

15. Signature of the owner of the training program; and

16. The fee prescribed under R4-33-104(D)(2).

C. After review of the materials submitted under subsection (B), the Board shall ensure the training program is evaluated at either an onsite or telephonic meeting. The program owner shall ensure the program owner, program administrator, and all instructors are available to participate in the evaluation meeting.

D. The Board shall ensure each training program receives an onsite evaluation at least every four years. An onsite evaluation includes visiting each assisted living facility at which the training program provides instruction.

E. If the Board approves a training program following an onsite evaluation, no deficiencies were identified during the onsite evaluation, and no complaints are filed with the Board, the Board shall evaluate the training program under subsection (C) using a telephonic meeting for at least two years.

F. After conducting the evaluation required under subsection (C), the Board shall:

1. Renew approval of a training program the Board determines complies with R4-33-702 and R4-33-703, or

2. Issue a notice of deficiency under R4-33-706 to the owner of a training program the Board determines does not comply with R4-33-702 or R4-33-703.

**Ariz. Admin. Code R4-33-705 Renewal of Approval of an Assisted
Living Facility Caregiver Training Program (Arizona
Administrative Code (2023 Edition))**

G. The owner of an assisted living facility training program issued a notice of deficiency by the Board under subsection (F)(2) may request a hearing regarding the deficiency notice by filing a written request with the Board within 30 days after service of the Board's order. The Board shall conduct hearings under A.R.S. Title 41, Chapter 6, Article 10.

History:

New Section made by final rulemaking at 19 A.A.R. 1619, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 24 A.A.R. 2734, effective 11/10/2018.

§ R4-33-706. Notice of Deficiency; Correction Plan; Disciplinary Action; Voluntary Termination

A. Notice of deficiency. If the Board determines an assisted living facility caregiver or medication management training program does not comply with the requirements in this Article, the Board shall issue a written notice of deficiency to the program owner or person described under R4-33-703.1(A) of the training. The Board shall include the following in the notice of deficiency:

1. Description of each deficiency;
2. Citation to the requirement in this Article with which the training program is not in compliance; and
3. The time, to a maximum of three months, allowed by the Board for correction of the deficiencies.

B. Correction plan.

1. Within 10 days after service of a notice of deficiency under subsection (A), the owner or person described under R4-33-703.1(A) of the served training program shall submit to the Board a written plan to correct the identified deficiencies;
2. The Board may conduct onsite or telephonic evaluations during the time for correction to assess progress towards compliance;
3. The owner or person described under R4-33-703.1(A) of a training program implementing a correction plan shall notify the Board when all corrections have been made; and
4. After receiving notice under subsection (B)(3) or after the time provided under subsection (A)(3) has expired, the Board shall conduct an onsite evaluation to determine whether all deficiencies listed in the notice under subsection (A) have been corrected.
 - a. If the Board determines all deficiencies have been corrected, the Board shall renew approval of the training program; or
 - b. If the Board determines all deficiencies have not been corrected, the Board shall take disciplinary action under subsection (C).

C. Disciplinary action.

**Ariz. Admin. Code R4-33-706 Notice of Deficiency; Correction
Plan; Disciplinary Action; Voluntary Termination (Arizona
Administrative Code (2023 Edition))**

1. Under A.R.S. §36-446.03(P), the Board shall issue a civil money penalty, suspend or revoke approval of an assisted living facility caregiver or medication management training program, or place the training program on probation if, following a hearing, the Board determines that the owner or the person described under R4-33-703.1(A):
 - a. Failed to submit a plan of correction to the Board under R4-33-706(B) within 10 days after service of a notice of deficiency;
 - b. Failed to comply with R4-33-702, R4-33-703, or R4-33-703.1, as applicable, within the time set by the Board under R4-33-706(A)(3) for correction of deficiencies;
 - c. Failed to comply with a federal or state requirement;
 - d. Failed to allow the Board to conduct an evaluation under R4-33-702(J) or R4-33-703.1(D)(6);
 - e. Failed to comply with R4-33-702(K);
 - f. Lent or transferred training program approval to another individual or entity or another training program, including one owned by the same owner or person described under R4-33-703.1(A);
 - g. Conducted an assisted living facility caregiver or medication management training program before obtaining Board approval;
 - h. Conducted an assisted living facility caregiver or medication management training program after expiration of program approval without timely submitting an application for renewal under R4-33-705 or R4-33-705.1, as applicable;
 - i. Falsified an application for assisted living facility caregiver or medication management training program approval under R4-33-704, R4-33-704.1, R4-33-705, or R4-33-705.1;
 - j. Violated an order, condition of probation, or stipulation issued by the Board; or
 - k. Failed to respond to a complaint filed with the Board.
2. The Board shall conduct hearings under A.R.S. Title 41, Chapter 6, Article 10.
3. The Board shall include in an order suspending or revoking approval of an assisted living facility caregiver or medication management training

program the time and circumstances under which the owner or person described under R4-33-703.1(A) of the suspended or revoked training program may apply again under R4-33-704 or R4-33-704.1 for training program approval.

D. Voluntary termination. If the owner or person described under R4-33-703.1(A) of an approved assisted living facility caregiver or medication management training program decides to terminate the training program, the owner or person described under R4-33-703.1(A) shall:

1. Provide written notice of the planned termination to the Board; and
2. Ensure that the training program, including the instructors, is maintained according to this Article until the last student is transferred or completes the training program.

History:

New Section made by final rulemaking at 19 A.A.R. 1619, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 24 A.A.R. 2734, effective 11/10/2018.

§ 36-446. Definitions

In this article, unless the context otherwise requires:

1. "Administrator" or "nursing care institution administrator" means a person who is charged with the general administration of a nursing care institution, whether or not that person has an ownership interest in the institution and whether or not the person's functions and duties are shared with others.
2. "Assisted living facility" has the same meaning prescribed in section 36-401.
3. "Assisted living facility manager" means a person who has responsibility for administering or managing an assisted living facility, whether or not that person has an ownership interest in the institution and whether or not the person's functions and duties are shared with others.
4. "Assisted living facility training program" includes:
 - (a) Training that is required for assisted living facility manager certification.
 - (b) Training that is required for assisted living facility caregivers and that is either:
 - (i) Consistent with the training, competency and test methodology standards developed by the Arizona health care cost containment system administration for in-home direct care workers.
 - (ii) As prescribed in section 36-446.16.
5. "Board" means the board of examiners of nursing care institution administrators and assisted living facility managers.
6. "Department" means the department of health services.
7. "Directed care services" has the same meaning prescribed in section 36-401.
8. "Director" means the director of the department of health services.
9. "Felony involving violence or financial fraud" means any of the following offenses:
 - (a) Sexual abuse of a vulnerable adult.

- (b) Homicide, including first or second degree murder, manslaughter or negligent homicide.
- (c) Sexual assault.
- (d) Sexual exploitation of a vulnerable adult.
- (e) Commercial sexual exploitation of a vulnerable adult.
- (f) Child abuse.
- (g) Abuse of a vulnerable adult.
- (h) Molestation of a child.
- (i) Molestation of a vulnerable adult.
- (j) A dangerous crime against children as defined in section 13-705.
- (k) Neglect or abuse of a vulnerable adult.
- (l) Sexual abuse.
- (m) Causing one's spouse to become a prostitute.
- (n) Detention of persons in a house of prostitution for debt.
- (o) Pandering.
- (p) A felony offense involving domestic violence as defined in section 13-3601 except for a felony offense involving only criminal damage in an amount of more than \$250 but less than \$1,000 if the offense was committed before June 29, 2009.
- (q) Any felony offense in violation of title 13, chapter 12.
- (r) Felony indecent exposure.
- (s) Felony public sexual indecency.
- (t) Terrorism.
- (u) Any offense involving a violent crime as defined in section 13-901.03.
- (v) Aggravated criminal damage.
- (w) Theft.

- (x) Theft by extortion.
- (y) Forgery.
- (z) Criminal possession of a forgery device.
- (aa) Obtaining a signature by deception.
- (bb) Theft of a credit card or obtaining a credit card by fraudulent means.
- (cc) Receipt of anything of value obtained by fraudulent use of a credit card.
- (dd) Forgery of a credit card.
- (ee) Fraudulent use of a credit card.
- (ff) Possession of any machinery, plate or other contrivance or incomplete credit card.
- (gg) A false statement as to financial condition or identity to obtain a credit card.
- (hh) Fraud by persons authorized to provide goods or services.
- (ii) Credit card transaction record theft.
- (jj) Adding poison or another harmful substance to food, drink or medicine.
- (kk) A criminal offense involving criminal trespass under title 13, chapter 15.
- (ll) A criminal offense involving burglary under title 13, chapter 15.
- (mm) A criminal offense under title 13, chapter 23, except terrorism.
- (nn) A felony offense involving domestic violence as defined in section 13-3601 if the offense involved only criminal damage in an amount of more than \$250 but less than \$1,000 and the offense was committed before June 29, 2009.
- (oo) Taking the identity of another person or entity.
- (pp) Aggravated taking the identity of another person or entity.
- (qq) Trafficking in the identity of another person or entity.
- (rr) Welfare fraud.
- (ss) Kidnapping.

(tt) Robbery, aggravated robbery or armed robbery.

10. "Nursing care institution":

(a) Means an institution or other place, however named, whether for profit or not, including facilities operated by this state or a subdivision of this state, that is advertised, offered, maintained or operated for the express or implied purpose of providing care to persons who need nursing services on a continuing basis but who do not require hospital care or care under the daily direction of a physician.

(b) Does not include:

(i) An institution for the care and treatment of the sick that is operated only for those who rely solely on treatment by prayer or spiritual means in accordance with the tenets of a recognized religious denomination.

(ii) Nursing care services that are an integral part of a hospital licensed pursuant to this chapter.

11. "Unprofessional conduct" includes:

(a) Dishonesty, fraud, incompetency or gross negligence in performing administrative duties.

(b) Gross immorality or proselytizing religious views on patients without their consent.

(c) Other abuses of official responsibilities, which may include intimidating or neglecting patients.

History:

Amended by L. 2022, ch. 15, s. 1, eff. 9/23/2022. Amended by L. 2020, ch. 73, s. 1, eff. 8/25/2020. Amended by L. 2019, ch. 280, s. 1, eff. 8/27/2019.

**§ 36-446.03. Powers and duties of the board; rules; fees;
fingerprinting**

A. The board may adopt, amend or repeal reasonable and necessary rules and standards for the administration of this article in compliance with title XIX of the social security act, as amended.

B. The board by rule may adopt nonrefundable fees for the following:

1. Initial application for certification as an assisted living facility manager.
2. Examination for certification as an assisted living facility manager.
3. Issuance of a certificate as an assisted living facility manager, prorated monthly.
4. Biennial renewal of a certificate as an assisted living facility manager.
5. Issuance of a temporary certificate as an assisted living facility manager.
6. Readministering an examination for certification as an assisted living facility manager.
7. Issuance of a duplicate certificate as an assisted living facility manager.
8. Reviewing the sponsorship of continuing education programs, for each credit hour.
9. Late renewal of an assisted living facility manager certificate.
10. Reviewing an individual's request for continuing education credit hours, for each credit hour.
11. Reviewing initial applications for assisted living facility training programs.
12. Annual renewal of approved assisted living facility training programs.

C. The board may elect officers it deems necessary.

D. The board shall apply appropriate techniques, including examinations and investigations, to determine whether a person meets the qualifications prescribed in section 36-446.04.

E. Beginning January 1, 2023, in addition to the requirements prescribed in section 36-446.04, the board shall require each applicant for initial nursing care institution administrator or assisted living facility manager certification

to submit a full set of fingerprints to the board for a state and federal criminal history records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

F. On its own motion or in response to any complaint against or report of a violation by an administrator of a nursing care institution or a manager of an assisted living facility, the board may conduct investigations, hearings and other proceedings concerning any violation of this article or of rules adopted by the board or by the department.

G. In connection with an investigation or administrative hearing, the board may administer oaths and affirmations, subpoena witnesses, take evidence and require by subpoena the production of documents, records or other information in any form concerning matters the board deems relevant to the investigation or hearing. If any subpoena issued by the board is disobeyed, the board may invoke the aid of any court in this state in requiring the attendance and testimony of witnesses and the production of evidence.

H. Subject to title 41, chapter 4, article 4, the board may employ persons to provide investigative, professional and clerical assistance as required to perform its powers and duties under this article. Compensation for board employees shall be as determined pursuant to section 38-611. The board may contract with other state or federal agencies as required to carry out this article.

I. The board may appoint review committees to make recommendations concerning enforcement matters and the administration of this article.

J. The board by rule may establish a program to monitor licensees and certificate holders who are chemically dependent and who enroll in rehabilitation programs that meet board requirements. The board may take disciplinary action if a licensee or a certificate holder refuses to enter into an agreement to enroll in and complete a board-approved rehabilitation program or fails to abide by that agreement.

K. The board shall adopt and use an official seal.

L. The board shall adopt rules for the examination and licensure of nursing care institution administrators and the examination and certification of assisted living facility managers.

M. The board shall adopt rules governing payment to a person for the direct or indirect solicitation or procurement of assisted living facility patronage.

N. The board must provide the senate and the house of representatives health committee chairmen with copies of all board minutes and executive decisions.

O. The board by rule shall limit by percentage the amount it may increase a fee above the amount of a fee previously prescribed by the board pursuant to this section.

P. The board by rule shall prescribe standards for assisted living facility training programs. The board shall prescribe rules for assisted living facility caregivers that are consistent with the training, competency and test methodology standards developed by the Arizona health care cost containment system administration for in-home direct care workers.

Q. The board may:

1. Grant, deny, suspend or revoke approval of, or place on probation, an assisted living facility training program.
2. Impose a civil penalty on an assisted living facility training program that violates this chapter or rules adopted pursuant to this chapter.

History:

Amended by L. 2022, ch. 15, s. 2, eff. 9/23/2022. Amended by L. 2019, ch. 280, s. 2, eff. 8/27/2019. L12, ch 321, sec 81.

C-3

DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 18, Chapter 2, Article 15

Amend: R18-2-1501, R18-2-1502, R18-2-1503, R18-2-1504, R18-2-1505, R18-2-1506,
R18-2-1507, R18-2-1509, R18-2-1511, R18-2-1512, R18-2-1513, R18-2-1514,
R18-2-1515

Repeal: R18-2-1508, R18-2-1510



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: June 6, 2023

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 15, 2023

SUBJECT: DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 2, Article 15

Amend: R18-2-1501, R18-2-1502, R18-2-1503, R18-2-1504, R18-2-1505,
R18-2-1506, R18-2-1507, R18-2-1509, R18-2-1511, R18-2-1512,
R18-2-1513, R18-2-1514, R18-2-1515

Repeal: R18-2-1508, R18-2-1510

Summary:

This regular rulemaking from the Department of Environmental Quality (Department) seeks to amend thirteen (13) rules and repeal two (2) rules in Title 18, Chapter 2, Article 15 related to Forest and Range Management Burns. Specifically, the purpose of this rulemaking is to update the Department's forest and range management burn rules which regulate prescribed burns and allow for smoke management across the State. Prescribed fires or burns, refer to the controlled application of fire by experts under specific weather conditions to the landscape in order to restore health to the ecosystem and to prevent forest under-growth from fueling wildfires.

Title 18, Chapter 2, Article 15 governs the emissions from these fires and the rules address the two primary concerns for air quality which are violations of national ambient air quality standards (NAAQS) for particulate matter (PM10 or PM 2.5) and visibility impairment.

The requirements under Article 15 address these air quality concerns, primarily through efforts to ensure best practices are being used to reduce the amount of smoke produced and as a result the impacts of the smoke to the citizens of Arizona and the environment.

The Department indicates this rulemaking relates to its proposed course of action in the Five-Year Review Report for these rules which was approved by the Council in November 2021.

1. **Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

The Department cites both general and specific statutory authority for these rules.

2. **Do the rules establish a new fee or contain a fee increase?**

This rulemaking does not establish a new fee or contain a fee increase.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The Department indicates it did not review or rely on a study in its evaluation of or justification for a rule in this rulemaking.

4. **Summary of the agency's economic impact analysis:**

The Department indicates that the rulemaking will update and clarify terminology to conform industry practice without additional regulatory burden, while also ensuring compliance with the enhanced smoke management program requirements under the federal regional haze program. The Department states that these updates will clarify the rules and improve the experience of the regulated community by reducing the amount of rework or additional information required to receive burn authorization. The changes will ensure Federal and State Land Managers conducting prescribed burns understand the smoke program's approval and reporting requirements while facilitating open communication and cooperation between them and the Department. The Department believes that this cooperative effort will allow the State to achieve its goals for prescribed fire (reduce wildfire risk, improved watershed and ecosystem health) while protecting air quality.

The Department indicates that it has jurisdiction over air pollution resulting from prescribed burning other than in Tribal Nations and Communities. Stakeholders include the Department and the following federal and state agencies that conduct prescribed burns: (1) Federal Land Managers (FLMs) involved in burning activities, such as the U.S. Forest Service, U.S. Fish and Wildlife Services, National Parks Service, Bureau of Land Management, Bureau of Reclamation, Department of Defense, (2) State Land Managers (SLMs), such as Arizona Department of Forest and Fire Management, Arizona Department of Transportation, Arizona Department of Game and Fish, and Parks Department. The Department states that political

subdivisions of the State of Arizona, local and municipal agencies and fire districts are considered SLMs for purposes of their analysis.

5. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Department states that since the rulemaking aligns with federal and state best management practices for wildfire and prescribed fire, there are no less intrusive or less costly alternatives available currently. The Department believes that because the amendments streamline the rules, the Department is reducing stakeholder burden with this rulemaking.

6. What are the economic impacts on stakeholders?

The Department believes that their administration of the rules is positively impacted by the rule improvements in this rulemaking, as less staff time will be required to address questions arising from outdated or conflicting provisions of the current rules. The current implementation of Article 15 will ease administration and reduce inconsistency between the current rules and nationwide industry standards. The Department believes that since the updates proposed are updating, clarifying, and streamlining the rules for users, no substantial changes were made to the operations of the Department's prescribed burn process.

The Department states that they reviewed and discussed the prescribed burn authorization process with federal and state land manager stakeholders who use Article 15 rules, as well as internal subject matter experts, and determined that the current permit structure achieves the enhanced smoke management program outcomes required under the federal Regional Haze rule in the least intrusive and costly way that is feasible.

7. Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?

The Department indicates it made the following changes to the rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking now before the Council:

- R18-2-1505(E) was amended to change the word "control" to "management" per stakeholder suggestion.
- R18-2-1501(10) was amended from the "'Daily Burn Authorization Process' means daily review by ADEQ of burn requests for the following day" to state the "'Daily Burn Authorization Process' means the daily process by which ADEQ reviews and approves, approves with conditions, or disapproves 'Daily Burn Requests' for the following day," per stakeholder suggestion
- In addition, minor typographical corrections were made throughout the document. These amendments further streamline and clarify the rules which furthers the purpose of this rulemaking.
- R18-2-1501(29), which is the definition for "Smoke Sensitive Area," "Air Pollution Control Officer" was changed to "ADEQ." This change was made to clarify ADEQ's role.

Council staff does not believe these changes make the final rules substantially different from the proposed rules pursuant to A.R.S. § 41-1025.

8. Does the agency adequately address the comments on the proposed rules and any supplemental proposals?

The Department received numerous comments from stakeholders including the National Park Service (NPS), AZ Department of Forest and Fire Management (DFFM), United States Forest Service (USFS), and Arizona Farm Bureau Federation. The comments are summarized in Section 11 of the Preamble along with the Department's responses. Copies of the written comments have also been provided with the final materials for the Council's reference. Council staff believes the Department has adequately responded to the comments on these proposed rules.

9. Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Pursuant to A.R.S. § 41-1037(A), if an agency proposes 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, as defined by A.R.S. § 41-1001(11), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

The Department indicates the rules provide the State and Federal Land Managers with an agency authorization which under Article 15 is referred to as the Daily Burn Authorization Process. The Department indicates this rulemaking is exempt from the use of a general permit under A.R.S. § 41-1037(A)(3) because a general permit is not technically feasible and would not meet the applicable statutory requirements under A.R.S. § 49-501(B)(2), (4)-(5) and (C). Furthermore, the Department states any efforts to incorporate a general permit into this rulemaking would result in additional regulatory requirements and costs being placed on the permit applicant.

10. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

The Department indicates the rules in Article 15 reflect the mandates of the federal regional haze SIP requirements under 40 CFR 51.308 and 51.309. The Department states, the rules under Article 15 are not more stringent than this corresponding federal law.

11. Conclusion

This regular rulemaking from the Department of Environmental Quality (Department) seeks to amend thirteen (13) rules and repeal two (2) rules in Title 18, Chapter 2, Article 15 related to Forest and Range Management Burns. Specifically, the purpose of this rulemaking is

to update the Department's forest and range management burn rules which regulate prescribed burns and allow for smoke management across the State.

The Department is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.



Katie Hobbs
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Karen Peters
Director

4/6/2023

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N. 15th Ave., #305
Phoenix, AZ 85007

Re: Rulemaking for Title 18. Environmental Quality, Chapter 2. Department of Environmental Quality-Air Pollution Control, Article 15.

Dear Chair Sornsin:

The Arizona Department of Environmental Quality (ADEQ) hereby submits changes to Arizona Administrative Code (A.A.C) R18-2-1500 through R18-2-1515 to the Governor's Regulatory Review Council (GRRC) for its consideration and approval at the Council meeting scheduled for June 6, 2023.

The following information is provided for your use in reviewing the enclosed rules for approval pursuant to A.R.S. § 41-1052 and A.A.C. R1-6-201:

I. Information Required by A.A.C. R1-6-201(A)(1)

- The public record closed for all rules on December 9, 2022 at 5:00 p.m.
- Pursuant to A.R.S. § 41-1038 (A)(1) this rulemaking does not: increase the cost of regulatory compliance, impose a new fee, increase a fee, or reduce procedural rights of regulated persons. This rulemaking amends rules that are outdated and no longer necessary for operation of the state government, as they are inconsistent with applicable federal law. The term "wildland fire use" which describes a fire management strategy has been out of date since the enactment of the U.S. Environmental Protection Agency's Final Rule for the Treatment of Data Influenced by Exceptional Events (81 FR 68216, 68247, Oct. 03, 2016) and the 2009 Updated Policy for Implementation of Federal Wildland Fire Management Policy published by the U.S. Department of the Interior, Bureau of Land Management updated the industry's terminology.
- The rulemaking activity relates to a five-year review report approved by the Council on November 2, 2021.
- The Department certifies that the preamble discloses 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.
- An immediate effective date under A.R.S. § 41-1032 is not being requested.

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- A list of documents enclosed under A.A.C. R1-6-202(A)(1)(h), (A)(2)-(8), which are enclosed as electronic copies:
 - This cover letter.
 - The Notice of Final Rulemaking (NFRM), including the preamble, table of contents, and text of each rule.
 - The written comments and transcript of oral comments received by ADEQ on the Notice of Proposed Rulemaking (NPRM).
 - ADEQ received no analysis regarding the rules' impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states; therefore, no such analysis is included in this submittal.
 - The rules amended by this rulemaking do not incorporate materials by reference; therefore, no such materials are included.
 - No statute was declared unconstitutional.
 - One electronic copy of each of the following is enclosed: the general and specific statutes authorizing the rules, including relevant statutory definitions: A.R.S. §§ 49-104(A)(1) and (A)(10), 49-404(A), 49-425(A), 49-458, 49-501(B)(2),(4)-(5) and (C). As well as a copy of 18- U.S.C. § 1151 as it is referred to in A.A.C. R18-2-1502(C).

Thank you for your timely review and approval. Please contact Daniel Czecholinski, Division Director, Air Quality Division, 602-771-4655 or czecholinski.daniel@azdeq.gov, if you have any questions.

Sincerely,



Karen Peters, Director
Arizona Department of Environmental Quality

NOTICE OF FINAL RULEMAKING
TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL

PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| R18-2-1501 | Amend |
| R18-2-1502 | Amend |
| R18-2-1503 | Amend |
| R18-2-1504 | Amend |
| R18-2-1505 | Amend |
| R18-2-1506 | Amend |
| R18-2-1507 | Amend |
| R18-2-1508 | Repeal |
| R18-2-1509 | Amend |
| R18-2-1510 | Repeal |
| R18-2-1511 | Amend |
| R18-2-1512 | Amend |
| R18-2-1513 | Amend |
| R18-2-1514 | Amend |
| R18-2-1515 | Amend |
- 2. Citations to the agency’s statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**
- Authorizing statute: Arizona Revised Statutes (A.R.S.) §§ 49-104(A)(1), (10), 49-404(A), 49-425(A), 49-458, 49-501(B)(2), (4)-(5) and (C).
- Implementing statute: A.R.S. § 49-458.01 (A)(7) and (C).
- 3. The effective date of the rule:**
- Not currently applicable
- 4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**
- Notice of Rulemaking Docket Opening: 27 A.A.R. 2702.
- Notice of Proposed Rulemaking: 28 A.A.R. 3413.

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

Name: Samantha Schaffer
Address: Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007
Telephone: (602) 771-2351
E-mail: Schaffer.samantha@azdeq.gov

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

Summary

The purpose of this rulemaking is to update the Arizona Department of Environmental Quality's (ADEQ) forest and range management burn rules which regulate prescribed burns and allow for smoke management across the State. Prescribed fires or burns, refer to the controlled application of fire by experts under specific weather conditions to the landscape in order to restore health to the ecosystem and to prevent forest under-growth from fueling wildfires.

Arizona has experienced an increase in severe wildfires. As a result, the Ducey Administration made it a priority to reduce the threat of wildfires by supporting and signing wildfire legislation that focuses on preventing and fighting fires. Improving and modernizing these rules to streamline and meet current industry standards- without creating additional regulatory burden- will be another step towards reducing the major threat of wildfires in Arizona. The changes made to each rule within the article are discussed later in this section.

Legal Background

State and federal forest and range land covers roughly 27% of the State and occupies 19.4 million acres. Despite potential air quality concerns, State and Federal Land Managers use the application of fire as a resource management tool on forest and range land for a variety of purposes. Arizona Administrative Code (A.A.C.) Title 18, Chapter 2, Article 15 governs the emissions from these fires and the rules address the two primary concerns for air quality which are violations of national ambient air quality standards (NAAQS) for particulate matter (PM₁₀ or PM_{2.5}) and visibility impairment. Research indicates that on average most of the smoke particles from wild and prescribed fires are from PM₁₀ and PM_{2.5}. The requirements under Article 15 address these air quality concerns, primarily through efforts to ensure best practices are being used to reduce the amount of smoke produced and as a result the impacts of the smoke to the citizens of Arizona and the environment.

A.R.S. § 49-458.01 specifically requires the Director to submit a plan to EPA, and allows ADEQ to promulgate rules to address programs related to emissions from fires, including prescribed and wildfires as necessary. (See A.R.S. § 49-458.01(A)(7)). The revisions to Article 15 will improve clarity and facilitate enhanced compliance.

In addition, the changes to Article 15 clarify the existing requirements that reflect the mandates of the regional haze State Implementation Plan (SIP) requirements promulgated at 40 Code of Federal Regulations (CFR) §§ 51.308 and 51.309. At the time of the program's inception, under 40 CFR § 51.309(d)(6), regional haze plans relating to fire had to provide for:

- “(i) Documentation that all federal, state, and private prescribed fire programs within the state evaluate and address the degree visibility impairment from smoke in their planning and application. In addition, *the plan must include smoke management programs that include all necessary components including, but not limited to, actions to minimize emissions, evaluation of smoke dispersion, alternatives to fire, public notification, air quality monitoring, surveillance and enforcement, and program evaluation.*
- (ii) *A statewide inventory and emissions tracking system (spatial and temporal) of VOC, NOX, elemental and organic carbon, and fine particle emissions from fire. In reporting and tracking emissions from fire from within the state, states may use information from regional data gathering and tracking initiatives.*
- (iii) *Identification and removal wherever feasible of any administrative barriers to the use of alternatives to burning in federal, state, and private prescribed fire programs within the state.*
- (iv) *Enhanced smoke management programs for fire that consider visibility effects, not only health and nuisance objectives, and that are based on the criteria of efficiency, economics, law, emission reduction opportunities, land management objectives, and reduction of visibility impact.*
- (v) Establishment of annual emission goals for fire, excluding wildfire, that will minimize emission increases from fire to the maximum extent feasible and that are established in cooperation with states, tribes, federal land management agencies, and private entities” (emphasis added).

Since the amendments streamline Article 15 for stakeholders and meet the current federal regional haze requirements under 40 CFR §§ 51.308 and 51.309 the changes do not create additional burden on stakeholders.

Factual Background

In early 2002, ADEQ established a Fire Emissions Work Group (FEWG) to discuss visibility issues related to fire emissions and to make recommendations to ADEQ for the Regional Haze SIP. Fifteen stakeholders, representing public and private entities in geographically diverse areas of the State, agreed to participate in the work group. The FEWG helped ADEQ draft the current rules and create the State’s enhanced smoke management program. The program, while nationally recognized at the time of its inception as one of the best in the country, has become outdated over the last 20 years and requires updating to ensure it continues to be one of the country’s leading enhanced smoke management programs. The current rulemaking was the result of a joint effort between ADEQ and stakeholders, including many of the original FEWG participants, to further improve the state’s existing program.

Section by Section Explanation of Proposed Rules:

R18-2-1501	Added and amended definitions used in the smoke management program. Added definitions identifying industry terms and programs referenced in the rules.
R18-2-1502	Amended to update outdated terminology and to clarify applicability. Additional amendments were made to ensure conformity with A.R.S. § 49-501 and A.A.C. R18-2-602.
R18-2-1503	Amended to remove references to the “annual registration program” and the program’s components which required the collection of data pertaining to possible future projects. The data collected for the annual registration program is not used by ADEQ because it is based on hypothetical prescribed fires (i.e. burns) that may or may not take place later in the year. ADEQ gathers the same information requested by the annual registration program albeit at a later date; usually within days of the actual burn taking place as part of the submitted Burn Plan documents. The data gathered prior to the prescribed fire taking place throughout the year is the most accurate, as weather patterns and physical conditions change quickly. By waiting to collect the information closer to the burn date ADEQ with the help of Federal and State Land Managers ensure that actual verifiable data is collected. However, ADEQ will still be working with stakeholders to establish annual emission goals as required by 40 CFR 51.309(d)(6). By removing the “annual registration program” requirements and references ADEQ will be freeing stakeholders from unnecessary burden and further streamline the program.
R18-2-1504	Amended to clarify the sequencing of the Daily Burn Application Process. Amended to update the mapping and modeling technology to modern agency capabilities. Amended to prevent users from being locked out of the ADEQ online database for 14 days for minor revisions.
R18-2-1505	Amended to ensure information is submitted for each day a burn is to take place. Amended to clarify what type of information may be requested, how Federal and State Land Managers may contact ADEQ, and that burn requests can only be reviewed the day before the burn. ADEQ cannot approve burn request forms prior to the day before the burn is to take place due to changing weather and other conditions that could impact the review of the request. Amended to clarify the standard industry safety requirements that apply when conducting ignitions to ensure the health and safety of Arizona residents and out of state visitors.
R18-2-1506	Amended to remove “wildland fire use” because the term and the associated processes are no longer used by industry. Amended to remove “100 acres prescription” because the numerical value is an arbitrary threshold that does not account for the changing nature of fires. Amended to provide further clarity and to reflect A.A.C. R18-2-1501(29).

R18-2-1507	Amended to extend reporting deadlines for post-burn information collection. The extension does not affect emissions or the conditions under which the Federal and State Land Manager may burn. Amended to clarify procedure and update terminology. Amended to remove outdated procedures.
R18-2-1508	Repealed to reflect unenforceable “wildland fire use” requirements. The term “wildland fire use” is no longer used by industry or the U.S. Environmental Protection Agency (EPA). In the Agency’s 2016 Final Rule for the Treatment of Data Influenced by Exceptional Events “wildland fire use” was not codified (<i>See</i> 81 FR 68216, 68247, Oct. 03, 2016). In this document EPA stated “[w]hen the [smoke management program] SMP elements were developed for the 1998 Interim Air Quality Policy on Wildland and Prescribed Fires, the language reflected actions consistent with addressing three types of wildland fire (i.e., wildfire, prescribed fire and wildland fire use fire.) Fire terminology now recognizes two types of wildland fire: Wildfire and prescribed fire. We chose not to include provisions in regulatory text that do not reflect current terminology.” <i>Id.</i>
R18-2-1509	Amended to combine with A.A.C. R18-2-1510 due to the overlapping text and methodologies used. Amended to reflect current industry practices.
R18-2-1510	Repealed to reflect the changes made to A.A.C. R15-2-1509.
R18-2-1511	Amended to clarify monitoring procedure. Amended to remove outdated monitoring technology requirements.
R18-2-1512	Amended to clarify existing requirements and to reflect the updated terminology used throughout the Article.
R18-2-1513	Amended to update and clarify the existing requirements. Amended to remove the outdated terminology.
R18-2-1514	Amended to conform with industry standards and to remove outdated terminology.
R18-2-1515	Amended to conform with current industry standards.

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

Not applicable.

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

Not applicable.

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

The following discussion addresses each of the elements required for an Economic, Small Business, and Consumer Impact statement (EIS) under A.R.S. § 41-1055.

An identification of the rulemaking

Conduct addressed in this rulemaking: ADEQ, on average, approves 440 prescribed fire requests per year, with the majority of prescribed burns taking place in the cooler months. The current rules regulating prescribed fires contain outdated terms and provisions that do not completely align with the industry standards developed by the National Wildfire Coordination Group (NWCG), which provides national leadership to prescribed fire operations. This misalignment causes confusion for stakeholders. This rulemaking will update the terminology, realign the program with NWCG standards, and streamline the program for stakeholders.

Resulting harm: The disconnect between industry standards and the State's regulatory rules causes confusion among stakeholders and requires them to adhere to practices that are no longer relevant nationally. Burn requests occasionally require revision or clarification during review by ADEQ in collaboration with the land manager requesting burn authorization. This rework causes delays for both parties and negatively impacts the ability of land managers to plan and adapt to changing fire conditions.

Change in targeted conduct:

This rulemaking will update and clarify terminology to conform to current industry practice without additional regulatory burden, while also ensuring compliance with the enhanced smoke management program requirements under the federal regional haze program. These updates will clarify the rules and improve the experience of the regulated community by reducing the amount of rework or additional information required to receive burn authorization. The changes will ensure Federal and State Land Managers conducting prescribed burns understand the smoke program's approval and reporting requirements while facilitating open communication and cooperation between them and ADEQ. This cooperative effort will allow the State to achieve its goals for prescribed fire (reduced wildfire risk, improved watershed and ecosystem health) while protecting air quality.

Improving and modernizing these rules to streamline and meet current industry standards - without creating additional regulatory burden - will be another step towards reducing the major threat of wildfires in Arizona. The details regarding the specific changes made to each rule within the article are discussed in section 6 of the Notice of Final Rulemaking.

An identification of the persons who will be directly affected by, bear the cost of or directly benefit from the rulemaking.

ADEQ has jurisdiction over air pollution resulting from prescribed burning other than in Tribal Nations and Communities. This rule will impact the following federal and state agencies that conduct prescribed burns: (1) Federal Land Managers (FLMs) involved in burning activities, such as U.S. Forest Service, U.S. Fish and Wildlife Service, National Parks Service, Bureau of Land Management, Bureau of Reclamation, Department of Defense; (2) State Land Managers (SLMs), such as Arizona Department of Forest and Fire Management, Arizona Department of Transportation, Arizona Department of Game and Fish, and Parks Department. Additionally, there are entities not legally subject to this rule who may voluntarily comply with some or all of the rule provisions, such as the Bureau of Indian Affairs, one of the largest burners in Arizona. Note that as political subdivisions of the State of Arizona, local and municipal agencies and fire districts are considered SLMs for purposes of this analysis.

Occasionally, there are also private individuals or land managers who wish to conduct large-scale prescribed burning. These parties must receive assistance and oversight from a F/SLM in order to ensure compliance. The private burner and the F/SLM then jointly follow smoke management procedures and rule requirements while sharing costs. Certain private burners, such as land conservation organizations, must coordinate with F/SLMs to use the Article 15 rules, there are no additional costs or benefits to private parties beyond the minimal impact on F/SLMs discussed in this impact statement.

ADEQ administers the smoke management program, reviews prescribed burn plans and individual burn requests, and is responsible for collecting and reporting data on the smoke impacts of prescribed fire. ADEQ's administration of the rules is positively impacted by the rule improvements in this rulemaking, as less staff time will be required to address questions arising from outdated or conflicting provisions of the current rules.

A cost benefit analysis of the following:

(a) The probable costs and benefits to the implementing agency or other agencies directly affected by the implementation and enforcement of the rulemaking.

Description of Affected Groups	Description of Effect	Increased Cost/Decreased Revenue or Benefit	Decreased Cost/Increased Revenue or Benefit
A. Government Agencies			
Federal and State Public Land Managers	Further clarifies the Article for users.	None	Marginal decreased time cost of compliance
Arizona Department of Environmental Quality	Further clarifies the Article for users.	Moderate initial cost to update online smoke portal/database	Marginal decreased time cost of addressing stakeholder questions

Minimal	Moderate	Substantial	Significant	Marginal
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\$5,000 or less	\$5,001 up to \$25,000	\$25,000 or more	Cost or benefit cannot be easily quantified, but ADEQ expects it to be significant.	Cost or benefit cannot be easily quantified, but ADEQ expects it to be marginal.
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(b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the rulemaking

Federal and State Land Managers

The current implementation of Article 15 already requires close coordination between ADEQ and Federal or State Land Managers seeking to conduct a prescribed burn in order to minimize smoke impacts on surrounding communities and sensitive areas. The updated rules will benefit Land Managers by reducing discrepancies between the state rules and federal programs/rules, which should clarify the administration of the rules.

Certain rule changes allow more time to report information to ADEQ, in order to provide flexibility to federal and state land managers in varying field conditions, while still complying with federal requirements for an enhanced smoke management program. This additional flexibility, on top of the clarifications to the rules to provide federal and state land managers with a streamlined experience, is anticipated to save time and effort. The substantive requirements of the rules remain the same, so ADEQ anticipates no additional costs to federal and state land managers, including local and municipal agencies or fire districts.

ADEQ

The clarification of the Article 15 will ease administration and reduce the inconsistency between the current rules and nationwide industry standards. ADEQ expects the rulemaking to decrease staffing costs related to providing technical assistance to land managers. ADEQ will not require new staff or any substantial contractor expenditures to implement these updated rules. ADEQ will benefit from the revision as the changes align with recognized industry standards which simplifies compliance and enforcement. The revisions will have a moderate, one-time cost to ADEQ. The department will be updating the prescribed fire online database to streamline access to users and to accommodate the changes to the rules.

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

As the rules apply only to federal and state land managers and do not directly apply to private businesses unless assisted by a federal or state land manager, ADEQ anticipates no impact on private employment from this rulemaking.

A general description of the probable impact on private and public employment in business, agencies, and political subdivisions of this state directly affected by the rulemaking.

Since the updates proposed are updating, clarifying, and streamlining the rule for users, no substantial changes were made to the operation of ADEQ's prescribed burn process. As such, there is no expected impact on public employment. ADEQ does not anticipate any impact to private employment due to the provisions under A.R.S. § 49-501 which prohibits private businesses and residents from conducting prescribed burns unless they are assisted by a qualified federal or state land manager that will apply the rules under Article 15.

There may be some impact to state political subdivisions, such as fire departments, who meet the federal and state land manager requirements who wish to conduct prescribed fires. However, the impact should only be procedural paperwork and not increase payroll or other costs.

A statement of the probable impact of the rulemaking on small businesses:

These rules apply only to federal and state land managers. Private entities, including any business, are prohibited from conducting prescribed burns under Article 15 unless assisted by an F/SLM. Therefore, this rulemaking will have no impact on small businesses.

(a) An identification of the small business subject to the rulemaking

Not applicable.

(b) The administrative and other costs required for compliance with the rulemaking

Not applicable.

(c) A description of the methods that the agency may use to reduce the impact on small businesses.

Not applicable.

(d) The probable costs and benefit to private persons and consumers who are directly affected by the rulemaking.

Not applicable.

A statement of the probable effect on state revenues.

Since the proposed rule updates do not substantially change the operations of the ADEQ prescribed burn authorization process or affect commercial activity from which the state of Arizona would receive tax

revenue, ADEQ projects no effect on state revenues resulting from the rulemaking.

A description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking.

Since this rulemaking aligns with federal and state best management practices for wildfire and prescribed fire, there is not a less intrusive or less costly alternative available at this time. In fact, because the amendments streamline the rules ADEQ is reducing stakeholder burden with this rulemaking.

ADEQ reviewed and discussed the prescribed burn authorization process with federal and state land manager stakeholders who use the Article 15 rules, as well as internal subject matter experts, and determined that the current burn permit structure achieves the enhanced smoke management program outcomes required under the federal Regional Haze rule in the least intrusive and costly way that is feasible.

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.

Not applicable.

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

A.A.C. R18-2-1505(E) was amended to change the word "control" to "management" per stakeholder suggestion. In addition, A.A.C. R18-2-1501(10) was amended from the "'Daily Burn Authorization Process" means daily review by ADEQ of burn requests for the following day" to state the "Daily Burn Authorization Process" means the daily process by which ADEQ reviews and approves, approves with conditions, or disapproves "Daily Burn Requests" for the following day" per stakeholder suggestion. In addition, minor typographical corrections were made throughout the document. These amendments further streamline and clarify the rules which furthers the purpose of this rulemaking. In A.A.C. R18-2-1501 (29), which is the definition for "Smoke Sensitive Area," "Air Pollution Control Officer was changed" to "ADEQ." This change was made to clarify ADEQ's role.

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

ADEQ thanks all commenters for their input. The following table addresses oral and written comments received from the following entities and organizations during the comment period and the extended comment period: National Park Service (NPS), AZ Department of Forest and Fire Management (DFFM), United States Forest Service (USFS), and Arizona Farm Bureau Federation. The Arizona Farm Bureau Federation submitted both oral and

written comments which ADEQ has combined in order to address overlapping comments.

Rule	Comments	Agency Response
N/A	ADEQ received a comment from the National Park Service (NPS) regarding the Department's stakeholder engagement process. In their comment the NPS indicated that they had only received notice of the proposed rulemaking on December 9, 2022, and thus had concerns regarding the implementation of the revision process and the lack of stakeholder involvement. They also requested advanced notification and more time for review.	ADEQ takes stakeholder engagement very seriously and has made every reasonable effort to engage with and accommodate our stakeholders. When this rulemaking began, ADEQ notified three hundred and twenty-four members of the smoke management community, twenty of which were NPS employees, and invited them to engage in and provide feedback for this rulemaking at stakeholder review meetings. In addition to the individual invitations, ADEQ sent out GovDelivery emails to the individuals and groups subscribed to the agency's email updates. Stakeholders received invitations for meetings held on Oct. 25, 2021, Nov. 4, 2021, Nov. 18, 2021, March 29, 2022, July 28, 2022, and Dec. 1, 2022. ADEQ has also met the legal requirements for public notice under Arizona Revised Statutes, Title 41, Chapter 6.
A.A.C. 18-2-1501(4)	Arizona Department of Forest and Fire Management (DFFM): This definition could definitely add workload and liability to DFFM?	This definition was added in response to stakeholder requests to clarify its meaning, but the substantive requirements for assisting agencies have not changed. The requirement under A.A.C. R18-2-1502 that "A F/SLM that is conducting or assisting a prescribed burn shall follow the requirements of this Article" remains the same.
A.A.C. R18-2-1501(6)	United States Forest Service (USFS): ADEQ should consider changing "Burn Plan" to "ADEQ Burn Plan." This would help differentiate between the ADEQ and the NWCG Burn Plan documents.	For consistency and clarity, ADEQ intends to retain this term as it was adopted. We believe the definition of "Burn Plan" contained in the rule adequately clarifies that the term refers only to the burn plan form provided by ADEQ.
A.A.C. R18-2-1501(10)	USFS: We feel the proposed language in A.A.C. R18-2-1501(10) and R18-2-1505(D)(1) could possibly have future repercussions that could limit or restrict our ability to protect the public from the risk of high intensity, high severity wildfire.	The revisions mentioned in this comment do not result in substantive change to the way the rules are enforced, because Daily Burn Requests have always been subject to final approval only on the business day before the burn in order to review the most up to date meteorological data to evaluate smoke dispersal conditions. These revisions are intended to clarify the burn authorization process and ensure the rule language more closely aligns with actual practice.
A.A.C. R18-2-1501(10)	USFS: Suggests the following change: "Daily Burn Authorization Process" means the process by which ADEQ reviews and approves, approves with conditions or disapproves "Daily Burn Requests."	ADEQ agrees with this proposed clarification to the definition, with a revision. The new A.A.C. R18-2-1501(10) will read: "Daily Burn Authorization Process" means the daily process by which ADEQ reviews and approves, approves with conditions or

		disapproves “Daily Burn Requests” for the following day.
A.A.C. R18-2-1501(21)	DFFM: We should use the NWCG definition. Our Prescribed Fire Burn Plans are a legal template with 21 components. The NWCG Prescribed Fire Implementation Guide provides instructions for all 21 components and also includes instructions for the complexity rating.	For consistency and clarity, ADEQ intends to retain this term as it has been since the rules were initially adopted. We believe the definition of “Burn Plan” contained in the rule adequately clarifies that the term refers only to the burn plan form provided by ADEQ.
A.A.C. R18-2-1501 (22)	DFFM: Suggests adding "Training “AND certification” to the first sentence of the definition. Change definition to read "prescribed fire BURN plan" at the end of the first sentence.	The suggested changes were made prior to publication of the NPRM and are reflected in the proposed rule.
A.A.C. R18-2-1501(25)	USFS: Suggested changing the definition for Smoke Management Prescription under A.A.C. R18-2-15001(25) to: ““Smoke management prescription” means the predetermined meteorological conditions that affect smoke transport and dispersion under which a burn could occur without adversely affecting public health and welfare.”	ADEQ will be proceeding with the proposed definition. The new definition does not increase the regulatory burden on stakeholders since the areas listed in the proposed definition are those that burners must already consider under NWCG definition for “prescription.” The NWCG definition for “prescription” states: “. . .a prescription is measurable criteria that define conditions under which a prescribed fire may be ignited. . . Prescription criteria typically describe environmental conditions such as temperature, humidity and fuel moisture, but may also include safety, economic, public health, geographic, administrative, social, or legal considerations” ¹ Since the proposed definition is codifying geographic considerations (i.e. Class I Visibility Areas), legal considerations (i.e. the National Ambient Air Quality Standards), and economic considerations (i.e. Transportation networks) it is aligned with industry standards and therefore is not more burdensome to stakeholders.
A.A.C. R18-2-1501 (28)	DFFM: Under statutory authority DFFM is responsible for fire suppression, prevention, and the mitigation of hazards fuels on State and private lands in Arizona. DFFM is also responsible for administering all prescribed fire qualifications and certifications.	ADEQ recognizes and respects Arizona DFFM’s authority as the State’s regulatory entity responsible for administering prescribed fire qualifications and certifications, as well as the entity responsible for fire suppression, prevention, and mitigation of hazardous fuels within Arizona. While DFFM is responsible for physical fires, ADEQ has authority under the federal Clean Air Act §§ 169 (A) and (B), as well as, A.R.S. § 49-458.01 to regulate the smoke created by fires within the State.
A.A.C. R18-2-1501 (29)	USFS: We previously submitted comments that this definition be changed. We support the unique sensitivity,	ADEQ appreciates this feedback and incorporated the first comment into the current proposed rule prior to publication. The proposed definition in this rule for “Smoke

	<p>professional work, and awareness that has elevated Arizona's Air Quality and Smoke Management reputation to the current National level of respect. It well may be detrimental to adopt a definition here which attempts to identify all areas of smoke sensitivity and/or concern. We suggest: Smoke sensitive area may include any area with infrastructure and values associated with public health and welfare. This determination may be of short duration. Additionally, short duration impact from prescribed fire implementation may be a much preferred and favorable option when compared to impacts from unplanned wildfires.</p>	<p>sensitive area” does not “attempt to identify all areas of smoke sensitivity.” Rather, it provides examples of possible smoke sensitive areas that could be considered while reviewing a Burn Request, as stakeholders requested in development of the rule revisions. At the same time, ADEQ believes the definition’s list of examples is not overly prescriptive and provides flexibility for ADEQ and F/SLMs to collaboratively identify areas of potential smoke concern on a case-by-case basis.</p> <p>ADEQ recognizes that impacts to smoke sensitive areas need to be evaluated along with the positive benefits for air quality and forest management from prescribed fire and believes that the rule revisions adequately address the need for flexibility and individual review of each Burn Plan and Daily Burn Request.</p>
A.A.C. R18-2-1501 (29)	<p>USFS: Suggested the following change: “Smoke sensitive areas” means areas where it has been determined that smoke may adversely impact public health and welfare. These areas may be the result of synoptic weather patterns, topography and geographical location and need to be examined on a case-by-case basis where air quality, meteorology, public health and welfare are considered. These areas may only be sensitive for short periods of time and any use of these areas in the “smoke dispersion evaluation” and “Daily Burn Authorization Process” should be weighed against the potential gains in forest health, resource, and public protection from high severity, dangerous wildfire.</p>	<p>ADEQ appreciates this feedback and incorporated the first comment into the current proposed rule prior to publication. The proposed definition in this rule for “Smoke sensitive area” does not “attempt to identify all areas of smoke sensitivity.” Rather, it provides examples of possible smoke sensitive areas that could be considered while reviewing a Burn Request, as stakeholders requested in development of the rule revisions. At the same time, ADEQ believes the definition’s list of examples is not overly prescriptive and provides flexibility for ADEQ and F/SLMs to collaboratively identify areas of potential smoke concern on a case-by-case basis.</p> <p>ADEQ recognizes that impacts to smoke sensitive areas need to be evaluated along with the positive benefits for air quality and forest management from prescribed fire and believes that the rule revisions adequately address the need for flexibility and individual review of each Burn Plan and Daily Burn Request.</p>
A.A.C. R18-2-1502	<p>DFFM: Arizona DFFM is currently conducting hazard fuels reduction efforts including prescription fire implementation on private land.</p>	<p>The changes made to A.A.C. R18-2-1502 will not impact the projects of F/SLM.</p>
A.A.C. R18-2-1504	<p>DFFM: The title for rule A.A.C. R18-2-1504 is confusing to F/SLM's. We consider this title as reference to the NWCG Prescribed Fire Burn Plan. Could this be changed to ADEQ Prescribed Fire Plan? or ADEQ Prescribed Fire Registration Plan?</p>	<p>For consistency and clarity, ADEQ intends to retain the title of this rule and the term for Prescribed Burn Plans as they have been since the rules were initially passed. We believe the definition of “Burn Plan” contained in the rule adequately clarifies that the term refers only to the burn plan form provided by ADEQ.</p>

A.A.C. R18-2-1505	DFFM: Suggest changing “control” to mitigation measures in section (E).	<p>ADEQ agrees with this suggestion and A.A.C. R18-2-1505(E) will now read, in relevant part:</p> <p>“ . . . the F/SLM shall take appropriate action to reduce further smoke impacts, ensure safe and appropriate fire mitigation . . .”</p>
A.A.C. R18-2-1505	<p>The NPS and USFS:</p> <p>Both agencies have submitted comments disagreeing with the Department's proposed changes to A.A.C. R18-2-1505(A) which would require F/SLM planning a prescribed burn to complete and submit a Daily Burn Request form for each day ignitions will take place. The comments covered multiple aspects of planning a prescribed burn but focused on the following: Burn Request authorization decisions restricted to only being made the day prior to the planned ignition will raise the cost per acre for projects making some projects cost prohibitive causing them to limit the size and number of projects that can be complete in a year ; stakeholders believe that the original intent of A.A.C. R18-2-1505 was not to limit Burn Requests to single day events; and the current language in A.A.C. R18-2-1505 and 1506 adequately outlines the process.</p>	<p>ADEQ disagrees with the comments related to the Department's proposed changes to A.A.C. R18-2-1505(A), which would require F/SLM planning a prescribed burn to complete and submit a Daily Burn Request form for each day ignitions will take place. However, ADEQ thanks the NPS and USFS for their comments and will take this opportunity to reiterate that the purpose of the revision to A.A.C. R18-2-1505 is to maintain the status quo. While ADEQ has had extensive conversations with the USFS Air Quality Specialist assigned to Arizona regarding this change and ADEQ's interpretation of the language proposed, there seems to be a misinterpretation in regards to the amended rules requirements. The revised language in these rules does not impact current practice of submitting, reviewing, and approving burn requests. The proposed revisions do not require burners to submit the "Daily Burn Request" form on each separate day of the burn. Rather, ADEQ is requiring that the burners submit a "Daily Burn Request" form for each day they plan to ignite, with the ability to submit multiple requests on the same day.</p> <p>For example, if the burners are planning on burning for five days they can submit all of their Daily Burn Request Forms on the same day- as long as the forms are submitted any time before 2 p.m. the business day before the burn is to take place. ADEQ has always approved burns the business day before the burn is to take place in order to allow timely assessment of meteorological and smoke dispersion conditions before approval of any burn. As the prescribed burn community knows, weather patterns change quickly and the updated rule will allow ADEQ to evaluate each burn day based on the most current and accurate air quality information available.</p> <p>This change is not intended to limit the prescribed burning process or to impact resources. In the event that it does have a negative impact on burners ADEQ commits to amending the rule to ensure it meets the objective for all parties. Furthermore, ADEQ's Smoke Management Team is readily available to speak with F/SLM and the public about any concerns or upcoming projects.</p>

A.A.C. R18-2-1506	DFFM: Regarding A.A.C. R18-2-1506(12) (Impacts to transportation): Doesn't the definition of Smoke Sensitive Areas cover impacts to transportation?	While it is true that transportation is included as one example of a possible smoke sensitive area, ADEQ believes it is valuable to reiterate the importance of evaluating impacts to transportation during the Daily Burn Request review within the rule itself.
A.A.C. R18-2-1506	USFS: Suggests removing "including transportation corridors" from A.A.C. R18-2-1506(10) as it is already implied in the language "smoke sensitive areas."	While it is true that transportation is included as one example of a possible smoke sensitive area, ADEQ believes it is valuable to reiterate the importance of evaluating impacts to transportation during the Daily Burn Request review within the rule itself.
A.A.C. R18-2-1506	NSPS: Best to include a comprehensive list of smoke-sensitive areas instead of only highlighting one ("Transportation Corridors").	ADEQ has included examples of smoke-sensitive areas under A.A.C. R18-2-1501(29). With that said, ADEQ believes it is valuable to reiterate the importance of evaluating the impacts to transportation during the Daily Burn Request review process as well.
A.A.C. R18-2-1506	USFS: A.A.C. R18-2-1506 Please see comment for A.A.C. R18-2-1501(10).	Please refer to the response for A.A.C. R18-2-1501(10).
A.A.C. R18-2-1508	The Arizona Farm Bureau Federation: "Although, we understand the Environmental Protection Agency (EPA) now only statutorily recognizes two types of fire, wildfire and prescribed fire, it is important that ADEQ recognize that wildland fire use, using wildfires to manage natural resources, is still employed by federal agencies even if the term is no longer used."	ADEQ understands the Farm Bureau's comment, but disagrees with their conclusion. While the term "wildland fire" might still be employed by federal agencies, the term "wildland fire use," is an outdated term to describe a NWCG fire management strategy. The U.S. Forest Service, and the Arizona DFFM have advised ADEQ that removing "wildland fire use" is appropriate moving forward. As ADEQ cited in the notice of proposed rulemaking, EPA removed the term in the Agency's 2016 Final Rule for the Treatment of Data Influenced by Exceptional Events "wildland fire use" was not codified. ² In the document EPA stated "[w]hen the [smoke management program] SMP elements were developed for the 1998 Interim Air Quality Policy on Wildland and Prescribed Fires, the language reflected actions consistent with addressing three types of wildland fire (i.e., wildfire, prescribed fire and wildland fire use fire.) Fire terminology now recognizes two types of wild-land fire: Wildfire and prescribed fire. We chose not to include provisions in regulatory text that do not reflect current terminology." ³ EPA's action is consistent with the changes made in the 2009 Updated Policy for Implementation of Federal Wildland Fire Management Policy published by the United States Department of the Interior, Bureau of Land Management. Removing this term ensures consistency in the terminology used throughout the industry and ensures

		understanding throughout the prescribed fire community.
A.A.C. R18-2-1508	The Arizona Farm Bureau Federation: “we are concerned that with the before mentioned rule changes, ADEQ is creating incentives for fire managers and administrators to rely too heavily on managed wildland fire -- which ADEQ would eliminate any oversight and air quality reporting. This is regardless of the fact that intentional ignitions, which are said to accomplish the same goals of prescribed burning, are much riskier to control, and may or may not employ best practices for smoke emission.”	<p>Repealing A.A.C. R18-2-1508 does not keep ADEQ from regulating the emissions from the fires formerly referred to as “wildland fires.” Wildland fires will now be regulated as wildfires and prescribed fires under Article 15. Regarding the Farm Bureau’s written comment that intentional ignitions are much riskier to control and may or may not employ best practices to control smoke emissions, the Department is uncertain what the Farm Bureau is asserting since prescribed fires are a category of intentional ignition and have a demonstrated track record of being quite safe while advancing multiple land management and environmental protection goals.</p> <p>The impact of intentional ignitions or prescribed fires is based on a number of factors, including: the materials being burned; weather conditions; size of the fire; and how long the fire will be smoldering. ⁴ Prescribed fires consume smaller amounts of fuel and often produce less smoke than wildfires due to the smoke management techniques implemented by burners and because the days selected for the activity are based on ideal meteorological conditions. One study notes that “the impacts of prescribed fires are typically constrained to local communities and persist for a short duration, whereas the impacts of high-intensity wildfires are often long-term (weeks to months) and far-reaching.” ⁵</p> <p>In EPA’s September 2021 Comparative Assessment of the Impacts of Prescribed Fire Versus Wildfire (CAIF): A case Study in the Western U.S., EPA found that “predicted concentrations of [particulate matter of] 2.5 [micrograms or less] from prescribed fires are smaller in magnitude and shorter in duration than actual wildfires.” Another study in 2019 determined that “[s]moke from prescribed fire is, in general, localized to small regions and has a less widespread impact on air quality. ⁶</p> <p>The impacts of prescribed fire versus wildfires were illustrated in a two year, study in Fresno, California titled “the impact of prescribed fire versus wildfire on the immune and cardiovascular systems of children” where researchers evaluated the respiratory outcomes and markers of immune function among school-aged children who had been exposed to wildfire or prescribed burn smoke.⁷ The study showed that the children in the wildfire group exhibited greater evidence of adverse respiratory health outcomes, than the children</p>

		<p>in the prescribed fire group.⁸ Furthermore, monitoring before, during, and after the fire event demonstrated that prescribed burns likely did not contribute substantially to PM2.5 levels, with concentrations actually decreasing from pre- to post fire.⁹</p> <p>Based on the evidence available ADEQ has found prescribed fires intentional ignitions to be one of the best available methods to mitigate future wildfire harms and achieve other land management objectives.</p>
A.A.C. R18-2-1508	<p>The Arizona Farm Bureau Federation: “Consequently, ADEQ’s proposed rule revisions create a disparity of expectations and reporting between managed wildfire and prescribed burning. Under A.R.S. § 49-458.01 regardless of whether the EPA uses the term Wildland fire use, the state is still responsible to meet certain air quality standards and the state has expressed the need to support best practices for reducing the major threat of wildfires in Arizona.</p>	<p>The Department thanks the Arizona Farm Bureau Federation for their oral and written comments. As mentioned previously, repealing A.A.C. R18-2-1508 does not keep ADEQ from regulating the emissions from the fires formally referred to as “wildland fires.” Wildland fires will now be regulated as wildfires and prescribed fires under Article 15.</p> <p>ADEQ has the authority to regulate emissions from prescribed and open burn ignitions under A.R.S. § 49-501. As the Farm Bureau mentioned in their comments, A.R.S. § 49-458.01(A)(7) does mention “wildland fires” and “wildland fire use” however, the statute also states: “[t]he state implementation plan revisions submitted to the administrator shall address any of the following as necessary to submit an approvable plan: . . . Programs related to emissions from fire sources defined as wildland fire, including wildfire, prescribed natural fire, wildland fire use, prescribed fire and agricultural burning conducted and occurring on federal, state and private lands.” In other words, these fire sources may be regulated under the state’s regional haze program, but only as necessary to develop a federally-approvable state implementation plan.</p> <p>ADEQ, with the aid of federal and state agencies, has determined that Arizona state implementation plan revisions are not required to address emissions from “wildland fire” or “wildland fire use” under the prescribed burn program, because these terms are no longer in use at the federal level for smoke management purposes.</p> <p>This decision is based partially on the advice of federal and state agencies, as well as the evolution of the nation’s prescribed fire programs over the last twenty years. A.R.S. § 49-458.01 was last amended in 2004 and codified aspects of 40 CFR § 51.308 and 51.309 which regulates the regional haze program requirements. However, shortly after</p>

		<p>A.R.S. § 49-458.01 was amended EPA began collecting its own emissions data on prescribed and wildfire data.¹⁰</p> <p>Due to advances in emission monitoring technology, in 2015 EPA amended the Air Emissions Reporting Requirements (AERR) rule to eliminate the mandatory requirements for states to report emissions from wildfires and prescribed fires under 40 CFR Part 51.¹¹ ADEQ has ensured that all the requirements under 40 CFR §§ 51.308 and 51.309 were met under the proposed rules. Therefore, maintaining controls for “wildland fire” and “wildland fire use” is no longer necessary under A.R.S. § 49-458.01. Furthermore, as ADEQ cited in the notice of proposed rulemaking, EPA removed the term in the Agency’s 2016 Final Rule for the Treatment of Data Influenced by Exceptional Events and “wildland fire use” was not re-codified.¹² In this document EPA stated “[w]hen the [smoke management program] SMP elements were developed for the 1998 Interim Air Quality Policy on Wildland and Prescribed Fires, the language reflected actions consistent with addressing three types of wildland fire (i.e., wildfire, prescribed fire and wildland fire use fire.) Fire terminology now recognizes two types of wild-land fire: Wildfire and prescribed fire. We chose not to include provisions in regulatory text that do not reflect current terminology.”¹³ EPA’s action is consistent with the changes made in the 2009 Updated Policy for Implementation of Federal Wildland Fire Management Policy published by the United States Department of the Interior, Bureau of Land Management. Removing this term ensures consistency in the terminology used throughout the industry and ensures understanding throughout the prescribed fire community.</p> <p>This revision will not create a disparity of expectations and reporting between managed wildfire and prescribed burning because as mentioned previously, EPA actively gathers emissions information on prescribed and wildfires and releases this information in the National Emissions Inventory (NEI).¹⁴</p>
A.A.C. R18-2-1508	The Arizona Farm Bureau Federation: “[w]e also understand that emissions from wildfires are covered and evaluated under the EPA’s Exceptional Events Rule and recognize the importance of this rule for addressing natural events that occur outside of the control of human actions. Because fire	ADEQ disagrees with the Farm Bureau in its conclusion. The repeal of A.A.C. R18-2-1508 does not affect ADEQ’s authority to ensure fires and emissions are managed and reported accordingly. We disagree that this repeal will leave the Department with “little information regarding the use of wildfires for the management of natural resources except what

	managers use wildfires to manage watersheds for natural resource benefits, it's important that ADEQ's rule maintains accountability to ensure fires and emissions are managed and reported accordingly. And the "wholesale repeal of A.A.C. R18-2-1508 leaves ADEQ with little information regarding the use of wildfires for the management of natural resources except what may be gathered under other areas of the rule in areas addressing wildfire."	may be gathered under other areas of the rule in areas addressing wildfire." The requirements for F/SLMs to report emissions and any other relevant information from wildfire events upon request from ADEQ are now contained in A.A.C. R18-2-1507(E). Therefore, under the revised rules, ADEQ maintains the same authority as it currently does to "ensure fires and emissions are managed and reported accordingly."
A.A.C. R18-2-1508	The Arizona Farm Bureau Federation: "It is important that ADEQ hold federal and state agencies who continue to use wildfire for resource management benefits accountable to Arizona and its citizens as to these decisions and their impact on air quality, just as it does with its prescribed burning."	ADEQ works in partnership with the Arizona Department of Forest and Fire Management, United States Forest Service, the Bureau of Land Management, and many other agencies to manage the impacts of prescribed burns. ADEQ does not have statutory authority to approve or disapprove the use or management of wildfires (human caused or natural) for resource benefits. ADEQ only has the authority to regulate prescribed fires with respect to emissions and collect information pertaining to wildfires. Under R18-2-1514, ADEQ does have regulatory authority to address noncompliance with the smoke management rules using fines or a burn moratorium.
A.A.C. R18-2-1508	The Arizona Farm Bureau Federation: "Fire management plans and Land/Resource Management Plans provide federal agencies with the management responses to wildfire on federal lands based on the objectives established therein. Although we have not seen any such plans for any of Arizona's forests, does ADEQ review these plans when it meets with F/SLM to evaluate the program and set annual emission goals as noted under A.A.C. R18-2-1503? If so, ADEQ should ensure information is provided regarding wildfire management objectives that include the use of purposeful ignitions and how emissions are monitored and reported.	ADEQ only reviews and approves the prescribed burn smoke management plans submitted to ADEQ under these rules. ADEQ does not review the overarching burn plans, fire management plans, or Land/Resource Management Plans that the F/SLM submit to federal agencies because the Department does not have the authority to regulate fire management plans, only the emissions from prescribed burns. Instead, ADEQ uses its own Burn Plans to collect emissions information and sets annual emissions goals based on the plans and the Annual meeting we hold with the F/SLMs. The information collected by ADEQ includes emissions information pertaining to the emissions required by A.A.C. R18-2-1504 which includes "the land management objective or purpose for the burn such as restoration or maintenance of ecological function and indicators of fire resiliency (A.A.C. R18-2-1504 (7)). More information about how emissions are monitored and reported is available on the Department's website under programs, wildfire support.
A.A.C. R18-2-1511	The Arizona Farm Bureau Federation:	Thank you for your comment. However, the

	<p>"The wholesale repeal of A.A.C. R18-2-1508 and A.A.C. R18-2-1511 (B) leaves ADEQ with little information regarding the use of wildfires for the management of natural resources except what may be gathered under other areas of the rule in areas addressing wildfire.</p>	<p>Department disagrees with the Farm Bureau in its conclusion. The repeal of A.A.C. R18-2-1508 and A.A.C. R18-2-1511(B) does not affect ADEQ's authority to ensure fires and emissions are managed and reported accordingly. We disagree that this repeal will leave the Department with "little information regarding the use of wildfires for the management of natural resources except what may be gathered under other areas of the rule in areas addressing wildfire." The requirements for F/SLMs to report emissions and any other relevant information from wildfire events upon request from ADEQ are now contained in A.A.C. R18-2-1507(E). Therefore, under the revised rules, ADEQ maintains the same authority as it currently does to "ensure fires and emissions are managed and reported accordingly."</p>
<p>¹ See NWCG Glossary of Wildland Fire, PMS 205). ² See 81 FR 68216, 68247 Oct. 3, 2016. ³ <i>Id.</i> ⁴ Can Prescribed Fires Mitigate Health Harm?, A Review of Air Quality and Public Health Implications of Wildfire and Prescribed Fire, PSE Health Energy, Lee Ann L. Hill, et. al pg. 25. ⁵ <i>Id.</i> ⁶ Hu, Y., Ai, H. H., Odman, M. T., Vaidyanathan, A., & Russell, A. G. (2019a). Development of a WebGIS-Based Analysis Tool for Human Health Protection from the Impacts of Prescribed Fire Smoke in Southeastern USA. International Journal of Environmental Research and Public Health, 16(11), 1981. https://doi.org/10.3390/ijerph16111981. ⁷ Prunicki, M., Kelsey, R., Lee, J., Zhou, X., Smith, E., Haddad, F., Wu, J., & Nadeau, K. (2019). The impact of prescribed fire versus wildfire on the immune and cardiovascular systems of children. Allergy, 74(10), 1989–1991. https://doi.org/10.1111/all.13825. ⁸ <i>Id.</i> ⁹ <i>Id.</i> ¹⁰ Laws 2004, Ch. 129, § 1. ¹¹ 80 FR 8,788, 8,789, Feb. 19, 2015. ¹² See 81 FR 68216, 68247, Oct. 3, 2016. ¹³ <i>Id.</i> ¹⁴ 80 FR 8,788, 8,792, Feb. 19, 2015.</p>		

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

A.R.S. § 49-458.01(A)(7) requires that the ADEQ Director submit to U.S. Environmental Protection Agency (EPA) SIP revisions to address regional haze visibility impairment in mandatory federal class I areas. The SIP revisions submitted to EPA must address programs related to emissions from fire sources including those emissions from prescribed fires conducted and occurring on federal, state and private lands.

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

The rules provide the F/SLM with an agency authorization which under Article 15 is referred to as the

Daily Burn Authorization Process. This rulemaking is exempt from the use of a general permit under A.R.S. § 41-1037 because a general permit is not technically feasible and would not meet the applicable statutory requirements under A.R.S. § 49-501(B)(2), (4)-(5) and (C). Furthermore, any efforts to incorporate a general permit into this rulemaking would result in additional regulatory requirements and costs being placed on the permit applicant.

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

Article 15 reflects the mandates of the federal regional haze SIP requirements under 40 CFR 51.308 and 51.309. However, the rules under Article 15 are not more stringent than federal law.

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

No such analysis was submitted.

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

Not applicable.

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

Not applicable.

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL**

ARTICLE 15. FOREST AND RANGE MANAGEMENT BURNS

R18-2-1501	Definitions
R18-2-1502	Applicability
R18-2-1503	Annual Registration, Program Evaluation and Planning
R18-2-1504	Prescribed Burn Plan
R18-2-1505	Prescribed Burn Requests and Authorization
R18-2-1506	Smoke Dispersion Evaluation
R18-2-1507	Prescribed Burn Accomplishment; Wildfire Reporting
R18-2-1508	Wildland Fire Use: Plan, Authorization, Monitoring, Inter-agency Consultation, Status reporting <u>Repealed</u>
R18-2-1509	Emission Reduction <u>and Smoke Management</u> Techniques

R18-2-1510	Smoke Management Techniques <u>Repealed</u>
R18-2-1511	Monitoring
R18-2-1512	Burner Qualifications
R18-2-1513	Public Notification and Awareness Program; Regional Coordination
R18-2-1514	Surveillance and Enforcement
R18-2-1515	Forms; Electronic Copies ; and Information Transfers

ARTICLE 15. FOREST RANGE AND MANAGEMENT BURNS

R18-2-1501. Definitions

In addition to the definitions contained in A.R.S. § 49-501 and R182-101, in this Article:

1. "Activity fuels" means those fuels created by human activities such as thinning or logging.
2. "ADEQ" means the Arizona Department of Environmental Quality.
3. "Annual emissions goal" means the annual establishment in cooperation with the F/SLMs, under R18-2-1503(G), of a planned quantifiable value of emissions reduction from prescribed fires and fuels management activities.
4. "Assisting" means an agency or organization providing personnel, services, or other resources to the agency with direct responsibility for prescribed fire management.
5. "Burn Accomplishment Form" means the online database form as provided by the director to be completed for each approved or approved with conditions Daily Burn Request, with details of the conducted prescribed burn.
- ~~4-6.~~ "Burn plan" for the purposes of this article means the ADEQ the ADEQ online database form as provided by the director that includes information on the conditions under which a burn will occur with details of the burn and smoke management prescriptions.
- ~~5-7.~~ "Burn prescription" means, with regard to a burn project, the pre-determined area, fuel, and weather conditions required to attain planned resource management objectives.
- ~~6-8.~~ "Burn project" means an active or planned prescribed burn, including a wildland fire use incident.
9. "Daily Burn Request" means the online database form as provided by the director that allows burners to request for permission to ignite on a single specific day, submitted under an acknowledged Burn Plan.
10. "Daily Burn Authorization Process" means the daily process by which ADEQ reviews and approves, approves with conditions, or disapproves "Daily Burn Requests" for the following day.
11. "Director" means the Director of ADEQ.
12. "Duff" means forest floor material consisting of decomposing needles and other natural materials.

- 8-13. “Emission reduction techniques (ERT)” means methods for controlling emissions from prescribed fires to minimize the amount of emission output per unit of area burned.
- 9-14. “Federal land manager (FLM)” means any department, agency, delegee, or agent of the federal government, including the following:
- a. United States Forest Service,
 - b. United States Fish and Wildlife Service,
 - c. National Park Service,
 - d. Bureau of Land Management,
 - e. Bureau of Reclamation,
 - f. Department of Defense,
 - g. Bureau of Indian Affairs, and
 - h. ~~and~~ Natural Resources Conservation Service.
- 10-15. “F/SLM” means a federal land manager or a state land manager.
- 11-16. “Local fire management officer” means a person designated by a F/SLM as responsible for fire management in a local district or area.
12. ~~“Mop-up” means the act of extinguishing or removing burning material from a prescribed fire to reduce smoke impacts.~~
- 13-17. “National Wildfire Coordinating Group” means the national inter-agency group of federal and state land managers that shares similar ~~wildfire suppression programs~~ wildfire management programs and has established standardized inter-agency training courses and qualifications for fire management positions.
18. “New Burn Plan” means a Burn Plan that has never been submitted to ADEQ.
- 14-19. “Non-burning alternatives to fire” means techniques that replace fire for at least five years as a means to treat activity fuels created to achieve a particular land management objective (e.g., reduction of fuel-loading, manipulation of fuels, enhancement of wildlife habitat, and ecosystem restoration). These alternatives are not used in conjunction with fire. Techniques used in conjunction with fire are referred to as emission reduction techniques (ERTs).
- 15-20. “Planned resource management objectives” means public interest goals in support of land management agency objectives including silviculture, wildlife habitat management, grazing enhancement, fire hazard reduction, wilderness management, cultural scene maintenance, weed abatement, watershed rehabilitation, vegetative manipulation, and disease and pest prevention.
- 16-21. “Prescribed burning” means the controlled application of fire to wildland fuels that are in either a natural or modified state, under certain burn and smoke management prescription conditions that have been specified by the ~~land manager~~ F/SLM in charge of or assisting the burn,

to attain planned resource management objectives. Prescribed burning does not include a fire set or permitted by a public officer to provide instruction in ~~fire-fighting~~ fire-fighting methods, or construction or residential burning under R18-2-602.

~~17-22.~~ “Prescribed fire manager” means a person designated by a F/SLM as responsible for prescribed burning for that land manager. “Prescribed Fire Burn Boss” means a person designated by their respective F/SLM with the requisite training and certification to ensure that all ADEQ prescribed fire burn plan specifications and requirements are met before, during, and after a prescribed fire. This includes the following NWCG positions: Prescribed Fire Burn Boss Type 1, Prescribed Fire Burn Boss Type 2, and Prescribed Fire Burn Boss Type 3. A private burner does not qualify as a Burn Boss under this article.

23. “Private Burner” means a private person or company assisted by a F/SLM in conducting a prescribed burn under this article. A person not covered under this definition shall be regulated under A.R.S. § 49-501 and A.A.C. R18-2-602.

24. “Revised Burn Plan” means any Burn Plan that has been submitted to ADEQ by way of the online database which has remaining un-accomplished acres available and has been revised.

~~18-25.~~ “Smoke management prescription” means the predetermined meteorological conditions that affect smoke transport and dispersion under which a burn could occur without adversely affecting public health and welfare, including transportation networks, considering such factors as National Ambient Air Quality Standard and Class I Visibility Areas.

~~19-26.~~ “Smoke management techniques (SMT)” means management and dispersion practices used during a prescribed burn or wildland fire use incident which affect the direction, duration, height, or density of smoke.

~~20-27.~~ “Smoke management unit” means any of the geographic areas defined by ADEQ whose area is based on primary watershed boundaries and whose outline is determined by diurnal windflow patterns that allow smoke to follow predictable drainage patterns. A map of the state divided into the smoke management units is on file with ADEQ.

~~21-28~~ “State land manager (SLM)” means any department, agency, or political subdivision of the state government including the following:

- a. State Land Department,
- b. Department of Transportation,
- c. Department of Game and Fish,
- d. ~~and~~ Parks Department,
- e. Local and Municipal Governments and Agencies,
- f. Arizona Department of Forestry and Fire Management, and

g. Fire Districts.

29. “Smoke Sensitive Area” means areas where ADEQ determines that smoke and air pollutants can adversely affect public health or welfare. Such areas may include, but are not limited to cities, towns, villages, campgrounds, trails, populated recreational areas, hospitals, nursing homes, schools, roads, airports, public events, shopping centers, and mandatory Class I areas.

~~22-30.~~ “Wildfire” means an unplanned wildland fire subject to appropriate control measures: ignition, such as lightning, unauthorized and accidental human fires. Wildfires include those incidents where suppression may be limited for safety, economic, or resource concerns.

~~23. “Wildland fire use” means a wildland fire that is ignited by natural causes, such as lightning, and is managed using the same controls and for the same planned resource management objectives as prescribed burning.~~

R18-2-1502. Applicability

- A. A F/SLM that is conducting or assisting a prescribed burn shall follow the requirements of this Article.
- B. A private burner may conduct burns under this article if assisted by an F/SLM or municipal burner with whom ADEQ has entered into a memorandum of agreement shall follow the requirements of this Article.
- C. The provisions of this Article apply to all areas of the state except ~~Indian Trust lands.~~ Tribal Nations and Communities land which has the same meaning as the term defined in 18 U.S.C. § 1151. All federally managed lands and all state lands, parks, and forests are under the jurisdiction of ADEQ in matters relating to air pollution from prescribed burning.
- D. ~~Notwithstanding subsection (C), ADEQ and any Indian tribe may enter into a memorandum of agreement to implement this Article.~~ Notwithstanding subsection (C), any Tribal Nations and Communities may enter into a memorandum of agreement with ADEQ to implement this article.
- E. ~~ADEQ and any private or municipal prescribed burner may enter into a memorandum of agreement to implement this Article.~~

R18-2-1503. Annual Registration, Program Evaluation and Planning

- A. ~~Each F/SLM shall register annually with ADEQ on a form prescribed by ADEQ, all planned burn projects, including areas planned for wildland fire use.~~ ADEQ shall hold a meeting after January 31 and before April 1 of each year between ADEQ and F/SLM to evaluate the program and set the annual emissions goals to minimize prescribed fire emissions to the maximum extent feasible using

emission reduction techniques and non-burning alternatives to fire subject to economic, technical, and safety feasibility criteria, and consistent with land management objectives.

- ~~B. Each planned year extends from January 1 of the registration year to December 31 of the same year. Each F/SLM shall use best efforts to register before December 31 and no later than January 31 of each year. Outside of the annual meeting, ADEQ may request additional information about future prescribed burns to support regional coordination of smoke management, annual emission goal setting using ERTs, and non-burning alternatives to fire.~~
- ~~C. A F/SLM shall include the following information on the registration form:~~
- ~~1. The F/SLM's name, address, and business telephone number;~~
 - ~~2. The name, address, and business telephone number of an air quality representative who will provide technical support to ADEQ for decisions regarding prescribed burning. The same air quality representative may be selected by more than one F/SLM;~~
 - ~~3. All prescribed burn projects and potential wildland fire use areas planned for the next year;~~
 - ~~4. Maximum project and annual acres to be burned, maximum daily acres to be burned, fuel types within project area, and planned use of emission reduction techniques to support the annual emissions goal for each prescribed burn project;~~
 - ~~5. Planned use of any smoke management techniques for each prescribed burn project;~~
 - ~~6. Maximum project and annual acres projected to be burned, maximum daily acres projected to be burned, and a map of the anticipated project area, fuel types and loading within the planned area for an area the F/SLM anticipates for wildland fire use;~~
 - ~~7. A list of all burn projects that were completed during the previous year;~~
 - ~~8. Project area for treatment, treatment type, fuel types to be treated, and activity fuel loading to support the annual emissions goal for areas to be treated using non-burning alternatives to fire; and~~
 - ~~9. The area treated using non-burning alternatives to fire during the previous year including the number of acres, the specific types of alternatives utilized, and the location of these areas. At least once every five years, ADEQ shall request long-term projections of future prescribed fire activity from the F/SLM to support planning for visibility impairment and assessment of air quality concerns by ADEQ.~~
- ~~D. After consultation with the F/SLM, ADEQ may request additional information for registration of prescribed burns and wildland fire use to support regional coordination of smoke management, annual emission goal setting using ERTs, and non-burning alternatives to fire. F/SLM may submit topics to discuss at the yearly meeting by contacting ADEQ.~~
- ~~E. A F/SLM may amend a registration at any time with a written submission to ADEQ.~~

- ~~F. ADEQ accepts a facsimile or other electronic method as a means of complying with the deadline for registration. If an electronic means is used, the F/SLM shall deliver the original paper registration form to ADEQ for its records. ADEQ shall acknowledge in writing the receipt of each registration.~~
- ~~G. ADEQ shall hold a meeting after January 31 and before April 1 of each year between ADEQ and F/SLMs to evaluate the program and cooperatively establish the annual emission goal. The annual emission goal shall be developed to minimize prescribed fire emissions to the maximum extent feasible using emission reduction techniques and alternatives to burning subject to economic, technical, and safety feasibility criteria, and consistent with land management objectives.~~
- ~~H. At least once every five years, ADEQ shall request long-term projections of future prescribed fire and wildland fire use activity from the F/SLMs to support planning for visibility impairment and assessment of other air quality concerns by ADEQ.~~

R18-2-1504. Prescribed Burn Plan

Each F/SLM planning a prescribed burn shall complete and submit to ADEQ the "Burn Plan" form supplied by ADEQ no later than 14 days before the date on which the F/SLM requests permission to burn. ADEQ shall consider the information supplied on the Burn Plan Form as binding conditions under which the burn shall be conducted. A Burn Plan shall be maintained by ADEQ until notification from the F/SLM of the completion of the burn project. ~~Revisions~~ The Burn Plan provisions listed in A.A.C. R18-2-1504(1)-(5), may be revised no later than 2:00 p.m. the business day before the burn. Any other revision to the Burn Plan for a burn project shall be submitted in writing no later than 14 days before the date on which the F/SLM requests permission to burn. ADEQ shall not act on the Daily Burn Request until the Burn Plan is submitted by the F/SLM and acknowledged as complete by ADEQ. To facilitate the Daily Burn Authorization Process ~~authorization process~~ under R18-2-1505, the Burn Plan Form ~~the F/SLM shall include on the Burn Plan form:~~

1. An emergency telephone number that is answered 24 hours a day, seven days a week;
2. Burn prescription;
3. Smoke management prescription;
4. The name of the person submitting the Burn Plan on behalf of the F/SLM;
5. Any other information to support the Burn Plan needed by ADEQ to assist in the Daily Burn Authorization Process for smoke management purposes, prevention of negative impacts on smoke sensitive areas, or assessment of contribution to visibility impairment of Class I areas.
- ~~4.6.~~ The total number of acres in the project to be burned, the quantity and type of fuel, type of burn, and the ignition technique to be used;

- ~~5.7.~~ The land management objective or purpose for the burn such as restoration or maintenance of ecological function and indicators of fire resiliency;
- ~~6.8.~~ A map depicting the potential impact of the smoke unless waived either orally or in writing by ADEQ. The potential impact shall be determined by mapping both the daytime and nighttime smoke path and down-drainage flow for 15 miles from the burn site, with smoke-sensitive areas delineated. The map shall use the appropriate scale to show the impacts of the smoke adequately;
- ~~7.9.~~ Modeling of smoke impacts unless waived either orally or in writing by ADEQ, for burns greater than 250 acres per day, or greater than 50 acres per day if the burn is within 15 miles of a Class I Area, an area that is nonattainment for particulates, a carbon monoxide nonattainment area, or other smoke-sensitive area. In consultation with the F/SLM, ADEQ shall provide guidelines on modeling;
- ~~8.~~ The name of the official submitting the Burn Plan on behalf of the F/SLM; and
- ~~9.~~ After consultation with the F/SLM, any other information to support the Burn Plan needed by ADEQ to assist in the Daily Burn authorization process for smoke management purposes or assessment of contribution to visibility impairment of Class I areas.

R18-2-1505. Prescribed Burn Requests and Authorization

- A. Each F/SLM planning a prescribed burn, shall complete and submit to ADEQ the “Daily Burn Request” form supplied by ADEQ for each day the F/SLM will complete ignitions. The Daily Burn Request form shall include:
 - 1. The contact information of the F/SLM conducting the burn;
 - 2. Acknowledgement that a qualified Prescribed Fire Burn Boss is conducting the burn;
 - ~~2.3.~~ Each day of the burn; Date of the ignition;
 - ~~3.4.~~ The area to be burned on the day for which the Burn Request is submitted, with reference to the Burn Plan, including size, legal location to the section, and latitude and longitude to the minute;
 - ~~4.5.~~ Projected smoke impacts; and
 - ~~5.6.~~ Any local conditions or circumstances known to the F/ SLM that, ~~if conveyed to ADEQ,~~ could impact the Daily Burn Authorization Process ~~authorization process or the burn.~~
- B. After consultation ~~with the F/SLM,~~ ADEQ may request and upon request by ADEQ, the F/SLM shall provide additional information related to the burn or any ongoing prescribed fires or wildfires such as: reports, digital photographs, meteorological, smoke dispersion, or air quality conditions to supplement the Daily Burn Request form and to aid in the Daily Burn Authorization Process ~~authorization process.~~ F/SLM may coordinate with ADEQ prior to submitting a Daily Burn Request to discuss potential air quality impacts or other concerns.

- C. The F/SLM shall submit the Daily Burn Request form to ADEQ as expeditiously as practicable, but no later than 2:00 p.m. of the business day preceding the burn. ~~An original form, a facsimile, or an electronic information transfer are acceptable submittals.~~
- D. An F/SLM shall not ignite a prescribed burn without receiving the approval of ADEQ, as follows:
1. ADEQ shall only approve, approve with conditions, or disapprove a burn on ~~the same business day as the Burn Request submittal.~~ the business day before the burn is to take place.
 2. If ADEQ fails to address a Burn Request by ~~10:00 p.m. of the business day on which the request is submitted,~~ 10:00 p.m. the business day before the burn is to take place the Burn Request is approved by default after the burner makes a good faith effort to contact ADEQ to confirm that the Burn Request was received: by exhausting available methods of communication, which may include contracting the ADEQ smoke management team directly, as well as the main number for the ADEQ air quality division, and leaving voicemails if there is no response.
 3. ADEQ may communicate its decision by verbal, written, or electronic means. ADEQ shall provide a written or electronic reply if requested by the F/SLM.
- E. If weather conditions cease to conform to those in the smoke management prescription of either the Burn Plan or ~~an Approval with Conditions,~~ any conditions on the approval of the applicable Burn Request, the F/SLM shall take appropriate action to reduce further smoke impacts, ensure safe and appropriate fire ~~control~~ mitigation, and notify the public ~~when necessary.~~ as per the requirements established by the National Wildfire Coordinating Group or F/SLM equivalent. After consultation with ADEQ, the smoke management prescription or burn plan may be modified. The F/SLM may modify the smoke management prescription in the Burn Plan after consultation with ADEQ. A F/SLM conducting a burn shall contact ADEQ if there is any change in the burn conditions that ceases to conform with the Burn Plan and could cause negative impacts to smoke sensitive areas and communicate what areas of the submitted smoke management prescription in the Burn Plan need to be modified.
- F. The F/SLM shall ensure that there is ~~appropriate~~ appropriate industry-standard signage and notification to protect public safety on transportation corridors including roadways and airports during a prescribed fire.

R18-2-1506. Smoke Dispersion Evaluation

ADEQ shall approve, approve with conditions, or disapprove a Daily Burn Request submitted under R18-2 1505, by using the following factors for each smoke management unit:

1. Analysis of the emissions from burns in progress and residual emissions from previous burns on a day-to-day basis;

- ~~2.~~ Analysis of emissions from active wildland fire use incidents, and active multiple-day burns, and consideration of potential long-term emissions estimates;
- ~~3-2.~~ Analysis of the emissions from wildfires greater than 100 acres and consideration of their potential long-term growth;
- ~~4-3.~~ Local burn conditions;
- ~~5-4.~~ Burn prescription and smoke management prescription from the applicable Burn Plan;
- ~~6-5.~~ Existing and predicted local air quality; i.e. meteorological or smoke modeling;
- ~~7-6.~~ Local and synoptic meteorological conditions;
- ~~8-7.~~ Type and location of areas to be burned;
- ~~9-8.~~ Protection of the national visibility goal for Class I Areas under § 169A(a)(1) of the Clean Air Act and 40 CFR 51.309;
- ~~10-9.~~ Assessment of duration and intensity of smoke emissions to minimize cumulative impacts;
- ~~11-10.~~ Minimization of smoke impacts in Class I Areas, areas that are non-attainment for particulate matter, carbon monoxide, and ozone non-attainment areas, or other ~~smoke-sensitive~~ smoke sensitive areas including transportation corridors; ~~and~~
- ~~12-11.~~ Protection of the National Ambient Air Quality Standards.

R18-2-1507. Prescribed Burn Accomplishment; Wildfire Reporting

- A. Each F/SLM conducting a prescribed burn shall complete and submit to ADEQ the “Burn Accomplishment” form supplied by ADEQ. For each burn approval, the F/SLM shall submit a Burn Accomplishment form to ADEQ ~~by 2:00 p.m. of the business day~~ within seven calendar days following the approved burn. The F/SLM shall include the following information on the Burn Accomplishment form:
 1. Any known conditions or circumstances that could impact ~~the subsequent~~ the subsequent Daily Burn ~~approvals~~ decision process;
 2. The date, location, fuel type, fuel loading, and acreage accomplishments;
 3. The ERTs and SMTs described in R18-2-1509 ~~and R182-1510, respectively~~, and may include any further ERTs and SMTs that become available, that the F/SLM used to reduce emissions or manage the smoke from the burn.
- B. The F/SLM shall submit the Burn Accomplishment form as an ~~original form, a facsimile, or an electronic information transfer~~ electronic submittal.

- C. ADEQ shall maintain a record of Daily Burn Requests, Burn Plan Form ~~Burn Approvals/Conditional Approvals/Denials and Burn Accomplishments for five years.~~ Burn Approvals with Conditions, Denials, and Burn Accomplishments data for five years.
- D. ~~The F/SLM in whose jurisdiction a wildfire occurs shall make available to ADEQ no later than the day after the activity all required information for wildfire incidents that burned more than 100 acres per day in timber or slash fuels or 300 acres per day in brush or grass fuels. For each day of a wildfire incident that exceeds the daily activity threshold, the F/SLM shall provide the location, an estimate of predominant fuel type and quantity consumed, and an estimate of the area blackened that day. ADEQ may request information about a burn prior to the submission of the Burn Accomplishment Form.~~
- E. The F/SLM in whose jurisdiction a wildfire occurs shall, upon request, make available to ADEQ no later than the day after the request is made and may include any necessary information for wildfire incidents, including the location, and estimate of predominant fuel type and quantity consumed, and an estimate of the area blackened that day. The F/SLM shall participate in air quality coordination calls upon request by ADEQ.

~~R18-2-1508. Wildland Fire Use: Plan, Authorization, Monitoring, Inter-agency Consultation; Status Reporting~~ Repealed

- A. ~~In order for ADEQ to participate in the wildland fire use decision-making process, the F/SLM shall notify ADEQ as soon as practicable of any wildland fire use incident projected to attain or attaining a size of 50 acres of timber fuel or 250 acres of brush or grass fuel.~~
- B. ~~For each wildland fire use incident that has been declared as such by the F/SLM, the F/SLM shall complete and submit to ADEQ a Wildland Fire Use Burn Plan in a format approved by ADEQ in cooperation with the F/SLM. The F/SLM shall submit the Wildland Fire Use Burn Plan to ADEQ as soon as practicable but no later than 72 hours after the wildland fire use incident is declared or under consideration for such designation. The F/SLM shall include the following information in the Wildland Fire Use Burn Plan:~~
 - 1. ~~An emergency telephone number that is answered 24 hours a day, seven days a week;~~
 - 2. ~~Anticipated burn prescription;~~
 - 3. ~~Anticipated smoke management prescription;~~
 - 4. ~~The estimated daily number of acres, quantity, and type of fuel to be burned;~~
 - 5. ~~The anticipated maximum allowable perimeter or size with map;~~
 - 6. ~~Information on the condition of the area to be burned, such as whether it is in maintenance or restoration, its ecological function, and other indicators of fire resiliency;~~
 - 7. ~~The anticipated duration of the wildland fire use incident;~~

8. ~~The anticipated long-range weather trends for the site;~~
9. ~~A map depicting the potential impact of the smoke. The potential impact shall be determined by mapping both the daytime and nighttime smoke path and down-drainage flow for 15 miles from the wildland fire use incident, with smoke-sensitive areas delineated. Mapping is mandatory unless waived either orally or in writing by ADEQ. The map shall use the appropriate scale to show the impacts of the smoke adequately; and 10. Modeling or monitoring of smoke impacts, if requested by ADEQ after consultation with the F/SLM.~~
- ~~C. ADEQ shall approve or disapprove a Wildland Fire Use Burn Plan within three hours of receipt. ADEQ shall consult directly with the requesting F/SLM before disapproving a Wildland Fire Use Burn Plan. If ADEQ fails to address the Wildland Fire Use Burn Plan within the time allotted, the Plan is approved by default under the condition that the F/SLM makes a good faith effort to contact ADEQ to confirm that the Plan was received. Approval by ADEQ of a Wildland Fire Use Burn Plan is binding upon ADEQ for the duration of the wildland fire use incident, unless smoke from the incident creates a threat to public health or welfare. If a threat to public health or welfare is created, ADEQ shall consult with the F/SLM regarding the situation and develop a joint action plan for reducing further smoke impacts.~~
- ~~D. The F/SLM shall submit a Daily Status Report for each wildland fire use incident to ADEQ for each day of the burn that the fire burns more than 100 acres in timber or slash fuels or 300 acres in brush or grass fuels. The F/SLM shall include a synopsis of smoke behavior, future daily anticipated growth, and location of the activity of the wildland fire use incident in the Daily Status Report.~~
- ~~E. The F/SLM shall consult with ADEQ prior to initiating human-made ignition on the wildland fire use incident when greater than 250 acres is anticipated to be burned by the ignition. Emergency human-made ignition on the incident for protection of public or fire-fighter safety does not require consultation with ADEQ regardless of the size of the area to be burned.~~
- ~~F. The F/SLM shall ensure that there is appropriate signage and notification to protect public safety on transportation corridors including roadways and airports during a wildland fire use incident.~~

R18-2-1509. Emission Reduction and Smoke Management Techniques

- A. Each F/SLM conducting a prescribed burn shall implement as many Emission Reduction Techniques and Smoke Management Techniques as are feasible subject to economic, technical, and safety feasibility criteria, and land management objectives.
- B. Emission Reduction Techniques include:

1. Reducing biomass to be burned by use of techniques such as yarding or consolidation of unmerchandisable material, multi-product timber sales, or public firewood access, when economically feasible;
2. Reducing biomass to be burned by fuel exclusion practices such as preventing the fire from consuming dead snags or dead and downed woody material through lining, application of fire-retardant foam, or water;
3. Using mass ignition techniques such as aerial ignition by helicopter to produce high intensity fires of high fuel density areas such as logging slash decks;
4. Burning only fuels essential to meet resource management objectives;
5. Minimizing consumption and smoldering by burning under conditions of high fuel moisture of duff and litter;
6. Minimizing fuel consumption and smoldering by burning under conditions of high fuel moisture of large woody fuels;
7. Minimizing soil content when slash piles are constructed by using brush blades on material-moving equipment and by constructing piles under dry soil conditions or by using hand piling methods;
8. Burning fuels in piles or windrows;
9. Using a backing fire in grass fuels;
10. Burning fuels with an air curtain destructor, as defined in R18-2-101, operated according to manufacturer specifications and meeting applicable state or local opacity requirements;
11. Extinguishing or mopping-up of smoldering fuels;
12. Chunking of piles and other consolidations of burning material to enhance flaming and fuel consumption, and to minimize smoke production;
13. Burning before litter fall; green-up of fuels, recently cut large fuels cure in areas with fuels reduction activity, and just before precipitation to reduce fuel smoldering and consumption;
14. ~~Burning before green-up of fuels;~~ Reduce the area burned, by only burning a portion of the area within a designated perimeter or through mosaic burning.
15. ~~Burning before recently cut large fuels cure in areas with activity; and~~
16. ~~Burning just before precipitation to reduce fuel smoldering and consumption.~~

C. Smoke management techniques include:

1. Burning from March 15 through September 15, when meteorological conditions allow for good smoke dispersion;
2. Igniting burns under good-to-excellent ventilation conditions;
3. Suspending operations under poor smoke dispersion conditions;

4. Considering smoke impacts on local community activities and land users;
5. Burning piles when other burns are not feasible, such as when snow or rain is present;
6. Using mass ignition techniques such as aerial ignition by helicopter to produce high combustion efficiency with short duration impacts;
7. Using all opportunities that meet the burn prescription and all burn locations to spread smoke impacts over a broader time period and geographic area;
8. Burning during optimum mid-day dispersion hours, with all ignitions in a burn unit completed by 3:00 p.m. to prevent trapping smoke in inversion or diurnal windflow patterns;
9. Providing information on the adverse impacts of using green or wet wood as fuel when public firewood access is allowed;
10. Implementing maintenance burning in a periodic rotation to shorten prescribed fire duration and reduce excessive fuel accumulations that could result in excessive smoke production in a wildfire; and
11. Using fire-management strategies to shift smoke into more favorable smoke dispersion seasons.

R18-2-1510. Smoke Management Techniques Repealed

A. ~~Each F/SLM conducting a prescribed burn shall implement as many Smoke Management Techniques as are feasible subject to economic, technical, and safety feasibility criteria, and land management objectives.~~

B. ~~Smoke management techniques include:~~

- ~~1. Burning from March 15 through September 15, when meteorological conditions allow for good smoke dispersion;~~
- ~~2. Igniting burns under good to excellent ventilation conditions;~~
- ~~3. Suspending operations under poor smoke dispersion conditions;~~
- ~~4. Considering smoke impacts on local community activities and land users;~~
- ~~5. Burning piles when other burns are not feasible, such as when snow or rain is present;~~
- ~~6. Using mass ignition techniques such as aerial ignition by helicopter to produce high intensity fires with short duration impacts;~~
- ~~7. Using all opportunities that meet the burn prescription and all burn locations to spread smoke impacts over a broader time period and geographic area;~~
- ~~8. Burning during optimum mid-day dispersion hours, with all ignitions in a burn unit completed by 3:00 p.m. to prevent trapping smoke in inversions or diurnal windflow patterns;~~
- ~~9. Providing information on the adverse impacts of using green or wet wood as fuel when public firewood access is allowed;~~

- ~~10. Implementing maintenance burning in a periodic rotation to shorten prescribed fire duration and to reduce excessive fuel accumulations that could result in excessive smoke production in a wildfire, and~~
- ~~11. Using wildland fire-use strategies to shift smoke into more favorable smoke dispersion seasons.~~

R18-2-1511. Monitoring

- A.** ADEQ may require a F/SLM to monitor air quality before ~~or~~, during, or after a prescribed burn ~~or a wildland fire use incident if~~ as reasonably necessary to assess smoke impacts. Air quality monitoring may be conducted using both federal and non-federal reference ~~method~~ methods, as well as other techniques including but not limited to digital photographs, video calling, webcams, visibility monitors, and air quality sensors.
- ~~**B.** ADEQ may require a F/SLM to monitor weather before or during a prescribed burn or a wildland fire use incident, if necessary to predict or assess smoke impacts. After consultation with the F/SLM, ADEQ may also require the F/SLM to establish burn site or area-representative remote automated weather stations or their equivalent, having telemetry that allows retrieval on a real-time basis by ADEQ. An F/SLM shall give ADEQ notice and an opportunity to comment before making any change to a long-term established remote automated weather station.~~
- ~~**C.**~~ **B.** A F/SLM shall employ the following types of monitoring, unless Unless waived by ADEQ, a F/SLM shall conduct a test burn at the burn site to verify the needed wind speed, direction, and stability, for burns greater than 250 acres per day, or greater than 50 acres per day if the burn is within 15 miles of a Class I Area, an area that is non-attainment for particulate matter, carbon monoxide, or ozone, or other ~~smokesensitive~~ smoke sensitive area:
 - ~~1. Smoke plume measurements, using a format supplied by ADEQ; and~~
 - ~~2. The release of pilot balloons (PIBALs) at the burn site to verify needed wind speed, direction, and stability. Instead of pilot balloons, a test burn at the burn site may be used for specific prescribed burns on a case-by-case basis as approved by ADEQ, to verify needed wind speed, direction, and stability.~~
- ~~**D.**~~ **C.** An F/SLM shall make monitoring information required under subsection ~~(C)~~ (B) available to ADEQ on the business day following the burn ignition, if an instantaneous method was not used to convey the information.
- ~~**E.**~~ **D.** The F/SLM shall keep on file for one year following the burn date any monitoring information required under this Section.

R18-2-1512. Burner Qualifications

- A. ~~All burn projects shall be conducted by personnel trained in prescribed fire and smoke management techniques as required by the F/SLM in charge of the burn and established by National Wildfire Coordinating Group training qualifications.~~ All burn projects shall be conducted by personnel trained and certified in prescribed fire and smoke management techniques. Burn project personnel shall be trained in the fire and smoke management techniques required by the F/SLM in charge of the burn or the training requirements established by the National Wildfire Coordinating Group.
- B. ~~A Prescribed Fire Boss or other local Fire Management Officer of the F/SLM having jurisdiction over prescribed burns shall have smoke management training obtained through one of the following:~~ A Prescribed Fire Burn Boss of the F/SLM with jurisdiction over the prescribed burn shall have smoke management training obtained through one of the following:
1. Successful completion of a National Wildfire Coordinating Group or F/SLM-equivalent course addressing smoke management; or
 2. Attendance at an ADEQ-approved smoke management workshop.

R18-2-1513. Public Notification and Awareness Program; Regional Coordination

- A. The Director shall maintain a public education and awareness program webpage, in cooperation with the F/SLM and other interested parties, to inform the general public of the smoke management program ~~conduct a public education and awareness program in cooperation with F/SLMs and other interested parties to inform the general public of the smoke management program~~ described by this Article. The webpage shall inform the public about the health risks and impacts from smoke and prescribed fires; how smoke management techniques can protect air quality; ~~program shall include smoke impacts from prescribed fires and the role of prescribed fire in natural ecosystems.~~
- B. ADEQ shall make ~~annual registration,~~ prescribed burn approval, and wildfire ~~and wildland fire use~~ activity information readily available to the public and to facilitate regional coordination efforts and public notification.
- C. ADEQ shall ensure all publicly available information concerning smoke management, including electronic material, is updated annually, or as new information is published.

R18-2-1514. Surveillance and Enforcement

- A. An F/SLM conducting a prescribed burn shall permit and provide safe escort to ADEQ ~~to for the purpose of entering and inspecting~~ enter and inspect burn sites ~~unannounced~~ to verify the accuracy of the Daily Burn Request, Burn Plan, or Accomplishment data as well as matching burn approval with

actual conditions, smoke dispersion, and air quality impacts. Onground site inspection procedures and aerial surveillance shall be coordinated by ADEQ and the F/SLM for safety purposes.

- B. ADEQ may use remote automated weather station data if necessary to verify current and previous meteorological conditions at or near the burn site.
- C. ADEQ may audit burn accomplishment data, smoke dispersion measurements, or weather measurements from previously conducted burns, if necessary to verify conformity with, or deviation from, procedures and authorizations approved by ADEQ.
- D. Deviation from procedures and authorizations approved by ADEQ constitute a violation of this Article. Violations may require containment or ~~mop-up~~ appropriate smoke mitigation action of any active burns and may also require, in the Director's discretion, a five-day moratorium on ignitions by the responsible F/SLM. Violations of this Article are also subject to a civil penalty of not more than \$10,000 per day per violation under A.R.S. § 49-463.

R18-2-1515. Forms; ~~Electronic Copies;~~ and Information Transfers

- A. ~~ADEQ shall make available on paper and in electronically readable format any form required to be developed by ADEQ and completed by a F/SLM.~~ ADEQ shall make all forms for completion by a F/SLM available in electronic format as provided by the director.
- B. After consultation with an F/SLM, ADEQ may require the F/ SLM to provide data ~~in a manner that facilitates electronic transfers of information.~~ or completed forms in an electronic format as provided by the director.

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY–AIR POLLUTION CONTROL

ARTICLE 15. FOREST AND RANGE MANAGEMENT BURNS

R18-2-1501. Definitions

In addition to the definitions contained in A.R.S. § 49-501 and R18-2-101, in this Article:

1. “Activity fuels” means those fuels created by human activities such as thinning or logging.
2. “ADEQ” or “Department” means the [Arizona](#) Department of Environmental Quality.
3. “Annual emissions goal” means the annual establishment in cooperation with the F/SLM, under R18-2-1503(G), of a planned quantifiable value of emissions reduction from prescribed fires and fuels management activities.
4. **“Assisting Agency”** means an agency directly contributing tactical or service resources to another agency.
5. **“Burn Accomplishment Form”** means the online database form as provided by the director to be completed for each approved or approved with conditions daily burn request, with details of the conducted prescribed burn.
- ~~4.~~ **6. “Burn Plan”** means ~~the ADEQ~~ the online database form as provided by the director that includes information on the conditions under which a burn will occur with details about the burn and smoke management prescriptions.
- ~~5.~~ **7. “Burn prescription”** means, with regard to a burn project, the pre-determined area, fuel, and weather conditions required to attain planned resource management objectives.
- ~~6.~~ **8. “Burn project”** means an active or planned prescribed burn, ~~including a wildland fire use incident.~~
9. **“Daily Burn Request”** means the online database form as provided by the director that allows burners to request for permission to burn on a single specific day, submitted under an acknowledged Burn Plan.
10. **“Daily Burn Authorization Process”** means daily review by ADEQ of burn requests for the following day.
11. **“Director”** means the Director of ADEQ.
- ~~7.~~ **12. “Duff”** means forest floor material consisting of decomposing needles and other natural materials.

~~8.~~ 13. “Emission reduction techniques (ERT)” means methods for controlling emissions from prescribed fires to minimize the amount of emission output per unit of area burned.

~~9.~~ 14. “federal land manager (FLM)” means any department, agency, delegatee, or agent of the federal government, including the following:

- a. United States Forest Service,
- b. United States Fish and Wildlife Service,
- c. National Park Service,
- d. Bureau of Land Management,
- e. Bureau of Reclamation,
- f. Department of Defense,
- g. Bureau of Indian Affairs, and
- h. Natural Resources Conservation Service.

~~10.~~ 15. “F/SLM” means a federal land manager or a state land manager.

~~11.~~ 16. “Local fire management officer” means a person designated by a F/SLM as responsible for fire management in a local district or area.

~~12.~~ “Mop-up” means the act of extinguishing or removing burning material from a prescribed fire to reduce smoke impacts.

~~13.~~ 17. “National Wildfire Coordinating Group” means the national inter-agency group of federal and state land managers that shares similar ~~wildfire suppression programs~~ wildfire management programs and has established standardized inter-agency training courses and qualifications for fire management positions.

18. “New Burn Plan” means a Burn Plan that has never been submitted to ADEQ.

~~14.~~ 19. “Non-burning alternatives to fire” means techniques that replace fire for at least five years as a means to treat activity fuels created to achieve a particular land management objective (e.g., reduction of fuel-loading, manipulation of fuels, enhancement of wildlife habitat, and ecosystem restoration). These alternatives are not used in conjunction with fire. Techniques used in conjunction with fire are referred to as emission reduction techniques (ERTs).

~~15.~~ 20. “Planned resource management objectives” means public interest goals in support of land management agency objectives including silviculture, wildlife habitat management, grazing enhancement, fire hazard reduction, wilderness management, cultural scene maintenance, weed abatement, watershed rehabilitation, vegetative manipulation, and disease and pest prevention.

~~16.~~ 21. “Prescribed burning” means the controlled application of fire to wildland fuels that are in either a natural or modified state, under certain burn and smoke management prescription conditions that have been specified by the ~~land manager~~ F/SLM in charge of or assisting the burn, to attain planned resource management objectives. Prescribed burning does not include a fire set or permitted by a public officer to provide instruction in fire fighting methods, or construction, or residential burning under R18-2-602.

~~17.~~ 22. ~~“Prescribed fire manager” means a person designated by a F/SLM as responsible for prescribed burning for that land manager.~~ “Prescribed Fire Burn Boss” means a person designated by their respective F/SLM with the requisite training to ensure that all prescribed fire plan specifications and legal requirements are met before, during, and after a prescribed fire. This includes the positions Prescribed Fire Burn Boss Type 1 and Prescribed Fire Burn Boss Type 2. A private burner does not qualify as a burn boss.

23. “Private Burner” means a private person or company assisted by a F/SLM in conducting a prescribed burn under this article. A person not covered under this definition shall be regulated under A.R.S. § 49-501 and A.A.C. R18-2-602.

24. “Revised Burn Plan” means any Burn Plan that has been submitted to ADEQ by way of the database which has remaining un-accomplished acres available and has been revised.

~~18.~~ 25. ~~“Smoke management prescription” means the predetermined meteorological conditions that affect smoke transport and dispersion under which a burn could occur without adversely affecting public health and welfare, considering such factors as National Ambient Air Quality Standards, transportation networks, and Class I Visibility Areas.~~

~~19.~~ 26. ~~“Smoke management techniques (SMT)” means management and dispersion practices used during a prescribed burn or wildland fire use incident which affect the direction, duration, height, or density of smoke.~~

~~20.~~ 27. ~~“Smoke management unit” means any of the geographic areas defined by ADEQ whose area is based on primary watershed boundaries and whose outline is determined by diurnal windflow patterns that allow smoke to follow predictable drainage patterns. A map of the state divided into the smoke management units is on file with ADEQ.~~

~~21.~~ 28. ~~“state land manager (SLM)” means any~~ department, agency, or political subdivision of the state government including the following:

- a. State Land Department
- b. Department of Transportation,
- c. Department of Game and Fish, ~~and~~
- d. Parks Department,
- e. Local and Municipal Governments and Agencies, and
- f. Arizona Department of Forestry and Fire Management
- g. Fire Districts

29. “Smoke Sensitive Area” means population centers including communities, towns, cities, hospitals, health clinics, nursing homes, schools (in session), campgrounds, numbered Arizona highways and roads, airports, Prevention of Significant Deterioration Class I Visibility Areas, and any other areas where smoke and air pollutants can adversely affect public health, safety, or welfare.

~~22-30.~~ “Wildfire” means an unplanned ~~wildland fire subject to appropriate control measures.~~ ignition, such as lightning, unauthorized and accidental human fires. Wildfires include those incidents where suppression may be limited for safety, economic, or resource concerns.

~~23.~~ “Wildland fire use” means a wildland fire that is ignited by natural causes, such as lightning, and is managed using the same controls and for the same planned resource management objectives as prescribed burning.

R18-2-1502. Applicability

A. A F/SLM that is conducting or assisting a prescribed burn shall follow the requirements of this Article.

B. A private ~~or municipal burner with whom ADEQ has entered into a memorandum of agreement shall follow the requirements of this Article.~~ person cannot conduct burns under this rule unless assisted by a F/SLM.

C. The provisions of this Article apply to all areas of the state except ~~Indian Trust lands.~~ Tribal Nations and Communities land which has the same meaning as the term defined in 18 U.S.C. § 1151. All federally managed lands and all state lands, parks, and forests are under the jurisdiction of ADEQ in matters relating to air pollution from prescribed burning.

~~D. Notwithstanding subsection (C), ADEQ and any Indian Tribe may enter into a memorandum of agreement to implement this Article.~~ Notwithstanding subsection (C), any Tribal Nations and Communities may enter into a memorandum of agreement to implement this Article.

~~E. ADEQ and any F/SLM private or municipal prescribed burner may enter into a memorandum of agreement to implement this Article.~~

R18-2-1503. Annual ~~Registration~~, Program Evaluation and Planning

A. ~~Each F/SLM shall register annually with ADEQ on a form prescribed by ADEQ, all planned burn projects, including areas planned for wildland fire use.~~ ADEQ shall hold a meeting after January 31 and before April 1 of each year between ADEQ and F/SLM to evaluate the program and set the annual emissions goals to minimize prescribed fire emissions to the maximum extent feasible using emission reduction techniques and non- burning alternatives to fire subject to economic, technical, and safety feasibility criteria, and consistent with land management objectives.

B. ~~Each planned year extends from January 1 of the registration year to December 31 of the same year. Each F/SLM shall use best efforts to register before December 31 and no later than January 31 of each year.~~ Outside of the annual meeting, ADEQ may request additional information for future prescribed burns to support regional coordination of smoke management, annual emission goal setting using ERTs, and non-burning alternatives to fire.

~~C. A F/SLM shall include the information on the registration form:~~

- ~~1. The F/SLM's name, address, and business telephone number;~~
- ~~2. The name, address, and business telephone number of an air quality representative who will provide technical support to ADEQ for decisions regarding prescribed burning. The same air quality representative may be selected by more than one F/SLM;~~
- ~~3. All prescribed burn projects and potential wildland fire use areas planned for the next year;~~
- ~~4. Maximum project and annual acres to be burned, maximum daily acres to be burned, fuel types within project area, and planned use of emission reduction techniques to support the annual emissions goal for each prescribed burn project;~~
- ~~5. Planned use of any smoke management techniques for each prescribed burn project;~~
- ~~6. Maximum project and annual acres projected to be burned, maximum daily acres projected to be burned, and a map of the anticipated project area, fuel types and loading within the planned area for an area the F/SLM anticipates for wildland fire use ;~~
- ~~7. A list of all burn projects that were completed during the previous year;~~
- ~~8. Project area for treatment, treatment type, fuel types to be treated, and activity fuel loading to support the annual emissions goal for areas to be treated using non-burning alternatives to fire; and~~
- ~~9. The area treated using non-burning alternatives to fire during the previous year including the number of acres, the specific types of alternatives utilized, and the location of these areas. At least once every five years, ADEQ shall request long-term projections of future prescribed fire activity from the F/SLM to support planning for visibility impairment and assessment of other air quality concerns by ADEQ.~~

~~D.—After consultation with the F/SLM, ADEQ may request additional information for registration of prescribed burns and wildland fire use to support regional coordination of smoke management, annual emission goal setting using ERTs, and non-burning alternatives to fire. F/SLM may submit topics to discuss at the yearly meeting by contacting ADEQ.~~

~~E. A F/SLM may amend a registration at any time with a written submission to ADEQ.~~

~~F. ADEQ accepts a facsimile or other electronic method as a means of complying with the deadline for registration. If an electronic means is used, the F/SLM shall deliver the original paper registration form to ADEQ for its records. ADEQ shall acknowledge in writing the receipt of each registration.~~

~~G. ADEQ shall hold a meeting after January 31 and before April 1 of each year between ADEQ and F/SLM to evaluate the program and cooperatively establish the annual emission goal. The annual emission goal shall be developed to minimize prescribed fire emissions to the maximum extent feasible using emission reduction techniques and alternatives to burning subject to economic, technical, and safety feasibility criteria, and consistent with land management objectives.~~

~~H. At least once every five years, ADEQ shall request long-term projections of future prescribed fire and wildland fire use activity from the F/SLM to support planning for visibility impairment and assessment of other air quality concerns by ADEQ.~~

R18-2-1504. Prescribed Burn Plan

Each F/SLM planning a prescribed burn shall complete and submit to ADEQ the “Burn Plan Form” supplied by ADEQ no later than 14 days before the date on which the F/SLM requests permission to burn. ADEQ shall consider the information supplied on the Burn Plan Form as binding conditions under which the burn shall be conducted. A Burn Plan shall be maintained by ADEQ until notification from the F/SLM of the completion of the burn project. ~~Revisions~~ The Burn Plan provisions listed in A.C.C. R18-2-1504 (1)-(3), may be revised no later than 2p.m. the business day before the burn. Any other revision to the Burn Plan for a burn project shall be submitted in writing no later than 14 days before the date on which the F/SLM requests permission to burn. ADEQ shall not act on the daily burn requests until the Burn Plan is submitted by the F/SLM and acknowledged as complete by ADEQ. To facilitate the Daily Burn authorization process under R18-2-1505, the Burn Plan Form ~~the F/SLM~~ shall include ~~on the Burn Plan form~~:

1. An emergency telephone number that is answered 24 hours a day, seven days a week;
2. Burn prescription;
3. Smoke management prescription;
4. The total number of acres in the project to be burned, the quantity and type of fuel, type of burn, and the ignition technique to be used;
5. The land management objective or purpose for the burn such as restoration or maintenance of ecological function and indicators of fire resiliency;
- ~~6. A map depicting the potential impact of the smoke unless waived either orally or in writing by ADEQ. The potential impact shall be determined by mapping both the daytime and nighttime smoke path and down drainage flow for 15 miles from the burn site, with smoke sensitive areas delineated. The map shall use the appropriate scale to show the impacts of the smoke adequately;~~
- ~~7. Modeling of smoke impacts unless waived either orally or in writing by ADEQ, for burns greater than 250 acres per day, or greater than 50 acres per day if the burn is within 15 miles of a Class I Area, an area that is non-attainment for particulates, a carbon monoxide non-attainment area, or other smoke-sensitive area. In consultation with the F/SLM, ADEQ shall provide guidelines on modeling;~~
- ~~8.~~ 6. The name of the official person submitting the Burn Plan on behalf of the F/SLM; and
- ~~9.~~ 7. ~~After consultation with the F/SLM, any~~ Any other information to support the Burn Plan needed by ADEQ to assist in the Daily Burn authorization process for smoke management purposes, prevention of negative impacts on smoke sensitive areas, or assessment of contribution to visibility impairment of Class I areas.

R18-2-1505. Prescribed Burn Requests and Authorization

A. Each F/SLM planning a prescribed burn, shall complete and submit to ADEQ the “Daily Burn Request” form supplied by ADEQ for each day the F/SLM will complete ignitions. The Daily Burn Request form shall include:

1. The contact information of the F/SLM conducting the burn;

2. Acknowledgement that a qualified Prescribed Fire Burn Boss is conducting the burn

~~2-3. Each day of the burn;~~ Date of the burn.

~~3. 4.~~ The area to be burned on the day for which the Burn Request is submitted, with reference to the Burn Plan, including size, legal location to the section, and latitude and longitude to the minute;

~~4. 5.~~ Projected smoke impacts; and

~~5. 6.~~ Any local conditions or circumstances known to the F/SLM that ~~if conveyed to ADEQ,~~ could impact the Daily Burn authorization process or the burn.

B. After consultation ~~with the F/SLM, ADEQ may request~~ and upon request by ADEQ, the F/SLM shall provide additional information related to the burn or any ongoing prescribed fires or wildfires such as: reports, digital photographs, meteorological, smoke dispersion, or air quality conditions to supplement the Daily Burn Request form and to aid in the Daily Burn authorization process. F/SLM may coordinate with ADEQ prior to submitting a Daily Burn Request to discuss potential air quality impacts or other concerns.

C. The F/SLM shall submit the Daily Burn Request form to ADEQ as expeditiously as practicable, but no later than 2:00 p.m. of the business day preceding the burn. ~~An original form, a facsimile, or an electronic information transfer are acceptable submittals.~~

D. An F/SLM shall not ignite a prescribed burn without receiving the approval of ADEQ, as follows:

1. ADEQ shall only approve, approve with conditions, or disapprove a burn on ~~the same business day as the Burn Request submittal~~ the business day before the burn is to take place.

2. If ADEQ fails to address a Burn Request by ~~10:00 p.m. of the business day on which the request is submitted by 10 p.m.~~ the business day before the burn is to take place, the Burn Request is approved by default after the burner makes a good faith effort to contact ADEQ to confirm that the Burn Request was received, by exhausting available methods of communication, including contacting the ADEQ smoke management team directly, as well as the main number for the ADEQ air quality division, and leaving voicemails if there is no response.

3. ADEQ may communicate its decision by verbal, written, or electronic means. ADEQ shall provide a written or electronic reply if requested by the F/SLM.

E. If weather conditions cease to conform to those in the smoke management prescription of either the Burn Plan or ~~an Approval with Conditions~~ any conditions on the approval of the applicable Burn Request, the F/SLM shall take appropriate action to reduce further smoke impacts, ensure safe and appropriate fire control, and notify the public ~~when necessary-~~ as per the requirements established by National Wildfire Coordinating Group or F/SLM-equivalent. ~~After consultation the smoke management prescription or burn plan may be modified.~~ The F/SLM may modify the smoke management prescription in the Burn Plan after consultation with ADEQ. A F/SLM conducting a burn shall contact ADEQ if there is any change in burn conditions that ceases to conform with the Burn Plan and could cause negative impacts to smoke sensitive areas and communicate what areas of the submitted smoke management prescription in the Burn Plan need to be modified.

F. The F/SLM shall ensure that there is ~~appropriate~~ industry-standard signage and notification to protect public safety on transportation corridors including roadways and airports during a prescribed fire.

R18-2-1506. Smoke Dispersion Evaluation

ADEQ shall approve, approve with conditions, or disapprove a Daily Burn Request submitted under *R18-2-1505*, by using the following factors for each smoke management unit:

1. Analysis of the emissions from burns in progress and residual emissions from previous burns on a day-to-day basis;
- ~~2. Analysis of emissions from active wildland fire use incidents, and active multiple day burns, and consideration of potential long term emissions estimates;~~
- ~~3.~~ 2. Analysis of the emissions from wildfires ~~greater than 100 acres~~ and consideration of their potential long-term growth;
- ~~4.~~ 3. Local burn conditions;
- ~~5.~~ 4. Burn prescription and smoke management prescription from the applicable Burn Plan;
- ~~6.~~ 5. Existing and predicted local air ~~quality;~~ quality, i.e. meteorological or smoke modeling;
- ~~7.~~ 6. Local and synoptic meteorological conditions;
- ~~8.~~ 7. Type and location of areas to be burned;
- ~~9.~~ 8. Protection of the national visibility goal for Class I Areas under § 169A(a)(1) of the Clean Air Act and 40 CFR 51.309;
- ~~10.~~ 9. Assessment of duration and intensity of smoke emissions to minimize cumulative impacts;
- ~~11.~~ 10. Minimization of smoke impacts in Class I Areas, areas that are non-attainment for particulate matter, carbon monoxide, and ozone non-attainment areas, or other ~~smoke-sensitive~~ smoke sensitive areas; and
- ~~12.~~ 11. Protection of the National Ambient Air Quality Standards.
12. Impacts to transportation.

R18-2-1507. Prescribed Burn Accomplishment; Wildfire Reporting

A. Each F/SLM conducting a prescribed burn shall complete and submit to ADEQ the “Burn Accomplishment” form supplied by ADEQ. For each burn approval, the F/SLM shall submit a Burn Accomplishment form to ADEQ ~~by 2:00 p.m. of the business day~~ within seven calendar days following the approved burn. The F/SLM shall include the following information on the Burn Accomplishment form:

1. Any known conditions or circumstances that could impact ~~the~~ subsequent Daily Burn approvals ~~process;~~
2. The date, location, fuel type, fuel loading, and acreage accomplishments;
3. The ERTs and SMTs described in *R18-2-1509* ~~and R18-2-1510, respectively,~~ and may include any further ERTs and SMTs that become available, that the F/SLM used to reduce emissions or manage the smoke from the burn.

B. The F/SLM shall submit the Burn Accomplishment form as an ~~original form, a facsimile, or an electronic information transfer.~~ electronic submittal.

C. ADEQ shall maintain a record of Daily Burn Requests, Burn Plan Form ~~Burn Approvals/Conditional Approvals/ Denials and Burn Accomplishments for five years.~~ Burn Approvals with Conditions, Denials, and Burn Accomplishments data for five years.

D. ~~The F/SLM in whose jurisdiction a wildfire occurs shall make available to ADEQ no later than the day after the activity all required information for wildfire incidents that burned more than 100 acres per day in timber or slash fuels or 300 acres per day in brush or grass fuels. For each day of a wildfire incident that exceeds the daily activity threshold, the F/SLM shall provide the location, an estimate of predominant fuel type and quantity consumed, and an estimate of the area blackened that day.~~ ADEQ may request information about a burn prior to the submission of the Burn Accomplishment form.

E. The F/SLM in whose jurisdiction a wildfire occurs shall, upon request, make available to ADEQ no later than the day after the request is made and may include any necessary information for wildfire incidents, including the location, an estimate of predominant fuel type and quantity consumed, and an estimate of the area blackened that day. F/SLM shall participate in air quality coordination calls upon request by ADEQ.

~~R18-2-1508. Wildland Fire Use: Plan, Authorization, Monitoring; Inter-agency Consultation; Status Reporting~~

~~A. In order for ADEQ to participate in the wildland fire use wildfire decision-making process, the F/SLM shall notify ADEQ as soon as practicable of any wildland fire use incident projected to attain or attaining a size of 50 acres of timber fuel or 250 acres of brush or grass fuel.~~

~~B. For each wildland fire use incident that has been declared as such by the F/SLM, the F/SLM shall complete and submit to ADEQ a Wildland Fire Use Burn Plan in a format approved by ADEQ in cooperation with the F/SLM. The F/SLM shall submit the Wildland Fire Use Burn Plan to ADEQ as soon as practicable but no later than 72 hours after the wildland fire use incident is declared or under consideration for such designation. The F/SLM shall include the following information in the Wildland Fire Use Burn Plan:~~

- ~~1. An emergency telephone number that is answered 24 hours a day, seven days a week;~~
- ~~2. Anticipated burn prescription;~~
- ~~3. Anticipated smoke management prescription;~~
- ~~4. The estimated daily number of acres, quantity, and type of fuel to be burned;~~
- ~~5. The anticipated maximum allowable perimeter or size with map;~~
- ~~6. Information on the condition of the area to be burned, such as whether it is in maintenance or restoration, its ecological function, and other indicators of fire resiliency;~~
- ~~7. The anticipated duration of the wildland fire use incident;~~

~~8. The anticipated long-range weather trends for the site;~~

~~9. A map depicting the potential impact of the smoke. The potential impact shall be determined by mapping both the daytime and nighttime smoke path and down-drainage flow for 15 miles from the wildland fire use incident, with smoke-sensitive areas delineated. Mapping is mandatory unless waived either orally or in writing by ADEQ. The map shall use the appropriate scale to show the impacts of the smoke adequately; and~~

~~10. Modeling or monitoring of smoke impacts, if requested by ADEQ after consultation with the F/SLM.~~

~~C. ADEQ shall approve or disapprove a Wildland Fire Use Burn Plan within three hours of receipt. ADEQ shall consult directly with the requesting F/SLM before disapproving a Wildland Fire Use Burn Plan. If ADEQ fails to address the Wildland Fire Use Burn Plan within the time allotted, the Plan is approved by default under the condition that the F/SLM makes a good faith effort to contact ADEQ to confirm that the Plan was received. Approval by ADEQ of a Wildland Fire Use Burn Plan is binding upon ADEQ for the duration of the wildland fire use incident, unless smoke from the incident creates a threat to public health or welfare. If a threat to public health or welfare is created, ADEQ shall consult with the F/SLM regarding the situation and develop a joint action plan for reducing further smoke impacts.~~

~~D. The F/SLM shall submit a Daily Status Report for each wildland fire use incident to ADEQ for each day of the burn that the fire burns more than 100 acres in timber or slash fuels or 300 acres in brush or grass fuels following A.A.C. R18-2-1507(D). The F/SLM shall include a synopsis of smoke behavior, future daily anticipated growth, and location of the activity of the wildland fire use incident in the Daily Status Report.~~

~~E. The F/SLM shall consult with ADEQ prior to initiating human-made ignition on the wildland fire use incident when greater than 250 acres is anticipated to be burned by the ignition. Emergency human-made ignition on the incident for protection of public or fire-fighter safety does not require consultation with ADEQ regardless of the size of the area to be burned. ADEQ may consult with the F/SLM to obtain information on wildfire emissions pertinent to smoke impacts and other air quality concerns.~~

~~F. The F/SLM shall ensure that there is appropriate signage and notification to protect public safety on transportation corridors including roadways and airports during a wildland fire use incident.~~

R18-2-1509. Emission Reduction and Smoke Management Techniques

A. Each F/SLM conducting a prescribed burn shall implement as many Emission Reduction Techniques and Smoke Management Techniques as are feasible subject to economic, technical, and safety feasibility criteria, and land management objectives.

B. Emission Reduction Techniques include:

1. Reducing biomass to be burned by use of techniques such as yarding or consolidation of unmerchandisable material, multi-product timber sales, or public firewood access, when economically feasible;

2. Reducing biomass to be burned by fuel exclusion practices such as preventing the fire from consuming dead snags or dead and downed woody material through lining, application of fire-retardant foam, or water;
3. Using mass ignition techniques such as aerial ignition by helicopter to produce high intensity fires of high fuel density areas such as logging slash decks;
4. Burning only fuels essential to meet resource management objectives;
5. Minimizing consumption and smoldering by burning under conditions of high fuel moisture of duff and litter;
6. Minimizing fuel consumption and smoldering by burning under conditions of high fuel moisture of large woody fuels;
7. Minimizing soil content when slash piles are constructed by using brush blades on material-moving equipment and by constructing piles under dry soil conditions or by using hand piling methods;
8. Burning fuels in piles or windrows;
9. Using a backing fire in grass fuels;
10. Burning fuels with an air curtain destructor, as defined in *R18-2-101*, operated according to manufacturer specifications and meeting applicable state or local opacity requirements;
11. Extinguishing or mopping-up of smoldering fuels;
12. Chunking of piles and other consolidations of burning material to enhance flaming and fuel consumption, and to minimize smoke production;
13. Burning before litter fall; before green-up of fuels; before recently cut large fuels cure in areas with activity; and burning just before precipitation to reduce fuel smoldering and consumption.
14. ~~Burning before green-up of fuels;~~ Reduce the area burned, by only burning a portion of the area within a designated perimeter or through mosaic burning.
15. ~~Burning before recently cut large fuels cure in areas with activity; and~~
16. ~~Burning just before precipitation to reduce fuel smoldering and consumption.~~

C. Smoke management techniques include:

1. Burning from March 15 through September 15, when meteorological conditions allow for good smoke dispersion;
2. Igniting burns under good-to-excellent ventilation conditions;
3. Suspending operations under poor smoke dispersion conditions;
4. Considering smoke impacts on local community activities and land users;
5. Burning piles when other burns are not feasible, such as when snow or rain is present;
6. Using mass ignition techniques such as aerial ignition by helicopter to produce high intensity fires with short duration impacts;
7. Using all opportunities that meet the burn prescription and all burn locations to spread smoke impacts over a broader time period and geographic area;

8. Burning during optimum mid-day dispersion hours, with all ignitions in a burn unit completed by 3:00 p.m. to prevent trapping smoke in inversions or diurnal windflow patterns;
9. Providing information on the adverse impacts of using green or wet wood as fuel when public firewood access is allowed;
10. Implementing maintenance burning in a periodic rotation to shorten prescribed fire duration and to reduce excessive fuel accumulations that could result in excessive smoke production in a wildfire; and
11. Using fire-use strategies to shift smoke into more favorable smoke dispersion seasons.

R18-2-1510. Smoke Management Techniques

~~A. Each F/SLM conducting a prescribed burn shall implement as many Smoke Management Techniques as are feasible subject to economic, technical, and safety feasibility criteria, and land management objectives.~~

~~B. Smoke management techniques include:~~

- ~~1. Burning from March 15 through September 15, when meteorological conditions allow for good smoke dispersion;~~
 - ~~2. Igniting burns under good to excellent ventilation conditions;~~
 - ~~3. Suspending operations under poor smoke dispersion conditions;~~
 - ~~4. Considering smoke impacts on local community activities and land users;~~
 - ~~5. Burning piles when other burns are not feasible, such as when snow or rain is present;~~
 - ~~6. Using mass ignition techniques such as aerial ignition by helicopter to produce high intensity fires with short duration impacts;~~
 - ~~7. Using all opportunities that meet the burn prescription and all burn locations to spread smoke impacts over a broader time period and geographic area;~~
 - ~~8. Burning during optimum mid-day dispersion hours, with all ignitions in a burn unit completed by 3:00 p.m. to prevent trapping smoke in inversions or diurnal windflow patterns;~~
 - ~~9. Providing information on the adverse impacts of using green or wet wood as fuel when public firewood access is allowed;~~
 - ~~10. Implementing maintenance burning in a periodic rotation to shorten prescribed fire duration and to reduce excessive fuel accumulations that could result in excessive smoke production in a wildfire; and~~
 - ~~11. Using wildland fire-use strategies to shift smoke into more favorable smoke dispersion seasons.~~
- ~~• Review for duplication from previous section, same comment that EPA may have updated these reqs/best practices. Issue with outdated WFU term.~~

R18-2-1511. Monitoring

A. ADEQ may require a F/SLM to monitor air quality before or during a prescribed burn ~~or a wildland fire use incident if~~ as reasonably necessary to assess smoke impacts. Air quality monitoring may be conducted using both federal and non-federal reference ~~method~~ methods, as well as other techniques including but not limited to digital photographs, video calling, webcams, visibility monitors, and air quality sensors.

~~B. ADEQ may require a F/SLM to monitor weather before or during a prescribed burn or a wildland fire use incident, if necessary to predict or assess smoke impacts. After consultation with the F/SLM, ADEQ may also require the F/SLM to establish burn site or area representative remote automated weather stations or their equivalent, having telemetry that allows retrieval on a real time basis by ADEQ. A An F/SLM shall give ADEQ notice and an opportunity to comment before making any change to a long term established remote automated weather station.~~

~~C. A F/SLM shall employ the following types of monitoring, unless waived by ADEQ,~~ B. Unless waived by ADEQ, a F/SLM shall conduct a test burn at the burn site to verify the needed wind speed, direction, and stability, for burns greater than 250 acres per day, or greater than 50 acres per day if the burn is within 15 miles of a Class I Area, an area that is non-attainment for particulate matter, carbon monoxide, or ozone, or other smoke-sensitive ~~area~~ area.

~~1. Smoke plume measurements, using a format supplied by ADEQ; and~~

~~2. The release of pilot balloons (PIBALs) at the burn site to verify needed wind speed, direction, and stability. Instead of pilot balloons, a test burn at the burn site may be used for specific prescribed burns on a case by case basis as approved by ADEQ, to verify needed wind speed, direction, and stability.~~

~~D. C.~~ C. An F/SLM shall make monitoring information required under subsection (C) available to ADEQ on the business day following the burn ignition, if an instantaneous method was not used to convey the information.

~~E. D.~~ D. The F/SLM shall keep on file for one year following the burn date any monitoring information required under this Section.

R18-2-1512. Burner Qualifications

A. ~~All burn projects shall be conducted by personnel trained in prescribed fire and smoke management techniques as required by the F/SLM in charge of the burn and established by the National Wildfire Coordinating Group training qualifications. All burn projects shall be conducted by personnel trained and certified in prescribed fire and smoke management techniques. Burn project personnel shall be trained in the fire and smoke management techniques required by the F/SLM in charge of the burn or the training requirements established by National Wildfire Coordinating Group.~~

B. ~~A prescribed Fire Boss or other local Fire Management Officer of the F/SLM having jurisdiction over prescribed burns shall have smoke management training obtained through one of the following: A Prescribed Fire Burn Boss of the F/SLM with jurisdiction over the prescribed burn shall have smoke management training obtained through one of the following:~~

1. Successful completion of a National Wildfire Coordinating Group or F/SLM -equivalent course addressing smoke management.; or

2. Attendance at an ADEQ-approved smoke management workshop.

R18-2-1513. Public Notification and Awareness Program; Regional Coordination

A. The Director shall maintain a public education and awareness program webpage, in cooperation with the F/SLM and other interested parties, to inform the general public of the smoke management program ~~conduct a public education and awareness program in cooperation with F/SLM and other interested parties to inform the general public of the smoke management program~~ described by this Article. The webpage shall inform the public about the health risks and impacts from smoke and prescribed fires; how smoke management techniques can protect air quality; ~~program shall include smoke impacts from prescribed fires~~ and the role of prescribed fire in natural ecosystems.

B. ADEQ shall make ~~annual registration~~ prescribed burn approval and wildfire ~~and wildland fire use~~ activity information readily available to the public and to facilitate regional coordination efforts and public notification.

C. ADEQ shall ensure all publicly available information concerning smoke management, including electronic material, is updated annually, or as new information is published.

R18-2-1514. Surveillance and Enforcement

A. An F/SLM conducting a prescribed burn shall permit ADEQ to enter and inspect burn sites ~~unannounced~~ to verify the accuracy of the Daily Burn Request, Burn Plan, or Accomplishment data as well as matching burn approval with actual conditions, smoke dispersion, and air quality impacts. On-ground site inspection procedures and aerial surveillance shall be coordinated by ADEQ and the F/SLM for safety purposes.

B. ADEQ may use remote automated weather station data if necessary to verify current and previous meteorological conditions at or near the burn site.

C. ADEQ may audit Burn Accomplishment data, smoke dispersion measurements, or weather measurements from previously conducted burns, if necessary to verify conformity with, or deviation from, procedures and authorizations approved by ADEQ.

D. Deviation from procedures and authorizations approved by ADEQ constitute a violation of this Article. Violations may require containment or ~~mop-up~~ appropriate smoke mitigation action of any active burns and may also require, in the Director's discretion, a five-day moratorium on ignitions by the responsible F/SLM. Violations of this Article are also subject to a civil penalty of not more than \$10,000 per day per violation under *A.R.S. § 49-463*.

R18-2-1515. Forms; ~~Electronic Copies;~~ and Information Transfers

A. ~~ADEQ shall make available on paper and in electronically readable format any form required to be developed by ADEQ and completed by a F/SLM. ADEQ shall make all forms for completion by a F/SLM available in electronic format as provided by the director.~~

B. After consultation with an F/SLM, ADEQ may require the F/SLM to provide data ~~in a manner that facilitates electronic transfers of information.~~ or completed forms in an electronic format as provided by the director.

DRAFT - DO NOT COPY



Arizona Farm Bureau Federation

325 S. Higley Rd, Suite 210
Gilbert, AZ 85296

December 1, 2022

Samantha Schaffer
Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007

Submitted electronically to Schaffer.Samantha@azdeq.gov

RE: Notice of Proposed Revisions to Arizona's Forest and Range Fire Management Regulatory Rules

Dear Ms. Shaffer:

The Arizona Farm Bureau Federations is a grassroots organization made up of farmers and ranchers from all across Arizona. Together, they form an industry that generates \$23.3 billion in economic impact to the state's economy. Our state's ranchers rely on well-managed forests and rangelands on which to raise their livestock. We appreciate this opportunity to make comments on the Arizona Department of Environmental Quality's (ADEQ) Notice of Proposed Revisions to Arizona's Forest and Range Fire Management Regulatory Rules.

The primary concern we have with the Notice of Proposed Revisions to Arizona's Forest and Range Fire Management Regulatory Rules is the proposed repeal of R18-2-1508 (Wildand Fire Use: Plan, Authorization, Monitoring; Inter-agency Consultation Status Reporting) and R18-2-1511 (B) (Monitoring). Although, we understand the Environmental Protection Agency (EPA) now only statutorily recognizes two types of fire, wildfire and prescribed fire, it is important that ADEQ recognize that wildland fire use, using wildfires to manage natural resources, is still employed by federal agencies even if the term is no longer used. We also understand that emissions from wildfires are covered and evaluated under the EPA's Exceptional Events Rule and recognize the importance of this rule for addressing natural events that occur outside of the control of human actions.

Because fire managers use wildfires to manage watersheds for natural resource benefits, it is important that ADEQ's rule maintains accountability to ensure fires and emissions are managed and reported accordingly. However, the wholesale repeal of R18-2-1508 and R18-2-1511 (B) leaves ADEQ with little information regarding the use of wildfires for the management of natural resources except what may be gathered under other areas of the rule in areas addressing wildfire. Consequently, ADEQ's proposed rule revisions create a disparity of expectations and reporting between managed wildfire and prescribed burning.

Fire management plans and Land/Resource Management Plans provide federal agencies with the management responses to wildfire on federal lands based on the objectives established therein. Although we have not seen any such plans for any of Arizona's forests, does ADEQ review these plans when it meets with F/SLM to evaluate the program and set annual emission goals as noted under R18-2-1503? If so, ADEQ should ensure information is provided regarding wildfire management objectives that include the use of purposeful ignitions and how emissions are monitored and reported.

The use of managed wildfire for natural resource benefits includes active and purposeful ignition which generates smoke and air quality issues in exceedance of natural wildfire smoke creation. It is important that ADEQ hold federal and state agencies who continue to use wildfire managed for resource benefits accountable to the State of Arizona and its citizens as to these decisions and their impact on air quality, just as it does with its prescribed burning rules.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Stefanie A. Smallhouse". The ink is dark and the signature is fluid.

Stefanie Smallhouse, President
Arizona Farm Bureau Federation

1 **Public Hearing Regarding the Article 15 Forest and Range Management Burns**

2 Oral Proceeding

3 Public Hearing Transcript

4 December 1st, 2022

5
6 Zachary Dorn: Good Morning my name is Zac Dorn with the Arizona Department of
7 Environmental Quality. This is the Public Hearing for the proposed rulemaking regarding Article
8 15. We are going to wait just another couple of minutes to give folks a chance to continue to log
9 into this meeting and then we will get started. Thank you.

10
11 [One minute later]

12
13 Zachary Dorn: Good Morning, and thank you for coming. I now open this hearing on the
14 proposed rulemaking for Article 15 Forest and Range Management Burn. This proceeding is
15 being recording and will be preserved for the record.

16 Today is December 1st, 2022 and the time is now 9:02 am. This hearing is being held virtually
17 using GoToWebinar software my name is Zach Dorn and I have been appointed by the Director
18 of the Arizona Department of Environmental Quality to preside at this proceeding.

19 The purpose of this oral proceeding is to provide the public an opportunity to: Hear a summary
20 of the proposed rule revision, ask questions, or provide comments if they choose to do so. The
21 Department representatives for today's hearing are: Samantha Schaffer, Alex Ponikvar, and Matt
22 Pace of ADEQ's Air Quality Division.

23 Public notice of the comment period in hearing was published in the Arizona Republic on
24 October 28th and October 29th.

25 Copies of the notice proposed rulemaking will remain available on ADEQ's website and at the
26 ADEQ Record Center starting October 28th, 2022 and will remain available until the close of
27 comment period, which ADEQ is extending to December 9th, 2022 at the request of stakeholders.

28 If you wish to make a verbal comment, please raise your hand using the GoToWebinar Software
29 and you will be called on during this proceeding. You may also submit written comments during
30 today's hearing. Comments may also be mailed to Samantha Schaffer, Air Quality Division,
31 Arizona Department of Environmental Quality, 1110 W. Washington St., Phoenix, AZ 85007, or
32 emailed to schaffer.samantha@azdeq.gov. Attendees also have the option of commenting using
33 the GoToWebinar software. Mailed comments must be postmarked by December 9, 2022.

1 Comments made during the formal comment period are required by law to be considered by the
2 Department when preparing the final submission to Governor's regulatory review counsel. The
3 department will only respond to comments related to this rulemaking. ADEQ will include a
4 responsiveness summary for written and oral comments received during the formal comment
5 period.

6
7 The agenda for this hearing is as follows: First, Samantha Schaffer will present a brief overview
8 of the proposal. Then I will conduct the oral comment portion. At that time, I will call speakers
9 in the order that the comments were received.

10
11 Please be aware that any comments at today's hearing that you want the Department to formally
12 consider must be given either in writing or on the record during this oral proceeding. At this
13 time, Samantha Schaffer will give a brief overview of the proposal.

14
15 Samantha Schaffer: Thank you, Zac. Hello and thank you for coming. This public hearing is
16 regarding the proposed *Rulemaking for Article 15 Forest and Range Management Burn*.

17
18 ADEQ is proposing to amend Art. 15 to improve and modernize the rule to meet current industry
19 standards without creating additional regulatory burden. The purpose of this rulemaking is to
20 update the rules that regulate for prescribed burns and allow for smoke management across the
21 state. On average, ADEQ approved 440 prescribed burn request per year. With the majority of
22 prescribed burns taking place in the cooler months.

23
24 Prescribed fires or burns refer to the controlled application of fire by experts under specific
25 weather conditions. The practices use to restore health to the ecosystem and to prevent forest
26 undergrowth from fueling wildfires. Which is important since global warming and climate
27 change have caused an increase in severe wildfires within Arizona.

28
29 The purpose of Art. 15 is to help ADEQ maintain the national ambient air quality standards for
30 particulate matter (PM) to prevent visibility impairment, and to protect public health. The rules
31 address these air quality concerns primarily by ensuring best practices are being used to reduce
32 the amount of smoke produced during a burn which in turn limits the impact of smoke on the
33 citizens and the environment.

34
35 Unfortunately, the current rules contain outdated terms and provisions that do not completely
36 align with the industry standards developed by the National Wildfire Coordination Group which

1 provides the national leadership to the prescribed fire operations. Disconnect between industry
2 standards and the state's regulatory rules requires those conducting these burns to adhere to
3 practices that are no longer relevant nationally. Amending the rules will not only improve and
4 modernize rules to meet current industry standards but it will help reduce the major threat of
5 wildfires in Arizona. Back to you Zac.

6
7 Zachary Dorn: This concludes the overview portion of this proceeding if you wish to ask a
8 question or make a comment please press the raise hand icon in the toolbar. We will call on any
9 raised hands during an unmute your line. Alternatively, you can type your comment or question
10 into the chat. Are there any other questions before we move on to the oral comments period of
11 this public hearing?

12
13 [Waits for questions. No questions were raised].

14
15 Zachary Dorn: Seeing no questions, this concludes the question and answer portion of this
16 proceeding for the proposed *Rulemaking for Article 15: Forest and Range Management Burns*.

17 I now open this proceeding for oral comments. At this time if you wish to make an oral comment
18 use the raised hand feature on the control panel we will unmute your line. When your line is
19 unmuted please state your first and last name, and organization if applicable. Due to the volume
20 of registrants on this meeting, we will limit the speaker time to five minutes. I will provide a one-
21 minute warning before the ending of the five-minute period. After the ending of the five minutes
22 I will ask that you will conclude your comments and place your line on mute.

23
24 Zachary Dorn: Alright I see one hand raised from Stefanie Smallhouse, I have unmuted your line
25 but you still appeared to be self-muted so you can un-mute and make your comment please.

26
27 Stefanie Smallhouse: Okay Good Morning can you hear me?

28
29 Zachary Dorn: Yes, we can.

30
31 Okay, should we be seeing anything on the screen? This is a little bit different process that I am
32 used to. I just want to make sure I am logged in okay.

1 Zachary Dorn: Yeah you are logged in fine, we are not displaying anything on the screen. We
2 will take that back as a note for future meetings to make it less confusing for folks.

3
4 Stefanie Smallhouse: Okay thank you, I will begin my comments good morning. My name is
5 Stefani Smallhouse I am president of Arizona Farm Bureau. The Arizona Farm Bureau
6 Federation is a grassroots organization made up of farmers and ranchers from all across Arizona.
7 To get reform industry that generates 23.3 billion dollars in economic impact to the state's
8 economy. Our state's ranchers on well managed forest and rangelands on which to raise their
9 livestock. We appreciate this opportunity to make comments on the Arizona Department
10 Environmental Quality's (ADEQ) notice of proposed revisions to Arizona Forest and Range Fire
11 Management Regulatory Rules. These comments I am providing this morning are provided in
12 addition to those submitted in writing.

13
14 The use of prescribed burning is critical tool for managing vegetation and fuel loads across
15 Arizona. Although we appreciate the efforts and the Governor and the ADEQ to improve and
16 modernize these rules to streamline and meet current industry standards in order to reduce the
17 major threat of wildfires in our state, in addition to not creating additional regulatory burden. We
18 foresee these rule changes as creating disincentives for the use of prescribed fire in the state of
19 Arizona. In tracking the largest fires in the southwest from 2013-2020 the Southwest Fire
20 Consortium reports that on average only 53% fire response was full suppression. With all other
21 activity managed fire response or wildland fire use, or some other strategy. Multiple land
22 managers across the state have witnessed this increase in use of managed fire response
23 specifically intentional ignitions and the use of fire for natural resource benefit.

24
25 ADEQ has proposed striking any mention definition, monitoring, and reporting of wildland fire
26 use in the proposed rulemaking by striking R18-2-1501(23) and striking R18-2-15(08) with the
27 reasoning that it reflects unenforceable requirement because the term wildland fire use is no
28 longer being used by the EPA as a type of wildland fire.

29 Arizona Farm Bureau recognizes emissions are treated differently and covered under the Natural
30 Events Policy and therefore exempt from the National Ambient Air Quality Standards
31 (NAAQS). However, in its 2016 *Guidance on the Preparation on Exceptional Events*
32 *Demonstration for Wildfire Events that May Influence Ozone Concentrations* - the EPA defines
33 prescribed fire which is not exempt from the air quality standards as quote "any fire intentionally
34 ignited by management actions in accordance with applicable laws, policies, and regulations to
35 meet specific land or resource management objectives." Managed fire or wildland fire use,
36 should essentially fall under this same definition. However, they do differ significantly in that, as
37 also stated by the EPA in its 2020 Comparative Assessment in the *Impacts of Prescribed Fire*
38 *Versus Wildfire: A Case Study in the Western US*. "Prescribed fire is perceived as lower risk
39 compared with wild fire because the timing and area to be burned can be managed to limit smoke

1 impacts. Prescribed fires are conducted when meteorological conditions are favorable, smoke
2 production is less, atmospheric conditions support adequate smoke dispersion, and wind patterns
3 allow smoke to move away from sensitive areas.”

4
5 Arizona’s Prescribed Burning requirements address air quality concerns, primarily through
6 efforts to, “ensure best practices are being used to reduce the amount of smoke produced and as a
7 result the impacts the smoke to the citizens of Arizona, and the environment.”

8 Given that the state of Arizona is required to address air quality issues through the NAAQS and
9 carry the burden of non-attainment areas within the state, we are very concerned that with the
10 before mentioned rule changes, ADEQ is creating incentives for fire managers and
11 administrators to rely too heavily on managed wildland fire which ADEQ would eliminate any
12 oversight in air quality reporting in this proposed rule. This is regardless of the fact that
13 intentional ignitions, which are said to accomplish the same goals of prescribed burning, which is
14 being regulated, are actually much riskier to control and may or may not employ best practices
15 for smoke emissions.

16 *ARS49-458.01 The State Implementation Plan Revision Regional Haze Rules* states that: “the
17 director shall submit the EPA administrator State Implementation Plan (SIP) revisions to address
18 regional haze visibility impairment and mandatory federal class 1 areas. The SIP revisions
19 submitted to the administrator shall address any of the following as necessary to submit an
20 improve plan: Programs related to admissions from fire sources defined as wildland fire,
21 including wildfire prescribed natural fire, wildland fire use, prescribed fire, and agricultural
22 burning conducted and occurring on federal, state, and private lands.”

23 We feel regardless whether the EPA uses the term Wildland fire use, the state is still responsible
24 to meet certain air quality standards and the state has expressed the need to support best practices
25 for reducing the major threat of wildfires in Arizona. Intentional ignitions used in wildland fires
26 are riskier, less manageable, lack transparency and accountability, and result in multiple
27 unintended consequences for natural resources, communities, and air quality. At the very least
28 this fire strategy should be monitored and reported to the ADEQ as its much safer counterpart,
29 prescribed fire continues to be. Thank you for the opportunity to comment

30
31 Zachary Dorn: Okay thank you for your comment.

32
33 Alright will give it another minute to see if there are additional hands being raised at this time.

34
35 Zachary Dorn: Okay, seeing no raised hands or comments being entered in the chat box, if you
36 have not already submitted written comments, you may submit them at this time. Again, the
37 comment period now ends on December 9th, 2022.

1

2 Thank you for attending. The time is now 9:15 a.m. I now close this oral proceeding.

3



Samantha Schaffer <schaffer.samantha@azdeq.gov>

AZ DEQ Proposed Rule Revision

Hickerson, Jeff L <Jeff_Hickerson@nps.gov>

Fri, Dec 9, 2022 at 2:33 PM

To: "Schaffer.samantha@azdeq.gov" <Schaffer.samantha@azdeq.gov>

Cc: "Miller, Debra C" <Debra_Miller@nps.gov>, "Devore, Lisa M" <lisa_devore@nps.gov>, Ron Sherron <rs8@azdeq.gov>, "Fitch, Mark J" <Mark_Fitch@nps.gov>, "Lusher, Jeremy JL" <Jeremy_Lusher@nps.gov>

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Samantha,

The National Park Service just learned that responses to a proposed rule revision are due today. I reached out to our air quality experts today, and they too were not aware. We are, therefore, troubled by the implementation of the revision process and the lack of stakeholder involvement; we would greatly appreciate more involvement and advance notification in the future (Lisa Devore is our primary regional air quality specialist). We probably like to do a more comprehensive review if we could have a couple more weeks(?).

Here are a couple of quick observations:

- Overall, we support many of the proposed changes, especially the removal of the fire use terminology/reporting requirements.
- Although March 15-Sept.15 is good for dispersion (3423); the majority of our broadcast burning is in the fall (after Sept. 15th).
- Verify all references to 40 CFR 51.309 (does the 309 Regional Haze Rule apply only to new or pre-2018 plans), it may be out of date and 40 CFR 51.308 might be a better reference(?).
- Concerned with the day-by-day burn approval process, which makes it difficult and costly to order outside resources and commit to multiple-day projects (it's also very hard to stop a burn once fire is on the ground). This is especially hard on smaller agencies like the NPS which don't have enough resources on hand to implement larger projects.
- Best to include a comprehensive list of smoke-sensitive areas instead of only highlighting one ("Transportation Corridors").

Jeffrey L Hickerson

"To serve so that together we are enriched."

Deputy Regional Fire Management Officer for Fuels, Planning, and Ecology

National Park Service - Intermountain Regional Office (Santa Fe, NM)

- serves Interior Regions 6, 7, and 8
- supports park units in AZ, CO, MT, NM, OK, TX, UT, and WY

For Emergency Situations, please call my cell - 505.629.9589

Know that life is not fair and that you will fail often. But if take some risks, step up when the times are toughest, face down the bullies, lift up the downtrodden and never, ever give up — if you do these things, then the next generation and the generations that follow will live in a world far better than the one we have today. *The closing remarks by Naval Adm. William H. McRaven, ninth commander of U.S. Special Operations Command, at the University-wide Commencement at The University of Texas at Austin on May 17, 2014*

for “Illegal Trafficking in Native American Human Remains and Cultural Items” in item 1170.

1990—Pub. L. 101-647, title XXXV, § 3536, Nov. 29, 1990, 104 Stat. 4925, struck out item 1157 “Livestock sold or removed”.

Pub. L. 101-644, title I, § 104(b), Nov. 29, 1990, 104 Stat. 4663, substituted “Misrepresentation of Indian produced goods and products” for “Misrepresentation in sale of products” in item 1159.

Pub. L. 101-630, title IV, § 404(a)(2), Nov. 28, 1990, 104 Stat. 4548, as amended, effective on the date section 404(a)(2) of Pub. L. 101-630 took effect, by Pub. L. 103-322, title XXXIII, § 330011(d), Sept. 13, 1994, 108 Stat. 2144, as amended by Pub. L. 104-294, title VI, § 604(b)(25), Oct. 11, 1996, 110 Stat. 3508, added item 1169.

Pub. L. 101-601, § 4(b), Nov. 16, 1990, 104 Stat. 3052, added item 1170.

1988—Pub. L. 100-497, § 24, Oct. 17, 1988, 102 Stat. 2488, added items 1166, 1167, and 1168.

1960—Pub. L. 86-634, § 3, July 12, 1960, 74 Stat. 469, added items 1164 and 1165.

1956—Act Aug. 1, 1956, ch. 822, § 1, 70 Stat. 792, added item 1163.

1953—Act Aug. 15, 1953, ch. 502, § 1, 67 Stat. 586, added item 1161.

Act Aug. 15, 1953, ch. 505, § 1, 67 Stat. 588, added item 1162.

§ 1151. Indian country defined

Except as otherwise provided in sections 1154 and 1156 of this title, the term “Indian country”, as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

(June 25, 1948, ch. 645, 62 Stat. 757; May 24, 1949, ch. 139, § 25, 63 Stat. 94.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on sections 548 and 549 of title 18, and sections 212, 213, 215, 217, 218 of title 25, Indians, U.S. Code, 1940 ed. (R.S. §§ 2142, 2143, 2144, 2145, 2146; Feb. 18, 1875, ch. 80, § 1, 18 Stat. 318; Mar. 4, 1909, ch. 321, §§ 328, 329, 35 Stat. 1151; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 28, 1932, ch. 284, 47 Stat. 337).

This section consolidates numerous conflicting and inconsistent provisions of law into a concise statement of the applicable law.

R.S. §§ 2145, 2146 (U.S.C., title 25, §§ 217, 218) extended to the Indian country with notable exceptions the criminal laws of the United States applicable to places within the exclusive jurisdiction of the United States. Crimes of Indians against Indians, and crimes punishable by tribal law were excluded.

The confusion was not lessened by the cases of *U.S. v. McBratney*, 104 U.S. 622 and *Draper v. U.S.*, 17 S.Ct. 107, holding that crimes in Indian country by persons not Indians are not cognizable by Federal courts in absence of reservation or cession of exclusive jurisdiction applicable to places within the exclusive jurisdiction of the United States. Because of numerous statutes applicable only to Indians and prescribing punishment for crimes committed by Indians against Indians, “Indian country” was defined but once. (See act June 30, 1834, ch. 161, § 1, 4, Stat. 729, which was later repealed.)

Definition is based on latest construction of the term by the United States Supreme Court in *U.S. v.*

McGowan, 58 S.Ct. 286, 302 U.S. 535, following *U.S. v. Sandoval*, 34 S.Ct. 1, 5, 231 U.S. 28, 46. (See also *Donnelly v. U.S.*, 33 S.Ct. 449, 228 U.S. 243; and *Kills Plenty v. U.S.*, 133 F.2d 292, certiorari denied, 1943, 63 S.Ct. 1172). (See reviser’s note under section 1153 of this title.)

Indian allotments were included in the definition on authority of the case of *U.S. v. Pelican*, 1913, 34 S.Ct. 396, 232 U.S. 442, 58 L.Ed. 676.

1949 ACT

This section [section 25], by adding to section 1151 of title 18, U.S.C., the phrase “except as otherwise provided in sections 1154 and 1156 of this title”, incorporates in this section the limitations of the term “Indian country” which are added to sections 1154 and 1156 by sections 27 and 28 of this bill.

AMENDMENTS

1949—Act May 24, 1949, incorporated the limitations of term “Indian country” which are contained in sections 1154 and 1156 of this title.

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94-297, § 1, May 29, 1976, 90 Stat. 585, provided: “That this Act [amending sections 113, 1153, and 3242 of this title] may be cited as the ‘Indian Crimes Act of 1976’.”

§ 1152. Laws governing

Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.

This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.

(June 25, 1948, ch. 645, 62 Stat. 757.)

HISTORICAL AND REVISION NOTES

Based on sections 215, 217, 218 of title 25, U.S.C., 1940 ed., Indians (R.S. 2144, 2145, 2146; Feb. 18, 1875, ch. 80, §§ 1, 18 Stat. 318).

Section consolidates said sections 217 and 218 of title 25, U.S.C., 1940 ed., Indians, and omits section 215 of said title as covered by the consolidation.

See reviser’s note under section 1153 of this title as to effect of consolidation of sections 548 and 549 of title 18, U.S.C., 1940 ed.

Minor changes were made in translations and phraseology.

§ 1153. Offenses committed within Indian country

(a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury (as defined in section 1365 of this title), an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

ARTICLE 15. FOREST AND RANGE MANAGEMENT BURNS**R18-2-1501. Definitions**

In addition to the definitions contained in A.R.S. § 49-501 and R18-2-101, in this Article:

1. "Activity fuels" means those fuels created by human activities such as thinning or logging.
2. "ADEQ" means the Department of Environmental Quality.
3. "Annual emissions goal" means the annual establishment in cooperation with the F/SLMs, under R18-2-1503(G), of a planned quantifiable value of emissions reduction from prescribed fires and fuels management activities.
4. "Burn plan" means the ADEQ form that includes information on the conditions under which a burn will occur with details of the burn and smoke management prescriptions.
5. "Burn prescription" means, with regard to a burn project, the pre-determined area, fuel, and weather conditions required to attain planned resource management objectives.
6. "Burn project" means an active or planned prescribed burn, including a wildland fire use incident.
7. "Duff" means forest floor material consisting of decomposing needles and other natural materials.
8. "Emission reduction techniques (ERT)" means methods for controlling emissions from prescribed fires to minimize the amount of emission output per unit of area burned.
9. "Federal land manager (FLM)" means any department, agency, or agent of the federal government, including the following:
 - a. United States Forest Service,
 - b. United States Fish and Wildlife Service,
 - c. National Park Service,
 - d. Bureau of Land Management,
 - e. Bureau of Reclamation,
 - f. Department of Defense,
 - g. Bureau of Indian Affairs, and
 - h. Natural Resources Conservation Service.
10. "F/SLM" means a federal land manager or a state land manager.
11. "Local fire management officer" means a person designated by a F/SLM as responsible for fire management in a local district or area.
12. "Mop-up" means the act of extinguishing or removing burning material from a prescribed fire to reduce smoke impacts.
13. "National Wildfire Coordinating Group" means the national inter-agency group of federal and state land managers that shares similar wildfire suppression programs and has established standardized inter-agency training courses and qualifications for fire management positions.
14. "Non-burning alternatives to fire" means techniques that replace fire for at least five years as a means to treat activity fuels created to achieve a particular land management objective (e.g., reduction of fuel-loading, manipulation of fuels, enhancement of wildlife habitat, and ecosystem restoration). These alternatives are not used in conjunction with fire. Techniques used in conjunction with fire are referred to as emission reduction techniques (ERTs).
15. "Planned resource management objectives" means public interest goals in support of land management agency objectives including silviculture, wildlife habitat management, grazing enhancement, fire hazard reduction, wilderness management, cultural scene maintenance, weed abatement, watershed rehabilitation, vegetative manipulation, and disease and pest prevention.
16. "Prescribed burning" means the controlled application of fire to wildland fuels that are in either a natural or modified state, under certain burn and smoke management prescription conditions that have been specified by the land manager in charge of or assisting the burn, to attain planned resource management objectives. Prescribed burning does not include a fire set or permitted by a public officer to provide instruction in fire fighting methods, or construction or residential burning under R18-2-602.
17. "Prescribed fire manager" means a person designated by a F/SLM as responsible for prescribed burning for that land manager.
18. "Smoke management prescription" means the predetermined meteorological conditions that affect smoke transport and dispersion under which a burn could occur without adversely affecting public health and welfare.
19. "Smoke management techniques (SMT)" means management and dispersion practices used during a prescribed burn or wildland fire use incident which affect the direction, duration, height, or density of smoke.
20. "Smoke management unit" means any of the geographic areas defined by ADEQ whose area is based on primary watershed boundaries and whose outline is determined by diurnal windflow patterns that allow smoke to follow predictable drainage patterns. A map of the state divided into the smoke management units is on file with ADEQ.
21. "State land manager (SLM)" means any department, agency, or political subdivision of the state government including the following:
 - a. State Land Department,
 - b. Department of Transportation,
 - c. Department of Game and Fish, and
 - d. Parks Department.
22. "Wildfire" means an unplanned wildland fire subject to appropriate control measures. Wildfires include those incidents where suppression may be limited for safety, economic, or resource concerns.
23. "Wildland fire use" means a wildland fire that is ignited by natural causes, such as lightning, and is managed using the same controls and for the same planned resource management objectives as prescribed burning.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).

Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1502. Applicability

- A. A F/SLM that is conducting or assisting a prescribed burn shall follow the requirements of this Article.
- B. A private or municipal burner with whom ADEQ has entered into a memorandum of agreement shall follow the requirements of this Article.
- C. The provisions of this Article apply to all areas of the state except Indian Trust lands. All federally managed lands and all state lands, parks, and forests are under the jurisdiction of ADEQ in matters relating to air pollution from prescribed burning.
- D. Notwithstanding subsection (C), ADEQ and any Indian tribe may enter into a memorandum of agreement to implement this Article.
- E. ADEQ and any private or municipal prescribed burner may enter into a memorandum of agreement to implement this Article.

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).
Amended by final rulemaking at 10 A.A.R. 388, effective
March 16, 2004 (Supp. 04-1).

R18-2-1503. Annual Registration, Program Evaluation and Planning

- A. Each F/SLM shall register annually with ADEQ on a form prescribed by ADEQ, all planned burn projects, including areas planned for wildland fire use.
- B. Each planned year extends from January 1 of the registration year to December 31 of the same year. Each F/SLM shall use best efforts to register before December 31 and no later than January 31 of each year.
- C. A F/SLM shall include the following information on the registration form:
 1. The F/SLM's name, address, and business telephone number;
 2. The name, address, and business telephone number of an air quality representative who will provide technical support to ADEQ for decisions regarding prescribed burning. The same air quality representative may be selected by more than one F/SLM;
 3. All prescribed burn projects and potential wildland fire use areas planned for the next year;
 4. Maximum project and annual acres to be burned, maximum daily acres to be burned, fuel types within project area, and planned use of emission reduction techniques to support the annual emissions goal for each prescribed burn project;
 5. Planned use of any smoke management techniques for each prescribed burn project;
 6. Maximum project and annual acres projected to be burned, maximum daily acres projected to be burned, and a map of the anticipated project area, fuel types and loading within the planned area for an area the F/SLM anticipates for wildland fire use;
 7. A list of all burn projects that were completed during the previous year;
 8. Project area for treatment, treatment type, fuel types to be treated, and activity fuel loading to support the annual emissions goal for areas to be treated using non-burning alternatives to fire; and
 9. The area treated using non-burning alternatives to fire during the previous year including the number of acres, the specific types of alternatives utilized, and the location of these areas.
- D. After consultation with the F/SLM, ADEQ may request additional information for registration of prescribed burns and wildland fire use to support regional coordination of smoke management, annual emission goal setting using ERTs, and non-burning alternatives to fire.
- E. A F/SLM may amend a registration at any time with a written submission to ADEQ.
- F. ADEQ accepts a facsimile or other electronic method as a means of complying with the deadline for registration. If an electronic means is used, the F/SLM shall deliver the original paper registration form to ADEQ for its records. ADEQ shall acknowledge in writing the receipt of each registration.
- G. ADEQ shall hold a meeting after January 31 and before April 1 of each year between ADEQ and F/SLMs to evaluate the program and cooperatively establish the annual emission goal. The annual emission goal shall be developed to minimize prescribed fire emissions to the maximum extent feasible using emission reduction techniques and alternatives to burning subject to economic, technical, and safety feasibility criteria, and consistent with land management objectives.

- H. At least once every five years, ADEQ shall request long-term projections of future prescribed fire and wildland fire use activity from the F/SLMs to support planning for visibility impairment and assessment of other air quality concerns by ADEQ.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).
Amended by final rulemaking at 10 A.A.R. 388, effective
March 16, 2004 (Supp. 04-1).

R18-2-1504. Prescribed Burn Plan

Each F/SLM planning a prescribed burn shall complete and submit to ADEQ the "Burn Plan" form supplied by ADEQ no later than 14 days before the date on which the F/SLM requests permission to burn. ADEQ shall consider the information supplied on the Burn Plan Form as binding conditions under which the burn shall be conducted. A Burn Plan shall be maintained by ADEQ until notification from the F/SLM of the completion of the burn project. Revisions to the Burn Plan for a burn project shall be submitted in writing no later than 14 days before the date on which the F/SLM requests permission to burn. To facilitate the Daily Burn authorization process under R18-2-1505, the F/SLM shall include on the Burn Plan form:

1. An emergency telephone number that is answered 24 hours a day, seven days a week;
2. Burn prescription;
3. Smoke management prescription;
4. The number of acres to be burned, the quantity and type of fuel, type of burn, and the ignition technique to be used;
5. The land management objective or purpose for the burn such as restoration or maintenance of ecological function and indicators of fire resiliency;
6. A map depicting the potential impact of the smoke unless waived either orally or in writing by ADEQ. The potential impact shall be determined by mapping both the daytime and nighttime smoke path and down-drainage flow for 15 miles from the burn site, with smoke-sensitive areas delineated. The map shall use the appropriate scale to show the impacts of the smoke adequately;
7. Modeling of smoke impacts unless waived either orally or in writing by ADEQ, for burns greater than 250 acres per day, or greater than 50 acres per day if the burn is within 15 miles of a Class I Area, an area that is non-attainment for particulates, a carbon monoxide non-attainment area, or other smoke-sensitive area. In consultation with the F/SLM, ADEQ shall provide guidelines on modeling;
8. The name of the official submitting the Burn Plan on behalf of the F/SLM; and
9. After consultation with the F/SLM, any other information to support the Burn Plan needed by ADEQ to assist in the Daily Burn authorization process for smoke management purposes or assessment of contribution to visibility impairment of Class I areas.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).
Amended by final rulemaking at 10 A.A.R. 388, effective
March 16, 2004 (Supp. 04-1).

R18-2-1505. Prescribed Burn Requests and Authorization

- A. Each F/SLM planning a prescribed burn, shall complete and submit to ADEQ the "Daily Burn Request" form supplied by ADEQ. The Daily Burn Request form shall include:
 1. The contact information of the F/SLM conducting the burn;

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

2. Each day of the burn;
 3. The area to be burned on the day for which the Burn Request is submitted, with reference to the Burn Plan, including size, legal location to the section, and latitude and longitude to the minute;
 4. Projected smoke impacts; and
 5. Any local conditions or circumstances known to the F/SLM that, if conveyed to ADEQ, could impact the Daily Burn authorization process.
- B.** After consultation with the F/SLM, ADEQ may request additional information related to the burn, meteorological, smoke dispersion, or air quality conditions to supplement the Daily Burn Request form and to aid in the Daily Burn authorization process.
- C.** The F/SLM shall submit the Daily Burn Request form to ADEQ as expeditiously as practicable, but no later than 2:00 p.m. of the business day preceding the burn. An original form, a facsimile, or an electronic information transfer are acceptable submittals.
- D.** An F/SLM shall not ignite a prescribed burn without receiving the approval of ADEQ, as follows:
1. ADEQ shall approve, approve with conditions, or disapprove a burn on the same business day as the Burn Request submittal.
 2. If ADEQ fails to address a Burn Request by 10:00 p.m. of the business day on which the request is submitted, the Burn Request is approved by default after the burner makes a good faith effort to contact ADEQ to confirm that the Burn Request was received.
 3. ADEQ may communicate its decision by verbal, written, or electronic means. ADEQ shall provide a written or electronic reply if requested by the F/SLM.
- E.** If weather conditions cease to conform to those in the smoke management prescription of either the Burn Plan or an Approval with Conditions, the F/SLM shall take appropriate action to reduce further smoke impacts, ensure safe and appropriate fire control, and notify the public when necessary. After consultation with ADEQ, the smoke management prescription or burn plan may be modified.
- F.** The F/SLM shall ensure that there is appropriate signage and notification to protect public safety on transportation corridors including roadways and airports during a prescribed fire.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).
Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1506. Smoke Dispersion Evaluation

ADEQ shall approve, approve with conditions, or disapprove a Daily Burn Request submitted under R18-2-1505, by using the following factors for each smoke management unit:

1. Analysis of the emissions from burns in progress and residual emissions from previous burns on a day-to-day basis;
2. Analysis of emissions from active wildland fire use incidents, and active multiple-day burns, and consideration of potential long-term emissions estimates;
3. Analysis of the emissions from wildfires greater than 100 acres and consideration of their potential long-term growth;
4. Local burn conditions;
5. Burn prescription and smoke management prescription from the applicable Burn Plan;
6. Existing and predicted local air quality;
7. Local and synoptic meteorological conditions;
8. Type and location of areas to be burned;

9. Protection of the national visibility goal for Class I Areas under § 169A(a)(1) of the Act and 40 CFR 51.309;
10. Assessment of duration and intensity of smoke emissions to minimize cumulative impacts;
11. Minimization of smoke impacts in Class I Areas, areas that are non-attainment for particulate matter, carbon monoxide non-attainment areas, or other smoke-sensitive areas; and
12. Protection of the National Ambient Air Quality Standards.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).
Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1507. Prescribed Burn Accomplishment; Wildfire Reporting

- A.** Each F/SLM conducting a prescribed burn shall complete and submit to ADEQ the "Burn Accomplishment" form supplied by ADEQ. For each burn approval, the F/SLM shall submit a Burn Accomplishment form to ADEQ by 2:00 p.m. of the business day following the approved burn. The F/SLM shall include the following information on the Burn Accomplishment form:
1. Any known conditions or circumstances that could impact the Daily Burn decision process;
 2. The date, location, fuel type, fuel loading, and acreage accomplishments;
 3. The ERTs and SMTs described in R18-2-1509 and R18-2-1510, respectively, and may include any further ERTs and SMTs that become available, that the F/SLM used to reduce emissions or manage the smoke from the burn.
- B.** The F/SLM shall submit the Burn Accomplishment form as an original form, a facsimile, or an electronic information transfer.
- C.** ADEQ shall maintain a record of Burn Requests, Burn Approvals/Conditional Approvals/Denials and Burn Accomplishments for five years.
- D.** The F/SLM in whose jurisdiction a wildfire occurs shall make available to ADEQ no later than the day after the activity all required information for wildfire incidents that burned more than 100 acres per day in timber or slash fuels or 300 acres per day in brush or grass fuels. For each day of a wildfire incident that exceeds the daily activity threshold, the F/SLM shall provide the location, an estimate of predominant fuel type and quantity consumed, and an estimate of the area blackened that day.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).
Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1508. Wildland Fire Use: Plan, Authorization, Monitoring; Inter-agency Consultation; Status Reporting

- A.** In order for ADEQ to participate in the wildland fire use decision-making process, the F/SLM shall notify ADEQ as soon as practicable of any wildland fire use incident projected to attain or attaining a size of 50 acres of timber fuel or 250 acres of brush or grass fuel.
- B.** For each wildland fire use incident that has been declared as such by the F/SLM, the F/SLM shall complete and submit to ADEQ a Wildland Fire Use Burn Plan in a format approved by ADEQ in cooperation with the F/SLM. The F/SLM shall submit the Wildland Fire Use Burn Plan to ADEQ as soon as practicable but no later than 72 hours after the wildland fire use incident is declared or under consideration for such design.

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nation. The F/SLM shall include the following information in the Wildland Fire Use Burn Plan:

1. An emergency telephone number that is answered 24 hours a day, seven days a week;
 2. Anticipated burn prescription;
 3. Anticipated smoke management prescription;
 4. The estimated daily number of acres, quantity, and type of fuel to be burned;
 5. The anticipated maximum allowable perimeter or size with map;
 6. Information on the condition of the area to be burned, such as whether it is in maintenance or restoration, its ecological function, and other indicators of fire resiliency;
 7. The anticipated duration of the wildland fire use incident;
 8. The anticipated long-range weather trends for the site;
 9. A map depicting the potential impact of the smoke. The potential impact shall be determined by mapping both the daytime and nighttime smoke path and down-drainage flow for 15 miles from the wildland fire use incident, with smoke-sensitive areas delineated. Mapping is mandatory unless waived either orally or in writing by ADEQ. The map shall use the appropriate scale to show the impacts of the smoke adequately; and
 10. Modeling or monitoring of smoke impacts, if requested by ADEQ after consultation with the F/SLM.
- C.** ADEQ shall approve or disapprove a Wildland Fire Use Burn Plan within three hours of receipt. ADEQ shall consult directly with the requesting F/SLM before disapproving a Wildland Fire Use Burn Plan. If ADEQ fails to address the Wildland Fire Use Burn Plan within the time allotted, the Plan is approved by default under the condition that the F/SLM makes a good faith effort to contact ADEQ to confirm that the Plan was received. Approval by ADEQ of a Wildland Fire Use Burn Plan is binding upon ADEQ for the duration of the wildland fire use incident, unless smoke from the incident creates a threat to public health or welfare. If a threat to public health or welfare is created, ADEQ shall consult with the F/SLM regarding the situation and develop a joint action plan for reducing further smoke impacts.
- D.** The F/SLM shall submit a Daily Status Report for each wildland fire use incident to ADEQ for each day of the burn that the fire burns more than 100 acres in timber or slash fuels or 300 acres in brush or grass fuels. The F/SLM shall include a synopsis of smoke behavior, future daily anticipated growth, and location of the activity of the wildland fire use incident in the Daily Status Report.
- E.** The F/SLM shall consult with ADEQ prior to initiating human-made ignition on the wildland fire use incident when greater than 250 acres is anticipated to be burned by the ignition. Emergency human-made ignition on the incident for protection of public or fire-fighter safety does not require consultation with ADEQ regardless of the size of the area to be burned.
- F.** The F/SLM shall ensure that there is appropriate signage and notification to protect public safety on transportation corridors including roadways and airports during a wildland fire use incident.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).
Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1509. Emission Reduction Techniques

- A.** Each F/SLM conducting a prescribed burn shall implement as many Emission Reduction Techniques as are feasible subject

to economic, technical, and safety feasibility criteria, and land management objectives.

B. Emission Reduction Techniques include:

1. Reducing biomass to be burned by use of techniques such as yarding or consolidation of unmerchandisable material, multi-product timber sales, or public firewood access, when economically feasible;
2. Reducing biomass to be burned by fuel exclusion practices such as preventing the fire from consuming dead snags or dead and downed woody material through lining, application of fire-retardant foam, or water;
3. Using mass ignition techniques such as aerial ignition by helicopter to produce high intensity fires of high fuel density areas such as logging slash decks;
4. Burning only fuels essential to meet resource management objectives;
5. Minimizing consumption and smoldering by burning under conditions of high fuel moisture of duff and litter;
6. Minimizing fuel consumption and smoldering by burning under conditions of high fuel moisture of large woody fuels;
7. Minimizing soil content when slash piles are constructed by using brush blades on material-moving equipment and by constructing piles under dry soil conditions or by using hand piling methods;
8. Burning fuels in piles;
9. Using a backing fire in grass fuels;
10. Burning fuels with an air curtain destructor, as defined in R18-2-101, operated according to manufacturer specifications and meeting applicable state or local opacity requirements;
11. Extinguishing or mopping-up of smoldering fuels;
12. Chunking of piles and other consolidations of burning material to enhance flaming and fuel consumption, and to minimize smoke production;
13. Burning before litter fall;
14. Burning before green-up of fuels;
15. Burning before recently cut large fuels cure in areas with activity; and
16. Burning just before precipitation to reduce fuel smoldering and consumption.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).
Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1510. Smoke Management Techniques

- A.** Each F/SLM conducting a prescribed burn shall implement as many Smoke Management Techniques as are feasible subject to economic, technical, and safety feasibility criteria, and land management objectives.
- B.** Smoke management techniques include:
1. Burning from March 15 through September 15, when meteorological conditions allow for good smoke dispersion;
 2. Igniting burns under good-to-excellent ventilation conditions;
 3. Suspending operations under poor smoke dispersion conditions;
 4. Considering smoke impacts on local community activities and land users;
 5. Burning piles when other burns are not feasible, such as when snow or rain is present;
 6. Using mass ignition techniques such as aerial ignition by helicopter to produce high intensity fires with short duration impacts;

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7. Using all opportunities that meet the burn prescription and all burn locations to spread smoke impacts over a broader time period and geographic area;
8. Burning during optimum mid-day dispersion hours, with all ignitions in a burn unit completed by 3:00 p.m. to prevent trapping smoke in inversions or diurnal windflow patterns;
9. Providing information on the adverse impacts of using green or wet wood as fuel when public firewood access is allowed;
10. Implementing maintenance burning in a periodic rotation to shorten prescribed fire duration and to reduce excessive fuel accumulations that could result in excessive smoke production in a wildfire; and
11. Using wildland fire-use strategies to shift smoke into more favorable smoke dispersion seasons.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4). Former Section R18-2-1510 renumbered to R18-2-1511; new R18-2-1510 made by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1511. Monitoring

- A. ADEQ may require a F/SLM to monitor air quality before or during a prescribed burn or a wildland fire use incident if necessary to assess smoke impacts. Air quality monitoring may be conducted using both federal and non-federal reference method as well as other techniques.
- B. ADEQ may require a F/SLM to monitor weather before or during a prescribed burn or a wildland fire use incident, if necessary to predict or assess smoke impacts. After consultation with the F/SLM, ADEQ may also require the F/SLM to establish burn site or area-representative remote automated weather stations or their equivalent, having telemetry that allows retrieval on a real-time basis by ADEQ. An F/SLM shall give ADEQ notice and an opportunity to comment before making any change to a long-term established remote automated weather station.
- C. A F/SLM shall employ the following types of monitoring, unless waived by ADEQ, for burns greater than 250 acres per day, or greater than 50 acres per day if the burn is within 15 miles of a Class I Area, an area that is non-attainment for particulate matter, carbon monoxide, or ozone, or other smoke-sensitive area:
 1. Smoke plume measurements, using a format supplied by ADEQ; and
 2. The release of pilot balloons (PIBALs) at the burn site to verify needed wind speed, direction, and stability. Instead of pilot balloons, a test burn at the burn site may be used for specific prescribed burns on a case-by-case basis as approved by ADEQ, to verify needed wind speed, direction, and stability.
- D. An F/SLM shall make monitoring information required under subsection (C) available to ADEQ on the business day following the burn ignition.
- E. The F/SLM shall keep on file for one year following the burn date any monitoring information required under this Section.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4). Former Section R18-2-1511 renumbered to R18-2-1512; new R18-2-1511 renumbered from R18-2-1510 and amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1512. Burner Qualifications

- A. All burn projects shall be conducted by personnel trained in prescribed fire and smoke management techniques as required by the F/SLM in charge of the burn and established by National Wildfire Coordinating Group training qualifications.
- B. A Prescribed Fire Boss or other local Fire Management Officer of the F/SLM having jurisdiction over prescribed burns shall have smoke management training obtained through one of the following:
 1. Successful completion of a National Wildfire Coordinating Group or F/SLM-equivalent course addressing smoke management; or
 2. Attendance at an ADEQ-approved smoke management workshop.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4). Former Section R18-2-1512 renumbered to R18-2-1513; new R18-2-1512 renumbered from R18-2-1511 and amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1513. Public Notification and Awareness Program; Regional Coordination

- A. The Director shall conduct a public education and awareness program in cooperation with F/SLMs and other interested parties to inform the general public of the smoke management program described by this Article. The program shall include smoke impacts from prescribed fires and the role of prescribed fire in natural ecosystems.
- B. ADEQ shall make annual registration, prescribed burn approval, and wildfire and wildland fire use activity information readily available to the public and to facilitate regional coordination efforts and public notification.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4). Former Section R18-2-1513 renumbered to R18-2-1514; new R18-2-1513 renumbered from R18-2-1512 and amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1514. Surveillance and Enforcement

- A. An F/SLM conducting a prescribed burn shall permit ADEQ to enter and inspect burn sites unannounced to verify the accuracy of the Daily Burn Request, Burn Plan, or Accomplishment data as well as matching burn approval with actual conditions, smoke dispersion, and air quality impacts. On-ground site inspection procedures and aerial surveillance shall be coordinated by ADEQ and the F/SLM for safety purposes.
- B. ADEQ may use remote automated weather station data if necessary to verify current and previous meteorological conditions at or near the burn site.
- C. ADEQ may audit burn accomplishment data, smoke dispersion measurements, or weather measurements from previously conducted burns, if necessary to verify conformity with, or deviation from, procedures and authorizations approved by ADEQ.
- D. Deviation from procedures and authorizations approved by ADEQ constitute a violation of this Article. Violations may require containment or mop-up of any active burns and may also require, in the Director's discretion, a five-day moratorium on ignitions by the responsible F/SLM. Violations of this Article are also subject to a civil penalty of not more than \$10,000 per day per violation under A.R.S. § 49-463.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4). Former Section R18-2-1514 repealed; new R18-2-1514 renumbered from R18-2-1513 and amended by final rulemaking

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at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1515. Forms; Electronic Copies; Information Transfers

- A. ADEQ shall make available on paper and in electronically readable format any form required to be developed by ADEQ and completed by a F/SLM.
- B. After consultation with an F/SLM, ADEQ may require the F/SLM to provide data in a manner that facilitates electronic transfers of information.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).
Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

ARTICLE 16. EXPIRED

Article 16, consisting of Sections R18-2-1601 through R18-2-1606, made by final rulemaking at 9 A.A.R. 4541, effective December 2, 2003 (Supp. 03-4).

R18-2-1601. Expired**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 4541, effective December 2, 2003 (Supp. 03-4). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2500, effective August 14, 2018 (Supp. 18-3).

R18-2-1602. Expired**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 4541, effective December 2, 2003 (Supp. 03-4). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2500, effective August 14, 2018 (Supp. 18-3).

R18-2-1603. Expired**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 4541, effective December 2, 2003 (Supp. 03-4). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2500, effective August 14, 2018 (Supp. 18-3).

R18-2-1604. Expired**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 4541, effective December 2, 2003 (Supp. 03-4). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2500, effective August 14, 2018 (Supp. 18-3).

R18-2-1605. Expired**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 4541, effective December 2, 2003 (Supp. 03-4). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2500, effective August 14, 2018 (Supp. 18-3).

R18-2-1606. Expired**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 4541, effective December 2, 2003 (Supp. 03-4). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2500, effective August 14, 2018 (Supp. 18-3).

R18-2-1607. Expired**Historical Note**

Section reserved at 11 A.A.R. 386, effective December 20, 2004, expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2500, effective August 14, 2018 (Supp. 18-3).

R18-2-1608. Expired**Historical Note**

Section reserved at 11 A.A.R. 386, effective December 20, 2004, expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2500, effective August 14, 2018 (Supp. 18-3).

R18-2-1609. Expired**Historical Note**

Section reserved at 11 A.A.R. 386, effective December 20, 2004, expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2500, effective August 14, 2018 (Supp. 18-3).

R18-2-1610. Expired**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 386, effective December 20, 2004 (Supp. 04-4). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

R18-2-1611. Expired**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 386, effective December 20, 2004 (Supp. 04-4). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

R18-2-1612. Expired**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 386, effective December 20, 2004 (Supp. 04-4). Section heading corrected at request of the Department, Office File No. M12-134, filed April 5, 2012 (Supp. 11-4). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

R18-2-1613. Expired**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 386, effective December 20, 2004 (Supp. 04-4). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

ARTICLE 17. EXPIRED**R18-2-1701. Expired****Historical Note**

New Section made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).

Table 1. Expired**Historical Note**

Table 1 made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Table 1 expired under A.R.S. § 41-1056(J) at 23 A.A.R. 135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).

R18-2-1702. Expired



A.R.S. § 49-104. Powers and duties of the department and director

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.
2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.
3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.
4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.
5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.
6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.
7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.
8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.
9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.
10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.
11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. The department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.
12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.
13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.
14. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.
15. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic



competitiveness of this state and of the Arizona-Mexico region.

16. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter. This paragraph does not adversely affect standards adopted by an Indian tribe under federal law.

17. Provide administrative and staff support for the oil and gas conservation commission.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.
2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.
3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.
4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.
5. Contract with other agencies, including laboratories, in furthering any department program.
6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.
7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.
8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.
9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.
10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.
11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:
 - (a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.



(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at those places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection I, paragraph 10.

13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules may:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. The department may establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rulemaking process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. The department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to



sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfundamendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on:

(a) The direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.

(b) The availability of other funds for the duties performed.

(c) The impact of the fees on the parties subject to the fees.

(d) The fees charged for similar duties performed by the department, other agencies and the private sector.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203, except that state agencies are exempt from paying those fees that are not associated with the dredge and fill permit program established pursuant to chapter 2, article 3.2 of this title. For services provided under the dredge and fill permit program, a state agency shall pay either:

(a) The fees established by the department under the dredge and fill permit program.

(b) The reasonable cost of services provided by the department pursuant to an interagency service agreement.

2. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

3. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:



1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.
2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.



A.R.S. § 49-404. State implementation plan

A. The director shall maintain a state implementation plan that provides for implementation, maintenance and enforcement of national ambient air quality standards and protection of visibility as required by the clean air act.

B. The director may adopt rules that describe procedures for adoption of revisions to the state implementation plan.

C. The state implementation plan and all revisions adopted before September 30, 1992 remain in effect according to their terms, except to the extent otherwise provided by the clean air act, inconsistent with any provision of the clean air act, or revised by the administrator. No control requirement in effect, or required to be adopted by an order, settlement agreement or plan in effect, before the enactment of the clean air act in any area which is a nonattainment or maintenance area for any air pollutant may be modified after enactment in any manner unless the modification insures equivalent or greater emission reductions of the air pollutant. The director shall evaluate and adopt revisions to the plan in conformity with federal regulations and guidelines promulgated by the administrator for those purposes until the rules required by subsection B are effective.



A.R.S. § 49-425. Rules; hearing

A. The director shall adopt such rules as he determines are necessary and feasible to reduce the release into the atmosphere of air contaminants originating within the territorial limits of the state or any portion thereof and shall adopt, modify, and amend reasonable standards for the quality of, and emissions into, the ambient air of the state for the prevention, control and abatement of air pollution. Additional standards shall be established for particulate matter emissions, sulfur dioxide emissions, and other air contaminant emissions determined to be necessary and feasible for the prevention, control and abatement of air pollution. In fixing such ambient air quality standards, emission standards or standards of performance, the director shall give consideration but shall not be limited to the relevant factors prescribed by the clean air act.

B. No rule may be enacted or amended except after the director first holds a public hearing after twenty days' notice of such hearing. The proposed rule, or any proposed amendment of a rule, shall be made available to the public at the time of notice of such hearing.

C. The department shall enforce the rules adopted by the director.

D. All rules enacted pursuant to this section shall be made available to the public at a reasonable charge upon request.



Authorizing Statute

A.R.S. § 49-458

A.R.S. § 49-458. *Regional haze Program; authority*

The department may participate in interstate regional haze programs that are established by the regional planning organization that is authorized for this region pursuant to 40 Code of Federal Regulations part 51, subpart P and the clean air act.



A.R.S. § 49-501. *Unlawful open burning; exceptions; civil penalty; definitions*

A. Notwithstanding the provisions of any other section of this article: 1. It is unlawful for any person to ignite, cause to be ignited, permit to be ignited, or suffer, allow, or maintain any open outdoor fire except as provided in this section.

2. From May 1 through September 30 each year, it is unlawful for any person to ignite, cause to be ignited, permit to be ignited or suffer, allow or maintain any open outdoor fire in area A as defined in section 49-541.

B. The following fires are excepted from this section:

1. Fires used only for cooking of food or for providing warmth for human beings or the branding of animals or the use of orchard heaters for the purpose of frost protection in farming or nursery operations.

2. Any fire set or permitted by any public officer in the performance of official duty, if such fire is set or permission given for the purpose of weed abatement, the prevention of a fire hazard, or instruction in the methods of fighting fires.

3. Fires set by or permitted by the director of the department of agriculture or county agricultural agents of the county for the purpose of disease and pest prevention.

4. Fires set by or permitted by the federal government or any of its departments, agencies or agents or the state or any of its agencies, departments or political subdivisions for the purpose of watershed rehabilitation or control through vegetative manipulation.

5. Fires permitted by any rule or regulation issued pursuant to this article, by any conditional permit issued by a hearing board established under this article or by any rule or conditional permit issued pursuant to article 2 of this chapter when the department of environmental quality pursuant to section 49-402 has assumed jurisdiction of the county in which the fire is located.

6. Fires set for the disposal of dangerous materials where there is no safe alternate method of disposal.

C. Permission for the setting of any fire given by a public officer in the performance of official duty under subsection B, paragraph 2, 3 or 4 of this section shall be given in writing and a copy of the written permission shall be transmitted immediately to the director of environmental quality and the control officer of the county, district or region in which such fire is allowed. The setting of any such fire shall be conducted in a manner and at such time as approved by the control officer or the director of environmental quality, unless doing so would defeat the purpose of the exemption.



D. Notwithstanding section 49-107, the director may delegate authority for the issuance of open burning permits to a county, city, town or fire district. A county, city, town or fire district that has been delegated authority for the issuance of open burning permits may assign the issuance of these permits to a private fire protection service provider that performs fire protection services within that county, city, town or fire district. Any private fire protection service provider that is authorized to issue open burning permits pursuant to this subsection shall maintain a copy of all currently effective permits issued including a means of contacting the person authorized by the permit to set the fire in the event that an order to extinguish the open burning is issued. Permits issued pursuant to this subsection shall contain both of the following:

1. Conditions that limit the manner and time of setting the fire and that are consistent with this section and rules adopted pursuant to this section.
2. A provision that all burning be extinguished at the discretion of the director or the director's authorized representative during periods of inadequate atmospheric smoke dispersion, periods of excessive visibility impairment that could adversely affect public safety or periods when smoke is blown into populated areas so as to create a public nuisance.

E. The director may issue a general permit to allow persons engaged in farming or ranching on forty acres or more in an unincorporated area to burn household waste, as defined in section 49-701, that is generated on site, if no household waste collection and disposal service is available. The general permit shall include the following:

1. Conditions governing the method, manner and times for burning.
2. Limitation on materials which may be burned, including a prohibition on burning of materials which generate noxious fumes.
3. A requirement that any person seeking coverage under the general permit shall register with the director on a form prescribed by the director. Upon receipt of a registration form, the director shall notify the county in which the farm or ranch is located of such registration.
4. A statement that the director, a local air pollution control officer, or any other public officer may order the extinguishment of burning or may prohibit burning during periods of inadequate smoke dispersion or excessive visibility impairment or at other times when public health or safety could be adversely affected.

F. Nothing in this section is intended to permit any practice which is a violation of any statute, ordinance, rule or regulation in a county with a population in excess of one million two hundred thousand persons. Notwithstanding any other law, such a county shall prohibit by ordinance the use of wood burning chimineas, outdoor fire pits and similar outdoor fires on those days for which the county has issued a no burn day restriction.

G. A person who violates any provision of this section may be served a notice of violation and be subject to the enforcement provisions of this article to the same extent as a person violating any rule or regulation adopted pursuant to this article, except that a violation that lasts no more than twenty-four hours and that is the first violation committed by that person is subject to a civil penalty of no more than five hundred dollars.

H. For the purposes of this section, "open outdoor fire" means any combustion of combustible material of any type outdoors, in the open where the products of combustion are not directed through a flue. For the purposes of this subsection, "flue" means any duct or passage for air, gases or the like, such as a stack or chimney.

C-4

DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 18, Chapter 4

Amend: R18-4-107

New Article: Article 4

New Section: R18-4-402



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: June 6, 2023

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 15, 2023

SUBJECT: DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 4

Amend: R18-4-107

New Article: Article 4

New Section: R18-4-402

Summary:

This expedited rulemaking from the Department of Environmental Quality (Department) seeks to amend one (1) in Title 18, Chapter 4, Article 1 regarding Primary Drinking Water Standards and add a new rule to Article 4 regarding Other Safe Drinking Water Regulations. Specifically, the Department is seeking to update the safe drinking water rules to conform with the Environmental Protection Agency's Lead Free Rule by amending R18-4-107 to update the incorporation by reference to 40 CFR 141, Subpart E (40 CFR 141.40 through 141.42) and retitling this section to "Special Regulations, Including Monitoring – 40 CFR 141, Subpart E" to align with changes made to 40 CFR Part 141. The Department also seeks to add a new article titled "Other Safe Drinking Water Act Regulations," to align with changes made to 40 CFR Part 143 and add a new section titled "Use of Lead Free Pipes, Fittings, Fixtures, Solder, and Flux for Drinking Water – 40 CFR 143, Subpart B," which incorporates by reference 40 CFR 143, Subpart B (40 CFR 143.10-143.20) to reflect current federal regulations.

1. **Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?**

The Department indicates it is updating the Safe Drinking Water rules to conform with the EPA final regulation entitled "Use of Lead Free Pipes, Fittings, Fixtures, Solder, and Flux for Drinking Water" (Lead Free Rule). 85 FR 54235 (Sept. 1, 2020). Furthermore, the Department indicates the purpose of this rulemaking is to protect public health by ensuring water distribution materials are free of lead. Additionally, the Department states this rulemaking effort ensures continued receipt of the full allotment of federal Public Water System Supervision grants.

The Department states an expedited rulemaking is appropriate pursuant to A.R.S. § 41-1027(A)(4) because this rulemaking only incorporates by reference without material change federal regulations pursuant to A.R.S. § 41-1028 and does not increase regulatory burden beyond what is required by the Safe Drinking Water Act, as amended (SDWA), and the Lead Free Rule.

The Department clarified that stakeholders must comply with EPA's Lead Free Rule, regardless of whether ADEQ incorporates it into our rules. Furthermore, the Department states plumbing codes in Arizona already require the changes that will be incorporated by reference in the International Plumbing Code, Chapter 6, 605.2.1. As such, the Department states any increase in the cost of regulatory compliance stems from EPA's final rulemaking; there is not an increased burden that will result from the Department's incorporation of the updated federal regulations. Consequently, the Department believes its rulemaking, which incorporates EPA's Lead Free Rule, "does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated" in accordance with A.R.S. 41-1027.

2. **Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

The Department cites both general and specific statutory authority for these rules.

4. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

The Department indicates it did not receive any public comments related to this rulemaking.

5. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

The Department indicates there were no changes between the Notice of Proposed Expedited Rulemaking and the Notice of Final Expedited Rulemaking now before the Council.

6. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

The Department indicates the Safe Drinking Water Act, as amended, and the Lead Free Rule are applicable to the subject of this rule. However, the Department states this rulemaking is not more stringent than is required by federal law.

7. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The Department indicates these rules do not require a permit, license or agency authorization under A.R.S. § 41-1037(A).

8. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The Department indicates it did not review or rely on a study in its evaluation of or justification for a rule in this rulemaking.

9. **Conclusion**

This expedited rulemaking from the Department seeks to amend one (1) in Title 18, Chapter 4, Article 1 regarding Primary Drinking Water Standards and add a new rule to Article 4 regarding Other Safe Drinking Water Regulations. The Department indicates it is updating the Safe Drinking Water rules to conform with the EPA final regulation entitled "Use of Lead Free Pipes, Fittings, Fixtures, Solder, and Flux for Drinking Water" (Lead Free Rule). 85 FR 54235 (Sept. 1, 2020). Furthermore, the Department indicates the purpose of this rulemaking is to protect public health by ensuring water distribution materials are free of lead. Additionally, the Department states this rulemaking effort ensures continued receipt of the full allotment of federal Public Water System Supervision grants.

Pursuant to A.R.S. § 41-1027(H), the rule will become effective immediately on the filing of the Notice of Final Expedited Rulemaking with the Secretary of State. Council staff recommends approval of this rulemaking.



Katie Hobbs
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



4/18/2023

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N. 15th Ave., Ste. 302
Phoenix, AZ 85007

Re: Expedited Rulemaking: Title 18. Environmental Quality, Chapter 4. Department of Environmental Quality – Safe Drinking Water

Dear Chair Sornsin:

The Arizona Department of Environmental Quality (ADEQ) hereby submits this final rulemaking package to the Governor's Regulatory Review Council (GRRC) for consideration and approval at the Council Meeting scheduled for June 1, 2023.

The following information is provided for your use in reviewing the enclosed rules for approval pursuant to A.R.S. § 41-1052 and A.A.C. R1-6-202:

I. Information Required by A.A.C. R1-6-202(A)(1)

- a. The public record closed for all rules on January 23, 2023 at 5:00 p.m.
- b. Pursuant to A.R.S. § 41-1027(A)(4), this expedited rulemaking does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of regulated persons. This rulemaking only incorporates by reference without material change federal regulations pursuant to A.R.S. § 41-1028. Specifically, ADEQ is updating the Safe Drinking Water rules in A.A.C. Title 18, Chapter 4 to conform with the U.S. Environmental Protection Agency's (EPA) final regulation entitled "Use of Lead Free Pipes, Fittings, Fixtures, Solder, and Flux for Drinking Water" (Lead Free Rule). 85 FR 54235 (Sept. 1, 2020). The purpose of this rulemaking is to protect public health by ensuring water distribution materials are free of lead. Additionally, this rulemaking effort ensures continued receipt of the full allotment of federal Public Water System Supervision grants.
- c. The rulemaking activity does not relate to a five-year review report.
- d. The Department certifies that the preamble discloses 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.
- e. A list of documents enclosed under A.A.C. R1-6-202(A)(1)(e) and (A)(2)-(8), which are enclosed as electronic copies:
 1. This cover letter.

2. The Notice of Final Expedited Rulemaking (NFERM), including the preamble, table of contents, and text of each rule.
3. ADEQ did not receive any written comments on the Notice of Proposed Expedited Rulemaking (NPERM).
4. ADEQ did not receive any analysis regarding the rules' impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.
5. Material incorporated by reference:
 - a. 40 CFR 141, Subpart E (40 CFR 141.40 through 141.42), revised as of July 1, 2021.
 - b. 40 CFR 143, Subpart B (40 CFR 143.10 through 143.20), revised as of July 1, 2021
6. No statute was declared unconstitutional.
7. The general and specific statutes authorizing the rule, including relevant statutory definitions:
 - a. Authorizing statute (general): A.R.S. § 49-353(A)(2)(c).
 - b. Implementing statute (specific): A.R.S. § 49-353.01(A).
8. No term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule.

II. Additional items required by GRRC:

- a. Exemption Memo Request.
- b. Governor's Office initial written approval.
- c. Governor's Office final written approval

Thank you for your timely review and approval. Please contact Trevor Baggione, Division Director, Water Quality Division, 602-771-2321 or baggiore.trevor@azdeq.gov, if you have any questions.

Sincerely,



Karen Peters, Director
Arizona Department of Environmental Quality

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY – SAFE DRINKING WATER

PREAMBLE

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

R18-4-107

Article 4

R18-4-402

Rulemaking Action

Amend

New Article

New Section

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

Authorizing statute: A.R.S. § 49-353(A)(2)(c)

Implementing statute: A.R.S. § 49-353.01(A)

3. The effective date of the rules:

Pursuant to A.R.S. § 41-1027(H), the rule will become effective immediately on the filing of the notice of final expedited rulemaking with the Secretary of State.

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

Notice of Rulemaking Docket Opening: 28 A.A.R. 2062.

Notice of Proposed Expedited Rulemaking: 28 A.A.R. 3899.

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

Name: Laura Carusona

Address: Arizona Department of Environmental Quality

1110 West Washington Street

Phoenix, Arizona 85007

Telephone: 602-771-0053

E-mail: carusona.laura@azdeq.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered under A.R.S. § 41-1027(A), to include an explanation about the rulemaking:

Summary

The Arizona Department of Environmental Quality (ADEQ) is updating the Safe Drinking Water rules in A.A.C. Title 18, Chapter 4 to conform with the U.S. Environmental Protection Agency's (EPA) final regulation entitled "Use of Lead Free Pipes, Fittings, Fixtures, Solder, and Flux for Drinking Water" (Lead Free Rule). 85 FR 54235 (Sept. 1, 2020). The purpose of this rulemaking is to protect public health by ensuring water distribution materials are free of lead. Additionally, this rulemaking effort ensures continued receipt of the full allotment of federal Public Water System Supervision grants.

An expedited rulemaking is appropriate pursuant to A.R.S. § 41-1027(A)(4) because this rulemaking only

incorporates by reference without material change federal regulations pursuant to A.R.S. § 41-1028 and does not increase regulatory burden beyond what is required by the Safe Drinking Water Act, as amended (SDWA), and the Lead Free Rule.

Legal Background

Lead Free Rule

In its final rule, the EPA codified revisions to the Safe Drinking Water Act's prohibition on use and introduction into commerce of certain products that are not lead free (SDWA lead prohibitions). 85 FR 54235, 54237. EPA also established requirements to certify plumbing products introduced into commerce to help ensure that only lead free pipes, fittings, and fixtures are used in repairs and new installations of a public water system or in a residential or nonresidential facility providing water for human consumption. *Id.* In addition to codifying the revised requirements under the Reduction of Lead in Drinking Water Act of 2011 (RLDWA) and the Community Fire Safety Act of 2013 (CFSA), EPA established regulations for product certification and information collection to help ensure consistent implementation and enforcement of the SDWA lead prohibitions. *Id.*

The final rule also contains language in 40 CFR 143.14 to clarify that SDWA section 1417(b) – which requires States enforce the use prohibition on pipe, pipe fittings, or fixtures, any solder, or any flux that are not lead free – is also a condition of receiving a full Public Water System Supervision (PWSS) grant allocation. *Id.* Under SDWA section 1417(b)(1), the State enforcement provision applies only to the use prohibition in section 1417(a)(1); it does not apply to the introduction into commerce prohibition in section 1417(a)(3), nor does it apply to the final rule requirements for product certification. *Id.*

Specifically, EPA's final rule amended 40 CFR part 143 by (1) retitling it as "Other Drinking Water Regulations," (2) adding Subpart A, which consists of the existing National Secondary Drinking Water Regulations, and (3) creating Subpart B, titled "Use of Lead Free Pipes, Fittings, Fixtures, Solder, and Flux for Drinking Water." 85 FR 54235, 54239. New Subpart B replaced similar regulatory language in 40 CFR 141.43, which had codified parts of section 1417 of the SDWA, but did not reflect the current version of section 1417, as amended by the RLDWA and the CFSA, or the introduction into commerce prohibitions, which were established in the 1996 amendments to the SDWA. 85 FR 54235, 54237.

Factual Background

Human Health Effects of Lead

Exposure to lead has been associated with adverse neurological effects, reproductive effects, cardiovascular effects, immunological effects, renal effects, and cancer. 85 FR 54235, 54238; *see also* the U.S. Department of Health and Human Services' National Toxicology Program Monograph on Health Effects of Low-Level Lead (National Toxicology Program, 2012); Integrated Science Assessment for Lead (EPA, 2013). EPA's final rule will help ensure that only lead free plumbing products and components of public water systems are used in repairs and new installations in potable use applications. The benefits of this final rule are the resulting incremental reduction in exposure to lead in drinking water. ADEQ's rulemaking will further ensure the protection of Arizona residents' public health.

Public Water System Supervision Grants

In addition to its primary purpose to protect public health, ADEQ's rulemaking is also necessary to ensure

continued receipt of the full allotment of PWSS grant monies. *See* 40 C.F.R 143.14 (clarifying that SDWA section 1417(b)'s direction for States to enforce the use prohibition on pipe, pipe fittings, or fixtures, any solder, or any flux that are not lead free is a condition of receiving a full PWSS grant allocation). The PWSS grants assist states in carrying out PWSS programs. *Public Water System Supervision (PWSS) Grant Program*, EPA, <https://www.epa.gov/dwreginfo/public-water-system-supervision-pwss-grant-program> (last visited Oct. 19, 2022). Arizona's PWSS program must be adequate to enforce the requirements of the SDWA and ensure that water systems comply with the National Primary Drinking Water Regulations. *Id.* Key activities of Arizona's PWSS program include: maintaining state drinking water regulations; conducting sanitary surveys of public water systems; developing and maintaining an inventory of public water systems throughout the state; and more. *Id.* In 2021, Arizona received \$1,615,000 in PWSS grant monies. EPA Memorandum regarding Final Allotments for the FY2021 Public Water System (PWSS) State and Tribal Support Program Grants, dated March 2, 2021, available at https://www.epa.gov/sites/default/files/2021-06/documents/fy21_pwss_allotment_memo_030421.pdf.

Section by Section Explanation of Rule Revisions:

ADEQ updates the safe drinking water rules in A.A.C. Title 18, Chapter 4 to conform with EPA's Lead Free Rule, specifically:

- | | |
|-----------|---|
| R18-4-107 | Amend R18-4-107 to update the incorporation by reference to 40 CFR 141, Subpart E (40 CFR 141.40 through 141.42) and retitle this section to "Special Regulations, Including Monitoring – 40 CFR 141, Subpart E" to align with changes made to 40 CFR Part 141. |
| Article 4 | Add a new article titled "Other Safe Drinking Water Act Regulations," to align with changes made to 40 CFR Part 143. |
| R18-4-402 | Add a new section titled "Use of Lead Free Pipes, Fittings, Fixtures, Solder, and Flux for Drinking Water – 40 CFR 143, Subpart B," which incorporates by reference 40 CFR 143, Subpart B (40 CFR 143.10-143.20) to reflect current federal regulations. |

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did 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:

Not Applicable.

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

Not Applicable.

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

Not applicable. The agency is exempt from the requirements to prepare and file an economic, small business, and consumer impact statement under A.R.S. § 41-1055(D)(2).

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

No changes were made between the proposed expedited rulemaking and the final expedited rulemaking.

11. The Agency's summary of the public or stakeholder comments or objections made about the expedited rulemaking and the agency response to the comments:

ADEQ did not receive public or stakeholder comments or objections about the expedited rulemaking.

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

There are no other matters prescribed by statutes applicable specifically to ADEQ or this specific rulemaking.

a. Whether the rule requires a permit, license, or agency authorization under A.R.S. § 41-1037(A), and whether a general permit is used and if not, the reasons why a general permit is not used:

This rule does not require a permit, license or agency authorization under A.R.S. § 41-1037(A).

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

The Safe Drinking Water Act, as amended, and the Lead Free Rule are applicable to the subject of this rule. This rulemaking is not more stringent than is required by federal law.

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

Not applicable.

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

40 CFR 141, Subpart E (40 CFR 141.40 through 141.42), revised as of July 1, 2021	R18-4-107
40 CFR 143, Subpart B (40 CFR 143.10 through 143.20), revised as of July 1, 2021	R18-4-402

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

The rules were not previously made as emergency rules.

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 4. DEPARTMENT OF ENVIRONMENTAL QUALITY – SAFE DRINKING WATER
ARTICLE 1. PRIMARY DRINKING WATER STANDARDS

Section

R18-4-107. Special Regulations, Including Monitoring ~~Regulations and Prohibition on Lead Use~~ – 40 CFR 141, Subpart E

ARTICLE 4. ~~REPEALED~~ OTHER SAFE DRINKING WATER ACT REGULATIONS

Section

R18-4-402. Use of Lead Free Pipes, Fittings, Fixtures, Solder, and Flux for Drinking Water – 40 CFR 143, Subpart B

ARTICLE 1. PRIMARY DRINKING WATER STANDARDS

R18-4-107 Special Regulations, Including Monitoring ~~Regulations and Prohibition on Lead Use~~ - 40 CFR 141, Subpart E

40 CFR 141, Subpart E (40 CFR 141.40 through 141.43 ~~141.42~~), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions. revised as of July 1, 2021 and published by the Office of the Federal Register, National Archives and Records Administration is incorporated by reference. This rule does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the U.S. Government Publishing Office, bookstore.gpo.gov, P.O. Box. 979050, St. Louis, MO 63197-9000.

ARTICLE 4. ~~REPEALED~~ OTHER SAFE DRINKING WATER ACT REGULATIONS

R18-4-402. ~~Repealed~~ Use of Lead Free Pipes, Fittings, Fixtures, Solder, and Flux for Drinking Water – 40 CFR 143, Subpart B

40 CFR 143, Subpart B (40 CFR 143.10 through 143.20) revised as of July 1, 2021 and published by the Office of the Federal Register, National Archives and Records Administration is incorporated by reference. This rule does not include any later amendments or editions of the incorporated material. Copies of the incorporated material are available for inspection at the Arizona Department of Environmental Quality, 1110 W. Washington, Phoenix, AZ 85007 or may be obtained from the U.S. Government Publishing Office, bookstore.gpo.gov, P.O. Box. 979050, St. Louis, MO 63197-9000.

§ 141.40

40 CFR Ch. I (7–1–21 Edition)

TABLE 1—UNREGULATED CONTAMINANT MONITORING REPORTING REQUIREMENTS—Continued

Data element	Definition
29. Indicator of Possible Bloom—Treatment.	<p>A yes or no answer provided by the PWS for each cyanotoxin sample event.</p> <p><i>Question:</i> Preceding the finished water sample collection, did you notice any changes in your treatment system operation and/or treated water quality that may indicate a bloom in the source water?</p> <p>YES = if yes, select all that apply:</p> <p>DFR = Decrease in filter runtimes.</p> <p>ITF = Increase in turbidity in filtered water.</p> <p>ICD = Need for increased coagulant dose.</p> <p>TOI = Increase in taste and odor issues in finished water.</p> <p>IOD = Need for increase in oxidant/disinfectant dose.</p> <p>IDB = Increase in TTHM/HAA5 in finished water.</p> <p>OTH = Describe other changes.</p> <p>NO = no changes.</p>
30. Indicator of Possible Bloom—Source Water Quality Parameters.	<p>A yes or no answer provided by the PWS for each cyanotoxin sample event.</p> <p><i>Question:</i> Preceding the finished water sample collection, did you observe any notable changes in source water quality parameters (if measured)?</p> <p>YES = if yes, select all that apply to the source water:</p> <p>ITP = Increase in water temperature.</p> <p>ITU = Increase in turbidity.</p> <p>IAL = Increase in alkalinity.</p> <p>ITO = Increase in total organic carbon.</p> <p>ICD = Increase in chlorine demand.</p> <p>IPH = Increase in pH.</p> <p>ICA = Increase in chlorophyll a.</p> <p>IPY = Increase in phycocyanin.</p> <p>INU = Increase in nutrients (example: nitrogen or phosphorus).</p> <p>OTH = Describe other changes.</p> <p>NO = no changes observed.</p>

[72 FR 389, Jan. 4, 2007, as amended at 77 FR 26096, May 2, 2012; 81 FR 92684, Dec. 20, 2016]

Subpart E—Special Regulations, Including Monitoring

§ 141.40 Monitoring requirements for unregulated contaminants.

(a) *General applicability.* This section specifies the monitoring and quality control requirements that must be followed if you own or operate a public water system (PWS) that is subject to the Unregulated Contaminant Monitoring Regulation (UCMR), as specified in paragraphs (a)(1) and (2) of this section. In addition, this section specifies the UCMR requirements for State and Tribal participation. For the purposes of this section, PWS “population served,” “State,” “PWS Official,” “PWS Technical Contact,” and “finished water” apply as defined in § 141.35(a). The determination of whether a PWS is required to monitor under this rule is based on the type of system (e.g., community water system, non-transient non-community water system, etc.), and its retail population, as indicated by SDWIS/Fed on December 31, 2015.

(1) *Applicability to transient non-community systems.* If you own or operate a transient non-community water system, you are not subject to monitoring requirements in this section.

(2) *Applicability to community water systems and non-transient non-community water systems—(i) Large systems.* If you own or operate a retail PWS (other than a transient non-community system) that serves more than 10,000 people, you must monitor according to the specifications in this paragraph (a)(2)(i). If you believe that your applicability status is different than EPA has specified in the notification letter that you received, or if you are subject to UCMR requirements and you have not been notified by either EPA or your State, you must report to EPA, as specified in § 141.35(b)(2) or (c)(4).

(A) *Assessment monitoring.* You must monitor for the contaminants on List 1, per Table 1, UCMR Contaminant List, in paragraph (a)(3) of this section. If you serve a retail population of more than 10,000 people, you are required to perform this monitoring regardless of whether you have been notified by the State or EPA.

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(B) *Screening Survey.* You must monitor for the unregulated contaminants on List 2 (Screening Survey) of Table 1, as specified in paragraph (a)(3) of this section, if your system serves 10,001 to 100,000 people and you are notified by EPA or your State that you are part of the State Monitoring Plan for Screening Survey testing. If your system serves more than 100,000 people, you are required to conduct this Screening Survey testing regardless of whether you have been notified by the State or EPA.

(C) *Pre-Screen Testing.* You must monitor for the unregulated contaminants on List 3 of Table 1, in paragraph (a)(3) of this section, if notified by your State or EPA that you are part of the Pre-Screen Testing.

(ii) *Small systems.* Small PWSs, as defined in this paragraph, will not be selected to monitor for any more than one of the three monitoring lists provided in Table 1, UCMR Contaminant List, in paragraph (a)(3) of this section. EPA will provide sample containers, provide pre-paid air bills for shipping the sampling materials, conduct the laboratory analysis, and report and review monitoring results for all small

systems selected to conduct monitoring under paragraphs (a)(2)(ii)(A) through (C) of this section. If you own or operate a PWS that serves 10,000 or fewer people you must monitor as follows:

(A) *Assessment monitoring.* You must monitor for the contaminants on List 1 per Table 1, in paragraph (a)(3) of this section, if you are notified by your State or EPA that you are part of the State Monitoring Plan for Assessment Monitoring.

(B) *Screening Survey.* You must monitor for the unregulated contaminants on List 2 of Table 1, in paragraph (a)(3) of this section, if notified by your State or EPA that you are part of the State Monitoring Plan for the Screening Survey.

(C) *Pre-screen testing.* You must monitor for the contaminants on List 3 of Table 1, in paragraph (a)(3) of this section if you are notified by your State or EPA that you are part of the State Monitoring Plan for Pre-Screen Testing.

(3) *Analytes to be monitored.* Lists 1, 2, and 3 contaminants are provided in the following table:

TABLE 1—UCMR CONTAMINANT LIST

1—Contaminant	2—CAS Registry No.	3—Analytical methods ^a	4—Minimum reporting level ^b	5—Sampling location ^c	6—Period during which monitoring to be completed
List 1: Assessment Monitoring Cyanotoxin Chemical Contaminants					
"total microcystin"	N/A	EPA 546	0.3 µg/L	EPTDS	3/1/2018–11/30/2020.
anatoxin-a	64285–06–9.	EPA 545	0.03 µg/L	EPTDS	3/1/2018–11/30/2020.
cylindrospermopsin	143545–90–8.	EPA 545	0.09 µg/L	EPTDS	3/1/2018–11/30/2020.
microcystin-LA	96180–79–9.	EPA 544	0.008 µg/L	EPTDS	3/1/2018–11/30/2020.
microcystin-LF	154037–70–4.	EPA 544	0.006 µg/L	EPTDS	3/1/2018–11/30/2020.
microcystin-LR	101043–37–2.	EPA 544	0.02 µg/L	EPTDS	3/1/2018–11/30/2020.
microcystin-LY	123304–10–9.	EPA 544	0.009 µg/L	EPTDS	3/1/2018–11/30/2020.
microcystin-RR	111755–37–4.	EPA 544	0.006 µg/L	EPTDS	3/1/2018–11/30/2020.
microcystin-YR	101064–48–6.	EPA 544	0.02 µg/L	EPTDS	3/1/2018–11/30/2020.
nodularin	118399–22–7.	EPA 544	0.005 µg/L	EPTDS	3/1/2018–11/30/2020.
List 1: Assessment Monitoring Additional Chemical Contaminants					
Metals					
germanium	7440–56–4	EPA 200.8, ASTM D5673–10, SM 3125.	0.3 µg/L	EPTDS	1/1/2018–12/31/2020.

TABLE 1—UCMR CONTAMINANT LIST—Continued

1—Contaminant	2—CAS Registry No.	3—Analytical methods ^a	4—Minimum reporting level ^b	5—Sampling location ^c	6—Period during which monitoring to be completed
manganese	7439–96–5	EPA 200.8, ASTM D5673–10, SM 3125.	0.4 µg/L	EPTDS	1/1/2018–12/31/2020.
Pesticides and a Pesticide Manufacturing Byproduct					
alpha-hexachlorocyclohexane.	319–84–6	EPA 525.3	0.01 µg/L	EPTDS	1/1/2018–12/31/2020.
chlorpyrifos	2921–88–2	EPA 525.3	0.03 µg/L	EPTDS	1/1/2018–12/31/2020.
dimethipin	55290–64–7.	EPA 525.3	0.2 µg/L	EPTDS	1/1/2018–12/31/2020.
ethoprop	13194–48–4.	EPA 525.3	0.03 µg/L	EPTDS	1/1/2018–12/31/2020.
oxyfluorfen	42874–03–3.	EPA 525.3	0.05 µg/L	EPTDS	1/1/2018–12/31/2020.
profenofos	41198–08–7.	EPA 525.3	0.3 µg/L	EPTDS	1/1/2018–12/31/2020.
tebuconazole	107534–96–3.	EPA 525.3	0.2 µg/L	EPTDS	1/1/2018–12/31/2020.
total permethrin (cis- & trans-).	52645–53–1.	EPA 525.3	0.04 µg/L	EPTDS	1/1/2018–12/31/2020.
tribufos	78–48–8 ...	EPA 525.3	0.07 µg/L	EPTDS	1/1/2018–12/31/2020.
Brominated Haloacetic Acid (HAA) Groups^{d e}					
HAA5	N/A	EPA 552.3 or EPA 557.	N/A	D/DBPR HAA location.	1/1/2018–12/31/2020.
HAA6Br	N/A	EPA 552.3 or EPA 557.	N/A	D/DBPR HAA location.	1/1/2018–12/31/2020.
HAA9	N/A	EPA 552.3 or EPA 557.	N/A	D/DBPR HAA location.	1/1/2018–12/31/2020.
Alcohols					
1-butanol	71–36–3 ...	EPA 541	2.0 µg/L	EPTDS	1/1/2018–12/31/2020.
2-methoxyethanol	109–86–4	EPA 541	0.4 µg/L	EPTDS	1/1/2018–12/31/2020.
2-propen-1-ol	107–18–6	EPA 541	0.5 µg/L	EPTDS	1/1/2018–12/31/2020.
Other Semivolatile Chemicals					
butylated hydroxanisole.	25013–16–5.	EPA 530	0.03 µg/L	EPTDS	1/1/2018–12/31/2020.
o-toluidine	95–53–4 ...	EPA 530	0.007 µg/L ...	EPTDS	1/1/2018–12/31/2020.
quinoline	91–22–5 ...	EPA 530	0.02 µg/L	EPTDS	1/1/2018–12/31/2020.
List 2: Screening Survey					
Reserved	Reserved	Reserved	Reserved	Reserved	Reserved.
List 3: Pre-Screen Testing					
Reserved	Reserved	Reserved	Reserved	Reserved	Reserved.

Column headings are:

1—Contaminant: The name of the contaminant to be analyzed.

2—CAS (Chemical Abstract Service) Registry Number or Identification Number: A unique number identifying the chemical contaminants.

3—Analytical Methods: Method numbers identifying the methods that must be used to test the contaminants.

4—Minimum Reporting Level (MRL): The value and unit of measure at or above which the concentration of the contaminant must be measured using the approved analytical methods. If EPA determines, after the first six months of monitoring that the specified MRLs result in excessive resampling, EPA will establish alternate MRLs and will notify affected PWSs and laboratories of the new MRLs. N/A is defined as non-applicable.

5—Sampling Location: The locations within a PWS at which samples must be collected.

6—Period During Which Monitoring to be Completed: The time period during which the sampling and testing will occur for the indicated contaminant.

^aThe analytical procedures shall be performed in accordance with the documents associated with each method, see paragraph (c) of this section.^bThe MRL is the minimum concentration of each analyte that must be reported to EPA.

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^cWith the exception of HAA monitoring, sampling must occur at entry points to the distribution system (EPTDSs), after treatment is applied, that represent each non-emergency water source in routine use over the 12-month period of monitoring. Systems that purchase water with multiple connections from the same wholesaler may select one representative connection from that wholesaler. This EPTDS sampling location must be representative of the highest annual volume connections. If the connection selected as the representative EPTDS is not available for sampling, an alternate highest volume representative connection must be sampled. See 40 CFR 141.35(c)(3) for an explanation of the requirements related to the use of representative GW EPTDSs. Sampling for UCMR 4 HAA groups must be conducted at the Disinfectants and Disinfection Byproduct Rule (D/DBPR) sampling locations (40 CFR 141.622).

^dUCMR 4 HAA monitoring applies only to those PWSs that are subject to D/DBPR HAA5 monitoring requirements. ^ePWSs that purchase 100 percent of their water ("consecutive systems") are not required to collect UCMR 4 source water samples for TOC or bromide analyses. Sampling for TOC and bromide must otherwise occur at source water influent locations representing untreated water entering the water treatment plant (*i.e.*, a location prior to any treatment). SW and GWUDI systems subject to the D/DBPR TOC monitoring must use their D/DBPR TOC source water sampling site(s) from 40 CFR 141.132 for UCMR 4 TOC and bromide samples. SW and GWUDI systems that are not subject to D/DBPR TOC monitoring will use their Long Term 2 Enhance Surface Water Treatment Rule (LT2) source water sampling site(s) (40 CFR 141.703) for UCMR 4 TOC and bromide samples. Ground water systems that are subject to the D/DBPRs, and therefore subject to UCMR 4 HAA monitoring, will take TOC and bromide samples at their influents entering their treatment train. TOC and bromide must be collected at the same time as HAA samples. These indicator samples must be collected at a single source water influent using methods already approved for compliance monitoring. TOC methods include: SM 5310 B, SM 5310 C, SM 5310 D (21st edition), or SM 5310 B-00, SM 5310 C-00, SM 5310 D-00 (SM Online). EPA Method 415.3 (Rev. 1.1 or 1.2). Bromide methods include: EPA Methods 300.0 (Rev. 2.1), 300.1 (Rev. 1.0), 317.0 (Rev. 2.0), 326.0 (Rev. 1.0) or ASTM D 6581-12. The MRLs for the individual HAAs are discussed in paragraph (a)(5)(v) of this section.

(4) *Sampling requirements*—(i) *Large systems*. If you serve more than 10,000 people and meet the UCMR applicability criteria specified in paragraph (a)(2)(i) of this section, you must comply with the requirements specified in paragraphs (a)(4)(i)(A) through (I) of this section. Your samples must be collected according to the schedule that you are assigned by EPA or your State, or the schedule that you revised using EPA's electronic data reporting system on or before December 31, 2017. Your schedule must follow both the timing and frequency of monitoring specified in Tables 1 and 2 of this section.

(A) *Monitoring period*. You must collect the samples in one continuous 12-month period for List 1 Assessment Monitoring, and, if applicable, for List 2 Screening Survey, or List 3 Pre-Screen Testing, during the time frame indicated in column 6 of Table 1, in

paragraph (a)(3) of this section. EPA or your State will specify the month(s) and year(s) in which your monitoring must occur. As specified in §141.35(c)(5), you must contact EPA if you believe you cannot conduct monitoring according to your schedule.

(B) *Frequency*. You must collect the samples within the timeframe and according to the frequency specified by contaminant type and water source type for each sampling location, as specified in Table 2, in this paragraph. For the second or subsequent round of sampling, if a sample location is non-operational for more than one month before and one month after the scheduled sampling month (*i.e.*, it is not possible for you to sample within the window specified in Table 2, in this paragraph), you must notify EPA as specified in §141.35(c)(5) to reschedule your sampling.

TABLE 2—MONITORING FREQUENCY BY CONTAMINANT AND WATER SOURCE TYPES

Contaminant type	Water source type	Timeframe	Frequency ¹
List 1 Cyanotoxins Chemicals.	Surface water or Ground water under the direct influence of surface water (GWUDI).	March–November.	You must monitor twice a month for four consecutive months (total of eight sampling events). Sample events must occur two weeks apart.
List 1 Contaminants—Additional Chemicals.	Surface water or GWUDI	12 months	You must monitor for four consecutive quarters. Sample events must occur three months apart. (Example: If first monitoring is in January, the second monitoring must occur any time in April, the third any time in July and the fourth any time in October).
	Ground water	12 months	You must monitor twice in a consecutive 12-month period. Sample events must occur 5–7 months apart. (Example: If the first monitoring event is in April, the second monitoring event must occur any time in September, October or November).

¹ Systems must assign a sample event code for each contaminant listed in Table 1. Sample event codes must be assigned by the PWS for each sample event. For more information on sample event codes see § 141.35(e) Table 1.

(C) *Location.* You must collect samples for each List 1 Assessment Monitoring contaminant, and, if applicable, for each List 2 Screening Survey, or List 3 Pre-Screen Testing contaminant, as specified in Table 1, in paragraph (a)(3) of this section. Samples must be collected at each sample point that is specified in column 5 and footnote c of Table 1, in paragraph (a)(3) of this section. PWSs conducting List 1 monitoring for the brominated HAA groups must collect TOC and bromide samples as specified in footnote d of Table 1, in paragraph (a)(3) of this section. If you are a GW system with multiple EPTDSs, and you request and receive approval from EPA or the State for sampling at representative EPTDS(s), as specified in §141.35(c)(3), you must collect your samples from the approved representative sampling location(s).

(D) *Sampling instructions.* For each List 1 Assessment Monitoring contaminant, and, if applicable, for each List 2 Screening Survey, or List 3 Pre-Screen Testing contaminant, you must follow the sampling procedure for the method specified in column 3 of Table 1, in paragraph (a)(3) of this section. In addition, you must not composite (that is, combine, mix, or blend) the samples; you must collect and preserve each sample separately.

(E) *Sample collection and shipping time.* If you must ship the samples for analysis, you must collect the samples early enough in the day to allow adequate time to send the samples for overnight delivery to the laboratory. You should not collect samples on Friday, Saturday, or Sunday because sampling on these days may not allow samples to be shipped and received at the laboratory at the required temperature, unless you have made special arrangements with your laboratory to receive the samples.

(F) *Analytical methods.* For each contaminant, you must use the respective analytical methods for List 1, and, if applicable, for List 2, or List 3 that are specified in column 3 of Table 1, in paragraph (a)(3) of this section; report values at or above the minimum reporting levels for List 1, and, if applicable, for List 2 Screening Survey, or List 3 Pre-Screen Testing, that are specified in column 4 of Table 1, in

paragraph (a)(3) of this section; and conduct the quality control procedures specified in paragraph (a)(5) of this section.

(G) *Laboratory errors or sampling deviations.* If the laboratory data do not meet the required QC criteria, as specified in paragraph (a)(5) of this section, or you do not follow the required sampling procedures, as specified in paragraphs (a)(4) of this section, you must resample within 30 days of being informed or becoming aware of these facts. This resampling is not for the purpose of confirming previous results, but to correct the sampling or laboratory error. All systems must report the results obtained from the first sampling for each sampling period, except for cases of sampling or laboratory errors. For the purposes of this rule, no samples are to be recollected for the purposes of confirming the results observed in a previous sampling.

(H) *Analysis.* For the List 1 contaminants, and, if applicable, List 2 Screening Survey, or List 3 Pre-Screen Testing contaminants, identified in Table 1, paragraph (a)(3) of this section, you must arrange for testing by a laboratory that has been approved by EPA according to requirements in paragraph (a)(5)(ii) of this section.

(I) *Review and reporting of results.* After you have received the laboratory results, you must review, approve, and submit the system information, and sample collection data and test results. You must report the results as provided in §141.35(c)(6).

(ii) *Small systems.* If you serve 10,000 or fewer people and are notified that you are part of the State Monitoring Plan for Assessment Monitoring, Screening Survey or Pre-Screen monitoring, you must comply with the requirements specified in paragraphs (a)(4)(ii)(A) through (H) of this section. If EPA or the State informs you that they will be collecting your UCMR samples, you must assist them in identifying the appropriate sampling locations and in collecting the samples.

(A) *Monitoring period and frequency.* You must collect samples at the times specified for you by the State or EPA. Your schedule must follow both the timing of monitoring specified in Table 1, List 1, and, if applicable, List 2, or

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List 3, and the frequency of monitoring in Table 2 of this section.

(B) *Location.* You must collect samples at the locations specified for you by the State or EPA.

(C) *Sample kits.* You must store and maintain the sample collection kits sent to you by the UCMR Sampling Coordinator in accordance with the kit's instructions. The sample kit will include all necessary containers, packing materials and cold packs, instructions for collecting the sample and sample treatment (such as dechlorination or preservation), report forms for each sample, contact name and telephone number for the laboratory, and a pre-paid return shipping docket and return address label. If any of the materials listed in the kit's instructions are not included in the kit or arrive damaged, you must notify the UCMR Sampling Coordinator who sent you the sample collection kits.

(D) *Sampling instructions.* You must comply with the instructions sent to you by the State or EPA concerning the use of containers, collection (how to fill the sample bottle), dechlorination and/or preservation, and sealing and preparation of sample and shipping containers for shipment. You must not composite (that is, combine, mix, or blend) the samples. You also must collect, preserve, and test each sample separately. You must also comply with the instructions sent to you by the UCMR Sampling Coordinator concerning the handling of sample containers for specific contaminants.

(E) *Sampling deviations.* If you do not collect a sample according to the instructions provided to you for a listed contaminant, you must report the deviation within 7 days of the scheduled monitoring on the sample reporting form, as specified in §141.35(d)(2). You must resample following instructions that you will be sent from the UCMR Sampling Coordinator or State. A copy of the form must be sent to the laboratory with the recollected samples, and to the UCMR Sampling Coordinator.

(F) [Reserved]

(G) *Sampling forms.* You must completely fill out each of the sampling forms and bottles sent to you by the UCMR Sampling Coordinator, including data elements listed in §141.35(e)

for each sample, as specified in §141.35(d)(2). You must sign and date the sampling forms.

(H) *Sample collection and shipping.* You must collect the samples early enough in the day to allow adequate time to send the samples for overnight delivery to the laboratory. You should not collect samples on Friday, Saturday, or Sunday because sampling on these days may not allow samples to be shipped and received at the laboratory at the required temperature unless you have made special arrangements with EPA for the laboratory to receive the samples. Once you have collected the samples and completely filled in the sampling forms, you must send the samples and the sampling forms to the laboratory designated on the air bill.

(iii) *Phased sample analysis for microcystins.* You must collect the three required samples (one each for EPA Methods 544, 545 and 546 (ELISA) at the EPTDS) for each sampling event, but not all samples may need to be analyzed. If the Method 546 ELISA result is less than 0.3 µg/L, report that result and do not analyze the EPA Method 544 sample for that sample event. If the Method 546 ELISA result is greater than or equal to 0.3 µg/L, report the value and analyze the other microcystin sample using EPA Method 544. You must analyze the EPA Method 545 sample for each sample event for Cylindrospermopsin and anatoxin-a only.

(5) *Quality control requirements.* If your system serves more than 10,000 people, you must ensure that the quality control requirements listed below are met during your sampling procedures and by the laboratory conducting your analyses. You must also ensure that all method quality control procedures and all UCMR quality control procedures are followed.

(i) *Sample collection/preservation.* You must follow the sample collection and preservation requirements for the specified method for each of the contaminants in Table 1, in paragraph (a)(3) of this section. These requirements specify sample containers, collection, dechlorination, preservation, storage, sample holding time, and extract storage and/or holding time that you must assure that the laboratory follow.

(ii) *Laboratory approval for Lists 1, List 2 and List 3.* To be approved to conduct UCMR testing, the laboratory must be certified under §141.28 for one or more compliance analyses; demonstrate for each analytical method it plans to use for UCMR testing that it can meet the Initial Demonstration of Capability (IDC) requirements detailed in the analytical methods specified in column 3 of Table 1, in paragraph (a)(3) of this section; and successfully participate in the UCMR Proficiency Testing (PT) Program administered by EPA for each analytical method it plans to use for UCMR testing. UCMR laboratory approval decisions will be granted on an individual method basis for the methods listed in column 3 of Table 1 in paragraph (a)(3) of this section for List 1, List 2, and List 3 contaminants. Laboratory approval is contingent upon the capability of the laboratory to post monitoring data to the EPA electronic data reporting system. To participate in the UCMR Laboratory Approval Program, the laboratory must complete and submit the necessary registration forms by February 21, 2017, and necessary application material April 19, 2017. Correspondence must be addressed to: UCMR Laboratory Approval Coordinator, USEPA, Technical Support Center, 26 West Martin Luther King Drive, (MS 140), Cincinnati, OH 45268; or emailed to EPA at: UCMR_Sampling_Coordinator@epa.gov.

(iii) *Minimum Reporting Level.* The MRL is an estimate of the quantitation limit. Assuming good instrumentation and experienced analysts, an MRL is achievable, with 95% confidence, by 75% of laboratories nationwide.

(A) Validation of laboratory performance. Your laboratory must be capable of quantifying each contaminant listed in Table 1, at or below the MRL specified in column 4 of Table 1, in paragraph (a)(3) of this section. You must ensure that the laboratory completes and has on file and available for your

inspection, records of two distinct procedures. First, your laboratory must have conducted an IDC involving replicate analyses at or below the MRL as described in this paragraph. Second, for each day that UCMR analyses are conducted by your laboratory, a validation of its ability to quantify each contaminant, at or below the MRL specified in column 4 of Table 1, in paragraph (a)(3) of this section, following the procedure listed in paragraph (a)(5)(iii)(B) of this section, must be performed. The procedure for initial validation of laboratory performance at or below the MRL is as follows:

(1) All laboratories performing analysis under UCMR must demonstrate that they are capable of meeting data quality objectives at or below the MRL listed in Table 1, column 4, in paragraph (a)(3) of this section.

(2) The MRL, or any concentration below the MRL, at which performance is being evaluated, must be contained within the range of calibration. The calibration curve regression model and the range of calibration levels that are used in these performance validation steps must be used in all routine sample analyses used to comply with this regulation. Only straight line or quadratic regression models are allowed. The use of either weighted or unweighted models is permitted. The use of cubic regression models is not permitted.

(3) Replicate analyses of at least seven (7) fortified samples in reagent water must be performed at or below the MRL for each analyte, and must be processed through the entire method procedure (*i.e.*, including extraction, where applicable, and with all preservatives).

(4) A prediction interval of results (PIR), which is based on the estimated arithmetic mean of analytical results and the estimated sample standard deviation of measurement results, must be determined by Equation 1:

$$\text{Equation 1} \quad \text{PIR} = \text{Mean} \pm s \times t_{(df, 1-\alpha/2)} \times \sqrt{1 + \frac{1}{n}}$$

Where:

t is the Student's t value with df degrees of freedom and confidence level $(1-\alpha)$,
 s is the sample standard deviation of n replicate samples fortified at the MRL,
 n is the number of replicates.

(5) The values needed to calculate the PIR using Equation 1 are: Number of replicates (n); Student's t value with a two-sided 99% confidence level for n number of replicates; the average (mean) of at least seven replicates; and the sample standard deviation. Factor 1 is referred to as the Half Range PIR (HR_{PIR}).

$$HR_{PIR} = s \times t_{(df, 1-\alpha/2)} \times \sqrt{1 + \frac{1}{n}}$$

For a certain number of replicates and for a certain confidence level in Student's t , this factor

TABLE 3—THE CONSTANT FACTOR (C) TO BE MULTIPLIED BY THE STANDARD DEVIATION TO DETERMINE THE HALF RANGE INTERVAL OF THE PIR (STUDENT'S t 99% CONFIDENCE LEVEL) ^A

Replicates	Degrees of freedom	Constant factor (C) to be multiplied by the standard deviation
7	6	3.963
8	7	3.711
9	8	3.536
10	9	3.409

^AThe critical t -value for a two-sided 99% confidence interval is equivalent to the critical t -value for a one-sided 99.5% confidence interval, due to the symmetry of the t -distribution. PIR = Prediction Interval of Results.

(8) The lower and upper result limits of the PIR must be converted to percent recovery of the concentration being tested. To pass criteria at a certain level, the PIR lower recovery limits cannot be lower than the lower recovery limits of the QC interval (50%), and the PIR upper recovery limits cannot be greater than the upper recovery limits of the QC interval (150%). When either of the PIR recovery limits falls outside of either bound of the QC interval of recovery (higher than 150% or less than 50%), laboratory performance is not validated at the concentration evaluated. If the PIR limits are contained within both bounds of the QC interval, laboratory performance is validated for that analyte.

$$C = t_{(df, 1-\alpha/2)} \times \sqrt{1 + \frac{1}{n}}$$

is constant, and can be tabulated according to replicate number and confidence level for the Student's t . Table 3 in this paragraph lists the constant factor (C) for replicate sample numbers 7 through 10 with a confidence level of 99% for Student's t .

(6) The HR_{PIR} is calculated by Equation 2:

$$\text{Equation 2} \quad HR_{PIR} = s \times C$$

(7) The PIR is calculated by Equation 3:

$$\text{Equation 3} \quad PIR = \text{Mean} \pm HR_{PIR}$$

(B) Quality control requirements for validation of laboratory performance at or below the MRL.

(1) You must ensure that the calibration curve regression model and that the range of calibration levels that are used in these performance validation steps are used in future routine sample analysis. Only straight line or quadratic regression models are allowed. The use of either weighted or unweighted models is permitted. The use of cubic regression models is not permitted.

(2) You must ensure, once your laboratory has performed an IDC as specified in each analytical method (demonstrating that DQOs are met at or below an MRL), that a daily performance check is performed for each

analyte and method. A single laboratory blank, fortified at or below the MRL for each analyte, must be processed through the entire method procedure. The measured concentration for each analyte must be converted to a percent recovery, and if the recovery is within 50%–150% (inclusive), the daily performance of the laboratory has been validated. The results for any analyte for which 50%–150% recovery cannot be demonstrated during the daily check are not valid. Laboratories may elect to re-run the daily performance check sample if the performance for any analyte or analytes cannot be validated. If performance is validated for these analytes, the laboratory performance is considered validated. Alternatively, the laboratory may re-calibrate and repeat the performance validation process for all analytes.

(iv) *Laboratory fortified sample matrix and laboratory fortified sample matrix duplicate.* You must ensure that your laboratory prepares and analyzes the Laboratory Fortified Sample Matrix (LFSM) sample for accuracy and Laboratory Fortified Sample Matrix Duplicate (LFSMD) samples for precision to determine method accuracy and precision for all contaminants in Table 1, in paragraph (a)(3) of this section. LFSM/LFSMD samples must be prepared using a sample collected and analyzed in accordance with UCMR requirements and analyzed at a frequency of 5% (or 1 LFSM/LFSMD set per every 20 samples) or with each sample batch, whichever is more frequent. In addition, the LFSM/LFSMD fortification concentrations must be alternated between a low-level fortification and mid-level fortification approximately

50% of the time. (For example: A set of 40 samples will require preparation and analysis of 2 LFSM/LFSMD paired samples. The first LFSM/LFSMD paired sample set must be fortified at either the low-level or mid-level, and the second LFSM/LFSMD paired sample set must be fortified with the other standard, either the low-level or mid-level, whichever was not used for the initial LFSM/LFSMD paired sample set.) The low-level LFSM/LFSMD fortification concentration must be within $\pm 50\%$ of the MRL for each contaminant (e.g., for an MRL of 1 $\mu\text{g/L}$ the acceptable fortification levels must be between 0.5 $\mu\text{g/L}$ and 1.5 $\mu\text{g/L}$). The mid-level LFSM/LFSMD fortification concentration must be within $\pm 20\%$ of the mid-level calibration standard for each contaminant, and is to represent, where possible and where the laboratory has data from previously analyzed samples, an approximate average concentration observed in previous analyses of that analyte. There are no UCMR contaminant recovery acceptance criteria specified for LFSM/LFSMD analyses. All LFSM/LFSMD data are to be reported.

(v) *Method defined quality control.* You must ensure that your laboratory analyzes Laboratory Fortified Blanks and conducts Laboratory Performance Checks, as appropriate to the method's requirements, for those methods listed in Table 1, column 3, in paragraph (a)(3) of this section. Each method specifies acceptance criteria for these QC checks. The following HAA results must be reported using EPA's electronic data reporting system for quality control purposes.

TABLE 4—HAA QC RESULTS

1—Contaminant	2—CAS Registry No.	3—Analytical methods ^a	4—Minimum reporting level ^b	5—HAA6Br Group	6—HAA9 Group	7—HAA5 Group
Brominated Haloacetic Acid (HAA) Groups						
Bromochloroacetic acid (BCAA)	5589–96–8	EPA 552.3 or EPA 557	0.3 µg/L.	HAA6Br	HAA9	HAA5
Bromodichloroacetic acid (BDCAA).	71133–14–7	EPA 552.3 or EPA 557	0.5 µg/L.			
Chlorodibromochloroacetic acid (CDBAA).	5278–95–5	EPA 552.3 or EPA 557	0.3 µg/L			
Tribromoacetic acid (TBAA)	75–96–7	EPA 552.3 or EPA 557	2.0 µg/L.			
Monobromoacetic acid (MBAA)	79–08–3	EPA 552.3 or EPA 557	0.3 µg/L.	HAA9	HAA9	HAA5
Dibromoacetic acid (DBAA)	631–64–1	EPA 552.3 or EPA 557	0.3 µg/L			
Dichloroacetic acid (DCAA)	79–43–6	EPA 552.3 or EPA 557	0.2 µg/L.			
Monochloroacetic acid (MCAA)	79–11–8	EPA 552.3 or EPA 557	2.0 µg/L			
Trichloroacetic acid (TCAA)	76–03–9	EPA 552.3 or EPA 557	0.5 µg/L.			

Column headings are:

1—Contaminant: The name of the contaminant to be analyzed.

2—CAS (Chemical Abstract Service) Registry Number or Identification Number: A unique number identifying the chemical contaminants.

3—Analytical Methods: Method numbers identifying the methods that must be used to test the contaminants.

4—Minimum Reporting Level (MRL): The value and unit of measure at or above which the concentration of the contaminant must be measured using the approved analytical methods. If EPA determines, after the first six months of monitoring that the specified MRLs result in excessive resampling, EPA will establish alternate MRLs and will notify affected PWSSs and laboratories of the new MRLs.

5–7—HAA groups identified in paragraph (a)(3) of this section to be monitored as UCMR contaminants.

^aThe analytical procedures shall be performed in accordance with the documents associated with each method, see paragraph (c) of this section, and must meet all quality control requirements outlined paragraph (a)(5) of this section.

^bThe MRL is the minimum concentration of each analyte that must be reported to EPA.

(vi) *Reporting.* You must require your laboratory to submit these data electronically to the State and EPA using EPA's electronic data reporting system, accessible at <https://www.epa.gov/dwucmr>, within 120 days from the sample collection date. You then have 60 days from when the laboratory posts the data to review, approve and submit the data to the State and EPA, via EPA's electronic data reporting system. If you do not electronically approve and submit the laboratory data to EPA within 60 days of the laboratory posting data to EPA's electronic reporting system, the data will be considered approved and available for State and EPA review.

(6) *Violation of this rule—(i) Monitoring violations.* Any failure to monitor in accordance with § 141.40(a)(3)–(5) is a monitoring violation.

(ii) *Reporting violations.* Any failure to report in accordance with § 141.35 is a reporting violation.

(b) *Petitions and waivers by States—(1) Governors' petition for additional contaminants.* The Safe Drinking Water Act allows Governors of seven (7) or more States to petition the EPA Administrator to add one or more contaminants to the UCMR Contaminant List in paragraph (a)(3) of this section. The petition must clearly identify the reason(s) for adding the contaminant(s) to the monitoring list, including the potential risk to public health, particularly any information that might be available regarding disproportional risks to the health and safety of children, the expected occurrence documented by any available data, any analytical methods known or proposed to be used to test for the contaminant(s), and any other information that could assist the Administrator in determining which contaminants present the greatest public health concern and should, therefore, be included on the UCMR Contaminant List in paragraph (a)(3) of this section.

(2) *State-wide waivers.* A State can waive monitoring requirements only with EPA approval and under very limited conditions. Conditions and procedures for obtaining a waiver are as follows:

(i) *Application.* A State may apply to EPA for a State-wide waiver from the

unregulated contaminant monitoring requirements for PWSs serving more than 10,000 people. To apply for such a waiver, the State must submit an application to EPA that includes the following information: The list of contaminants on the UCMR Contaminant List for which a waiver is requested, along with documentation for each contaminant in the request demonstrating that the contaminants or their parent compounds do not occur naturally in the State, and certifying that during the past 15 years they have not been used, applied, stored, disposed of, released, or detected in the source waters or distribution systems in the State.

(ii) *Approval.* EPA will review State applications and notify the State whether it accepts or rejects the request. The State must receive written approval from EPA before issuing a State-wide waiver.

(c) *Incorporation by reference.* These standards are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection either electronically at <http://www.regulations.gov>, in hard copy at the Water Docket, EPA/DC, and from the sources as follows. The Public Reading Room (EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC) is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for this Public Reading Room is (202) 566-1744, and the telephone number for the Water Docket is (202) 566-2426. The material is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030 or go to <http://www.archives.gov/federal-register/cfr/about.html>.

(1) U.S. Environmental Protection Agency, Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004.

(i) Method 200.8 "Determination of Trace Elements in Waters and Wastes by Inductively Coupled Plasma—Mass Spectrometry," Revision 5.4, EMMC

Version, 1994. Available on the Internet at <https://www.nemi.gov>.

(ii) Method 300.0 “Determination of Inorganic Anions by Ion Chromatography Samples,” Revision 2.1, August 1993. Available on the Internet at <https://www.nemi.gov>.

(iii) Method 300.1 “Determination of Inorganic Anions in Drinking Water by Ion Chromatography,” Revision 1.0, 1997. Available on the Internet at <https://www.epa.gov/dwanalyticalmethods>.

(iv) Method 317.0 “Determination of Inorganic Oxyhalide Disinfection By-Products in Drinking Water Using Ion Chromatography with the Addition of a Postcolumn Reagent for Trace Bromate Analysis,” Revision 2.0, July 2001, EPA 815-B-01-001. Available on the Internet at <https://www.epa.gov/dwanalyticalmethods>.

(v) Method 326.0 “Determination of Inorganic Oxyhalide Disinfection By-Products in Drinking Water Using Ion Chromatography Incorporating the Addition of a Suppressor Acidified Postcolumn Reagent for Trace Bromate Analysis,” Revision 1.0, June 2002, EPA 815-R-03-007. Available on the Internet at <https://www.epa.gov/dwanalyticalmethods>.

(vi) Method 415.3 “Determination of Total Organic Carbon and Specific UV Absorbance at 254 nm in Source Water and Drinking Water,” Revision 1.1, February 2005, EPA/600/R-05/055. Available on the Internet at <https://www.epa.gov/water-research/epa-drinking-water-research-methods>.

(vii) Method 415.3 “Determination of Total Organic Carbon and Specific UV Absorbance at 254 nm in Source Water and Drinking Water,” Revision 1.2, September 2009, EPA/600/R-09/122. Available on the Internet at <https://www.epa.gov/water-research/epa-drinking-water-research-methods>.

(viii) Method 525.3 “Determination of Semivolatile Organic Chemicals in Drinking Water by Solid Phase Extraction and Capillary Column Gas Chromatography/Mass Spectrometry (GC/MS),” Version 1.0, February 2012, EPA/600/R-12/010. Available on the Internet at <https://www.epa.gov/water-research/epa-drinking-water-research-methods>.

(ix) Method 530 “Determination of Select Semivolatile Organic Chemicals

in Drinking Water by Solid Phase Extraction and Gas Chromatography/Mass Spectrometry (GC/MS),” Version 1.0, January 2015, EPA/600/R-14/442. Available on the Internet at <https://www.epa.gov/water-research/epa-drinking-water-research-methods>.

(x) EPA Method 541: “Determination of 1-Butanol, 1,4-Dioxane, 2-Methoxyethanol and 2-Propen-1-ol in Drinking Water by Solid Phase Extraction and Gas Chromatography/Mass Spectrometry,” November 2015, EPA 815-R-15-011. Available on the Internet at <https://www.epa.gov/water-research/epa-drinking-water-research-methods>.

(xi) Method 544 “Determination of Microcystins and Nodularin in Drinking Water by Solid Phase Extraction and Liquid Chromatography/Tandem Mass Spectrometry (LC/MS/MS),” Version 1.0, February 2015, EPA 600-R-14/474. Available on the Internet at <https://www.epa.gov/water-research/epa-drinking-water-research-methods>.

(xii) EPA Method 545: “Determination of Cylindrospermopsin and Anatoxin-a in Drinking Water by Liquid Chromatography Electrospray Ionization Tandem Mass Spectrometry (LC/ESI-MS/MS),” April 2015, EPA 815-R-15-009. Available on the Internet at <https://www.epa.gov/dwanalyticalmethods>.

(xiii) EPA Method 546: “Determination of Total Microcystins and Nodularins in Drinking Water and Ambient Water by Adda Enzyme-Linked Immunosorbent Assay,” August 2016, EPA-815-B-16-011. Available on the Internet at <https://www.epa.gov/dwanalyticalmethods>.

(xiv) Method 552.3 “Determination of Haloacetic Acids and Dalapon in Drinking Water by Liquid-Liquid Microextraction, Derivatization, and Gas Chromatography with Electron Capture Detection,” Revision 1.0, July 2003, EPA 815-B-03-002. Available on the Internet at <https://www.epa.gov/dwanalyticalmethods>.

(xv) EPA Method 557: “Determination of Haloacetic Acids, Bromate, and Dalapon in Drinking Water by Ion Chromatography Electrospray Ionization Tandem Mass Spectrometry (IC-ESI-MS/MS),” Version 1.0, September 2009, EPA 815-B-09-012. Available on

the Internet at <https://www.epa.gov/dwanalyticalmethods>.

(2) American Public Health Association—Standard Test Method for Elements in Water by Inductively Coupled Plasma-Mass Spectrometry,” approved August 1, 2010. Available for purchase on the Internet at <http://www.astm.org/Standards/D5673.htm>.

(i) “Standard Methods for the Examination of Water & Wastewater,” 21st edition (2005).

(A) SM 3125 “Metals by Inductively Coupled Plasma/Mass Spectrometry.”

(B) SM 5310B “Total Organic Carbon (TOC): High-Temperature Combustion Method.”

(C) SM 5310C “Total Organic Carbon (TOC): Persulfate-UV or Heated-Persulfate Oxidation Method.”

(D) SM 5310D “Total Organic Carbon (TOC): Wet-Oxidation Method.”

(ii) The following methods are from “Standard Methods Online,” approved 2000 (unless noted). Available for purchase on the Internet at <http://www.standardmethods.org>.

(A) SM 3125 “Metals by Inductively Coupled Plasma/Mass Spectrometry” Editorial revisions, 2011 (SM 3125–09).

(B) SM 5310B “Total Organic Carbon: High-Temperature Combustion Method,” (5310B–00).

(C) SM 5310C “Total Organic Carbon: Persulfate-UV or Heated-Persulfate Oxidation Method,” (5310C–00).

(D) SM 5310D “Total Organic Carbon: Wet-Oxidation Method,” (5310D–00).

(3) ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

(i) ASTM D5673–10 “Standard Test Method for Elements in Water by Inductively Coupled Plasma-Mass Spectrometry,” approved August 1, 2010. Available for purchase on the Internet at <http://www.astm.org/Standards/D5673.htm>.

(ii) ASTM D6581–12 “Standard Test Methods for Bromate, Bromide, Chlorate, and Chlorite in Drinking Water by Suppressed Ion Chromatography,” approved March 1, 2012. Available for purchase on the Internet at <http://www.astm.org/Standards/D6581.htm>.

[72 FR 393, Jan. 4, 2007; 72 FR 3916, Jan. 26, 2007, as amended at 77 FR 26098, May 2, 2012; 81 FR 92688, Dec. 20, 2016]

§ 141.41 Special monitoring for sodium.

(a) Suppliers of water for community public water systems shall collect and analyze one sample per plant at the entry point of the distribution system for the determination of sodium concentration levels; samples must be collected and analyzed annually for systems utilizing surface water sources in whole or in part, and at least every three years for systems utilizing solely ground water sources. The minimum number of samples required to be taken by the system shall be based on the number of treatment plants used by the system, except that multiple wells drawing raw water from a single aquifer may, with the State approval, be considered one treatment plant for determining the minimum number of samples. The supplier of water may be required by the State to collect and analyze water samples for sodium more frequently in locations where the sodium content is variable.

(b) The supplier of water shall report to EPA and/or the State the results of the analyses for sodium within the first 10 days of the month following the month in which the sample results were received or within the first 10 days following the end of the required monitoring period as stipulated by the State, whichever of these is first. If more than annual sampling is required the supplier shall report the average sodium concentration within 10 days of the month following the month in which the analytical results of the last sample used for the annual average was received. The supplier of water shall not be required to report the results to EPA where the State has adopted this regulation and results are reported to the State. The supplier shall report the results to EPA where the State has not adopted this regulation.

(c) The supplier of water shall notify appropriate local and State public health officials of the sodium levels by written notice by direct mail within three months. A copy of each notice required to be provided by this paragraph shall be sent to EPA and/or the State within 10 days of its issuance. The supplier of water is not required to notify appropriate local and State public health officials of the sodium levels

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where the State provides such notices in lieu of the supplier.

(d) Analyses for sodium shall be conducted as directed in § 141.23(k)(1).

[45 FR 57345, Aug. 27, 1980, as amended at 59 FR 62470, Dec. 5, 1994]

§ 141.42 Special monitoring for corrosivity characteristics.

(a)–(c) [Reserved]

(d) Community water supply systems shall identify whether the following construction materials are present in their distribution system and report to the State:

Lead from piping, solder, caulking, interior lining of distribution mains, alloys and home plumbing.

Copper from piping and alloys, service lines, and home plumbing.

Galvanized piping, service lines, and home plumbing.

Ferrous piping materials such as cast iron and steel.

Asbestos cement pipe.

In addition, States may require identification and reporting of other materials of construction present in distribution systems that may contribute contaminants to the drinking water, such as:

Vinyl lined asbestos cement pipe.

Coal tar lined pipes and tanks.

[45 FR 57346, Aug. 27, 1980; 47 FR 10999, Mar. 12, 1982, as amended at 59 FR 62470, Dec. 5, 1994]

Subpart F—Maximum Contaminant Level Goals and Maximum Residual Disinfectant Level Goals

§ 141.50 Maximum contaminant level goals for organic contaminants.

(a) MCLGs are zero for the following contaminants:

- (1) Benzene
- (2) Vinyl chloride
- (3) Carbon tetrachloride
- (4) 1,2-dichloroethane
- (5) Trichloroethylene
- (6) Acrylamide
- (7) Alachlor
- (8) Chlordane
- (9) Dibromochloropropane
- (10) 1,2-Dichloropropane
- (11) Epichlorohydrin
- (12) Ethylene dibromide

- (13) Heptachlor
 - (14) Heptachlor epoxide
 - (15) Pentachlorophenol
 - (16) Polychlorinated biphenyls (PCBs)
 - (17) Tetrachloroethylene
 - (18) Toxaphene
 - (19) Benzo[a]pyrene
 - (20) Dichloromethane (methylene chloride)
 - (21) Di(2-ethylhexyl)phthalate
 - (22) Hexachlorobenzene
 - (23) 2,3,7,8-TCDD (Dioxin)
- (b) MCLGs for the following contaminants are as indicated:

Contaminant	MCLG in mg/l
(1) 1,1-Dichloroethylene	0.007
(2) 1,1,1-Trichloroethane	0.20
(3) para-Dichlorobenzene	0.075
(4) Aldicarb	0.001
(5) Aldicarb sulfoxide	0.001
(6) Aldicarb sulfone	0.001
(7) Atrazine	0.003
(8) Carbofuran	0.04
(9) o-Dichlorobenzene	0.6
(10) cis-1,2-Dichloroethylene	0.07
(11) trans-1,2-Dichloroethylene	0.1
(12) 2,4-D	0.07
(13) Ethylbenzene	0.7
(14) Lindane	0.0002
(15) Methoxychlor	0.04
(16) Monochlorobenzene	0.1
(17) Styrene	0.1
(18) Toluene	1
(19) 2,4,5-TP	0.05
(20) Xylenes (total)	10
(21) Dalapon	0.2
(22) Di(2-ethylhexyl)adipate4
(23) Dinoseb007
(24) Diquat02
(25) Endothall1
(26) Endrin002
(27) Glyphosate7
(28) Hexachlorocyclopentadiene05
(29) Oxamyl (Vydate)2
(30) Picloram5
(31) Simazine004
(32) 1,2,4-Trichlorobenzene07
(33) 1,1,2-Trichloroethane003

[50 FR 46901, Nov. 13, 1985, as amended at 52 FR 20674, June 2, 1987; 52 FR 25716, July 8, 1987; 56 FR 3592, Jan. 30, 1991; 56 FR 30280, July 1, 1991; 57 FR 31846, July 17, 1992]

§ 141.51 Maximum contaminant level goals for inorganic contaminants.

(a) [Reserved]

(b) MCLGs for the following contaminants are as indicated:

Contaminant	MCLG (mg/l)
Antimony	0.006
Arsenic	zero ¹
Asbestos	7 Million fibers/liter (longer than 10 µm).

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§§ 143.5—143.9 [Reserved]

Subpart B—Use of Lead Free Pipes, Fittings, Fixtures, Solder, and Flux for Drinking Water

SOURCE: 85 FR 54256, Sept. 1, 2020, unless otherwise noted.

§ 143.10 Applicability and scope.

(a) This subpart establishes regulations pertaining to pipes, pipe or plumbing fittings, or fixtures, solder and flux, pursuant to, *inter alia*, sections 1417 and 1461 of the Safe Drinking Water Act (42 U.S.C. 300g-6 and 300j-21). It applies to any person who introduces these products into commerce, such as manufacturers, importers, wholesalers, distributors, re-sellers, and retailers. It also applies to any person who uses these products in the installation or repair of:

- (1) A public water system; or
- (2) A residential or nonresidential facility providing water for human consumption.

(b) Reserved.

§ 143.11 Definitions.

The following definitions apply to this subpart:

Accredited third party certification body means those bodies that are accredited by the American National Standards Institute (ANSI) to provide product certification to meet the lead free requirements of not more than a weighted average of 0.25 percent lead content when used with respect to the wetted surfaces, consistent with section 1417 of the Safe Drinking Water Act and § 143.12, such as certification to the NSF/ANSI 372 standard.

Administrator means the Administrator of the U.S. Environmental Protection Agency or his or her authorized representative.

Affiliated means a person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity specified. Affiliated persons or entities include but are not limited to: A parent company and all wholly or partially owned subsidiaries of a parent company, or two or more corporations or

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family partnerships that have overlap in ownership or control.

Alloy means a substance composed of two or more metals or of a metal and a nonmetal.

Coating means a thin layer of material such as paint, epoxy, zinc galvanization, or other material usually applied by spraying or in liquid form to coat internal surfaces of pipes, fittings, or fixtures.

Custom fabricated product means a product that:

- (1) Is manufactured on a case-by-case basis to accommodate the unique needs of a single customer;
- (2) Does not have a Universal Product Code (UPC) assigned to the product;
- (3) Is not stocked by and is not available through inventory from a manufacturer, importer, wholesaler, distributor, retailer, or other source for distribution; and
- (4) Is not cataloged in print or on the internet with a specific item number or code.

Drinking water cooler means any mechanical device, affixed to drinking water supply plumbing, which actively cools water for human consumption.

Fitting means a pipe fitting or plumbing fitting.

Fixture means a receptacle or device that is connected to a water supply system or discharges to a drainage system or both. Fixtures used for potable uses shall include but are not limited to:

- (1) Drinking water coolers, drinking water fountains, drinking water bottle fillers, dishwashers;
- (2) Plumbed in devices, such as point-of-use treatment devices, coffee makers, and refrigerator ice and water dispensers; and
- (3) Water heaters, water meters, water pumps, and water tanks, unless such fixtures are not used for potable uses.

Flux means a substance used for helping to melt or join metals such as by removal of oxides and other coatings or residues from the metals before joining by using solder or other means.

Importer means any person who introduces into commerce any pipe, any pipe or plumbing fitting or fixture, or any solder or flux entering the United

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States; or any “importer” as defined in 19 CFR 101.1; or both.

Introduce into commerce or introduction into commerce means the sale or distribution of products or offering products for sale or distribution in the United States.

Liner means a rigid lining such as a plastic or copper sleeve that is:

(1) Sealed with a permanent barrier to exclude lead-bearing surfaces from water contact; and

(2) Of sufficient thickness and otherwise having physical properties necessary to prevent erosion and cracking for the expected useful life of the product.

Manufacturer means a person or entity who:

(1) Processes or makes a product; or

(2) Has products processed or made under a contractual arrangement for distribution, using the person’s or entity’s brand name or trademark.

Nonpotable services means all product uses and applications that are not potable uses.

Person means an individual; corporation; company; association; partnership; municipality; or State, federal, or Tribal agency (including officers, employees, and agents of any corporation, company, association, municipality, State, Tribal, or federal agency).

Pipe means a conduit, conductor, tubing, or hose and may also include permanently attached end fittings.

Pipe fitting means any piece (such as a coupling, elbow, or gasket) used for connecting pipe lengths together or to connect other plumbing pieces together or to change direction.

Plumbing fitting means a plumbing component that controls the volume and/or directional flow of water, such as kitchen faucets, bathroom lavatory faucets, manifolds, and valves.

Point-of-use treatment device means point-of-use treatment device as defined in § 141.2 of this chapter.

Potable uses, for purposes only of this subpart, means services or applications that provide water for human ingestion, such as for drinking, cooking, food preparation, dishwashing, teeth brushing, or maintaining oral hygiene.

Product means a pipe, fitting, or fixture.

Public water system means a public water system as defined in § 141.2 of this chapter.

Solder means a type of metal that is used to join metal parts such as sections of pipe, without melting the existing metal in the parts to be joined. Solder is usually sold or distributed in the form of wire rolls or bars.

State means state as defined in § 142.2 of this chapter.

United States includes its commonwealths, districts, States, Tribes, and Territories.

Water distribution main means a pipe, typically found under or adjacent to a roadway, that supplies water to buildings via service lines.

§ 143.12 Definition of lead free and calculation methodology.

(a) “Lead free” for the purposes of this subpart means:

(1) Not containing more than 0.2 percent lead when used with respect to solder and flux; and

(2) Not more than a weighted average of 0.25 percent lead when used with respect to the wetted surfaces of pipes, pipe fittings, plumbing fittings, and fixtures.

(b) The weighted average lead content of a pipe, pipe fitting, plumbing fitting, or fixture is calculated by using the following formula: For each wetted component, the percentage of lead in the component is multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to arrive at the weighted percentage of lead of the component. The weighted percentage of lead of each wetted component is added together, and the sum of these weighted percentages constitutes the weighted average lead content of the product. The lead content of the material used to produce wetted components is used to determine compliance with paragraph (a)(2) of this section. For lead content of materials that are provided as a range, the maximum content of the range must be used.

(c) If a coating, as defined in § 143.11, is applied to the internal surfaces of a pipe, fitting or fixture component, the maximum lead content of both the coating and the alloy must be used to

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calculate the lead content of the component.

(d) If a liner, as defined in § 143.11, is manufactured into a pipe, fitting or fixture, the maximum lead content of the liner must be used to calculate the lead content of the component.

(e) If a fixture contains any media (e.g., activated carbon, ion exchange resin) contained in filters, the media are not to be used in determining the “total wetted surface area of the entire product” in paragraph (b) of this section.

(f) In addition to the definitions of “lead free” in paragraphs (a) through (e) of this section, no drinking water cooler, which contains any solder, flux, or storage tank interior surface, which may come into contact with drinking water, is lead free if the solder, flux, or storage tank interior surface contains more than 0.2 percent lead. Drinking water coolers must be manufactured such that each individual part or component that may come in contact with drinking water shall not contain more than 8 percent lead while still meeting the maximum 0.25 percent weighted average lead content of the wetted surfaces of the entire product.

§ 143.13 Use prohibitions.

(a) No person may use any pipe, any pipe or plumbing fitting or fixture, any solder or any flux that is not lead free as defined in § 143.12 in the installation or repair of:

- (1) Any public water system; or
- (2) Any plumbing in a residential or nonresidential facility providing water for human consumption.

(b) Paragraph (a) of this section shall not apply to leaded joints necessary for the repair of cast iron pipes.

§ 143.14 State enforcement of use prohibitions.

As a condition of receiving a full allotment of Public Water System Supervision grants under section 1443(a) of the Safe Drinking Water Act, States must enforce the requirements of section 1417(a)(1) of the Safe Drinking Water Act and § 143.13 through State or local plumbing codes, or such other means of enforcement as the State may determine to be appropriate.

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§ 143.15 Introduction into commerce prohibitions.

(a) No person may introduce into commerce any pipe, or any pipe or plumbing fitting or fixture, that is not lead free, except for a pipe that is used in manufacturing or industrial processing;

(b) No person engaged in the business of selling plumbing supplies in the United States, except manufacturers, may sell solder or flux that is not lead free; and

(c) No person may introduce into commerce any solder or flux that is not lead free, unless the solder or flux bears a prominent label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.

§ 143.16 Exemptions.

The prohibitions in §§ 143.13 and 143.15 and the product certification requirements in § 143.19 shall not apply to the products listed in paragraphs (a) through (c) of this section:

(a) Pipes, pipe fittings, plumbing fittings, or fixtures, including backflow preventers, that are used exclusively for nonpotable services such as manufacturing, industrial processing, irrigation, outdoor watering, or any other uses where the water is not anticipated to be used for human consumption. Additional products that could be “used exclusively for nonpotable services” include:

(1) Products that are clearly labeled, on the product, package, or tag with a phrase such as: “Not for use with water for human consumption” or another phrase that conveys the same meaning in plain language;

(2) Products that are incapable of use in potable services (e.g., physically incompatible) with other products that would be needed to convey water for potable uses; or

(3) Products that are plainly identifiable and marketed as being solely for a use other than the conveyance of water (these other uses include conveyance of air, chemicals other than water, hydraulic fluids, refrigerants, gasses, or other non-water fluids).

(b) Toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower

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valves, fire hydrants, service saddles, and water distribution main gate valves (provided that such valves are 2 inches in diameter or larger).

(c) Clothes washing machines, emergency drench showers, emergency face wash equipment, eyewash devices, fire suppression sprinklers, steam capable clothes dryers, and sump pumps.

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§ 143.18 Required labeling of solder and flux that is not lead free.

Solder and flux that is not “lead free” as defined in §143.12(a)(1) must bear a prominent label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.

§ 143.19 Required certification of products.

(a) Manufacturers or importers that introduce into commerce products that must meet the lead free requirements of section 1417 of the Safe Drinking Water Act and §143.12 must ensure, except as provided in paragraphs (a)(1) through (3) of this section, that the products are certified to be in compliance as specified in paragraphs (b) and (c) of this section by September 1, 2023, or prior to product introduction into commerce, whichever occurs later. Such manufacturers or importers must maintain documentation to substantiate the certification for at least 5 years from the date of the last sale of the product by the manufacturer or importer.

(1) Product components of assembled pipes, fittings, or fixtures do not need to be individually certified if the entire product in its final assembled form is lead free certified.

(2) Direct replacement parts for previously installed lead free certified products do not need to be individually certified if the weighted average lead content of wetted surface area for the part does not exceed such lead content of the original part.

(3) Dishwashers do not need to be certified.

(b) Certification of products must be obtained by manufacturers or importers from an accredited third party cer-

tification body, except as provided in paragraph (c) of this section. The manufacturer or importer must keep records for all products certified by an accredited third party certification body that include, at a minimum, documentation of certification, of dates of certification, and of expiration. This documentation must be provided upon request to the Administrator as specified in §143.20(b).

(c) Products may be self-certified by manufacturers or importers as provided in paragraph (c)(1) or (c)(2) of this section. Such manufacturers or importers electing to self-certify products must comply with paragraphs (d) through (g) of this section.

(1) Manufacturers having fewer than 10 employees, or importers entering products purchased from or manufactured by manufacturers having fewer than 10 employees, may elect to self-certify products in lieu of obtaining certification from an accredited third party certification body. The number of employees includes any persons employed by the manufacturer and any of its affiliated entities. The number of employees must be calculated by averaging the number of persons employed, regardless of part-time, full-time, or temporary status, by an entity and all of its affiliated entities for each pay period over the entity's latest 12 calendar months or averaged over the number of months in existence if less than 12 months. Any such firms that subsequently expand employment to 10 or more employees, based on the most recent 12-month average number of persons employed, are no longer eligible to self-certify products and must obtain third party certification within 12 months of having 10 or more employees.

(2) Manufacturers or importers may elect to self-certify any custom fabricated product in lieu of obtaining certification from an ANSI accredited third party certification body, regardless of the number of persons employed by the manufacturer.

(d) In order for eligible manufacturers or importers to self-certify products, such manufacturers or importers must attest that products are in compliance with the definition of “lead free” in §143.12 by developing and

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maintaining a “certificate of conformity.” The certificate of conformity must be:

(1) Signed by a responsible corporate officer; a general partner or proprietor; or an authorized representative of a responsible corporate officer, general partner, or proprietor; and

(2) Posted to a website with continuing public access in the United States, unless it is distributed by other means (e.g., electronically or in hard copy) with the product through the distribution channel for final delivery to the end use installer of the product.

(e) The certificate of conformity must be in English and include:

(1) Contact information for the manufacturer or importer to include:

- (i) The entity or proprietor name;
- (ii) Street and mailing addresses;
- (iii) Phone number; and
- (iv) Email address;

(2) For products imported into the United States, the contact information must also be included for the manufacturer;

(3) A brief listing of the products to include, when applicable, unique identifying information such as model names and numbers;

(4) A statement attesting that the products meet the lead free requirements of the Safe Drinking Water Act and 40 CFR part 143, subpart B, and also that the manufacturer or importer is eligible to self-certify the product consistent with this regulation;

(5) A statement indicating how the manufacturer or importer verified conformance with the Safe Drinking Water Act and 40 CFR part 143, subpart B; and

(6) The signature, date, name, and position of the signatory; and, if the signatory is an authorized representative of a responsible corporate officer, a general partner, or a proprietor, the name and position of the officer, partner, or proprietor.

(f) Manufacturers or importers that self-certify products must maintain, at a primary place of business within the United States, certificates of conformity and sufficient documentation to confirm that products meet the lead free requirements of this subpart. Sufficient documentation may include detailed schematic drawings of the products indicating dimensions, records of

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calculations of the weighted average lead content of the product, documentation of the lead content of materials used in manufacture, and other documentation used in verifying the lead content of a plumbing device. This documentation and certificates of conformity must be provided upon request to the Administrator as specified in §143.20(b) and must be maintained for at least five (5) years after the last sale of the product by the manufacturer or importer.

(g) The certificate of conformity and documentation must be completed prior to a product's introduction into commerce.

§ 143.20 Compliance provisions.

(a) Noncompliance with the Safe Drinking Water Act or this subpart may be subject to enforcement. Enforcement actions may include seeking injunctive or declaratory relief, civil penalties, or criminal penalties.

(b) The Administrator may, on a case-by-case basis, request any information, such as records deemed necessary to determine whether a person has acted or is acting in compliance with section 1417 of the Safe Drinking Water Act and this subpart. Information, such as records requested, must be provided to the Administrator at a time and in a format as may be reasonably determined by the Administrator.

PART 144—UNDERGROUND INJECTION CONTROL PROGRAM

Subpart A—General Provisions

Sec.

- 144.1 Purpose and scope of part 144.
- 144.2 Promulgation of Class II programs for Indian lands.
- 144.3 Definitions.
- 144.4 Considerations under Federal law.
- 144.5 Confidentiality of information.
- 144.6 Classification of wells.
- 144.7 Identification of underground sources of drinking water and exempted aquifers.
- 144.8 Noncompliance and program reporting by the Director.

Subpart B—General Program Requirements

- 144.11 Prohibition of unauthorized injection.
- 144.12 Prohibition of movement of fluid into underground sources of drinking water.
- 144.13 Prohibition of Class IV wells.

ARTICLE 1. PRIMARY DRINKING WATER REGULATIONS**R18-4-101. Authority and Purpose**

- A. This Chapter is created under the authority of A.R.S. Title 49, Chapter 2, Article 9, and the federal Safe Drinking Water Act, 42 U.S.C. 300f through 300j-26.
- B. The purposes of this Chapter include the following:
 1. To protect the public health and welfare by ensuring that all potable water distributed or sold to the public by public water systems is free from unwholesome, poisonous, deleterious, or other foreign substances, and filth or disease-causing substances or organisms; and
 2. To enable the state to maintain primary enforcement responsibility of the Safe Drinking Water Act, including the requirements of 40 CFR 141 and 142.

Historical Note

Former Section R9-20-504 repealed, new Section R9-20-504 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-504 amended, renumbered as Section R9-20-501, then renumbered as Section R18-4-101 effective October 23, 1987 (Supp. 87-4). R18-4-101 recodified to R18-5-101 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended effective December 8, 1998 (Supp. 98-4). Amended by final rulemaking effective September 23, 1999; the A.A.R. citation was not available at the time of publication and will appear in Supp. 99-4 (Supp. 99-3). Amended by final rulemaking at 5 A.A.R. 4456, effective September 23, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-102. Incorporation by Reference of 40 CFR 141 and 142

- A. Unless otherwise specified in this Chapter, all references to regulations in 40 CFR 141 and 142 in this Chapter refer to the July 1, 2014, version of the regulations. Copies of the incorporated material are available for review at the Arizona Department of Environmental Quality, 1110 W. Washington St., Phoenix, AZ, 85007, and are available from the U.S. General Printing office at <http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.
- B. A reference to a federal statute or regulation in a federal statute or regulation incorporated by reference in this Chapter shall refer to and incorporate by reference the referenced statute or regulation as of the date specified in subsection (A), unless the referenced statute or regulation is incorporated by reference elsewhere in this Chapter in a modified form, in which case the reference shall be to the statute or regulation as incorporated in this Chapter.
- C. Documents incorporated by reference in a federal statute or regulation incorporated by reference in this Chapter are also incorporated by reference in this Chapter, as of the date specified in the federal statute or regulation.
- D. A federal rule incorporated by reference in this Chapter shall include all “Effective Date Notes” associated with the federal rule.
- E. The term “State” or “primacy agency” in the text of a federal statute or regulation incorporated by reference in this Chapter shall mean the Arizona Department of Environmental Quality unless otherwise noted.

Historical Note

Adopted as Section R9-20-502 and renumbered as Section R18-4-102 effective October 23, 1987 (Supp. 87-4). R18-4-102 recodified to R18-5-102 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3). Amended by final rulemaking at 22 A.A.R. 379, effective April 2, 2016 (Supp. 16-1).

R18-4-103. General – 40 CFR 141, Subpart A

- A. 40 CFR 141, Subpart A (40 CFR 141.1 through 141.6), is incorporated by reference as of the date specified in R18-4-102, except for the changes listed in this Section; this incorporation does not include any later amendments or editions.
- B. The definition of “State” in 40 CFR 141.2 is not incorporated by reference. In addition to the terms defined in A.R.S. §§ 49-201 and 49-351, and 40 CFR 141.2, in this Chapter, unless otherwise specified, the terms listed below have the following meanings.

“Air-gap separation” means a physical separation between the discharge end of a supply pipe and the top rim of its receiving vessel of at least 1 inch or twice the diameter of the supply pipe, whichever is greater.

“ANSI/NSF Standard 60” means American National Standards Institute/NSF International Standard 60 - 2014a, Drinking Water Treatment Chemicals - Health Effects, November 17, 2014, incorporated by reference and on file with the Department. This material is available from NSF International, 789 N. Dixboro Road, P.O. Box 130140, Ann Arbor, MI 48113-0140, USA; (734) 769-8010; <http://www.nsf.org>. This incorporation by reference includes no future editions or amendments.

“ANSI/NSF Standard 61” means American National Standards Institute/NSF International Standard 61 - 2014a, Drinking Water System Components - Health Effects, October 19, 2014, incorporated by reference and on file with the Department. This material is available from NSF International, 789 N. Dixboro Road, P.O. Box 130140, Ann Arbor, MI 48113-0140, USA; (734) 769-8010; <http://www.nsf.org>. This incorporation by reference includes no future editions or amendments.

“Backflow” means a reverse flow condition that causes water or mixtures of water and other liquids, gases, or substances to flow back into the distribution system. Backflow can be created by a difference in water pressure (backpressure), a vacuum or partial vacuum (backsiphonage), or a combination of both.

“Backflow-prevention assembly” means a mechanical device used to prevent backflow.

“Capacity” means the overall capability of a water system to consistently produce and deliver water meeting all national and state primary drinking water regulations in effect when new or modified operations begin. Capacity includes the technical, managerial, and financial capacities of the water system to plan for, achieve, and maintain compliance with applicable national and state primary drinking water regulations.

“Capacity development” means improving public water system finances, management, infrastructure, and opera-

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tions, so that the public water system can provide safe drinking water consistently, reliably, and cost-effectively.

“Capacity development report” means an annual report adopted by the Department that describes progress made in improving technical, managerial, or financial capacity of public water systems in Arizona.

“Cross connection” means a physical connection between a public water system and any source of water or other substance that may lead to contamination of the water provided by the public water system through backflow.

“Distribution system” means a pipeline, appurtenance, device, and facility of a public water system that conducts water from a source or water treatment plant to persons served by the system.

“Department” means the Arizona Department of Environmental Quality.

“Double check valve assembly” means a backflow-prevention assembly that contains two independently acting check valves with tightly closing, resilient-seated shut-off valves on each end of the assembly and properly located, resilient-seated test cocks.

“Elementary business plan” means a document containing all of the items necessary for a complete review of the technical, managerial, and financial capacity of a new public water system under Article 6 of this Chapter.

“Entry point to the distribution system” means a compliance sampling point anywhere on a finished water line that is representative of a water source and located after the well, surface water intake, treatment plant, storage tank, or pressure tank, whichever is last in the process flow, but prior to where the water is discharged into the distribution system and prior to the first service connection.

“EPA” means the United States Environmental Protection Agency.

“Exclusion” means a waiver granted by the Department under R18-4-219 from a requirement of this Chapter that is not a requirement contained in a federal drinking water law.

“Exemption” means a form of temporary relief from a maximum contaminant level or treatment technique granted by the Department to a public water system, pending installation and operation of treatment facilities, acquisition of an alternate source, or completion of improvements in treatment processes to bring the system into compliance with drinking water regulations.

“Financial capacity” means the ability of a public water system to acquire and manage sufficient financial resources for the system to achieve and maintain compliance with the federal Safe Drinking Water Act.

“Groundwater system” means a public water system that is supplied solely by groundwater that is not under the direct influence of surface water.

“Lead-free” has the same meaning prescribed in A.R.S. § 49-353(B).

“Major stockholder” means a person who has 20% or more ownership interest in a public water system.

“Master priority list” means a list created by the Department that ranks public water systems according to the criteria in R18-4-803.

“Monitoring assistance program” means the program established by A.R.S. § 49-360 to assist public water systems with mandatory monitoring for contaminants and administered by the Department under 18 A.A.C. 4.

“Operational assistance” means professional or financial assistance provided to a public water system to improve the technical, managerial, or financial operations of the public water system.

“Protected water source” means a groundwater source that:

- Meets the requirements of A.A.C. R18-5-502(D);
- Is not located within 100 feet of a drywell as defined by A.R.S. § 49-331(3), and
- Is not located within 100 feet of a condition that can constitute an environmental nuisance as described in A.R.S. § 49-141(A).

“Reduced pressure principle backflow-prevention assembly” means a backflow-prevention assembly that contains two independently acting check valves; a hydraulically operating, mechanically independent pressure differential relief valve located between the two check valves; tightly closing, resilient seated shut-off valves on each end of the check valve assembly; and properly located resilient seated test cocks.

“Service connection” means a location at the meter or, in the absence of a meter, at the curbstop or building inlet.

“Service line” means the water line that runs from the corporation stop at a water main to the building inlet, including any pigtail, gooseneck, or fitting.

“State” means the Arizona Department of Environmental Quality, except during any time period during which the Department does not have primary enforcement responsibility pursuant to Section 1413 of the Act, the term “State” means the Regional Administrator of EPA Region 9.

“System evaluation assistance” means assistance provided to assess the status of the public water system's technical, managerial, and financial components, with emphasis on infrastructure status.

“Technical assistance” means operational assistance, system evaluation assistance, or both.

“Treatment” means a process that changes the quality of water by physical, chemical, or biological means.

“Treatment technique” means a treatment procedure promulgated by EPA in lieu of an MCL.

“Variance” means relief from a maximum contaminant level or treatment technique granted by the Department to a public water system when characteristics of a system's raw water source preclude the system from complying with maximum contaminant levels prescribed by drinking water regulations, despite application of best technology, treatment techniques, or other means available to the system.

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“Water main” means a pipe that is exterior to buildings and is used to distribute drinking water to more than one property.

“Water Infrastructure Finance Authority” means the entity created under A.R.S. § 49-1201 et seq. to provide financial assistance to political subdivisions, Indian tribes, and eligible drinking water facilities for constructing, acquiring, or improving wastewater treatment facilities, drinking water facilities, nonpoint source projects, and other related water quality facilities and projects.

“Water treatment plant” means a process, device, or structure used to improve the physical, chemical, or biological quality of the water in a public water system. A booster chlorination facility that is designed to maintain an effective disinfectant residual in water in the distribution system is not a water treatment plant.

C. 40 CFR 141.4, entitled “variances and exemptions,” is incorporated by reference subject to the following modifications:

1. The phrase “entity with primary enforcement responsibility” is changed to “Department.”
2. When reviewing and acting on requests for variances and exemptions, the Department shall act in accordance with the procedures at 42 U.S.C. 300g-4 and 300g-5 (2004) of the Act (Public Health Service Act §§ 1415 and 1416), including:
 - a. The Department shall require a public water system granted a variance under subsection (C) to comply with the requirements in a compliance schedule as expeditiously as practicable.
 - b. The Department shall promptly notify EPA of all variances and exemptions granted by the Department in the manner specified in the Act.
 - c. The Department shall enforce a schedule or other requirement on which a variance or exemption is conditioned under 42 U.S.C. 300g-3 and A.R.S. § 49-354, as if the schedule or other requirement is part of a national primary drinking water regulation incorporated by reference in this Chapter.
 - d. “Treatment technique requirement,” for the purpose of subsection (C), means a requirement in a national primary drinking water regulation which specifies for a contaminant, in accordance with 42 U.S.C. 300f(1)(C)(ii), each treatment technique known to lead to a reduction in the level of the contaminant sufficient to satisfy the requirements of 42 U.S.C. 300g-1(b).
 - e. If the Department grants a variance or exemption, the Department shall prescribe:
 - i. A compliance schedule that includes increments of progress or measures to develop an alternative source of water supply; and
 - ii. An implementation schedule that includes such control measures as the Department deems necessary for each contaminant.

D. 40 CFR 142, 142.2, 142.20, and Subparts E, F, G, and K, are incorporated by reference as of the date specified in R18-4-102, with the following changes; this incorporation does not include any later amendments or editions. The following substitutions are to be applied in the listed order.

1. 40 CFR 142.46, 142.302, 142.313 are not incorporated by reference.
2. 40 CFR 142.20(a), (b). The phrase “States with primary enforcement responsibility” is changed to “the Department”; the second sentences in 142.20(a) and 142.20(b) are deleted.

3. 40 CFR 142.60(b), 142.61(b). The phrase “Administrator in a state that does not have primary enforcement responsibility or a state with primary enforcement responsibility (primacy state) that issues variances” is changed to “Department.”
4. 40 CFR 142.40(a), (b); 142.41; 142.50(a); 142.51. The phrase “a State that does not have primary enforcement responsibility” is changed to “Arizona.”
5. 40 CFR 142.60(b), (c), (d); 142.61(b), (c). The phrase “Administrator or [‘primacy’ or ‘primary’] state that issues variances” is changed to “Department.”
6. 40 CFR 142.60(b), (d); 142.61(b), (d); 142.62(e), (g)(1); 142.65(a)(4). The phrase “Administrator or [the] primacy state” is changed to “Department”; the phrase “Administrator’s or primacy state’s” is changed to “Department’s.”
7. In 40 CFR 142, Subpart K:
 - a. The phrases “[‘a’ or ‘the’] State or [the] Administrator,” “Administrator or State,” “the public water system, State and the Administrator,” and “a State exercising primary enforcement responsibility for public water systems (or the Administrator for other systems)” are changed to “the Department.”
 - b. 40 CFR 142.301. The last sentence is deleted.
 - c. 40 CFR 142.303(b). The phrase “a State exercising primary enforcement responsibility for public water systems” is changed to “the Department.”
 - d. 40 CFR 142.306(b)(2). The phrase “(or by the Administrator in States which do not have primary enforcement responsibility)” is deleted.
 - e. 40 CFR 142.308(a), 142.309(c). The phrase “the State, Administrator, or [the] public water system as directed by the State or Administrator” is changed to “the Department or the public water system, as determined by the Department.”
 - f. 40 CFR 142.308(b). The text of this subsection is replaced by the following: “At the time of proposal, the Department must publish a notice in the *Arizona Administrative Register* or a newspaper or newspapers of wide circulation in the affected region of the State. This notice shall include the information listed in paragraph (c) of this section.”
 - g. 40 CFR 142.308(c)(7). The phrase “the primacy agency” is changed to “the Department.”
8. In all parts of 40 CFR 142 incorporated by reference other than Subpart K, the term “Administrator” is changed to “Department”; the pronoun “he” is changed to “the Department”; and the pronoun “his” is changed to “the Department’s.”
9. In all parts of 40 CFR 142 incorporated by reference, the term “a state” or “the state” is changed to “the Department”; the term “the State’s” is changed to “the Department’s.”
10. 40 CFR 142.62(h)(3). The term “State-approved” is changed to “Department-approved.”
11. In 40 CFR 142.44(b). The text of this subsection is replaced by the following: “Public notice of an opportunity for hearing on a variance schedule shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed schedule, and shall meet the notice requirements of A.A.C. R18-1-401.”
12. In 40 CFR 142.54(b). The text of this subsection is replaced by the following: “Public notice of an opportunity for hearing on an exemption schedule shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed schedule,

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and shall meet the notice requirements of A.A.C. R18-1-401.”

13. 40 CFR 142.44(d), 142.54(d). The third, fourth, and fifth sentences of these subsections are deleted.
14. 40 CFR 142.44(e), 142.54(e). The text of these subsections is replaced by the following: “A hearing convened pursuant to paragraph (d) of this section shall be conducted according to the procedural requirements of A.A.C. R18-1-402.”

- E. 40 CFR 141.5 is not incorporated by reference.

Historical Note

Former Section R9-20-505 repealed, new Section R9-20-505 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-505 amended, renumbered as Section R9-20-503, then renumbered as Section R18-4-103 effective October 23, 1987 (Supp. 87-4). R18-4-103 recodified to R18-5-103 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Section R18-4-103 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3). Amended by final rulemaking at 22 A.A.R. 379, effective April 2, 2016 (Supp. 16-1).

R18-4-104. Maximum Contaminant Levels – 40 CFR 141, Subpart B

40 CFR 141, Subpart B (40 CFR 141.11 through 141.13), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Former Section R9-20-506 repealed, new Section R9-20-506 adopted effective November 1, 1979 (Supp. 79-6). Amended effective March 19, 1980 (Supp. 80-2). Former Section R9-20-506 amended, renumbered as Section R9-20-504, then renumbered as Section R18-4-104 effective October 23, 1987 (Supp. 87-4). R18-4-104 recodified to R18-5-104 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended effective December 8, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Amended under R1-1-109(B) to correct a manifest clerical error; subsection R18-4-104(J)(3) moved to its proper place as subsection R18-4-104(K)(3); compare at 8 A.A.R. 3086, July 26, 2002 (Supp. 03-1). Section R18-4-104 renumbered to R18-4-211; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-105. Monitoring and Analytical Requirements – 40 CFR 141, Subpart C

- A. 40 CFR 141, Subpart C (40 CFR 141.21 through 141.29 and Appendix A), is incorporated by reference as of the date specified in R18-4-102, subject to the modifications specified in this Section; this incorporation does not include any later amendments or editions.
- B. 40 CFR 141.21(c)(2), 141.21(d) and 141.21(f) are not incorporated by reference.
- C. 40 CFR 141.22: the last sentence of 141.22(a) is replaced by the following: “Turbidity measurements shall be made using analytical methods approved by EPA and the Arizona Department of Health Services.”

- D. 40 CFR 141.23(k) is not incorporated by reference.
- E. 40 CFR 141.24(f)(17), 141.24(f)(20), and 141.24(h)(19) are not incorporated by reference.
- F. 40 CFR 141.25: the following text replaces the text of 40 CFR 141.25(a) and (b): “Analysis for the following contaminants shall be conducted to determine compliance with 40 CFR 141.66 (radioactivity) using analytical methods approved by EPA and the Arizona Department of Health Services:
 1. Naturally occurring contaminants: gross alpha and beta, gross alpha, radium 226, radium 228, and uranium.
 2. Man-made contaminants: radioactive cesium, radioactive iodine, radioactive strontium 89, 90, tritium, and gamma emitters.”
- G. 40 CFR 141.27, alternate analytical techniques, is not incorporated by reference; the following text is substituted in its place: “The use of an alternate analytical technique approved by EPA and the Arizona Department of Health Services shall not decrease the frequency of monitoring required by this Chapter.”
- H. 40 CFR 141.28:
 1. In 40 CFR 141.28(a), the term “State” is changed to “Arizona Department of Health Services.”
 2. In 40 CFR 141.28(b), the term “State” is changed to “Arizona Department of Health Services or Arizona Department of Environmental Quality.”
 3. A new subsection (c) is added: “A laboratory that performs drinking water analysis in Arizona shall be certified by EPA or the Arizona Department of Health Services.”

Historical Note

Former Section R9-20-507 repealed, new Section R9-20-507 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-507 amended, renumbered as Section R9-20-505, then renumbered as Section R18-4-105 effective October 23, 1987 (Supp. 87-4). R18-4-105 recodified to R18-5-105 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Section repealed by final rulemaking at 8 A.A.R. 3046, effective May 6, 2002 (Supp. 02-3). New Section R18-4-105 renumbered from R18-4-105.01 at 8 A.A.R. 2756, effective June 6, 2002 (Supp. 02-3). Subsection citation in part 4 of Table 2 corrected (Supp. 04-1). Section R18-4-105 and Tables 1 through 4 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3). Amended by final rulemaking at 22 A.A.R. 379, effective April 2, 2016 (Supp. 16-1).

R18-4-105.01. Renumbered**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3046, effective May 6, 2002 (Supp. 02-3). Section renumbered to R18-4-105 at 8 A.A.R. 2756, effective June 6, 2002 (Supp. 02-3).

R18-4-106. Reporting and Recordkeeping – 40 CFR 141, Subpart D

- A. 40 CFR 141, Subpart D (40 CFR 141.31 through 141.35), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions. The requirements in the following subsections are in addition to the requirements of 40 CFR 141, Subpart D.
- B. Department reporting forms. A public water system shall report to the Department the results of all analyses completed under this Chapter on Department-approved forms.

- C. Direct reporting. A public water system may contract with a laboratory or another agent to report monitoring results to the Department, but the public water system remains legally responsible for compliance with reporting requirements.

Historical Note

Adopted effective March 19, 1980 (Supp. 80-2). Former Section R9-20-508 amended, renumbered as Section R9-20-506, then renumbered as Section R18-4-106 effective October 23, 1987 (Supp. 87-4). Amended subsection (F) effective November 30, 1988 (Supp. 88-4). R18-4-106 recodified to R18-5-106 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-106 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-107. Special Regulations, Including Monitoring Regulations and Prohibition on Lead Use – 40 CFR 141, Subpart E 40 CFR 141, Subpart E (40 CFR 141.40 through 141.43), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Former Section R9-20-509 repealed, new Section R9-20-509 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-509 amended, renumbered as Section R9-20-507, then renumbered as Section R18-4-107 effective October 23, 1987 (Supp. 87-4). Amended subsection (B) effective November 30, 1988 (Supp. 88-4). R18-4-107 recodified to R18-5-107 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-107 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-108. Maximum Contaminant Level Goals and Maximum Residual Disinfectant Level Goals – 40 CFR 141, Subpart F 40 CFR 141, Subpart F (40 CFR 141.50 through 141.55), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Former Section R9-20-510 repealed, new Section R9-20-510 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-510 amended, renumbered as Section R9-20-508, then renumbered as Section R18-4-108 effective October 23, 1987 (Supp. 87-4). Amended subsection (D) effective November 30, 1988 (Supp. 88-4). R18-4-108 recodified to R18-5-108 (Supp. 95-2). New Section R18-4-108 renumbered from R18-4-109 and amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-108 renumbered to R18-4-205; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-109. Primary Drinking Water Regulations: Maximum Contaminant Levels and Maximum Residual Disinfectant Levels – 40 CFR 141, Subpart G 40 CFR 141, Subpart G (40 CFR 141.60 through 141.66), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Former Section R9-20-511 repealed, new Section R9-20-511 adopted effective November 1, 1979 (Supp. 79-6).

Former Section R9-20-511 amended, renumbered as Section R9-20-509, then renumbered as Section R18-4-109 effective October 23, 1987 (Supp. 87-4). R18-4-109 recodified to R18-5-109 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Former Section R18-4-109 renumbered to R18-4-108; new Section R18-4-109 made by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-109 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-110. Filtration and Disinfection – 40 CFR 141, Subpart H

- A. 40 CFR 141, Subpart H (40 CFR 141.70 through 141.76), is incorporated by reference as of the date specified in R18-4-102, subject to the modifications specified in this Section; this incorporation does not include any later amendments or editions.
- B. The text of 40 CFR 141.74(a) is replaced by the following: “*Analytical requirements.* In order to demonstrate compliance with the requirements of this Part, public water systems shall use analytical methods approved by EPA and the Arizona Department of Health Services for monitoring under this Part.”

Historical Note

Former Section R9-20-512 repealed, new Section R9-20-512 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-512 amended, renumbered as Section R9-20-510, then renumbered as Section R18-4-110 effective October 23, 1987 (Supp. 87-4). Amended subsection (B) effective November 30, 1988 (Supp. 88-4). R18-4-110 recodified to R18-5-110 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-110 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-111. Control of Lead and Copper – 40 CFR 141, Subpart I

- A. 40 CFR 141, Subpart I (40 CFR 141.80 through 141.91), is incorporated by reference as of the date specified in R18-4-102, subject to the modifications specified in this Section; this incorporation does not include any later amendments or editions.
- B. The first sentence of 40 CFR 141.89(a) is replaced by the following: “Analyses for lead, copper, pH, conductivity, calcium, alkalinity, orthophosphate, silica, and temperature shall be conducted using analytical methods approved by EPA and the Arizona Department of Health Services. Analyses under this section for lead and copper shall be conducted by laboratories that have been certified by EPA or the Arizona Department of Health Services.”
- C. The text of 40 CFR 141.89(a)(1) is not incorporated by reference.

Historical Note

Adopted as Section R9-20-511 and renumbered as Section R18-4-111 effective October 23, 1987 (Supp. 87-4). R18-4-111 recodified to R18-5-111 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-111 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-112. Use of Non-Centralized Treatment Devices – 40 CFR 141, Subpart J

40 CFR 141.101 is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Former Section R9-20-517 repealed, new Section R9-20-517 adopted effective November 1, 1979 (Supp. 79-6). Amended effective March 19, 1980 (Supp. 80-2). Former Section R9-20-517 amended, renumbered as Section R9-20-512, then renumbered as Section R18-4-112 effective October 23, 1987 (Supp. 87-4). R18-4-112 recodified to R18-5-112 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-112 renumbered to R18-4-219; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-113. Treatment Techniques – 40 CFR 141, Subpart K
40 CFR 141, Subpart K (40 CFR 141.110 through 141.111), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Adopted as Section R9-20-513 and renumbered as Section R18-4-113 effective October 23, 1987 (Supp. 87-4). Amended subsections (A) and (C) effective November 30, 1988 (Supp. 88-4). R18-4-113 recodified to R18-5-113 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-113 repealed; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-114. Disinfectant Residuals, Disinfection Byproducts, and Disinfection Byproduct Precursors – 40 CFR 141, Subpart L

- A. 40 CFR 141, Subpart L (40 CFR 141.130 through 141.135), is incorporated by reference as of the date specified in R18-4-102, subject to the modifications specified in this Section; this incorporation does not include any later amendments or editions.
- B. 40 CFR 141.131 is not incorporated by reference.
- C. In order to demonstrate compliance with the requirements of this Chapter:
 1. Public water systems shall use analytical methods approved by EPA and the Arizona Department of Health Services for monitoring under this Chapter; and
 2. Analyses of drinking water samples shall be conducted by laboratories that have been certified by EPA or the Arizona Department of Health Services.
- D. A party approved by the Department shall measure daily chlorine samples at the entrance to the distribution system.
- E. A public water system may measure residual disinfectant concentrations for chlorine, chloramines, and chlorine dioxide by using N,N-diethyl-p-phenylenediamine (DPD) colorimetric test kits. A party approved by the Department shall measure residual disinfectant concentration.

Historical Note

Former Section R9-20-519 repealed, new Section R9-20-519 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-519 amended, renumbered as Section R9-20-514, then renumbered as Section R18-4-114 effective October 23, 1987 (Supp. 87-4). R18-4-114 recodified to R18-5-114 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-114 renumbered to R18-4-202; new Section made by final rulemaking at 14 A.A.R. 2978, effective August

30, 2008 (Supp. 08-3).

R18-4-115. Renumbered**Historical Note**

Former Section R9-20-520 repealed, new Section R9-20-520 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-520 amended, renumbered as Section R9-20-515, then renumbered as Section R18-4-115 effective October 23, 1987 (Supp. 87-4). R18-4-115 recodified to R18-5-115 (Supp. 95-2). New Section adopted effective April 28, 1995 (Supp. 95-2). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-115 renumbered to R18-4-215 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-116. Renumbered**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Section R18-4-116 renumbered to R18-4-204 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-117. Consumer Confidence Reports – 40 CFR 141, Subpart O

40 CFR 141, Subpart O (40 CFR 141.151 through 141.155 and Appendix A), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Section R18-4-117 renumbered to R18-4-209; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-118. Enhanced Filtration and Disinfection - Systems Serving 10,000 or More People – 40 CFR 141, Subpart P

40 CFR 141, Subpart P (40 CFR 141.170 through 141.175), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-118 renumbered to R18-4-208; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-119. Public Notification of Drinking Water Violations – 40 CFR 141, Subpart Q

40 CFR 141, Subpart Q (40 CFR 141.201 through 141.211 and Appendices A, B, and C), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Former Section R18-4-215 renumbered R18-4-119 pursuant to R1-1-404 effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-119 renumbered to R18-4-213; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-120. Renumbered**Historical Note**

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective December 8, 1998 (Supp. 98-4). Section R18-4-

120 renumbered to R18-4-206 by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-121. Ground Water Rule – 40 CFR 141, Subpart S

- A.** 40 CFR Part 141, Subpart S (40 CFR 141.400 through 141.405), is incorporated by reference as of the date specified in R18-4-102, subject to the modifications specified in this Section; this incorporation does not include any later amendments or editions.
- B.** 40 CFR 141.402(a)(4) is modified as follows:
Consecutive and wholesale systems.
- (i) In addition to the other requirements of this paragraph (a), a consecutive ground water system that has a total coliform-positive sample, collected under § 141.21(a) until March 31, 2016 or under §§ 141.854 through 141.857 beginning April 1, 2016, within 24 hours of being notified of the total coliform-positive sample must:
 - (A) Notify the wholesale system(s) and,
 - (B) Collect a sample from its consecutive connection with the wholesale ground water system and analyze it for a fecal indicator under paragraph (c) of this section.
 - (ii) If the sample collected under paragraph (a)(4)(i)(B) of this section is fecal indicator-positive, within 24 hours:
 - (A) The consecutive system must notify the wholesale ground water system, and
 - (B) Both systems must consult with the Department on additional sampling to meet the requirements of paragraph (a)(3) of this section.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective June 3, 1998 (Supp. 98-3). Section R18-4-121 renumbered to R18-4-201; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3). Amended by final rulemaking at 22 A.A.R. 379, effective April 2, 2016 (Supp. 16-1).

R18-4-122. Enhanced Filtration and Disinfection – Systems Serving Fewer Than 10,000 People – 40 CFR 141, Subpart T
40 CFR 141, Subpart T (40 CFR 141.500 through 141.571), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Amended effective December 8, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Section R18-4-122 renumbered to R18-4-207; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

Appendix A. Renumbered

Historical Note

New Appendix made by final rulemaking at 8 A.A.R. 973, effective February 19, 2002 (Supp. 02-1). Appendix A repealed; new Appendix A made by final rulemaking at 8 A.A.R. 3046, effective May 1, 2002 (Supp. 02-3). Appendix A renumbered to a position after R18-4-125 at 8 A.A.R. 2756, effective June 6, 2002 (Supp. 02-3).

R18-4-123. Initial Distribution System Evaluations – 40 CFR 141, Subpart U

40 CFR 141, Subpart U (40 CFR 141.600 through 141.605), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Adopted effective April 28, 1995 (Supp. 95-2). Section R18-4-123 renumbered to R18-4-216; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-124. Stage 2 Disinfection Byproducts Requirements – 40 CFR 141, Subpart V

40 CFR 141, Subpart V (40 CFR 141.620 through 141.629), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Adopted effective February 9, 1996 (Supp. 96-1). Section R18-4-124 renumbered to R18-4-203; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-125. Enhanced Treatment For *Cryptosporidium* – 40 CFR 141, Subpart W

40 CFR 141, Subpart W (40 CFR 141.700 through 141.723), is incorporated by reference as of the date specified in R18-4-102; this incorporation does not include any later amendments or editions.

Historical Note

Adopted effective February 9, 1996 (Supp. 96-1). Section R18-4-125 renumbered to R18-4-214; new Section made by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

R18-4-126. Revised Total Coliform Rule 40 CFR Part 141, Subpart Y

- A.** 40 CFR Part 141, Subpart Y (40 CFR 141.851 through 141.861), is incorporated by reference as of the date specified in R18-4-102, subject to modifications specified in this Section; this incorporation does not include any later amendments or editions.
- B.** 40 CFR 141.851(d), 141.852, 141.853(c)(2), and 141.854(h)(2)(i) – (ii) are not incorporated by reference.

Historical Note

New Section made by final rulemaking at 22 A.A.R. 379, effective April 2, 2016 (Supp. 16-1).

Appendix A. Repealed

Historical Note

Appendix A renumbered from a position after R18-4-122 to a position after R18-4-125 at 8 A.A.R. 2756, effective June 6, 2002 (Supp. 02-3). Subsection citation in Appendix A corrected (Supp. 04-1). Appendix A repealed by final rulemaking at 14 A.A.R. 2978, effective August 30, 2008 (Supp. 08-3).

ARTICLE 2. STATE DRINKING WATER REGULATIONS

R18-4-201. Enforcement

- A.** A water supplier who constructs, operates, or maintains a public water system contrary to the provisions of this Chapter or fails to maintain the quality of water within the public water system as required by this Chapter is subject to the actions provided in A.R.S. §§ 49-142 and 49-354.
- B.** If the Department determines that a public water system is not in compliance with any of the provisions of this Chapter, the Department may issue an order to the water supplier that requires the public water system to make no further service connections or that limits the number of service connections until the Department determines that the public water system achieves compliance.
- C.** The Department may determine compliance or initiate enforcement action based upon analytical results and other

49-353. Duties of director; rules; prohibited lead use

A. The director shall:

1. Exercise general supervision over all matters related to water quality control of public water systems throughout this state.

2. Prescribe rules regarding the production, treatment, distribution and testing of potable water by public water systems, except that such rules shall not apply to irrigation, industrial or similar systems where the water is used for nonpotable purposes. The rules shall comply with at least the following:

(a) The requirements established by the United States environmental protection agency for state primary enforcement responsibility of the safe drinking water act, including the requirements of 40 Code of Federal Regulations parts 141 and 142.

(b) Require that the plans and specifications for all public water systems, including water treatment plants, distribution systems, distribution system extensions, water treatment methods and devices and all appurtenances and devices for sale to be used in water supplies and public water systems be submitted with a fee for review to the department. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section. Monies collected from the fees shall be deposited in the water quality fee fund established by section 49-210. The director may require that plans and specifications for public water systems include programs to meet future needs for drinking water and to supply specified minimum quantities of drinking water. The director shall:

(i) Require that a new public water system demonstrate that the system possesses adequate managerial and financial capacity to operate in compliance with this article and the rules adopted pursuant to this article.

(ii) Accept adequate findings of other public authorities regarding the adequate managerial and financial capacity of a public water system to operate in compliance with this article and the rules adopted pursuant to this article.

(c) Provide that no public water system, including a water treatment plant, distribution system, distribution system extension, water treatment method or device, appurtenance and device used in water supplies or public water systems be constructed, reconstructed, installed or initiated before compliance with the standards and rules has been demonstrated by approval of the plans and specifications by the department. The rules shall prescribe minimum standards for the bacteriological, physical and chemical quality of water distributed through public water systems. The director of environmental quality may consult with the director of the department of health services in developing these standards.

(d) Provide for a simplified administrative procedure for approving structural revisions, additions, extensions or modifications to existing small public water systems for potable water serving a population of three thousand three hundred or fewer persons.

(e) Exempt from the plan review requirements of this paragraph, including any requirements for approval to construct or approval of construction, any structural revisions, additions, extensions or modifications to public water systems which are in compliance with the department's rules applicable to those systems or which are making satisfactory progress towards compliance under a schedule approved by the department if either of the following conditions is satisfied:

(i) The revision, addition, extension or modification has a project cost of twelve thousand five hundred dollars or less.

(ii) The revision, addition, extension or modification is made to a water line which is not for a subdivision requiring plat approval by a city, town or county, and has a project cost of more than twelve thousand five

hundred dollars but less than fifty thousand dollars, the design of which is sealed by a professional engineer registered in this state and the construction of which is reviewed for conformance with the design by a professional engineer.

(f) Require a notice of compliance with the conditions for exemption on the completion of any revisions, additions, extensions or modifications completed in accordance with subdivision (e) of this paragraph.

(g) Provide for the submission of samples at stated intervals.

(h) Provide for inspection and certification of such water supplies.

(i) Provide for the abatement as public nuisances of any premises, equipment, process or device, or public water system that does not comply with the minimum standards and rules.

(j) Provide for records regarding water quality to be kept by owners and operators of the public water systems and that reports regarding water quality be filed with the department.

(k) Provide for appropriate actions to be taken if a water supply does not meet the standards established by the department.

(l) Require a public water system to implement a specified program to control contamination from backflow, backsiphonage or cross connection. All such programs shall be consistent with section 37-1388.

(m) Require that public water systems identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from either or both of the following:

(i) The lead content in the construction materials of the public water distribution system.

(ii) Corrosivity of the water supply sufficient to cause leaching of lead.

(n) Provide for relief from water testing and monitoring requirements for public water systems qualifying under the federal safe drinking water act (P.L. 93-523; 88 Stat. 1661; P.L. 95-190; 91 Stat. 1393; P.L. 104-182; 110 Stat. 1613), as amended in 1996.

3. Develop and implement strategies to assist public water systems in acquiring and maintaining the technical, managerial and financial capacity to operate in compliance with this article and the rules adopted pursuant to this article. Assistance may be provided based on the needs of the water system.

B. Pipes, pipe fittings and plumbing fittings and fixtures having a lead content in excess of a weighted average of one-quarter of one percent lead when used with respect to the wetted surfaces and solders and flux having a lead content in excess of two-tenths of one percent shall not be used in the installation or repair of public water systems or of any plumbing in residential or nonresidential facilities providing water for human consumption. The weighted average lead content of a pipe, pipe fitting or plumbing fitting or fixture shall be calculated as follows:

1. For each wetted component, the percentage of lead in the component shall be multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to arrive at the weighted percentage of lead of the component.

2. The weighted percentage of lead of each wetted component shall be added together, and the sum of these weighted percentages shall constitute the weighted average lead content of the product.

3. The lead content of the material used to produce a wetted component shall be used to determine compliance with this subsection.

4. For lead content of materials that are provided as a range, the maximum content of that range shall be used.

C. Subsection B of this section does not apply to:

1. Leaded joints necessary for the repair of cast iron pipes.
2. Pipes, pipe fittings and plumbing fittings and fixtures, including backflow preventers, that are used exclusively for nonpotable water services such as manufacturing, industrial processing, irrigation, outdoor watering or any other uses where the water is not anticipated to be used for human consumption.
3. Toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves or service saddles or water distribution main gate valves that are two inches in diameter or larger.

D. Notwithstanding subsection A, paragraph 2, subdivision (c) of this section, a public water system may construct, reconstruct, install, extend or initiate a water supply system, water treatment plant, distribution system, water treatment method or device, or appurtenance that is used in water supply or in a public water system when the system is out of compliance with standards and rules adopted pursuant to this article only if the construction is necessary to correct the system's noncompliance.

E. This section and the rules adopted pursuant to this section apply to public water systems as described by section 49-352, subsection B.

49-353.01. Duties of director; rules; standards; water supply; definition

A. The director shall adopt rules which prescribe minimum standards for the:

1. Sanitary facilities and conditions that shall be maintained by any public water system.
2. Chemicals, additives and drinking water system components that come into contact with drinking water that is used by any domestic or industrial water supply and that is sold or distributed to the public.

B. Chemicals and additives certified as conforming to the national sanitation foundation standards comply with the standards required by this section.

C. In those instances where chemicals, additives and drinking water system components that come into contact with drinking water are essential to the design, construction or operation of the drinking water system and have not been certified by the national sanitation foundation or have national sanitation foundation certification but are not available from more than one source, the standards shall provide for the use of alternatives which include:

1. Chemicals and additives composed entirely of ingredients determined by the environmental protection agency, the food and drug administration or other federal agencies as appropriate for addition to potable water or aqueous food.
2. Chemicals and additives composed entirely of ingredients listed in the national academy of sciences water chemicals codex.
3. Chemicals, additives and drinking water system components consistent with the specifications of the American water works association.
4. Chemicals, additives and drinking water system components that are designed for use in drinking water systems and that are consistent with the specifications of the American society for testing and materials.
5. Drinking water system components that are historically used or in use in drinking water systems consistent with standard practice and that have not been demonstrated during past applications in the United States to contribute to water contamination.

D. Except as identified by the department as an alternative in accordance with this section at or after the time of use or installation, drinking water system components installed and used after January 1, 1993 shall conform to the national sanitation foundation standards.

E. The director of the department of environmental quality may consult with the director of the department of health services in developing the standards prescribed by this section.

F. For the purposes of this section, "drinking water system components" means equipment and materials that are used in a drinking water system, including process media, protective materials, joining and sealing materials, pipes and related products, mechanical devices and mechanical plumbing devices.

DEPARTMENT OF HEALTH SERVICES

Title 9, Chapter 25

Amend: R9-25-701, R9-25-703, R9-25-704, R9-25-705, R9-25-7010, R9-25-711,
R9-25-712, R9-25-801, R9-25-803, R9-25-804



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: June 6, 2023

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 3, 2023

SUBJECT: DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 25

Amend: R9-25-701, R9-25-703, R9-25-704, R9-25-705, R9-25-7010, R9-25-711,
R9-25-712, R9-25-801, R9-25-803, R9-25-804

Summary:

This expedited rulemaking with the Department of Health Services (Department) seeks to amend ten (10) rules in Title 9, Chapter 25 related to Air Ambulance Services. The Department is required to adopt standards and criteria pertaining to the quality of emergency care, rules necessary for the operation of emergency medical services, and requirements related to operating an air ambulance service. Article 7 establishes requirements for licensing air ambulance services to ensure the health and safety of patients being transported, and Article 8 establishes requirements for registering air ambulances.

The Department determined that some rules may conflict with the authority of the Federal Aviation Administration to regulate aircrafts and thus received approval to conduct a rulemaking to clarify the Department's authority and reduce their regulatory burden.

A 5YRR for Article 7 and 8 was due June 2022, but was rescheduled on May 3, 2022 with a new due date of June 2027. The rules were adopted in April 2006 and R9-25-701, R9-25-704, and R9-25-711 were revised by exempt rulemaking in 2013.

1. **Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?**

The Department states the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)(3) because the rulemaking amends rules to clarify requirements to alleviate any confusion as to the Department's authority, and A.R.S. § 41-1027(A)(5) because the rulemaking reduces the number of documents required as part of an application.

2. **Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

The Department cites both general and specific statutory authority for these rules.

4. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

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

5. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

The Department indicates that the final rules are not a substantial change, considered as a whole, from the proposed rules and any supplemental proposals.

6. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

The Department indicates that this subsection does not apply as there is no federal law applicable to this rule.

7. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Department indicates that they consider certain air ambulance service licenses as general permits because the Department is authorized to issue a certificate of registration for operation of an aircraft as an air ambulance if the aircraft meets the criteria established by statute and rule. The Department considers the certificate of registration to be a general permit and is therefore in compliance with A.R.S. § 41-1037.

8. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The Department did not review or rely on any study for this rulemaking.

9. Conclusion

This expedited rulemaking with the Department of Health Services (Department) seeks to amend ten rules in Title 9, Chapter 25. Specifically, the Department is updating rules that may conflict with the authority of the Federal Aviation Administration to regulate aircrafts. The Department satisfies the criteria for expedited rulemaking under A.R.S. § 41-1027(A)(3) and A.R.S. § 41-1027(A)(5) and Council staff recommend approval.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

April 13, 2023

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Chair

Governor's Regulatory Review Council

Arizona Department of Administration

100 N. 15th Avenue, Suite 305

Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 25, Articles 7 and 8, Expedited Rulemaking

Dear Ms. Sornsin:

1. The close of record date: April 10, 2023
2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of regulated persons. The Department was made aware that some requirements in the current rules in 9 A.A.C. 25, Articles 7 and 8, may be construed as being in conflict with and impinging on the authority of the Federal Aviation Administration to regulate aircraft. The rulemaking amends rules to clarify requirements to alleviate any confusion as to the Department's authority, as provided in A.R.S. § 41-1027(A)(3), as well as to reduce the number of documents required as part of an application, as provided in A.R.S. § 41-1027(A)(5).
3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking for 9 A.A.C. 25, Articles 7 and 8, does not relate to a five-year-review report.
4. A list of all items enclosed:
 - a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule
 - b. Statutory authority
 - c. Current rule

The Department is requesting that the rules be heard at the Council meeting on June 6, 2023.

Katie Hobbs | Governor Jennie Cunico | Acting Director

I certify that the Preamble of this rulemaking discloses a reference to any study relevant to the rule that the Department reviewed and either did or did not rely on in its evaluation of or justification for the rule.

The Department's point of contact for questions about the rulemaking documents is Ruthann Smejkal at Ruthann.Smejkal@azdhs.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Stacie Gravito". The signature is stylized with large, flowing loops and a prominent "S" at the beginning.

Stacie Gravito
Director's Designee

SG:rms

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING
TITLE 9. HEALTH SERVICES
CHAPTER 25. DEPARTMENT OF HEALTH SERVICES
EMERGENCY MEDICAL SERVICES

PREAMBLE

- 1. Article, Part or Sections Affected (as applicable)**

<u>Article, Part or Sections Affected (as applicable)</u>	<u>Rulemaking Action</u>
R9-25-701	Amend
R9-25-703	Amend
R9-25-704	Amend
R9-25-705	Amend
R9-25-710	Amend
R9-25-711	Amend
R9-25-712	Amend
R9-25-801	Amend
R9-25-803	Amend
R9-25-804	Amend
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
Authorizing statutes: A.R.S. §§ 36-132(A)(1), 36-136(G), 36-2202(A)(4), and 36-2209(A)(2)
Implementing statutes: A.R.S. §§ 36-2201, 36-2202(A)(3) and (5), 36-2204, 36-2212, 36-2213, 36-2214, 36-2215, 36-2240(4)
- 3. The effective date of the rules:**
The rule is effective the day the Notice of Final Expedited Rulemaking is filed with the Office of the Secretary of State.
- 4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:**
Notice of Rulemaking Docket Opening: 29 A.A.R. 709, March 10, 2023
Notice of Proposed Expedited Rulemaking: 29 A.A.R. 775, March 24, 2023
- 5. The agency's contact person who can answer questions about the rulemaking:**
Name: Rachel Garcia, Bureau Chief
Address: Arizona Department of Health Services
Division of Public Health Services

Bureau of Emergency Medical Services and Trauma System
150 N. 18th Avenue, Suite 540
Phoenix, AZ 85007

Telephone: (602) 364-3150
Fax: (602) 364-3568
E-mail: Rachel.Garcia@azdhs.gov

or

Name: Stacie Gravito, Office Chief
Address: Arizona Department of Health Services
Office of Administrative Counsel and Rules
150 N. 18th Ave., Suite 200
Phoenix, AZ 85007

Telephone: (602) 542-1020
Fax: (602) 364-1150
E-mail: Stacie.Gravito@azdhs.gov

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

Arizona Revised Statutes (A.R.S.) §§ 36-2202(A)(3) and (4) and 36-2209(A)(2) require the Arizona Department of Health Services (Department) to adopt standards and criteria pertaining to the quality of emergency care, rules necessary for the operation of emergency medical services, and rules for carrying out the purposes of A.R.S. Title 36, Chapter 21.1. A.R.S. §§ 36-2212, 36-2213, and 36-2214 specify requirements related to operating an air ambulance service. The Department has adopted rules to implement these statutes in 9 A.A.C. 25, Article 7, which establishes requirements for licensing air ambulance services to ensure the health and safety of patients being transported, and Article 8, which establishes requirements for registering air ambulances. The Department was made aware that some requirements in the current rules in 9 A.A.C. 25, Articles 7 and 8, may be construed as being in conflict with and impinging on the authority of the Federal Aviation Administration to regulate aircraft. After receiving approval for the rulemaking according to A.R.S. § 41-1039(A), the Department is clarifying the rules to alleviate any confusion as to the Department's authority and is reducing the regulatory burden.

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

The Department did not review or rely on any study for this rulemaking.

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

Not applicable

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

Under A.R.S. § 41-1055(D)(2), the Department is not required to provide an economic, small business, and consumer impact statement.

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

Between the proposed expedited rulemaking and the final expedited rulemaking, no changes were made to the rulemaking.

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

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

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

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

A.R.S. § 36-2214 authorizes the Department to issue a license to an air ambulance service that meets criteria established by statute and rule. Although the activities that an air ambulance service is authorized to undertake are specified on the license, based on criteria in rule, the Department considers the license to be a general permit. A.R.S. § 36-2212 authorized the Department to issue a certificate of registration for operation of an aircraft as an air ambulance. The Department considers the certificate of registration to be a general permit.

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

Not applicable

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

No business competitiveness analysis was received by the Department.

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

Not applicable

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

The rule was not previously made as an emergency rule.

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES
CHAPTER 25. DEPARTMENT OF HEALTH SERVICES
EMERGENCY MEDICAL SERVICES

ARTICLE 7. AIR AMBULANCE SERVICE LICENSING

Section

- R9-25-701. Definitions (Authorized by A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), 36-2212, 36-2213, 36-2214, and 36-2215)
- R9-25-703. Requirement and Eligibility for a License (Authorized by A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), 36-2212, 36-2213, 36-2214, and 36-2215)
- R9-25-704. Application and Licensing Process (Authorized by A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), 36-2213, 36-2214, and 36-2215)
- R9-25-705. Minimum Standards for Operations as an Air Ambulance Service (Authorized by A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), and 36-2213)
- R9-25-710. Term and Transferability of License (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), 36-2213, 36-2214, and 41-1092.11)
- R9-25-711. Inspections and Investigations (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), 36-2213, and 36-2214)
- R9-25-712. Enforcement Actions (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), 36-2213, 36-2214, 36-2215, 41-1092.03, and 41-1092.11(B))

ARTICLE 8. AIR AMBULANCE REGISTRATION

Section

- R9-25-801. Requirement, Eligibility, and Application for an Initial or Renewal Certificate of Registration for an Air Ambulance (Authorized by A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), 36-2212, 36-2213, 36-2214, 36-2232(A)(11), and 36-2240(4))
- R9-25-803. Changes Affecting Registration (Authorized by A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), and 36-2212)
- R9-25-804. Term and Transferability of Certificate of Registration (Authorized by A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), 36-2212, and 41-1092.11)

ARTICLE 7. AIR AMBULANCE SERVICE LICENSING

R9-25-701. Definitions (Authorized by A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), 36-2212, 36-2213, 36-2214, and 36-2215)

In addition to the definitions in A.R.S. § 36-2201 and R9-25-101, the following definitions apply in this Article and in Article 8 of this Chapter, unless otherwise specified:

1. “Air ambulance” means an aircraft that is an “ambulance” as defined in A.R.S. § 36-2201.
2. “Air ambulance service” means an ambulance service that ~~operates~~ uses an air ambulance.
3. “Application packet” means the information, applicable fees, and documents required by the Department when making a decision for:
 - a. Licensing an air ambulance service, or
 - b. Issuing a certificate of registration for an air ambulance.
4. “Base location” means a physical location at which a person houses an air ambulance or equipment and supplies used for the operation of an air ambulance service or provides administrative or other support for the operation of an air ambulance service.
5. “CAMTS” means the Commission on Accreditation of Medical Transport Systems, formerly known as the Commission on Accreditation of Air Medical Services.
6. “Certificate holder” means a person who holds a current and valid certificate of registration for an air ambulance.
7. “Change of ownership” means a transfer of controlling legal or controlling equitable interest and authority in an air ambulance service.
8. “Critical care” means pertaining to a patient who has an illness or injury acutely impairing one or more organ systems, such that the conditions are life-threatening and require constant monitoring to avoid deterioration of the patient’s condition.
9. “Estimated time of arrival” means the number of minutes from the time that an air ambulance service agrees to perform a mission to the time that an air ambulance arrives at the scene.
10. “Interfacility” means between two health care institutions.
11. “Interfacility maternal transport” means an interfacility transport of a woman:
 - a. Whose pregnancy is considered by a physician to be high risk,
 - b. Who is in need of critical care services related to the pregnancy, and
 - c. Who is being transferred to a medical facility that has the specialized perinatal

and neonatal resources and capabilities necessary to provide an appropriate level of care.

12. “Interfacility neonatal transport” means an interfacility transport of an infant who is 28 days of age or younger and who is in need of critical care services.
13. “Licensed respiratory care practitioner” has the same meaning as in A.R.S. § 32-3501.
14. “Licensee” means a person who holds a current and valid license from the Department to operate an air ambulance service.
15. “Medical team” means personnel whose main function on a mission is the medical care of the patient being transported.
16. “Mission” means a transport event that involves an air ambulance service’s sending an air ambulance to a patient’s location to provide transport of the patient from one location to another, whether or not transport of the patient is actually provided.
17. “Mission level” means critical care services or ALS services, based on the staffing and the services provided by the air ambulance service.
18. “Mission type” means an emergency medical services transport, interfacility transport, interfacility maternal transport, or interfacility neonatal transport provided by an air ambulance service.
19. “On-line medical guidance” means emergency medical services direction or information provided to a non-EMCT medical team member by a physician through two-way voice communication.
20. “Operate an air ambulance ~~service in this state~~” means to use an air ambulance:
 - a. ~~Transporting a patient via air ambulance~~ To transport a patient from a location in this state to another location in this state,
 - b. ~~Operating an air ambulance from~~ From a base location in this state, or
 - c. ~~Transporting a patient via air ambulance~~ To transport a patient from a location in this state to a location outside of this state more than once per month.
21. “Owner” means a person that holds a controlling legal or equitable interest and authority in a business organization.
22. “Personnel” means individuals who work for an air ambulance service, with or without compensation, whether as employees, contractors, or volunteers.
23. “Premises” means each physical location of air ambulance service operations and includes all equipment and records at each location.
24. “Proficiency in neonatal resuscitation” means current and valid certification in neonatal resuscitation obtained through completing a nationally recognized training program such

as the American Academy of Pediatrics and American Heart Association NRP: Neonatal Resuscitation Program.

- 25. “Regularly” means at recurring, fixed, or uniform intervals.
- 26. “Subspecialization” means:
 - a. For a physician board certified by a specialty board approved by the American Board of Medical Specialties, subspecialty certification;
 - b. For a physician board certified by a specialty board approved by the American Osteopathic Association, attainment of either a certification of special qualifications or a certification of added qualifications; and
 - c. For a physician who has completed an accredited residency program, completion of at least one year of training pertaining to the specified area of medicine.
- 27. “Two-way voice communication” means that two individuals are able to convey information back and forth to each other orally, either directly or through a third-party relay.
- 28. “Valid” means that a license, certification, or other form of authorization is in full force and effect and not suspended.
- 29. “Working day” means the period between 8:00 a.m. and 5:00 p.m. on a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday.

R9-25-703. Requirement and Eligibility for a License (Authorized by A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), 36-2212, 36-2213, 36-2214, and 36-2215)

- A. A person shall not operate an air ambulance service in this state unless the person has a current and valid air ambulance service license and, except as provided in A.R.S. § 36-2212(C), a current and valid certificate of registration for ~~the an~~ air ambulance as required under Article 8 of this Chapter.
- B. To be eligible to obtain an air ambulance service license, an applicant shall:
 - ~~1. Hold current and valid registration and exemption issued by the Federal Aviation Administration under 14 CFR 298, as evidenced by a current and valid U.S. Department of Transportation OST Form 4507 showing the effective date of registration;~~
 - ~~2. Hold the following issued by the Federal Aviation Administration:~~
 - a. ~~A current and valid Air Carrier Certificate authorizing common carriage under 14 CFR 135;~~
 - b. ~~If operating a rotor wing air ambulance, current and valid Operations Specifications authorizing aeromedical helicopter operations;~~
 - c. ~~If operating a fixed wing air ambulance, current and valid Operations~~

~~Specifications authorizing airplane air ambulance operations;~~

~~d. A current and valid Certificate of Registration for each air ambulance to be operated; and~~

~~e. A current and valid Airworthiness Certificate for each air ambulance to be operated;~~

~~3.1.~~ Have applied for a certificate of registration, issued by the Department under Article 8 of this Chapter, for each air ambulance aircraft to be ~~operated~~ used as an air ambulance by the air ambulance service;

~~4.2.~~ Possess a copy of a current and valid registration, issued by the Arizona Department of Transportation under A.R.S. Title 28, Chapter 25, Article 4, ~~to the owner of the aircraft~~ for each air ambulance aircraft to be ~~operated~~ used as an air ambulance by the air ambulance service;

~~5.3.~~ Have current and valid liability insurance coverage for the air ambulance service that complies with A.R.S. § 36-2215 and that has at least the following ~~maximum~~ liability limits:

a. \$1 million for injuries to or death of any one person arising out of any one incident or accident;

b. \$3 million for injuries to or death of more than one person in any one incident or accident; and

c. \$500,000 for damage to property arising from any one incident or accident;

~~6.4.~~ Have current and valid malpractice insurance coverage for the air ambulance service that complies with A.R.S. § 36-2215 and that has a maximum liability limit of at least \$1 million per occurrence; and

~~7.5.~~ Comply with all applicable requirements of this Article, Articles 2 and 8 of this Chapter, and A.R.S. Title 36, Chapter 21.1.

C. To maintain eligibility for an air ambulance service license, a licensee shall meet the requirements of subsections ~~(B)(1), (2), and (4) through (7)~~ (B)(2) through (5) and hold a current and valid certificate of registration, issued by the Department under Article 8 of this Chapter, for each ~~air ambulance operated~~ aircraft used as an air ambulance in Arizona by the air ambulance service.

R9-25-704. Application and Licensing Process (Authorized by A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), 36-2213, 36-2214, and 36-2215)

A. An applicant for an initial license shall submit an application packet to the Department, including:

1. The following information in a Department-provided format:

a. The applicant's name; mailing address; e-mail address; fax number, if any; and

- telephone number;
- b. The names of all other business organizations operated by the applicant related to the air ambulance service;
 - c. The physical and mailing addresses to be used for the air ambulance service, if different from the applicant's mailing address;
 - d. The name, title, address, e-mail address, and telephone number of the applicant's statutory agent or the individual designated by the applicant to accept service of process and subpoenas for the air ambulance service;
 - e. The name, title, address, e-mail address, and telephone number of the individual acting on behalf of the applicant according to R9-25-102;
 - f. If the applicant is a business organization:
 - i. The type of business organization; and
 - ii. The name; address; e-mail address; telephone number; and fax number, if any, of the individual who is to serve as the primary contact for information regarding the application;
 - g. The name and Arizona license number for the physician who is to serve as the administrative medical director for the air ambulance service;
 - h. The intended hours of operation for the air ambulance service;
 - i. The intended schedule of rates for the air ambulance service;
 - j. Which of the following mission types is to be provided:
 - i. Emergency medical services transports,
 - ii. Interfacility transports,
 - iii. Interfacility maternal transports, or
 - iv. Interfacility neonatal transports;
 - k. Which of the following mission levels is to be provided:
 - i. Critical care, or
 - ii. Advanced life support;
 - l. Whether the applicant plans to use fixed-wing or rotor-wing aircraft for the air ambulance service;
 - m. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-25-1201(C)(3);
 - n. Attestation that the applicant will comply with all applicable requirements in this Article, Articles 2 and 8 of this Chapter, and A.R.S. Title 36, Chapter 21.1;
 - o. Attestation that the information provided in the application packet, including the

- information in the accompanying documents, is accurate and complete; and
- p. The signature of the applicant and the date signed;
2. Documentation for the individual specified according to subsection (A)(1)(e) that complies with A.R.S. § 41-1080;
 3. A copy of the business organization's articles of incorporation, articles of organization, or partnership documents, if applicable;
 4. ~~A copy of a current and valid U.S. Department of Transportation OST Form 4507, showing the effective date of Federal Aviation Administration registration and exemption under 14 CFR 298;~~
 5. ~~A copy of the following issued by the Federal Aviation Administration:~~
 - a. ~~A current and valid Air Carrier Certificate authorizing common carriage under 14 CFR 135;~~
 - b. ~~If intending to operate a rotor-wing air ambulance, the following signed pages of the current and valid Operations Specifications authorizing aeromedical helicopter operations:~~
 - i. ~~The page showing the certificate number issued by the Federal Aviation Administration and stating the name and contact information for the entity to which the certificate, approving the Operation Specifications authorizing aeromedical helicopter operations, was issued by the Federal Aviation Administration;~~
 - ii. ~~The page stating the characteristics of the rotor-wing aircraft for which the certificate was issued by the Federal Aviation Administration;~~
 - iii. ~~Each page stating the name and contact information for the individuals with controlling legal interest or controlling equitable interest in the ownership of the entity specified in subsection (A)(5)(b)(i);~~
 - iv. ~~Each page stating the name and contact information for the individuals designated to act as a point of contact with the Federal Aviation Administration about the Operation Specifications for the rotor-wing aircraft;~~
 - v. ~~Each page stating the name and contact information for the individuals with operational control of the rotor-wing aircraft; and~~
 - vi. ~~Each page listing the tail numbers of the rotor-wing aircraft covered under the Operations Specifications; and~~
 - e. ~~If intending to operate a fixed-wing air ambulance, the following signed pages of~~

~~the current and valid Operations Specifications authorizing airplane air ambulance operations:~~

- ~~i. The page showing the certificate number issued by the Federal Aviation Administration and stating the name and contact information for the entity to which the certificate, approving the Operation Specifications authorizing airplane ambulance operations, was issued by the Federal Aviation Administration;~~
- ~~ii. The page stating the characteristics of the fixed-wing aircraft for which the certificate was issued by the Federal Aviation Administration;~~
- ~~iii. Each page stating the name and contact information for the individuals with controlling legal interest or controlling equitable interest in the ownership of the entity specified in subsection (A)(5)(c)(i);~~
- ~~iv. Each page stating the name and contact information for the individuals designated to act as a point of contact with the Federal Aviation Administration about the Operation Specifications for the fixed-wing aircraft;~~
- ~~v. Each page stating the name and contact information for the individuals with operational control of the fixed-wing aircraft; and~~
- ~~vi. Each page listing the tail numbers of the fixed-wing aircraft covered under the Operations Specifications;~~

- ~~6.4.~~ For each aircraft to be used as an air ambulance ~~to be operated for by~~ the air ambulance service:
- a. An application for registration that includes all of the information and documents required under R9-25-801(B); and
 - b. A copy of a current and valid registration, issued by the Arizona Department of Transportation under A.R.S. Title 28, Chapter 25, Article 4;
- ~~7.5.~~ A certificate of insurance establishing that the applicant has current and valid liability insurance coverage for the air ambulance service as required under ~~R9-25-703(B)(5)~~ R9-25-703(B)(3);
- ~~8.6.~~ A certificate of insurance establishing that the applicant has current and valid malpractice insurance coverage for the air ambulance service as required under ~~R9-25-703(B)(6)~~ R9-25-703(B)(4);
- ~~9.7.~~ A list of each entity that or physician who is to provide on-line medical direction to EMCTs of the air ambulance service, including:

- a. For each entity, such as an ALS base hospital, centralized medical direction communications center, or physician group practice, the name, mailing address, e-mail address, and telephone number of the entity; or
 - b. For each physician who is to provide on-line medical direction, the name, professional license number, mailing address, e-mail address, and telephone number for the physician; and
- ~~10-8.~~ If the applicant holds current CAMTS accreditation for the air ambulance service, a copy of the current CAMTS accreditation report; ~~and~~
- ~~11.~~ ~~If a document required under subsection (A)(4) or (5) is not issued in the name of the applicant, documentation showing the applicant can legally possess and operate the aircraft covered by the document, signed by the owner of the aircraft.~~
- B.** No more than 30 days before the expiration date of the current license, a licensee shall submit to the Department a renewal application packet including:
 1. The information required in subsection (A)(1), in a Department-provided format;
 2. The documents required in subsections ~~(A)(4), (5), (7), (8), (9), and, if applicable, (10)~~ (A)(5), (6), (7), and, if applicable, (8); and
 3. For each aircraft used or to be used as an air ambulance ~~operated or to be operated~~ by the air ambulance service:
 - a. Either:
 - i. A copy of a current and valid certificate of registration issued by the Department under Article 8 of this Chapter, or
 - ii. An application packet for registration that includes all of the information and documents required under R9-25-801(B); and
 - b. A copy of a current and valid registration, issued by the Arizona Department of Transportation under A.R.S. Title 28, Chapter 25, Article 4.
- C.** Unless an applicant or licensee documents current CAMTS accreditation, as provided in subsection (A)(10), or is applying for an initial license because of a change of ownership as described in R9-25-710(D), the Department shall conduct an inspection, as required under A.R.S. § 36-2214(B) and R9-25-711, during the substantive review period for the application for a license.
- D.** The Department shall review each application packet as described in Article 12 of this Chapter, and:
 1. Approve the application;
 2. Approve the application with a corrective action plan, as specified in R9-25-711(G)(2); or

3. Deny the application.

E. The Department may deny an application if an applicant or licensee:

1. Fails to meet the eligibility requirements of R9-25-703(B);
2. Fails or has failed to comply with any provision in A.R.S. Title 36, Chapter 21.1;
3. Fails or has failed to comply with any provision in this Article or Article 2 or 8 of this Chapter;
4. Knowingly or negligently provides false documentation or false or misleading information to the Department; or
5. Fails to submit to the Department documents or information requested under R9-25-1201(B)(1) or (C)(3) and requests a denial as permitted under R9-25-1201(E).

R9-25-705. Minimum Standards for Operations as an Air Ambulance Service (Authorized by A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), and 36-2213)

A. A licensee shall ensure that the air ambulance service:

1. Maintains eligibility for licensure as required under R9-25-703(C);
2. Makes a good faith effort to communicate information about its hours of operation to the general public through print media, broadcast media, the Internet, or other means;
3. Makes the air ambulance service's schedule of rates available to any individual upon request and, if requested, in writing;
4. Provides an accurate estimated time of arrival to the person requesting transport at the time that transport is requested and provides an amended estimated time of arrival to the person requesting transport if the estimated time of arrival changes;
5. Except as provided in subsection (B), only transports patients for whom the air ambulance service has the resources to provide appropriate medical care;
6. Does not perform interfacility transport of a patient unless:
 - a. The transport is initiated by the sending health care institution, and
 - b. The destination health care institution confirms that a bed is available for the patient;
7. Ensures that the protocol for the transfer of information to be communicated to emergency receiving facility staff concurrent with the transfer of care, required in R9-25-201(E)(2)(d)(i), includes:
 - a. The date and time the call requesting service was received by the air ambulance service;
 - b. The unique number used by the air ambulance service to identify the mission;
 - c. The name of the air ambulance service;

- d. The number or other identifier of the air ambulance used for the mission;
 - e. The following information about the patient:
 - i. The patient's name;
 - ii. The patient's date of birth or age, as available;
 - iii. The principal reason for requesting services for the patient;
 - iv. The patient's medical history, including any chronic medical illnesses, known allergies to medications, and medications currently being taken by the patient;
 - v. The patient's level of consciousness at initial contact and when reassessed;
 - vi. The patient's pulse rate, respiratory rate, oxygen saturation, and systolic blood pressure at initial contact and when reassessed;
 - vii. The results of an electrocardiograph, if available;
 - viii. The patient's glucose level at initial contact and when reassessed, if applicable;
 - ix. The patient's level of responsiveness score, as applicable, at initial contact and when reassessed;
 - x. The results of the patient's neurological assessment, if applicable; and
 - xi. The patient's pain level at initial contact and when reassessed; and
 - f. Any procedures or other treatment provided to the patient at the scene or during transport, including any agents administered to the patient;
8. Creates a prehospital incident history report, in a Department-provided format, for each patient that includes the following information:
- a. The name and identification number of the air ambulance service;
 - b. Information about the software for the storage and submission of the prehospital incident history report;
 - c. The unique number assigned to the mission;
 - d. The unique number assigned to the patient;
 - e. Information about the response to the call requesting service, including:
 - i. The mission level requested;
 - ii. Information obtained by the person providing direction for response to the request;
 - iii. Information about the air ambulance assigned to the mission;

- iv. Information about the medical team responding to the call requesting service;
 - v. The priority assigned to the response; and
 - vi. Response delays, as applicable;
- f. Whether patient care was transferred from another EMS provider or ambulance service and, if so, identification of the EMS provider or ambulance service;
- g. The date and time that:
 - i. The call requesting service was received;
 - ii. The request was received by the person coordinating transport;
 - iii. The air ambulance service received the transport request;
 - iv. The air ambulance left for the patient's location;
 - v. The air ambulance arrived at the patient's location;
 - vi. The medical team in the air ambulance arrived at the patient's side;
 - vii. Transfer of the patient's care occurred at a location other than the destination, if applicable;
 - viii. The air ambulance departed the patient's location;
 - ix. The air ambulance arrived at the destination;
 - x. Transfer of the patient's care occurred at the destination;
 - xi. The air ambulance was available to take another mission;
- h. Information about the patient, including:
 - i. The patient's first and last name;
 - ii. The address of the patient's residence;
 - iii. The county of the patient's residence;
 - iv. The country of the patient's residence;
 - v. The patient's gender, race, ethnicity, and age;
 - vi. The patient's estimated weight;
 - vii. The patient's date of birth; and
 - viii. If the patient has an alternate residence, the address of the alternate residence;
- i. The primary method of payment for services and anticipated level of payment;
- j. Information about the scene, including:
 - i. Specific information about the location of the scene;
 - ii. Whether the air ambulance was first on the scene;
 - iii. The number of patients at the scene;

- iv. Whether the scene was the location of a mass casualty incident; and
- v. If the scene was the location of a mass casualty incident, triage information;
- k. Information about the reason for requesting service for the patient, including:
 - i. The date and time of onset of symptoms and when the patient was last well;
 - ii. Information about the complaint;
 - iii. The patient's symptoms;
 - iv. The results of the medical team's initial assessment of the patient;
 - v. If the patient was injured, information about the injury and the cause of the injury;
 - vi. If the patient experienced a cardiac arrest, information about the etiology of the cardiac arrest and subsequent treatment provided; and
 - vii. For an interfacility transport, the reason for the transport;
- l. Information about any specific barriers to providing care to the patient;
- m. Information about the patient's medical history, including:
 - i. Known allergies to medications,
 - ii. Surgical history,
 - iii. Current medications, and
 - iv. Alcohol or drug use;
- n. Information about the patient's current medical condition, including the information in subsections (A)(7)(e)(v) through (xi) and the time and method of assessment;
- o. Information about agents administered to the patient, including the dose and route of administration, time of administration, and the patient's response to the agent;
- p. If not specifically included under subsection (A)(8)(k), (m)(iv), (n), or (o), the information required in A.A.C. R9-4-602(A);
- q. Information about any procedures performed on the patient and the patient's response to the procedure;
- r. Whether the patient was transported and, if so, information about the transport;
- s. Information about the destination of the transport, including the reason for choosing the destination;
- t. Whether patient care was transferred to another EMS provider or ambulance

- service and, if so, identification of the EMS provider or ambulance service;
 - u. Unless patient care was transferred to another EMS provider or ambulance service, information about:
 - i. Whether the destination facility was notified that the patient being transported has a time-sensitive condition and the time of notification;
 - ii. The disposition of the patient at the destination; and
 - iii. The disposition of the mission;
 - v. Any other narrative information about the patient, care received by the patient, or transport; and
 - w. The name and certification level of the medical team member providing the information;
- 9. Creates a record for each mission that includes:
 - a. Mission date;
 - b. Mission level;
 - c. Mission type;
 - d. Staffing of the mission;
 - e. Aircraft type—fixed-wing aircraft or rotor-wing aircraft;
 - f. Name of the person requesting the transport;
 - g. Time of receipt of the transport request;
 - h. The estimated time of arrival, as provided according to subsection (A)(4);
 - i. Departure time to the patient's location;
 - j. Address of the patient's location;
 - k. Arrival time at the patient's location;
 - l. Departure time to the destination health care institution;
 - m. Name and address of the destination health care institution;
 - n. Arrival time at the destination health care institution;
 - o. Either the:
 - i. Unique reference number used by the air ambulance service to identify the patient, or
 - ii. Unique call number used by the air ambulance service to identify the specific mission; and
 - p. Aircraft tail number for the air ambulance used on the mission;
- 10. Establishes, documents, and, if necessary, implements a plan to address and minimize potential issues of patient health and safety due to the air ambulance service terminating

operations at a physical address used for the air ambulance service that:

- a. Is developed in conjunction with hospitals near the physical address used for the air ambulance service and other persons who may be adversely affected by the air ambulance service terminating operations;
 - b. Includes notification by the air ambulance service of the persons in subsection (A)(10)(a) of the intent to terminate operations, at least 30 calendar days before the termination of operations; and
 - c. Includes temporary measures that will be used until alternate methods may be arranged for patient transport that address patient health and safety;
11. Establishes, documents, and implements a quality improvement program, as specified in policies and procedures, through which:
- a. Data related to initial patient assessment, patient care, transport services provided, and patient status upon arrival at the destination are:
 - i. Collected continuously;
 - ii. For the information required in subsection (A)(8), submitted to the Department, in a Department-provided format and within 48 hours after the date of a mission, for quality improvement purposes; and
 - iii. If the air ambulance service is notified that the submission of information to the Department according to subsection (A)(11)(a)(ii) was unsuccessful, corrected and resubmitted within seven days after notification;
 - b. Continuous quality improvement processes are developed to identify, document, and evaluate issues related to the provision of services, including:
 - i. Care provided to patients with time-sensitive conditions;
 - ii. Transport or documentation, and
 - iii. Patient status upon arrival at the destination;
 - c. A committee consisting of the administrative medical director, the individual managing the air ambulance service or designee, and other employees as appropriate:
 - i. Review the data in subsection (A)(11)(a) and any issues identified in subsection (A)(11)(b) on at least a quarterly basis; and
 - ii. Implement activities to improve performance when deviations in patient care, transport, or documentation are identified; and
 - d. The activities in subsection (A)(11)(c) are documented, consistent with A.R.S. §§

36-2401, 36-2402, and 36-2403; and

12. Beginning within 12 months after the effective date of this Section, establish and maintain a method to electronically document patient information and treatment that is capable of being transferred.
- B.** An air ambulance service may transport a patient for whom the air ambulance does not have the resources to provide appropriate medical care:
1. In a rescue situation in which:
 - a. An individual's life, limb, or health is imminently threatened;
 - b. The threat may be reduced or eliminated by removing the individual from the situation to a location in which medical services may be provided; and
 - c. There is no other practical means of transport, including another air ambulance service, available; or
 2. For an interfacility transport of a patient if:
 - a. The sending health care institution provides medically appropriate life support measures, staff, and equipment to sustain the patient during the interfacility transport; and
 - b. Each staff member provided by the sending health care institution has completed training in the subject areas listed in R9-25-707(A) before participating in the interfacility transport.
- C.** If an air ambulance service completes a mission under subsection (B) for which the air ambulance service does not have the resources to provide appropriate medical care, the licensee shall ensure that the air ambulance service creates a record within five working days after the mission, including:
1. The information required under subsection (A)(8),
 2. The manner in which the air ambulance service deviated from subsection (A)(5), and
 3. The justification for operating under subsection (B).
- D.** If an air ambulance service uses a single-member medical team as authorized under R9-25-706(B) and (C), the licensee shall ensure that the air ambulance service creates a record within five working days after the mission, including:
1. The information required under subsection (A)(9),
 2. The name and qualifications of the individual comprising the single-member medical team, and
 3. The justification for using a single-member medical team.
- E.** If an air ambulance service completes a critical care interfacility transport mission under

conditions permitted in R9-25-802(F), the licensee shall ensure that the air ambulance service creates a record within five working days after the mission, including:

1. The information required under subsection (A)(9),
2. A description of the life-support equipment used on the mission,
3. A list of the equipment and supplies required in R9-25-802(C) that were removed from the air ambulance for the mission, and
4. The justification for conducting the mission as permitted under R9-25-802(F).

F. A licensee shall ensure that an individual does not serve on the medical team for an interfacility maternal transport unless the air ambulance service's medical director has verified and attested in writing to the individual's having the proficiencies described in R9-25-706(A)(2).

G. A licensee shall ensure that an individual does not serve on the medical team for an interfacility neonatal transport unless the air ambulance service's medical director has verified and attested in writing to the individual's having the proficiencies described in R9-25-706(A)(3).

H. A licensee shall ensure that the air ambulance service:

1. Retains each document required to be created or maintained under this Article or Article 2 or 8 of this Chapter for at least three years after the last event recorded in the document, and
2. Produces each document for Department review upon request.

I. A licensee shall ensure that, while on a mission, two-way voice communication is available:

1. Between and among personnel on the air ambulance, including the pilot; and
2. Between personnel on the air ambulance and the following persons on the ground:
 - a. Personnel;
 - b. Physicians providing on-line medical direction or on-line medical guidance to medical team members; and
 - c. For a rotor-wing air ambulance mission:
 - i. Emergency medical services providers, and
 - ii. Law enforcement agencies.

R9-25-710. Term and Transferability of License (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), 36-2213, 36-2214, and 41-1092.11)

A. The Department shall issue an initial license:

1. When based on current CAMTS accreditation, with a term beginning on the date of issuance of the initial license and ending on the expiration date of the CAMTS accreditation upon which licensure is based; and
2. When based on Department inspection, with a term beginning on the date of issuance of

the initial license and ending three years later.

- B.** The Department shall issue a renewal license with a term beginning on the day after the expiration date shown on the previous license and ending:
1. When based on current CAMTS accreditation, on the expiration date of the CAMTS accreditation upon which licensure is based; and
 2. When based on Department inspection, three years after the effective date of the renewal license.
- C.** If a licensee submits an application packet for renewal as described in R9-25-704(B), the current license does not expire until the Department has made a final determination on the application for renewal, as provided in A.R.S. § 41-1092.11.
- D.** At least 30 days before an anticipated change of ownership:
1. A licensee wanting to transfer an air ambulance service license shall submit a letter to the Department that contains:
 - a. A request that the air ambulance service license be transferred,
 - b. The name and license number of the currently licensed air ambulance service, and
 - c. The name of the person to whom the air ambulance service license is to be transferred; and
 2. The person to whom the license is to be transferred shall submit to the Department an application packet that complies with R9-25-704(A).
- E.** A new owner shall not operate an air ambulance service in this state until:
1. The new owner complies with requirements in Articles 7 and 8 of this Chapter, and
 2. The Department has issued an air ambulance service license to the new owner.

R9-25-711. Inspections and Investigations (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), 36-2213, and 36-2214)

- A.** Except as provided in subsections (D) and (E), the Department shall inspect an air ambulance service, as required under A.R.S. § 36-2214(B), before issuing an initial or renewal license and as necessary to determine compliance with this Article, Articles 2 and 8 of this Chapter, and A.R.S. Title 36, Chapter 21.1.
- B.** A Department inspection may include the air ambulance service's premises, records, and equipment, and each air ambulance ~~operated or to be operated~~ used by the air ambulance service.
- C.** If the Department receives written or verbal information alleging a violation of this Article, Article 2 or 8 of this Chapter, or A.R.S. Title 36, Chapter 21.1, the Department shall conduct an investigation.

1. The Department may conduct an inspection as part of an investigation.
 2. A licensee shall allow the Department to inspect the air ambulance service's premises, records, and equipment, and each air ambulance and to interview personnel as part of an investigation.
- D.** Except as provided in subsection (C), the Department shall not conduct an inspection of an air ambulance service before issuing an initial or renewal license if an applicant or licensee provides documentation of current CAMTS certification as part of the application packet according to ~~R9-25-704(A)(9)~~ R9-25-704(A)(8).
- E.** When an application for an air ambulance service license is submitted along with a transfer request due to a change of ownership, the Department shall determine whether an inspection is necessary based upon the potential impact to public health, safety, and welfare.
- F.** The Department shall conduct each inspection in compliance with A.R.S. § 41-1009.
- G.** If the Department determines that an air ambulance service is not in compliance with the requirements in this Article, Article 2 or 8 of this Chapter, or A.R.S. Title 36, Chapter 21.1, the Department may:
1. Take an enforcement action as described in R9-25-712; or
 2. Require that the air ambulance service submit to the Department, within 15 days after written notice from the Department, a corrective action plan to address issues of compliance that do not directly affect the health or safety of a patient that:
 - a. Describes how each identified instance of non-compliance will be corrected and reoccurrence prevented, and
 - b. Includes a date for correcting each instance of non-compliance that is appropriate to the actions necessary to correct the instance of non-compliance.

R9-25-712. Enforcement Actions (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), 36-2213, 36-2214, 36-2215, 41-1092.03, and 41-1092.11(B))

- A.** The Department may take an action listed in subsection (B) against an air ambulance service that:
1. Fails to meet the eligibility requirements of R9-25-703;
 2. Fails or has failed to comply with any provision in A.R.S. Title 36, Chapter 21.1;
 3. Fails or has failed to comply with any provision in this Article or Article 2 or 8 of this Chapter;
 4. Does not submit a corrective action plan, as provided in R9-25-711(G)(2), that is acceptable to the Department;
 5. Does not complete a corrective action plan submitted according to R9-25-711(G)(2); or
 6. Knowingly or negligently provides false documentation or false or misleading

information to the Department or to a patient, third-party payor, or other person billed for service.

B. The Department may take the following actions against an air ambulance service:

1. Except as provided in subsection (B)(3), after notice and an opportunity to be heard is provided under A.R.S. Title 41, Chapter 6, Article 10, suspend:
 - a. The air ambulance service license, or
 - b. The certificate of registration of an aircraft to be used as an air ambulance ~~operated~~ by the air ambulance service;
2. After notice and an opportunity to be heard is provided under A.R.S. Title 41, Chapter 6, Article 10, revoke:
 - a. The air ambulance service license, or
 - b. The certificate of registration of an aircraft to be used as an air ambulance ~~operated~~ by the air ambulance service; and
3. As permitted under A.R.S. § 41-1092.11(B), if the Department determines that the public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in the Department's order, immediately suspend:
 - a. The air ambulance service license pending proceedings for revocation or other action, or
 - b. The certificate of registration of an aircraft to be used as an air ambulance ~~operated~~ by the air ambulance service pending proceedings for revocation or other action.

C. In determining whether to take action under subsection (B), the Department shall consider:

1. The severity of each violation relative to public health and safety;
2. The number of violations relative to the transport volume of the air ambulance service;
3. The nature and circumstances of each violation;
4. Whether each violation was corrected and, if so, the manner of correction; and
5. The duration of each violation.

ARTICLE 8. AIR AMBULANCE REGISTRATION

R9-25-801. Requirement, Eligibility, and Application for an Initial or Renewal Certificate of Registration for an Air Ambulance (Authorized by A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), 36-2212, 36-2213, 36-2214, 36-2232(A)(11), and 36-2240(4))

- A.** To be eligible to obtain a certificate of registration for an air ambulance, an applicant shall:
1. Ensure that the aircraft is not currently registered with the Department by another air ambulance service;
 2. Hold a current and valid air ambulance service license issued under Article 7 of this Chapter;
 - ~~2. Hold the following issued by the Federal Aviation Administration for the air ambulance:~~
 - ~~a. A current and valid Certificate of Registration, and~~
 - ~~b. A current and valid Airworthiness Certificate;~~
 3. Possess a copy of a current and valid registration for the air ambulance, issued by the Arizona Department of Transportation under A.R.S. Title 28, Chapter 25, Article 4, ~~to the owner of the aircraft;~~ and
 4. Comply with all applicable requirements of this Article, Articles 2 and 7 of this Chapter, and A.R.S. Title 36, Chapter 21.1.
- B.** An applicant for an initial or renewal certificate of registration for an air ambulance shall submit an application packet to the Department, including:
1. The following information in a Department-provided format:
 - a. The applicant's name; mailing address; e-mail address; fax number, if any; and telephone number;
 - b. The names of all other business organizations operated by the applicant related to the use of an air ambulance;
 - c. The physical address of the applicant, if different from the mailing address;
 - d. If applicable, the number of the applicant's air ambulance service license;
 - e. The name, title, address, e-mail address, and telephone number of the individual acting on behalf of the applicant according to R9-25-102;
 - f. The name, address, telephone number, and e-mail address of the owner of the air ambulance, if different from the applicant;
 - g. Whether the air ambulance is a fixed-wing or rotor-wing aircraft;
 - h. The number of engines on the air ambulance;
 - i. The manufacturer's name;

- j. The model name of the air ambulance;
 - k. The year the air ambulance was manufactured;
 - l. The serial number of the air ambulance;
 - m. The tail number of the air ambulance;
 - n. The aircraft colors, including fuselage, stripe, and lettering;
 - o. A description of any insignia, monogram, or other distinguishing characteristics of the aircraft's appearance;
 - p. The address at which the air ambulance is usually based;
 - q. The address in Arizona at which the air ambulance will be available for inspection;
 - r. The name and telephone number of the individual to contact to arrange for inspection, if the inspection is preannounced;
 - s. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-25-1201(C)(3);
 - t. Attestation that the information provided in the application packet, including the information in the accompanying documents, is accurate and complete; and
 - u. The dated signature of the applicant;
2. ~~A copy of the following for the air ambulance, issued by the Federal Aviation Administration:~~
- a. ~~A current and valid Certificate of Registration, and~~
 - b. ~~A current and valid Airworthiness Certificate;~~
3. ~~2.~~ A copy of a current and valid registration for the air ambulance, issued by the Arizona Department of Transportation under A.R.S. Title 28, Chapter 25, Article 4;
4. ~~If a document required under subsection (B)(2) or (3) is not issued in the name of the applicant, documentation showing the applicant can legally possess and operate the aircraft covered by the document, signed by the owner of the aircraft; and~~
5. ~~3.~~ Unless the applicant ~~operates or intends to operate~~ uses or intends to use the aircraft as an air ambulance only as a volunteer not-for-profit service, the following fees:
- a. A \$50 registration fee, as required under A.R.S. § 36-2212(D); and
 - b. A \$200 annual regulatory fee, as required under A.R.S. § 36-2240(4).
- C. The Department requires submission of a separate application and the fees in subsection ~~(B)(5)~~ (B)(3) for each air ambulance.
- D. Except as provided in A.R.S. § 36-2232(A)(11), the Department shall inspect each air ambulance according to R9-25-805(A) and (B) to determine compliance with the provisions of A.R.S. Title

36, Chapter 21.1 and this Article:

1. Within 30 calendar days before issuing an initial certificate of registration; and
 2. At least every 12 months thereafter, before issuing a renewal certificate of registration.
- E.** The Department shall review and approve or deny each application as described in Article 12 of this Chapter.
- F.** If the Department approves the application and sends the applicant the written notice of approval, specified in R9-25-1201(C)(5), the Department shall issue the certificate of registration to the applicant:
1. For an applicant with a current and valid air ambulance service license issued under Article 7 of this Chapter, within five working days after the date on the written notice of approval; and
 2. For an applicant that does not have a current and valid air ambulance service license issued under Article 7 of this Chapter, when the air ambulance service license is issued.
- G.** The Department may deny a certificate of registration for an air ambulance if the applicant:
1. Fails to meet the eligibility requirements of subsection (A);
 2. Fails or has failed to comply with any provision in A.R.S. Title 36, Chapter 21.1;
 3. Fails or has failed to comply with any provision in this Article or Article 2 or 7 of this Chapter;
 4. Knowingly or negligently provides false documentation or false or misleading information to the Department; or
 5. Fails to submit to the Department documents or information requested under R9-25-1201(B)(1) or (C)(3) and requests a denial as permitted under R9-25-1201(E).

R9-25-803. Changes Affecting Registration (Authorized by A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), and 36-2212)

- A.** At least 30 days before the date of a change in a certificate holder's name, the certificate holder shall send the Department written notice of the name change.
- B.** No later than 10 days after a certificate holder ceases to ~~operate~~ use an aircraft as an air ambulance, the certificate holder shall send the Department written notice of the date that the certificate holder ceased to ~~operate the~~ use the aircraft as an air ambulance and of the certificate holder's intention to relinquish the certificate of registration for the use as an air ambulance as of that date.
- C.** Within 30 days after the date of receipt of a notice described in subsection (A) or (B), the Department shall:
1. For a notice described in subsection (A), issue an amended certificate of registration that

incorporates the name change but retains the expiration date of the current certificate of registration; and

2. For a notice described in subsection (B):
 - a. Void the certificate of registration for the air ambulance; and
 - b. Send the certificate holder written confirmation of the voluntary relinquishment of the certificate of registration, with an effective date that corresponds to the written notice.

D. A certificate holder shall notify the Department in writing within one working day after a change in the certificate holder's eligibility to hold a certificate of registration for an air ambulance under R9-25-801(A).

E. Upon receiving a notification required in subsection (D), the Department:

1. Shall revoke the certificate for the aircraft used as an air ambulance; and
2. If the air ambulance is the only aircraft used as an air ambulance ~~operated~~ by an air ambulance service, may revoke the license of the air ambulance service.

R9-25-804. Term and Transferability of Certificate of Registration (Authorized by A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), 36-2212, and 41-1092.11)

A. The Department shall issue an initial certificate of registration:

1. With a term of one year from date of issuance of the initial certificate of registration; or
2. If requested by the applicant, with a term shorter than one year that allows for the Department to conduct annual inspections of all of the applicant's air ambulances at one time.

B. The Department shall issue a renewal certificate of registration with a term of one year from the expiration date on the previous certificate of registration.

C. If a certificate holder submits an application for renewal as described in R9-25-801 before the expiration date of the current certificate of registration, the current certificate of registration does not expire until the Department has made a final determination on the application for renewal, as provided in A.R.S. § 41-1092.11.

D. A certificate of registration is not transferable from one person to another.

E. If there is a change in the ownership of an aircraft used as an air ambulance or the person who can legally ~~possess and operate~~ use the aircraft as an air ambulance, the new owner or person who can legally ~~possess and operate~~ use the aircraft as an air ambulance shall apply for and obtain a new certificate of registration before ~~operating using~~ operating using the aircraft as an air ambulance in this state.

Current Rules in 9 A.A.C. 25, Articles 7 and 8

**TITLE 9. HEALTH SERVICES
CHAPTER 25. DEPARTMENT OF HEALTH SERVICES
EMERGENCY MEDICAL SERVICES**

ARTICLE 7. AIR AMBULANCE SERVICE LICENSING

Section

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- R9-25-710. Term and Transferability of License (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), 36-2213, 36-2214, and 41-1092.11)
- R9-25-711. Inspections and Investigations (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), 36-2213, and 36-2214)
- R9-25-712. Enforcement Actions (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), 36-2213, 36-2214, 36-2215, 41-1092.03, and 41-1092.11(B))

ARTICLE 8. AIR AMBULANCE REGISTRATION

Section

- R9-25-801. Requirement, Eligibility, and Application for an Initial or Renewal Certificate of Registration for an Air Ambulance (Authorized by A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), 36-2212, 36-2213, 36-2214, 36-2232(A)(11), and 36-2240(4))
- R9-25-802. Minimum Standards for an Air Ambulance (Authorized by A.R.S. §§ 36-2202(A)(3), (4), and (5); 36-2209(A)(2); and 36-2212)
- R9-25-803. Changes Affecting Registration (Authorized by A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), and 36-2212)
- R9-25-804. Term and Transferability of Certificate of Registration (Authorized by A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), 36-2212, and 41-1092.11)
- R9 25 805. Inspections (Authorized by A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), 36-2212, and 36-2232(A)(11))

ARTICLE 7. AIR AMBULANCE SERVICE LICENSING

R9-25-701. Definitions (Authorized by A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), 36-2212, 36-2213, 36-2214, and 36-2215)

In addition to the definitions in A.R.S. § 36-2201 and R9-25-101, the following definitions apply in this Article and in Article 8 of this Chapter, unless otherwise specified:

1. “Air ambulance” means an aircraft that is an “ambulance” as defined in A.R.S. § 36-2201.
2. “Air ambulance service” means an ambulance service that operates an air ambulance.
3. “Application packet” means the information, applicable fees, and documents required by the Department when making a decision for:
 - a. Licensing an air ambulance service, or
 - b. Issuing a certificate of registration for an air ambulance.
4. “Base location” means a physical location at which a person houses an air ambulance or equipment and supplies used for the operation of an air ambulance service or provides administrative or other support for the operation of an air ambulance service.
5. “CAMTS” means the Commission on Accreditation of Medical Transport Systems, formerly known as the Commission on Accreditation of Air Medical Services.
6. “Certificate holder” means a person who holds a current and valid certificate of registration for an air ambulance.
7. “Change of ownership” means a transfer of controlling legal or controlling equitable interest and authority in an air ambulance service.
8. “Critical care” means pertaining to a patient who has an illness or injury acutely impairing one or more organ systems, such that the conditions are life-threatening and require constant monitoring to avoid deterioration of the patient’s condition.
9. “Estimated time of arrival” means the number of minutes from the time that an air ambulance service agrees to perform a mission to the time that an air ambulance arrives at the scene.
10. “Interfacility” means between two health care institutions.
11. “Interfacility maternal transport” means an interfacility transport of a woman:
 - a. Whose pregnancy is considered by a physician to be high risk,
 - b. Who is in need of critical care services related to the pregnancy, and
 - c. Who is being transferred to a medical facility that has the specialized perinatal and neonatal resources and capabilities necessary to provide an appropriate level of care.
12. “Interfacility neonatal transport” means an interfacility transport of an infant who is 28 days of age or younger and who is in need of critical care services.
13. “Licensed respiratory care practitioner” has the same meaning as in A.R.S. § 32-3501.
14. “Licensee” means a person who holds a current and valid license from the Department to operate an air ambulance service.
15. “Medical team” means personnel whose main function on a mission is the medical care of the patient being transported.
16. “Mission” means a transport event that involves an air ambulance service’s sending an air ambulance to a patient’s location to provide transport of the patient from one location to another, whether or not transport of the patient is actually provided.

17. “Mission level” means critical care services or ALS services, based on the staffing and the services provided by the air ambulance service.
18. “Mission type” means an emergency medical services transport, interfacility transport, interfacility maternal transport, or interfacility neonatal transport provided by an air ambulance service.
19. “On-line medical guidance” means emergency medical services direction or information provided to a non-EMCT medical team member by a physician through two-way voice communication.
20. “Operate an air ambulance in this state” means:
 - a. Transporting a patient via air ambulance from a location in this state to another location in this state,
 - b. Operating an air ambulance from a base location in this state, or
 - c. Transporting a patient via air ambulance from a location in this state to a location outside of this state more than once per month.
21. “Owner” means a person that holds a controlling legal or equitable interest and authority in a business organization.
22. “Personnel” means individuals who work for an air ambulance service, with or without compensation, whether as employees, contractors, or volunteers.
23. “Premises” means each physical location of air ambulance service operations and includes all equipment and records at each location.
24. “Proficiency in neonatal resuscitation” means current and valid certification in neonatal resuscitation obtained through completing a nationally recognized training program such as the American Academy of Pediatrics and American Heart Association NRP: Neonatal Resuscitation Program.
25. “Regularly” means at recurring, fixed, or uniform intervals.
26. “Subspecialization” means:
 - a. For a physician board certified by a specialty board approved by the American Board of Medical Specialties, subspecialty certification;
 - b. For a physician board certified by a specialty board approved by the American Osteopathic Association, attainment of either a certification of special qualifications or a certification of added qualifications; and
 - c. For a physician who has completed an accredited residency program, completion of at least one year of training pertaining to the specified area of medicine.
27. “Two-way voice communication” means that two individuals are able to convey information back and forth to each other orally, either directly or through a third-party relay.
28. “Valid” means that a license, certification, or other form of authorization is in full force and effect and not suspended.
29. “Working day” means the period between 8:00 a.m. and 5:00 p.m. on a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday.

R9-25-702. Applicability (A.R.S. §§ 36-2202(A)(4) and 36-2217)

This Article and Article 8 of this Chapter do not apply to persons and vehicles exempted from the provisions of A.R.S. Title 36, Chapter 21.1 as provided in A.R.S. § 36-2217(A).

R9-25-703. Requirement and Eligibility for a License (Authorized by A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), 36-2212, 36-2213, 36-2214, and 36-2215)

- A. A person shall not operate an air ambulance in this state unless the person has a current and valid air ambulance service license and, except as provided in A.R.S. § 36-2212(C), a current and valid certificate of registration for the air ambulance as required under Article 8 of this Chapter.
- B. To be eligible to obtain an air ambulance service license, an applicant shall:
 - 1. Hold current and valid registration and exemption issued by the Federal Aviation Administration under 14 CFR 298, as evidenced by a current and valid U.S. Department of Transportation OST Form 4507 showing the effective date of registration;
 - 2. Hold the following issued by the Federal Aviation Administration:
 - a. A current and valid Air Carrier Certificate authorizing common carriage under 14 CFR 135;
 - b. If operating a rotor-wing air ambulance, current and valid Operations Specifications authorizing aeromedical helicopter operations;
 - c. If operating a fixed-wing air ambulance, current and valid Operations Specifications authorizing airplane air ambulance operations;
 - d. A current and valid Certificate of Registration for each air ambulance to be operated; and
 - e. A current and valid Airworthiness Certificate for each air ambulance to be operated;
 - 3. Have applied for a certificate of registration, issued by the Department under Article 8 of this Chapter, for each air ambulance to be operated by the air ambulance service;
 - 4. Possess a copy of a current and valid registration, issued by the Arizona Department of Transportation under A.R.S. Title 28, Chapter 25, Article 4, to the owner of the aircraft for each air ambulance to be operated by the air ambulance service;
 - 5. Have current and valid liability insurance coverage for the air ambulance service that complies with A.R.S. § 36-2215 and that has at least the following maximum liability limits:
 - a. \$1 million for injuries to or death of any one person arising out of any one incident or accident;
 - b. \$3 million for injuries to or death of more than one person in any one incident or accident; and
 - c. \$500,000 for damage to property arising from any one incident or accident;
 - 6. Have current and valid malpractice insurance coverage for the air ambulance service that complies with A.R.S. § 36-2215 and that has a maximum liability limit of at least \$1 million per occurrence; and
 - 7. Comply with all applicable requirements of this Article, Articles 2 and 8 of this Chapter, and A.R.S. Title 36, Chapter 21.1.
- C. To maintain eligibility for an air ambulance service license, a licensee shall meet the requirements of subsections (B)(1), (2), and (4) through (7) and hold a current and valid certificate of registration, issued by the Department under Article 8 of this Chapter, for each air ambulance operated in Arizona by the air ambulance service.

R9-25-704. Application and Licensing Process (Authorized by A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), 36-2213, 36-2214, and 36-2215)

- A. An applicant for an initial license shall submit an application packet to the Department, including:
 - 1. The following information in a Department-provided format:
 - a. The applicant's name; mailing address; e-mail address; fax number, if any; and telephone number;
 - b. The names of all other business organizations operated by the applicant related to the air ambulance service;

- c. The physical and mailing addresses to be used for the air ambulance service, if different from the applicant's mailing address;
 - d. The name, title, address, e-mail address, and telephone number of the applicant's statutory agent or the individual designated by the applicant to accept service of process and subpoenas for the air ambulance service;
 - e. The name, title, address, e-mail address, and telephone number of the individual acting on behalf of the applicant according to R9-25-102;
 - f. If the applicant is a business organization:
 - i. The type of business organization; and
 - ii. The name; address; e-mail address; telephone number; and fax number, if any, of the individual who is to serve as the primary contact for information regarding the application;
 - g. The name and Arizona license number for the physician who is to serve as the administrative medical director for the air ambulance service;
 - h. The intended hours of operation for the air ambulance service;
 - i. The intended schedule of rates for the air ambulance service;
 - j. Which of the following mission types is to be provided:
 - i. Emergency medical services transports,
 - ii. Interfacility transports,
 - iii. Interfacility maternal transports, or
 - iv. Interfacility neonatal transports;
 - k. Which of the following mission levels is to be provided:
 - i. Critical care, or
 - ii. Advanced life support;
 - l. Whether the applicant plans to use fixed-wing or rotor-wing aircraft for the air ambulance service;
 - m. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-25-1201(C)(3);
 - n. Attestation that the applicant will comply with all applicable requirements in this Article, Articles 2 and 8 of this Chapter, and A.R.S. Title 36, Chapter 21.1;
 - o. Attestation that the information provided in the application packet, including the information in the accompanying documents, is accurate and complete; and
 - p. The signature of the applicant and the date signed;
2. Documentation for the individual specified according to subsection (A)(1)(e) that complies with A.R.S. § 41-1080;
 3. A copy of the business organization's articles of incorporation, articles of organization, or partnership documents, if applicable;
 4. A copy of a current and valid U.S. Department of Transportation OST Form 4507, showing the effective date of Federal Aviation Administration registration and exemption under 14 CFR 298;
 5. A copy of the following issued by the Federal Aviation Administration:
 - a. A current and valid Air Carrier Certificate authorizing common carriage under 14 CFR 135;
 - b. If intending to operate a rotor-wing air ambulance, the following signed pages of the current and valid Operations Specifications authorizing aeromedical helicopter operations:
 - i. The page showing the certificate number issued by the Federal Aviation Administration and stating the name and contact information for the entity to which the certificate, approving the

- Operation Specifications authorizing aeromedical helicopter operations, was issued by the Federal Aviation Administration;
- ii. The page stating the characteristics of the rotor-wing aircraft for which the certificate was issued by the Federal Aviation Administration;
 - iii. Each page stating the name and contact information for the individuals with controlling legal interest or controlling equitable interest in the ownership of the entity specified in subsection (A)(5)(b)(i);
 - iv. Each page stating the name and contact information for the individuals designated to act as a point of contact with the Federal Aviation Administration about the Operation Specifications for the rotor-wing aircraft;
 - v. Each page stating the name and contact information for the individuals with operational control of the rotor-wing aircraft; and
 - vi. Each page listing the tail numbers of the rotor-wing aircraft covered under the Operations Specifications; and
- c. If intending to operate a fixed-wing air ambulance, the following signed pages of the current and valid Operations Specifications authorizing airplane air ambulance operations:
- i. The page showing the certificate number issued by the Federal Aviation Administration and stating the name and contact information for the entity to which the certificate, approving the Operation Specifications authorizing airplane ambulance operations, was issued by the Federal Aviation Administration;
 - ii. The page stating the characteristics of the fixed-wing aircraft for which the certificate was issued by the Federal Aviation Administration;
 - iii. Each page stating the name and contact information for the individuals with controlling legal interest or controlling equitable interest in the ownership of the entity specified in subsection (A)(5)(c)(i);
 - iv. Each page stating the name and contact information for the individuals designated to act as a point of contact with the Federal Aviation Administration about the Operation Specifications for the fixed-wing aircraft;
 - v. Each page stating the name and contact information for the individuals with operational control of the fixed-wing aircraft; and
 - vi. Each page listing the tail numbers of the fixed-wing aircraft covered under the Operations Specifications;
6. For each air ambulance to be operated for the air ambulance service:
- a. An application for registration that includes all of the information and documents required under R9-25-801(B); and
 - b. A copy of a current and valid registration, issued by the Arizona Department of Transportation under A.R.S. Title 28, Chapter 25, Article 4;
7. A certificate of insurance establishing that the applicant has current and valid liability insurance coverage for the air ambulance service as required under R9-25-703(B)(5);
8. A certificate of insurance establishing that the applicant has current and valid malpractice insurance coverage for the air ambulance service as required under R9-25-703(B)(6);
9. A list of each entity that or physician who is to provide on-line medical direction to EMCTs of the air ambulance service, including:

- a. For each entity, such as an ALS base hospital, centralized medical direction communications center, or physician group practice, the name, mailing address, e-mail address, and telephone number of the entity; or
 - b. For each physician who is to provide on-line medical direction, the name, professional license number, mailing address, e-mail address, and telephone number for the physician;
 10. If the applicant holds current CAMTS accreditation for the air ambulance service, a copy of the current CAMTS accreditation report; and
 11. If a document required under subsection (A)(4) or (5) is not issued in the name of the applicant, documentation showing the applicant can legally possess and operate the aircraft covered by the document, signed by the owner of the aircraft.
- B.** No more than 30 days before the expiration date of the current license, a licensee shall submit to the Department a renewal application packet including:
1. The information required in subsection (A)(1), in a Department-provided format;
 2. The documents required in subsections (A)(4), (5), (7), (8), (9), and, if applicable, (10); and
 3. For each air ambulance operated or to be operated by the air ambulance service:
 - a. Either:
 - i. A copy of a current and valid certificate of registration issued by the Department under Article 8 of this Chapter, or
 - ii. An application packet for registration that includes all of the information and documents required under R9-25-801(B); and
 - b. A copy of a current and valid registration, issued by the Arizona Department of Transportation under A.R.S. Title 28, Chapter 25, Article 4.
- C.** Unless an applicant or licensee documents current CAMTS accreditation, as provided in subsection (A)(10), or is applying for an initial license because of a change of ownership as described in R9-25-710(D), the Department shall conduct an inspection, as required under A.R.S. § 36-2214(B) and R9-25-711, during the substantive review period for the application for a license.
- D.** The Department shall review each application packet as described in Article 12 of this Chapter, and:
1. Approve the application;
 2. Approve the application with a corrective action plan, as specified in R9-25-711(G)(2); or
 3. Deny the application.
- E.** The Department may deny an application if an applicant or licensee:
1. Fails to meet the eligibility requirements of R9-25-703(B);
 2. Fails or has failed to comply with any provision in A.R.S. Title 36, Chapter 21.1;
 3. Fails or has failed to comply with any provision in this Article or Article 2 or 8 of this Chapter;
 4. Knowingly or negligently provides false documentation or false or misleading information to the Department; or
 5. Fails to submit to the Department documents or information requested under R9-25-1201(B)(1) or (C)(3) and requests a denial as permitted under R9-25-1201(E).

R9-25-705. Minimum Standards for Operations (Authorized by A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), and 36-2213)

- A.** A licensee shall ensure that the air ambulance service:
1. Maintains eligibility for licensure as required under R9-25-703(C);

2. Makes a good faith effort to communicate information about its hours of operation to the general public through print media, broadcast media, the Internet, or other means;
3. Makes the air ambulance service's schedule of rates available to any individual upon request and, if requested, in writing;
4. Provides an accurate estimated time of arrival to the person requesting transport at the time that transport is requested and provides an amended estimated time of arrival to the person requesting transport if the estimated time of arrival changes;
5. Except as provided in subsection (B), only transports patients for whom the air ambulance service has the resources to provide appropriate medical care;
6. Does not perform interfacility transport of a patient unless:
 - a. The transport is initiated by the sending health care institution, and
 - b. The destination health care institution confirms that a bed is available for the patient;
7. Ensures that the protocol for the transfer of information to be communicated to emergency receiving facility staff concurrent with the transfer of care, required in R9-25-201(E)(2)(d)(i), includes:
 - a. The date and time the call requesting service was received by the air ambulance service;
 - b. The unique number used by the air ambulance service to identify the mission;
 - c. The name of the air ambulance service;
 - d. The number or other identifier of the air ambulance used for the mission;
 - e. The following information about the patient:
 - i. The patient's name;
 - ii. The patient's date of birth or age, as available;
 - iii. The principal reason for requesting services for the patient;
 - iv. The patient's medical history, including any chronic medical illnesses, known allergies to medications, and medications currently being taken by the patient;
 - v. The patient's level of consciousness at initial contact and when reassessed;
 - vi. The patient's pulse rate, respiratory rate, oxygen saturation, and systolic blood pressure at initial contact and when reassessed;
 - vii. The results of an electrocardiograph, if available;
 - viii. The patient's glucose level at initial contact and when reassessed, if applicable;
 - ix. The patient's level of responsiveness score, as applicable, at initial contact and when reassessed;
 - x. The results of the patient's neurological assessment, if applicable; and
 - xi. The patient's pain level at initial contact and when reassessed; and
 - f. Any procedures or other treatment provided to the patient at the scene or during transport, including any agents administered to the patient;
8. Creates a prehospital incident history report, in a Department-provided format, for each patient that includes the following information:
 - a. The name and identification number of the air ambulance service;
 - b. Information about the software for the storage and submission of the prehospital incident history report;
 - c. The unique number assigned to the mission;
 - d. The unique number assigned to the patient;
 - e. Information about the response to the call requesting service, including:

- i. The mission level requested;
 - ii. Information obtained by the person providing direction for response to the request;
 - iii. Information about the air ambulance assigned to the mission;
 - iv. Information about the medical team responding to the call requesting service;
 - v. The priority assigned to the response; and
 - vi. Response delays, as applicable;
- f. Whether patient care was transferred from another EMS provider or ambulance service and, if so, identification of the EMS provider or ambulance service;
- g. The date and time that:
 - i. The call requesting service was received;
 - ii. The request was received by the person coordinating transport;
 - iii. The air ambulance service received the transport request;
 - iv. The air ambulance left for the patient's location;
 - v. The air ambulance arrived at the patient's location;
 - vi. The medical team in the air ambulance arrived at the patient's side;
 - vii. Transfer of the patient's care occurred at a location other than the destination, if applicable;
 - viii. The air ambulance departed the patient's location;
 - ix. The air ambulance arrived at the destination;
 - x. Transfer of the patient's care occurred at the destination;
 - xi. The air ambulance was available to take another mission;
- h. Information about the patient, including:
 - i. The patient's first and last name;
 - ii. The address of the patient's residence;
 - iii. The county of the patient's residence;
 - iv. The country of the patient's residence;
 - v. The patient's gender, race, ethnicity, and age;
 - vi. The patient's estimated weight;
 - vii. The patient's date of birth; and
 - viii. If the patient has an alternate residence, the address of the alternate residence;
- i. The primary method of payment for services and anticipated level of payment;
- j. Information about the scene, including:
 - i. Specific information about the location of the scene;
 - ii. Whether the air ambulance was first on the scene;
 - iii. The number of patients at the scene;
 - iv. Whether the scene was the location of a mass casualty incident; and
 - v. If the scene was the location of a mass casualty incident, triage information;
- k. Information about the reason for requesting service for the patient, including:
 - i. The date and time of onset of symptoms and when the patient was last well;
 - ii. Information about the complaint;
 - iii. The patient's symptoms;
 - iv. The results of the medical team's initial assessment of the patient;
 - v. If the patient was injured, information about the injury and the cause of the injury;

- vi. If the patient experienced a cardiac arrest, information about the etiology of the cardiac arrest and subsequent treatment provided; and
- vii. For an interfacility transport, the reason for the transport;
- l. Information about any specific barriers to providing care to the patient;
- m. Information about the patient's medical history, including:
 - i. Known allergies to medications,
 - ii. Surgical history,
 - iii. Current medications, and
 - iv. Alcohol or drug use;
- n. Information about the patient's current medical condition, including the information in subsections (A)(7)(e)(v) through (xi) and the time and method of assessment;
- o. Information about agents administered to the patient, including the dose and route of administration, time of administration, and the patient's response to the agent;
- p. If not specifically included under subsection (A)(8)(k), (m)(iv), (n), or (o), the information required in A.A.C. R9-4-602(A);
- q. Information about any procedures performed on the patient and the patient's response to the procedure;
- r. Whether the patient was transported and, if so, information about the transport;
- s. Information about the destination of the transport, including the reason for choosing the destination;
- t. Whether patient care was transferred to another EMS provider or ambulance service and, if so, identification of the EMS provider or ambulance service;
- u. Unless patient care was transferred to another EMS provider or ambulance service, information about:
 - i. Whether the destination facility was notified that the patient being transported has a time-sensitive condition and the time of notification;
 - ii. The disposition of the patient at the destination; and
 - iii. The disposition of the mission;
- v. Any other narrative information about the patient, care received by the patient, or transport; and
- w. The name and certification level of the medical team member providing the information;
- 9. Creates a record for each mission that includes:
 - a. Mission date;
 - b. Mission level;
 - c. Mission type;
 - d. Staffing of the mission;
 - e. Aircraft type—fixed-wing aircraft or rotor-wing aircraft;
 - f. Name of the person requesting the transport;
 - g. Time of receipt of the transport request;
 - h. The estimated time of arrival, as provided according to subsection (A)(4);
 - i. Departure time to the patient's location;
 - j. Address of the patient's location;
 - k. Arrival time at the patient's location;
 - l. Departure time to the destination health care institution;

- m. Name and address of the destination health care institution;
 - n. Arrival time at the destination health care institution;
 - o. Either the:
 - i. Unique reference number used by the air ambulance service to identify the patient, or
 - ii. Unique call number used by the air ambulance service to identify the specific mission; and
 - p. Aircraft tail number for the air ambulance used on the mission;
10. Establishes, documents, and, if necessary, implements a plan to address and minimize potential issues of patient health and safety due to the air ambulance service terminating operations at a physical address used for the air ambulance service that:
- a. Is developed in conjunction with hospitals near the physical address used for the air ambulance service and other persons who may be adversely affected by the air ambulance service terminating operations;
 - b. Includes notification by the air ambulance service of the persons in subsection (A)(10)(a) of the intent to terminate operations, at least 30 calendar days before the termination of operations; and
 - c. Includes temporary measures that will be used until alternate methods may be arranged for patient transport that address patient health and safety;
11. Establishes, documents, and implements a quality improvement program, as specified in policies and procedures, through which:
- a. Data related to initial patient assessment, patient care, transport services provided, and patient status upon arrival at the destination are:
 - i. Collected continuously;
 - ii. For the information required in subsection (A)(8), submitted to the Department, in a Department-provided format and within 48 hours after the date of a mission, for quality improvement purposes; and
 - iii. If the air ambulance service is notified that the submission of information to the Department according to subsection (A)(11)(a)(ii) was unsuccessful, corrected and resubmitted within seven days after notification;
 - b. Continuous quality improvement processes are developed to identify, document, and evaluate issues related to the provision of services, including:
 - i. Care provided to patients with time-sensitive conditions;
 - ii. Transport or documentation, and
 - iii. Patient status upon arrival at the destination;
 - c. A committee consisting of the administrative medical director, the individual managing the air ambulance service or designee, and other employees as appropriate:
 - i. Review the data in subsection (A)(11)(a) and any issues identified in subsection (A)(11)(b) on at least a quarterly basis; and
 - ii. Implement activities to improve performance when deviations in patient care, transport, or documentation are identified; and
 - d. The activities in subsection (A)(11)(c) are documented, consistent with A.R.S. §§ 36-2401, 36-2402, and 36-2403; and
12. Beginning within 12 months after the effective date of this Section, establish and maintain a method to electronically document patient information and treatment that is capable of being transferred.

- B.** An air ambulance service may transport a patient for whom the air ambulance does not have the resources to provide appropriate medical care:
1. In a rescue situation in which:
 - a. An individual's life, limb, or health is imminently threatened;
 - b. The threat may be reduced or eliminated by removing the individual from the situation to a location in which medical services may be provided; and
 - c. There is no other practical means of transport, including another air ambulance service, available; or
 2. For an interfacility transport of a patient if:
 - a. The sending health care institution provides medically appropriate life support measures, staff, and equipment to sustain the patient during the interfacility transport; and
 - b. Each staff member provided by the sending health care institution has completed training in the subject areas listed in R9-25-707(A) before participating in the interfacility transport.
- C.** If an air ambulance service completes a mission under subsection (B) for which the air ambulance service does not have the resources to provide appropriate medical care, the licensee shall ensure that the air ambulance service creates a record within five working days after the mission, including:
1. The information required under subsection (A)(8),
 2. The manner in which the air ambulance service deviated from subsection (A)(5), and
 3. The justification for operating under subsection (B).
- D.** If an air ambulance service uses a single-member medical team as authorized under R9-25-706(B) and (C), the licensee shall ensure that the air ambulance service creates a record within five working days after the mission, including:
1. The information required under subsection (A)(9),
 2. The name and qualifications of the individual comprising the single-member medical team, and
 3. The justification for using a single-member medical team.
- E.** If an air ambulance service completes a critical care interfacility transport mission under conditions permitted in R9-25-802(F), the licensee shall ensure that the air ambulance service creates a record within five working days after the mission, including:
1. The information required under subsection (A)(9),
 2. A description of the life-support equipment used on the mission,
 3. A list of the equipment and supplies required in R9-25-802(C) that were removed from the air ambulance for the mission, and
 4. The justification for conducting the mission as permitted under R9-25-802(F).
- F.** A licensee shall ensure that an individual does not serve on the medical team for an interfacility maternal transport unless the air ambulance service's medical director has verified and attested in writing to the individual's having the proficiencies described in R9-25-706(A)(2).
- G.** A licensee shall ensure that an individual does not serve on the medical team for an interfacility neonatal transport unless the air ambulance service's medical director has verified and attested in writing to the individual's having the proficiencies described in R9-25-706(A)(3).
- H.** A licensee shall ensure that the air ambulance service:
1. Retains each document required to be created or maintained under this Article or Article 2 or 8 of this Chapter for at least three years after the last event recorded in the document, and
 2. Produces each document for Department review upon request.

- I. A licensee shall ensure that, while on a mission, two-way voice communication is available:
 - 1. Between and among personnel on the air ambulance, including the pilot; and
 - 2. Between personnel on the air ambulance and the following persons on the ground:
 - a. Personnel;
 - b. Physicians providing on-line medical direction or on-line medical guidance to medical team members; and
 - c. For a rotor-wing air ambulance mission:
 - i. Emergency medical services providers, and
 - ii. Law enforcement agencies.

R9-25-706. Minimum Standards for Mission Staffing (Authorized by A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), and 36-2213)

- A. A licensee shall ensure that, except as provided in subsection (B):
 - 1. Each critical care mission is staffed by a medical team of at least two individuals with the following qualifications:
 - a. For a critical care interfacility transport mission:
 - i. A physician or registered nurse; and
 - ii. Another physician, another registered nurse, a Paramedic, or a licensed respiratory care practitioner; and
 - b. For a critical care mission that is an emergency medical services transport:
 - i. A physician or registered nurse; and
 - ii. A Paramedic or another registered nurse;
 - 2. Each interfacility maternal transport mission is staffed by a medical team that:
 - a. Complies with the requirements for a critical care mission medical team in subsection (A)(1); and
 - b. Has the following additional qualifications:
 - i. Proficiency in advanced emergency cardiac life support that includes didactic instruction and a practical skills test, consistent with training recognized by the American Heart Association;
 - ii. Proficiency in neonatal resuscitation; and
 - iii. Proficiency in stabilization and transport of the pregnant patient;
 - 3. Each interfacility neonatal transport mission is staffed by a medical team that:
 - a. Complies with the requirements for a critical care mission medical team in subsection (A)(1); and
 - b. Has the following additional qualifications:
 - i. Proficiency in pediatric advanced emergency life support that includes didactic instruction and a practical skills test, consistent with training recognized by the American Heart Association; and
 - ii. Proficiency in neonatal resuscitation and stabilization of the neonatal patient; and
 - 4. Each advanced life support mission is staffed by a medical team of at least two individuals with the following qualifications:
 - a. For an advanced life support mission that is an emergency medical services transport:
 - i. A physician, registered nurse, or Paramedic; and
 - ii. Another Paramedic or another registered nurse;
 - b. For an advanced life support interfacility transport mission:
 - i. A physician, registered nurse, or Paramedic; and

- ii. Another Paramedic, a licensed respiratory care practitioner, or another registered nurse.
- B. If the pilot on a mission using a rotor-wing air ambulance determines, in accordance with the air ambulance service's written guidelines required under subsection (C)(1), that the weight of a second medical team member could potentially compromise the performance of the rotor-wing air ambulance and the safety of the mission, and the use of a single-member medical team is consistent with the on-line medical direction or on-line medical guidance received as required under subsection (C)(2), an air ambulance service may use a single-member medical team consisting of an individual with the following qualification:
 - 1. For a critical care mission, a physician or registered nurse; and
 - 2. For an advanced life support mission, a physician, registered nurse, or Paramedic.
- C. A licensee shall ensure that:
 - 1. Each air ambulance service rotor-wing pilot is provided with written guidelines to use in determining when the weight of a second medical team member could potentially compromise the performance of a rotor-wing air ambulance and the safety of a mission, including the conditions of density altitude and weight that warrant the use of a single-member medical team;
 - 2. The following are done, without delay, after an air ambulance service rotor-wing pilot determines that the weight of a second medical team member could potentially compromise the performance of a rotor-wing air ambulance and the safety of a mission:
 - a. The pilot communicates that information to the medical team,
 - b. The medical team obtains on-line medical direction or on-line medical guidance regarding the use of a single-member medical team, and
 - c. The medical team proceeds in compliance with the on-line medical direction or on-line medical guidance;
 - 3. A single-member medical team has the knowledge and medical equipment to perform one-person cardiopulmonary resuscitation;
 - 4. The patient care provided by each single-member medical team, including consideration of each patient's status upon arrival at the destination health care institution, is reviewed through the quality improvement processes in R9-25-705(A)(11)(b) and (c); and
 - 5. A single-member medical team is used only when no other transport team is available that would be more appropriate for delivering the level of care that a patient requires.
- D. A licensee shall ensure that the air ambulance service creates and maintains for each personnel member a file containing documentation of the personnel member's qualifications, including, as applicable, licenses, certifications, and training records.

R9-25-707. Minimum Standards for Training (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), and 36-2213)

- A. A licensee shall ensure that each medical team member completes training in the following subjects before serving on a mission:
 - 1. Aviation terminology;
 - 2. Physiological aspects of flight;
 - 3. Patient loading and unloading;
 - 4. Safety in and around the aircraft;
 - 5. In-flight communications;

6. Use, removal, replacement, and storage of the medical equipment installed on the aircraft;
 7. In-flight emergency procedures;
 8. Emergency landing procedures; and
 9. Emergency evacuation procedures.
- B.** A licensee shall ensure that the air ambulance service documents each medical team member's completion of the training required under subsection (A), including the name of the medical team member, each training component completed, and the date of completion.

R9-25-708. Minimum Standards for Medical Control (Authorized by A.R.S. §§ 36-2202(A)(3) and (4), 36-2209(A)(2), and 36-2213)

- A.** A licensee shall ensure that:
1. The air ambulance service has an administrative medical director who:
 - a. Meets the qualifications in subsection (B);
 - b. Supervises and evaluates the quality of medical care provided by medical team members;
 - c. Ensures the competency and current qualifications of all medical team members;
 - d. Except as provided in subsections (A)(3) and (4), ensures that:
 - i. Each EMCT medical team member receives medical direction as required under Article 2 of this Chapter; and
 - ii. Each non-EMCT medical team member receives medical guidance through written treatment protocols and according to subsection (C); and
 - e. Approves, ensures implementation of, and annually reviews treatment protocols to be followed by medical team members;
 2. The administrative medical director reviews data related to patient care and transport services provided, documentation, and patient status upon arrival at destination that are collected through the quality management program in R9-25-705(A)(11);
 3. For an interfacility maternal transport mission, on-line medical direction or on-line medical guidance provided to medical team member is provided by a physician who meets the qualifications of subsection (B)(2)(b)(i);
 4. For an interfacility neonatal transport mission, on-line medical direction or on-line medical guidance provided to medical team member is provided by a physician who meets the qualifications of subsection (B)(2)(b)(ii);
- B.** An administrative medical director shall:
1. Be a physician; and
 2. Comply with one of the following:
 - a. If the air ambulance service provides emergency medical services transports, meet the qualifications of R9-25-201(A)(1); or
 - b. If the air ambulance service does not provide emergency medical services transports, meet the qualifications of R9-25-201(A)(1) or one of the following:
 - i. If the air ambulance service provides interfacility maternal transport missions, have board certification or have completed an accredited residency program in one of the following specialty areas:
 - (1) Obstetrics and gynecology, with subspecialization in critical care medicine or maternal and fetal medicine; or

- (2) Pediatrics, with subspecialization in neonatal-perinatal medicine;
 - ii. If the air ambulance service provides interfacility neonatal transport missions, have board certification or have completed an accredited residency program in one of the following specialty areas:
 - (1) Obstetrics and gynecology, with subspecialization in maternal and fetal medicine; or
 - (2) Pediatrics, with subspecialization in neonatal-perinatal medicine, neonatology, pediatric critical care medicine, or pediatric intensive care; or
 - iii. If neither subsection (B)(2)(b)(i) or (ii) applies, have board certification or have completed an accredited residency program in one of the following specialty areas:
 - (1) Anesthesiology, with subspecialization in critical care medicine;
 - (2) Internal medicine, with subspecialization in critical care medicine;
 - (3) If the air ambulance service transports only pediatric patients, pediatrics, with subspecialization in pediatric critical care medicine or pediatric emergency medicine; or
 - (4) If the air ambulance service transports only surgical patients, surgery, with subspecialization in surgical critical care.
- C. An administrative medical director shall ensure that each non-EMCT medical team member receives on-line medical guidance provided by:
- 1. The administrative medical director;
 - 2. Another physician designated by the administrative medical director; or
 - 3. If the medical guidance needed exceeds the administrative medical director's area of expertise, a consulting specialty physician.

R9-25-709. Changes Affecting a License (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), and 36-2213)

- A. At least 30 days before the date of a change in an air ambulance service's name, the licensee shall send the Department written notice of the name change.
- B. At least 90 days before an air ambulance service ceases to operate, the licensee shall send the Department written notice of the intention to cease operating, effective on a specific date, and the licensee's intention to relinquish the air ambulance service's license as of that date.
- C. Within 30 days after the date of receipt of a notice described in subsection (A) or (B), the Department shall:
 - 1. For a notice described in subsection (A), issue an amended license that incorporates the name change but retains the expiration date of the current license; and
 - 2. For a notice described in subsection (B), send the licensee written confirmation of the voluntary relinquishment of the air ambulance service's license, with an effective date consistent with the written notice.
- D. A licensee shall notify the Department in writing at least 30 calendar days before:
 - 1. Changing the physical address used for the air ambulance service, as provided according to R9-25-704(A)(1)(c); or
 - 2. Terminating operations at a physical address used for the air ambulance service, as provided according to R9-25-704(A)(1)(c).
- E. A licensee shall notify the Department in writing within one working day after:
 - 1. A change in the air ambulance service's eligibility for licensure under R9-25-703(B) or (C);

2. A change in the business organization information most recently submitted to the Department according to R9-25-704(A)(1)(f);
 3. A change in the air ambulance service's CAMTS accreditation status, including a copy of the air ambulance service's new CAMTS accreditation report, if applicable;
 4. A change in the air ambulance service's hours of operation, as specified according to R9-25-704(A)(1)(h);
 5. A change in the air ambulance service's schedule of rates, as specified according to R9-25-704(A)(1)(i); or
 6. A change in the mission types provided, as specified according to R9-25-704(A)(1)(j).
- F.** If the Department receives a notice specified in subsection (E)(6), the Department:
1. Shall reissue a license for the air ambulance service reflecting the change, but retaining the expiration date on the original license; and
 2. May conduct an inspection according to R9-25-711.

R9-25-710. Term and Transferability of License (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), 36-2213, 36-2214, and 41-1092.11)

- A.** The Department shall issue an initial license:
1. When based on current CAMTS accreditation, with a term beginning on the date of issuance of the initial license and ending on the expiration date of the CAMTS accreditation upon which licensure is based; and
 2. When based on Department inspection, with a term beginning on the date of issuance of the initial license and ending three years later.
- B.** The Department shall issue a renewal license with a term beginning on the day after the expiration date shown on the previous license and ending:
1. When based on current CAMTS accreditation, on the expiration date of the CAMTS accreditation upon which licensure is based; and
 2. When based on Department inspection, three years after the effective date of the renewal license.
- C.** If a licensee submits an application packet for renewal as described in R9-25-704(B), the current license does not expire until the Department has made a final determination on the application for renewal, as provided in A.R.S. § 41-1092.11.
- D.** At least 30 days before an anticipated change of ownership:
1. A licensee wanting to transfer an air ambulance service license shall submit a letter to the Department that contains:
 - a. A request that the air ambulance service license be transferred,
 - b. The name and license number of the currently licensed air ambulance service, and
 - c. The name of the person to whom the air ambulance service license is to be transferred; and
 2. The person to whom the license is to be transferred shall submit to the Department an application packet that complies with R9-25-704(A).
- E.** A new owner shall not operate an air ambulance in this state until:
1. The new owner complies with requirements in Articles 7 and 8 of this Chapter, and
 2. The Department has issued an air ambulance service license to the new owner.

R9-25-711. Inspections and Investigations (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2),

36-2213, and 36-2214)

- A.** Except as provided in subsections (D) and (E), the Department shall inspect an air ambulance service, as required under A.R.S. § 36-2214(B), before issuing an initial or renewal license and as necessary to determine compliance with this Article, Articles 2 and 8 of this Chapter, and A.R.S. Title 36, Chapter 21.1.
- B.** A Department inspection may include the air ambulance service's premises, records, and equipment, and each air ambulance operated or to be operated by the air ambulance service.
- C.** If the Department receives written or verbal information alleging a violation of this Article, Article 2 or 8 of this Chapter, or A.R.S. Title 36, Chapter 21.1, the Department shall conduct an investigation.
 - 1. The Department may conduct an inspection as part of an investigation.
 - 2. A licensee shall allow the Department to inspect the air ambulance service's premises, records, and equipment, and each air ambulance and to interview personnel as part of an investigation.
- D.** Except as provided in subsection (C), the Department shall not conduct an inspection of an air ambulance service before issuing an initial or renewal license if an applicant or licensee provides documentation of current CAMTS certification as part of the application packet according to R9-25-704(A)(9).
- E.** When an application for an air ambulance service license is submitted along with a transfer request due to a change of ownership, the Department shall determine whether an inspection is necessary based upon the potential impact to public health, safety, and welfare.
- F.** The Department shall conduct each inspection in compliance with A.R.S. § 41-1009.
- G.** If the Department determines that an air ambulance service is not in compliance with the requirements in this Article, Article 2 or 8 of this Chapter, or A.R.S. Title 36, Chapter 21.1, the Department may:
 - 1. Take an enforcement action as described in R9-25-712; or
 - 2. Require that the air ambulance service submit to the Department, within 15 days after written notice from the Department, a corrective action plan to address issues of compliance that do not directly affect the health or safety of a patient that:
 - a. Describes how each identified instance of non-compliance will be corrected and reoccurrence prevented, and
 - b. Includes a date for correcting each instance of non-compliance that is appropriate to the actions necessary to correct the instance of non-compliance.

R9-25-712. Enforcement Actions (Authorized by A.R.S. §§ 36-2202(A)(4), 36-2209(A)(2), 36-2213, 36-2214, 36-2215, 41-1092.03, and 41-1092.11(B))

- A.** The Department may take an action listed in subsection (B) against an air ambulance service that:
 - 1. Fails to meet the eligibility requirements of R9-25-703;
 - 2. Fails or has failed to comply with any provision in A.R.S. Title 36, Chapter 21.1;
 - 3. Fails or has failed to comply with any provision in this Article or Article 2 or 8 of this Chapter;
 - 4. Does not submit a corrective action plan, as provided in R9-25-711(G)(2), that is acceptable to the Department;
 - 5. Does not complete a corrective action plan submitted according to R9-25-711(G)(2); or
 - 6. Knowingly or negligently provides false documentation or false or misleading information to the Department or to a patient, third-party payor, or other person billed for service.
- B.** The Department may take the following actions against an air ambulance service:
 - 1. Except as provided in subsection (B)(3), after notice and an opportunity to be heard is provided under A.R.S. Title 41, Chapter 6, Article 10, suspend:

- a. The air ambulance service license, or
 - b. The certificate of registration of an air ambulance operated by the air ambulance service;
2. After notice and an opportunity to be heard is provided under A.R.S. Title 41, Chapter 6, Article 10, revoke:
 - a. The air ambulance service license, or
 - b. The certificate of registration of an air ambulance operated by the air ambulance service; and
3. As permitted under A.R.S. § 41-1092.11(B), if the Department determines that the public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in the Department's order, immediately suspend:
 - a. The air ambulance service license pending proceedings for revocation or other action, or
 - b. The certificate of registration of an air ambulance operated by the air ambulance service pending proceedings for revocation or other action.
- C. In determining whether to take action under subsection (B), the Department shall consider:
 1. The severity of each violation relative to public health and safety;
 2. The number of violations relative to the transport volume of the air ambulance service;
 3. The nature and circumstances of each violation;
 4. Whether each violation was corrected and, if so, the manner of correction; and
 5. The duration of each violation.

ARTICLE 8. AIR AMBULANCE REGISTRATION

R9-25-801. Requirement, Eligibility, and Application for an Initial or Renewal Certificate of Registration for an Air Ambulance (Authorized by A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), 36-2212, 36-2213, 36-2214, 36-2232(A)(11), and 36-2240(4))

- A.** To be eligible to obtain a certificate of registration for an air ambulance, an applicant shall:
1. Hold a current and valid air ambulance service license issued under Article 7 of this Chapter;
 2. Hold the following issued by the Federal Aviation Administration for the air ambulance:
 - a. A current and valid Certificate of Registration, and
 - b. A current and valid Airworthiness Certificate;
 3. Possess a copy of a current and valid registration for the air ambulance, issued by the Arizona Department of Transportation under A.R.S. Title 28, Chapter 25, Article 4, to the owner of the aircraft; and
 4. Comply with all applicable requirements of this Article, Articles 2 and 7 of this Chapter, and A.R.S. Title 36, Chapter 21.1.
- B.** An applicant for an initial or renewal certificate of registration for an air ambulance shall submit an application packet to the Department, including:
1. The following information in a Department-provided format:
 - a. The applicant's name; mailing address; e-mail address; fax number, if any; and telephone number;
 - b. The names of all other business organizations operated by the applicant related to the use of an air ambulance;
 - c. The physical address of the applicant, if different from the mailing address;
 - d. If applicable, the number of the applicant's air ambulance service license;
 - e. The name, title, address, e-mail address, and telephone number of the individual acting on behalf of the applicant according to R9-25-102;
 - f. The name, address, telephone number, and e-mail address of the owner of the air ambulance, if different from the applicant;
 - g. Whether the air ambulance is a fixed-wing or rotor-wing aircraft;
 - h. The number of engines on the air ambulance;
 - i. The manufacturer's name;
 - j. The model name of the air ambulance;
 - k. The year the air ambulance was manufactured;
 - l. The serial number of the air ambulance;
 - m. The tail number of the air ambulance;
 - n. The aircraft colors, including fuselage, stripe, and lettering;
 - o. A description of any insignia, monogram, or other distinguishing characteristics of the aircraft's appearance;
 - p. The address at which the air ambulance is usually based;
 - q. The address in Arizona at which the air ambulance will be available for inspection;
 - r. The name and telephone number of the individual to contact to arrange for inspection, if the inspection is preannounced;
 - s. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-25-1201(C)(3);

- t. Attestation that the information provided in the application packet, including the information in the accompanying documents, is accurate and complete; and
 - u. The dated signature of the applicant;
- 2. A copy of the following for the air ambulance, issued by the Federal Aviation Administration:
 - a. A current and valid Certificate of Registration, and
 - b. A current and valid Airworthiness Certificate;
- 3. A copy of a current and valid registration for the air ambulance, issued by the Arizona Department of Transportation under A.R.S. Title 28, Chapter 25, Article 4;
- 4. If a document required under subsection (B)(2) or (3) is not issued in the name of the applicant, documentation showing the applicant can legally possess and operate the aircraft covered by the document, signed by the owner of the aircraft; and
- 5. Unless the applicant operates or intends to operate the air ambulance only as a volunteer not-for-profit service, the following fees:
 - a. A \$50 registration fee, as required under A.R.S. § 36-2212(D); and
 - b. A \$200 annual regulatory fee, as required under A.R.S. § 36-2240(4).
- C. The Department requires submission of a separate application and the fees in subsection (B)(5) for each air ambulance.
- D. Except as provided in A.R.S. § 36-2232(A)(11), the Department shall inspect each air ambulance according to R9-25-805(A) and (B) to determine compliance with the provisions of A.R.S. Title 36, Chapter 21.1 and this Article:
 - 1. Within 30 calendar days before issuing an initial certificate of registration; and
 - 2. At least every 12 months thereafter, before issuing a renewal certificate of registration.
- E. The Department shall review and approve or deny each application as described in Article 12 of this Chapter.
- F. If the Department approves the application and sends the applicant the written notice of approval, specified in R9-25-1201(C)(5), the Department shall issue the certificate of registration to the applicant:
 - 1. For an applicant with a current and valid air ambulance service license issued under Article 7 of this Chapter, within five working days after the date on the written notice of approval; and
 - 2. For an applicant that does not have a current and valid air ambulance service license issued under Article 7 of this Chapter, when the air ambulance service license is issued.
- G. The Department may deny a certificate of registration for an air ambulance if the applicant:
 - 1. Fails to meet the eligibility requirements of subsection (A);
 - 2. Fails or has failed to comply with any provision in A.R.S. Title 36, Chapter 21.1;
 - 3. Fails or has failed to comply with any provision in this Article or Article 2 or 7 of this Chapter;
 - 4. Knowingly or negligently provides false documentation or false or misleading information to the Department; or
 - 5. Fails to submit to the Department documents or information requested under R9-25-1201(B)(1) or (C)(3) and requests a denial as permitted under R9-25-1201(E).

R9-25-802. Minimum Standards for an Air Ambulance (Authorized by A.R.S. §§ 36-2202(A)(3), (4), and (5); 36-2209(A)(2); and 36-2212)

- A. An applicant or certificate holder shall ensure that an air ambulance has:
 - 1. A climate control system to prevent temperature extremes that would adversely affect patient care;

2. If a fixed-wing air ambulance, pressurization capability;
 3. Interior lighting that allows for patient care and monitoring without interfering with the pilot's vision;
 4. For each place where a patient may be positioned, at least one electrical power outlet or other power source that is capable of operating all electrically powered medical equipment without compromising the operation of any electrical aircraft equipment;
 5. A back-up source of electrical power or batteries capable of operating all electrically powered life-support equipment for at least one hour;
 6. An entry that allows for patient loading and unloading without rotating a patient and stretcher more than 30 degrees about the longitudinal axis or 45 degrees about the lateral axis and without compromising the operation of monitoring systems, intravenous lines, or manual or mechanical ventilation;
 7. A configuration that allows each medical team member sufficient access to each patient to begin and maintain treatment modalities, including complete access to the patient's head and upper body for effective airway management;
 8. A configuration that allows for rapid exit of personnel and patients, without obstruction from stretchers and medical equipment;
 9. A configuration that protects the aircraft's flight controls, throttles, and communications equipment from any intentional or accidental interference from a patient or equipment and supplies;
 10. A padded interior or an interior that is clear of objects or projections in the head strike envelope;
 11. An installed self-activating emergency locator transmitter;
 12. A voice communications system that:
 - a. Is capable of air-to-ground communication, and
 - b. Allows the flight crew and medical team members to communicate with each other during flight;
 13. Interior patient compartment wall and floor coverings that are:
 - a. Free of cuts or tears,
 - b. Made from non-absorbent material,
 - c. Capable of being disinfected, and
 - d. Maintained in a sanitary manner; and
 14. If a rotor-wing air ambulance, the following:
 - a. A searchlight that:
 - i. Has a range of motion of at least 90 degrees vertically and 180 degrees horizontally,
 - ii. Is capable of illuminating a landing site, and
 - iii. Is located so that the pilot can operate the searchlight without removing the pilot's hands from the aircraft's flight controls;
 - b. Restraining devices that can be used to prevent a patient from interfering with the pilot or the aircraft's flight controls; and
 - c. A light to illuminate the tail rotor.
- B.** An applicant or certificate holder shall ensure that:
1. Except as provided in subsections (D), (E), and (F), each air ambulance has the equipment and supplies required in subsection (C) for each mission for which the air ambulance is used; and
 2. The equipment and supplies on an air ambulance are secured, stored, and maintained in a manner that prevents hazards to personnel and patients.

- C. An applicant or certificate holder shall ensure that an air ambulance used for an advanced life support mission or critical care mission has the following equipment and supplies:
1. The following ventilation and airway equipment and supplies:
 - a. Portable and fixed suction apparatus, with wide-bore tubing, rigid pharyngeal curved suction tip, tonsillar and flexible suction catheters, 5F-14F;
 - b. Portable and fixed oxygen equipment, with variable flow regulators;
 - c. Oxygen administration equipment, including: tubing; non-rebreathing masks (adult and pediatric sizes); and nasal cannulas (adult and pediatric sizes);
 - d. Bag-valve mask, with hand-operated, self-reexpanding bag (adult size), with oxygen reservoir/accumulator; mask (adult, pediatric, infant, and neonate sizes); and valve;
 - e. Airways, oropharyngeal (adult, pediatric, and infant sizes);
 - f. Laryngoscope handle, adult and pediatric, with, if applicable, extra batteries and bulbs;
 - g. Laryngoscope blades, sizes 0, 1, and 2, straight; sizes 3 and 4, straight and curved;
 - h. Endotracheal tube cuff pressure manometer;
 - i. Endotracheal tubes, sizes 2.5-5.0 mm cuffed or uncuffed and 6.0-8.0 mm cuffed;
 - j. Stylettes for Endotracheal tubes, adult and pediatric;
 - k. Airways, nasal (adult, pediatric, and infant sizes), one each in French sizes 16 to 34;
 - l. One type of supraglottic airway device, adult and pediatric;
 - m. 10 mL straight-tip syringes;
 - n. Small volume nebulizer or nebulizers and aerosol masks, adult and pediatric;
 - o. Magill forceps, adult and pediatric;
 - p. Nasogastric tubes, sizes 5F and 8F, Salem sump sizes 14F and 18F;
 - q. End-tidal CO₂ detectors, quantitative;
 - r. Portable automatic ventilator with positive end expiratory pressure; and
 - s. In-line viral/bacterial filter;
 2. The following monitoring and defibrillation equipment and supplies:
 - a. Portable, battery-operated monitor/defibrillator, with:
 - i. Tape write-out/recorder,
 - ii. Defibrillator pads,
 - iii. Adult and pediatric paddles or hands-free patches,
 - iv. ECG leads,
 - v. Adult and pediatric chest attachment electrodes, and
 - vi. Capability to provide electrical discharge below 25 watt-seconds; and
 - b. Transcutaneous cardiac pacemaker, either stand-alone unit or integrated into monitor/defibrillator;
 3. For rotor wing aircraft only, the following immobilization devices and supplies:
 - a. Cervical collars, rigid, adjustable or in an assortment of adult and pediatric sizes;
 - b. Head immobilization device, either firm padding or another commercial device;
 - c. Lower extremity (femur) traction device, including lower extremity, limb support slings, padded ankle hitch, padded pelvic support, and traction strap; and
 - d. Upper and lower extremity immobilization splints;
 4. The following bandages:
 - a. Burn pack, including standard package, clean burn sheets;
 - b. Dressings, including:

- i. Sterile multi-trauma dressings (various large and small sizes);
 - ii. Abdominal pads, 10" x 12" or larger; and
 - iii. 4" x 4" gauze sponges;
- c. Gauze rolls, sterile (4" or larger);
- d. Elastic bandages, non-sterile (4" or larger);
- e. Occlusive dressing, sterile, 3" x 8" or larger; and
- f. Adhesive or self-adhesive tape, including various sizes (1" or larger) hypoallergenic and various sizes (1" or larger) adhesive or self-adhesive;
- 5. The following obstetrical equipment and supplies:
 - a. Separate sterile obstetrical kit, including:
 - i. Towels,
 - ii. 4" x 4" dressing,
 - iii. Umbilical tape,
 - iv. Sterile scissors or other cutting utensil,
 - v. Bulb suction,
 - vi. Clamps for cord,
 - vii. Sterile gloves,
 - viii. Blankets, and
 - ix. A head cover; and
 - b. An alternate portable patient heat source or two heat packs;
- 6. The following infection control equipment and supplies, including the availability of latex-free:
 - a. Eye protection (full peripheral glasses or goggles, face shield);
 - b. Masks, at least as protective as a National Institute for Occupational Safety and Health-approved N-95 respirator, which are fit-tested;
 - c. Gloves, non-sterile;
 - d. Jumpsuits or gowns;
 - e. Shoe covers;
 - f. Disinfectant hand wash, commercial antimicrobial (towelette, spray, or liquid);
 - g. Disinfectant solution for cleaning equipment;
 - h. Standard sharps containers;
 - i. Disposable red trash bags; and
 - j. Protective facemasks or cloth face coverings for patients;
- 7. The following injury prevention equipment:
 - a. Appropriate restraints, such as seat belts or, if applicable, child safety restraints, for patient, personnel, and family members;
 - b. For rotor wing aircraft only, safety vest or other garment with reflective material for each personnel member;
 - c. Fire extinguisher, either disposable with an indicator of a full charge or with a current inspection tag;
 - d. Hazardous material reference guide; and
 - e. Hearing protection for patient and personnel;
- 8. The following vascular access equipment and supplies:
 - a. Intravenous administration equipment, with fluid in bags;

- b. Antiseptic solution (alcohol wipes and povidone-iodine wipes);
 - c. Intravenous pole or roof hook;
 - d. Intravenous catheters 14G-24G;
 - e. Intraosseous needles, adult and pediatric sizes;
 - f. Venous tourniquet;
 - g. One of each of the following types of intravenous solution administration sets:
 - i. A set with blood tubing,
 - ii. A set capable of delivering 60 drops per cc, and
 - iii. A set capable of delivering 10 or 15 drops per cc;
 - h. Intravenous arm boards, adult and pediatric;
 - i. IV pump or pumps (minimum of 3 infusion lines); and
 - j. IV pressure bag;
9. The agents, specified in a table of agents established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov/ems-regulatory-references, that an administrative medical director has authorized for use, based on the EMCT classification of the medical team; and
10. The following miscellaneous equipment and supplies:
- a. Sphygmomanometer (infant, pediatric, and adult regular and large sizes);
 - b. Stethoscope;
 - c. Pediatric equipment sizing reference guide;
 - d. Thermometer with low temperature capability;
 - e. Heavy bandage or paramedic scissors for cutting clothing, belts, and boots;
 - f. Cold packs;
 - g. Flashlight (1) with extra batteries or recharger, as applicable;
 - h. Blankets;
 - i. Sheets;
 - j. Disposable emesis bags or basins;
 - k. For fixed wing aircraft only, a disposable bedpan;
 - l. For fixed wing aircraft only, a disposable urinal;
 - m. Properly secured patient transport system;
 - n. Lubricating jelly (water soluble);
 - o. Glucometer or blood glucose measuring device with reagent strips;
 - p. Pulse oximeter with pediatric and adult probes;
 - q. Automatic blood pressure monitor; and
 - r. A commercially available trauma arterial tourniquet.
- D.** An applicant or certificate holder shall ensure that an air ambulance used for an interfacility maternal transport mission has:
- 1. The equipment and supplies in subsection (C); and
 - 2. The following:
 - a. A Doppler fetal heart monitor;
 - b. Unless use is not indicated for the patient as determined through on-line medical direction or on-line medical guidance provided as described in R9-25-708(A)(3), an external fetal heart and tocographic monitor with printer capability;
 - c. Tocolytic and anti-hypertensive medications;

- d. Advanced emergency cardiac life support equipment and supplies; and
 - e. Neonatal resuscitation equipment and supplies.
- E. An applicant or certificate holder shall ensure that an air ambulance used for an interfacility neonatal transport mission has:
 - 1. The equipment and supplies in subsection (C); and
 - 2. The following:
 - a. A transport incubator with:
 - i. Battery and inverter capabilities,
 - ii. An infant safety restraint system, and
 - iii. An integrated neonatal-capable pressure ventilator with oxygen-air supply and blender;
 - b. An invasive automatic blood pressure monitor;
 - c. A neonatal monitor or monitors with heart rate, respiratory rate, temperature, non-invasive blood pressure, and pulse oximetry capabilities;
 - d. Neonatal-specific drug concentrations and doses;
 - e. Thoracostomy supplies;
 - f. Neonatal resuscitation equipment and supplies;
 - g. A neonatal size cuff (size 2, 3, or 4) for use with an automatic blood pressure monitor; and
 - h. A neonatal probe for use with a pulse oximeter.
- F. A certificate holder may conduct a critical care interfacility transport mission using an air ambulance that does not have all of the equipment and supplies required in subsection (C) if:
 - 1. Care of the patient to be transported necessitates use of life-support equipment that, because of its size or weight or both, makes it unsafe or impossible for the air ambulance to carry all of the equipment and supplies required in subsection (C), as determined by the certificate holder based upon:
 - a. The individual aircraft's capabilities,
 - b. The size and weight of the equipment and supplies required in subsection (C) and of the additional life-support equipment,
 - c. The composition of the required medical team, and
 - d. Environmental factors such as density altitude;
 - 2. The certificate holder ensures that, during the mission, the air ambulance has the equipment and supplies necessary to provide an appropriate level of medical care for the patient and to protect the health and safety of the personnel on the mission; and
 - 3. The certificate holder ensures that the air ambulance is not used for another mission until the air ambulance has all of the equipment and supplies required in subsection (C).

R9-25-803. Changes Affecting Registration (Authorized by A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), and 36-2212)

- A. At least 30 days before the date of a change in a certificate holder's name, the certificate holder shall send the Department written notice of the name change.
- B. No later than 10 days after a certificate holder ceases to operate an air ambulance, the certificate holder shall send the Department written notice of the date that the certificate holder ceased to operate the air ambulance and of the certificate holder's intention to relinquish the certificate of registration for the air ambulance as of that date.

- C. Within 30 days after the date of receipt of a notice described in subsection (A) or (B), the Department shall:
 - 1. For a notice described in subsection (A), issue an amended certificate of registration that incorporates the name change but retains the expiration date of the current certificate of registration; and
 - 2. For a notice described in subsection (B):
 - a. Void the certificate of registration for the air ambulance; and
 - b. Send the certificate holder written confirmation of the voluntary relinquishment of the certificate of registration, with an effective date that corresponds to the written notice.
- D. A certificate holder shall notify the Department in writing within one working day after a change in the certificate holder's eligibility to hold a certificate of registration for an air ambulance under R9-25-801(A).
- E. Upon receiving a notification required in subsection (D), the Department:
 - 1. Shall revoke the certificate for the air ambulance; and
 - 2. If the air ambulance is the only air ambulance operated by an air ambulance service, may revoke the license of the air ambulance service.

R9-25-804. Term and Transferability of Certificate of Registration (Authorized by A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), 36-2212, and 41-1092.11)

- A. The Department shall issue an initial certificate of registration:
 - 1. With a term of one year from date of issuance of the initial certificate of registration; or
 - 2. If requested by the applicant, with a term shorter than one year that allows for the Department to conduct annual inspections of all of the applicant's air ambulances at one time.
- B. The Department shall issue a renewal certificate of registration with a term of one year from the expiration date on the previous certificate of registration.
- C. If a certificate holder submits an application for renewal as described in R9-25-801 before the expiration date of the current certificate of registration, the current certificate of registration does not expire until the Department has made a final determination on the application for renewal, as provided in A.R.S. § 41-1092.11.
- D. A certificate of registration is not transferable from one person to another.
- E. If there is a change in the ownership of an air ambulance or the person who can legally possess and operate the air ambulance, the new owner or person who can legally possess and operate the air ambulance shall apply for and obtain a new certificate of registration before operating the air ambulance in this state.

R9-25-805. Inspections (Authorized by A.R.S. §§ 36-2202(A)(4) and (5), 36-2209(A)(2), 36-2212, and 36-2232(A)(11))

- A. Except as provided in R9-25-711(C), an applicant or a certificate holder shall make an air ambulance available for inspection within Arizona within 10 working days after a request by the Department.
- B. The Department shall conduct each inspection in compliance with A.R.S. § 41-1009.
- C. As permitted under A.R.S. § 36-2232(A)(11), upon a certificate holder's request and at the certificate holder's expense, the annual inspection of an air ambulance required for renewal of a certificate of registration may be conducted by a Department-approved inspection facility.

Statutory Authority for Rules in 9 A.A.C. 25, Articles 7 and 8

36-2202. Duties of the director; qualifications of medical director

(L12, Ch. 94, sec. 5. Eff. until 1/1/24)

A. The director shall:

1. Appoint a medical director of the emergency medical services and trauma system.
2. Adopt standards and criteria for the denial or granting of certification and recertification of emergency medical care technicians. These standards shall allow the department to certify qualified emergency medical care technicians who have completed statewide standardized training required under section 36-2204, paragraph 1 and a standardized certification test required under section 36-2204, paragraph 2 or who hold valid certification with a national certification organization. Before the director may consider approving a statewide standardized training or a standardized certification test, or both, each of these must first be recommended by the medical direction commission and the emergency medical services council to ensure that the standardized training content is consistent with national education standards and that the standardized certification tests examines comparable material to that examined in the tests of a national certification organization.
3. Adopt standards and criteria that pertain to the quality of emergency care pursuant to section 36-2204.
4. Adopt rules necessary to carry out this chapter. Each rule shall identify all sections and subsections of this chapter under which the rule was formulated.
5. Adopt reasonable medical equipment, supply, staffing and safety standards, criteria and procedures for issuance of a certificate of registration to operate an ambulance.
6. Maintain a state system for recertifying emergency medical care technicians, except as otherwise provided by section 36-2202.01, that is independent from any national certification organization recertification process. This system shall allow emergency medical care technicians to choose to be recertified under the state or the national certification organization recertification system subject to subsection H of this section.

B. Emergency medical technicians who choose the state recertification process shall recertify in one of the following ways:

1. Successfully completing an emergency medical technician refresher course approved by the department.
2. Successfully completing an emergency medical technician challenge course approved by the department.
3. For emergency medical care technicians who are currently certified at the emergency medical technician level by the department, attesting on a form provided by the department that the applicant holds a valid and current cardiopulmonary resuscitation certification, has and will maintain documented proof of a minimum of twenty-four hours of continuing medical education within the last two years consistent with department rules and has functioned in the capacity of an emergency medical technician for at least two hundred forty hours during the last two years.

C. After consultation with the emergency medical services council the director may authorize pilot programs designed to improve the safety and efficiency of ambulance inspections for governmental or quasi-governmental entities that provide emergency medical services in this state.

D. The rules, standards and criteria adopted by the director pursuant to subsection A, paragraphs 2, 3, 4 and 5 of this section shall be adopted in accordance with title 41, chapter 6, except that the director may adopt on an emergency basis pursuant to section 41-1026 rules relating to the regulation of ambulance services in this state necessary to protect the public peace, health and safety in advance of adopting rules, standards and criteria as otherwise provided by this subsection.

E. The director may waive the requirement for compliance with a protocol adopted pursuant to section 36-2205 if the director determines that the techniques, drug formularies or training makes the protocol inconsistent with contemporary medical practices.

F. The director may suspend a protocol adopted pursuant to section 36-2205 if the director does all of the following:

1. Determines that the rule is not in the public's best interest.
2. Initiates procedures pursuant to title 41, chapter 6 to repeal the rule.
3. Notifies all interested parties in writing of the director's action and the reasons for that action. Parties interested in receiving notification shall submit a written request to the director.

G. To be eligible for appointment as the medical director of the emergency medical services and trauma system, the person shall be qualified in emergency medicine and shall be licensed as a physician in one of the states of the United States.

H. Applicants for certification shall apply to the director for certification. Emergency medical care technicians shall apply for recertification to the director every two years. The director may extend the expiration date of an emergency medical care technician's certificate for thirty days. The department shall establish a fee for this extension by rule. Emergency medical care technicians shall pass an examination administered by the department as a condition for recertification only if required to do so by the advanced life support base hospital's medical director or the emergency medical care technician's medical director.

I. The medical director of the emergency medical services and trauma system is exempt from title 41, chapter 4, articles 5 and 6 and is entitled to receive compensation pursuant to section 38-611, subsection A.

J. The standards, criteria and procedures adopted by the director pursuant to subsection A, paragraph 5 of this section shall require that ambulance services serving a rural or wilderness certificate of necessity area with a population of less than ten thousand persons according to the most recent United States decennial census have at least one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a) and one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (b) staffing an ambulance while transporting a patient and that ambulance services serving a population of ten thousand persons or more according to the most recent United States decennial census have at least one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a) and one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a), (c), (d) or (e) staffing an ambulance while transporting a patient.

K. If the department determines there is not a qualified administrative medical director, the department shall ensure the provision of administrative medical direction for an emergency medical technician if the emergency medical technician meets all of the following criteria:

1. Is employed by a nonprofit or governmental provider employing less than twelve full-time emergency medical technicians.
2. Stipulates to the inability to secure a physician who is willing to provide administrative medical direction.
3. Stipulates that the provider agency does not provide administrative medical direction for its employees.

36-2209. Powers and duties of the director

A. The director shall:

1. Appoint and define the duties and prescribe the terms of employment of all employees of the bureau.
2. Adopt rules necessary for the operation of the bureau and for carrying out the purposes of this chapter.
3. Cooperate with and assist the personnel of emergency receiving facilities and other health care institutions in preparing a plan to be followed by these facilities and institutions in the event of a major disaster.
4. Cooperate with the state director of emergency management when a state of emergency or a state of war emergency has been declared by the governor.

B. The director may:

1. Request the cooperation of utilities, communications media and public and private agencies to aid and assist in the implementation and maintenance of a statewide emergency medical services system.
2. Enter into contracts and agreements with any local governmental entity, agency, facility or group that provides a similar program of emergency medical services in a contiguous state.

3. Enter into contracts and agreements for the acquisition and purchase of any equipment, tools, supplies, materials and services necessary in the administration of this chapter.
4. Enter into contracts with emergency receiving facilities, governmental entities, emergency rescue services and ambulance services, and the director may establish emergency medical services, including emergency receiving facilities, if necessary to assure the availability and quality of these services.
5. Accept and expend federal funds and private grants, gifts, contributions and devises to assist in carrying out the purposes of this chapter. These funds do not revert to the state general fund at the close of a fiscal year.
6. Establish an emergency medical services notification system that uses existing telephone communications networks.
7. Contract with private telephone companies for the establishment of a statewide emergency reporting telephone number.
8. Authorize the testing entity to collect fees determined by the director. In determining fees for testing entities the director shall consider the fees required by national certification organizations.

36-2212. Certificate of registration to operate an ambulance; termination on change in ownership; fees; exemption

- A. A person shall not operate an ambulance in this state unless the ambulance has a certificate of registration and complies with this article and the rules, standards and criteria adopted pursuant to this article.
- B. A person may obtain a certificate of registration to operate an ambulance by submitting an application on a form prescribed by the director and by demonstrating to the director's satisfaction that the applicant is in compliance with this article and all rules, standards and criteria adopted by the director for the operation of an ambulance.
- C. A certificate of registration issued under this section terminates upon any change of ownership or control of the ambulance. Following any change of ownership, the new owner of an ambulance shall apply for and receive a new certificate of registration from the director before the ambulance may again be operated in this state. This subsection does not apply if an ambulance service borrows, leases, rents or otherwise obtains a registered ambulance from another ambulance service to temporarily replace an inoperable ambulance.
- D. The department shall issue a certificate of registration to a person who complies with the requirements of this article and who pays an initial registration fee. A certificate of registration is valid for one year. However, an ambulance service may request that the department issue an initial certificate of registration that expires before the end of one year in order for the department to conduct an annual inspection of all of the ambulance service's ambulances at one time. A person may renew a certificate of registration by complying with the requirements of this article and by paying a renewal fee prescribed by the director. The fee for initial registration and registration renewal shall not exceed fifty dollars for each ambulance. The department shall base these fees on an amount that approximates the per vehicle costs incurred by the department to administer this chapter. The director shall deposit, pursuant to sections 35-146 and 35-147, fees collected under this subsection in the state general fund. The department shall not charge a registration fee for an ambulance to an ambulance service that operates an ambulance or ambulances only as a volunteer not-for-profit service.

36-2213. Regulation of air ambulance services

The director shall adopt rules to establish minimum standards for the operation of air ambulance services that are necessary to assure the public health and safety. The director may use the current standards adopted by the commission on accreditation of air medical services. Each rule shall reference the specific authority from this chapter under which the rule was formulated. The rules shall provide for the department to do the following:

1. Establish standards and requirements relating to at least the following:
 - (a) Medical control plans. These plans shall conform to the standards adopted pursuant to section 36-2204, paragraph 9.
 - (b) Qualifications of the medical director of the air ambulance services.
 - (c) Operation of only those air ambulances registered pursuant to section 36-2212 and licensed pursuant to title 28, chapter 25.

2. Establish response times and operation times to assure that the health and safety needs of the public are met.
3. Establish standards for emergency medical dispatch training, including prearrival instruction. For the purposes of this paragraph, "emergency medical dispatch" means the receipt of calls requesting emergency medical services and the response of appropriate resources to the appropriate location.
4. Require the filing of run log information.
5. Issue, transfer, suspend or revoke air ambulance service licenses under terms and conditions consistent with this chapter. These rules shall be consistent for all ambulance services.
6. Investigate the operation of an air ambulance service including a person operating an ambulance that has not been issued a certificate of registration and conduct on-site investigations of facilities communications equipment, vehicles, procedures, materials and equipment.
7. Prescribe the terms of the air ambulance service license.
8. Prescribe the criteria for the air ambulance service license inspection process and for determining an air ambulance service's compliance with licensure requirements. The director shall accept proof that an air ambulance service is accredited by the commission on accreditation of air medical services in lieu of all licensing inspections required if the director receives a copy of the air ambulance service's accreditation report.

36-2214. Air ambulance service license

- A. A person shall not operate an air ambulance service in this state unless the air ambulance service is licensed and complies with this article and the rules adopted pursuant to this article.
- B. On receipt of a properly completed application for initial licensure or relicensure on a form prescribed by the director, the director shall conduct an inspection of the air ambulance service as prescribed by this article. If an application for a license is submitted due to a planned change of ownership, the director shall determine the need for an inspection of the air ambulance service.
- C. The director shall issue a license if the director determines that an applicant and the air ambulance service for which the license is sought comply with the requirements of this article and rules adopted pursuant to this article and the applicant agrees to carry out a plan acceptable to the director to eliminate any deficiencies.

36-2215. Required insurance or financial responsibility; denial or revocation for failure to comply

- A. The director shall not issue an air ambulance service license to an ambulance service unless the applicant for the license or the licensee files with the department a certificate of insurance completed by an insurance company that is authorized to transact business in this state or other evidence of financial responsibility in an amount that the director by rule determines is necessary to adequately protect the interest of the public. The applicant for a license or the licensee shall have malpractice and liability insurance that requires the insurer to compensate for injuries to persons and for loss or damage to property resulting from the negligent operation of the air ambulance service.
- B. The director shall deny the application for a license or revoke the license of any air ambulance service that fails to comply with this section.

36-2232. Director; powers and duties; regulation of ambulance services; inspections; response time compliance; mileage rate calculation factors

(L22, Ch. 217, sec. 1)

- A. The director shall adopt rules to regulate the operation of ambulances and ambulance services in this state. Each rule shall identify all sections and subsections of this chapter under which the rule was formulated. The rules shall provide for the department to do the following:
 1. Consistent with the requirements of subsection H of this section, determine, fix, alter and regulate just, reasonable and sufficient rates and charges for the provision of ambulances, including rates and charges for advanced life support service, basic life support service, patient loaded mileage, standby waiting, subscription service contracts and other contracts for services related to the provision of ambulances. The director shall inform all ambulance services of the procedures and methodology used to determine ambulance rates or charges.
 2. Regulate operating and response times of ambulances to meet the needs of the public and to ensure adequate service. The rules adopted by the director for certificated ambulance service response times shall include uniform

standards for urban, suburban, rural and wilderness geographic areas within the certificate of necessity based on, at a minimum, population density, geographic and medical considerations.

3. Determine, fix, alter and regulate bases of operation. The director may issue a certificate of necessity to more than one ambulance service within any base of operation. For the purposes of this paragraph, "base of operation" means a service area granted under a certificate of necessity.

4. Issue, amend, transfer, suspend or revoke certificates of necessity under terms consistent with this article.

5. Prescribe a uniform system of accounts to be used by ambulance services that conforms to standard accounting forms and principles for the ambulance industry and generally accepted accounting principles.

6. Require the filing of an annual financial report and other data. These rules shall require an ambulance service to file the report with the department not later than one hundred eighty days after the completion of its annual accounting period.

7. Regulate ambulance services in all matters affecting services to the public to the end that this article may be fully carried out.

8. Prescribe bonding requirements, if any, for ambulance services granted authority to provide any type of subscription service.

9. Offer technical assistance to ambulance services to maximize a healthy and viable business climate for the provision of ambulances.

10. Offer technical assistance to ambulance services in order to obtain or to amend a certificate of necessity.

11. Inspect, at a maximum of twelve-month intervals, each ambulance registered pursuant to section 36-2212 to ensure that the vehicle is operational and safe and that all required medical equipment is operational. At the request of the provider, the inspection may be performed by a facility approved by the director. If a provider requests that the inspection be performed by a facility approved by the director, the provider shall pay the cost of the inspection.

B. The director may require any ambulance service offering subscription service contracts to obtain a bond in an amount determined by the director that is based on the number of subscription service contract holders and to file the bond with the director to protect all subscription service contract holders in this state who are covered under that subscription contract.

C. An ambulance service shall:

1. Maintain, establish, add, move or delete suboperation stations within its base of operation to ensure that the ambulance service meets the established response times or those approved by the director in a political subdivision contract.

2. Determine the operating hours of its suboperation stations to provide for coverage of its base of operation.

3. Provide the department with a list of suboperation station locations.

4. Notify the department not later than thirty days after the ambulance service makes a change in the number or location of its suboperation stations.

D. At any time, the director or the director's agents may:

1. Inquire into the operation of an ambulance service, including a person operating an ambulance that has not been issued a certificate of registration or a person who does not have or is operating outside of a certificate of necessity.

2. Conduct on-site inspections of facilities, communications equipment, vehicles, procedures, materials and equipment.

3. Review the qualifications of ambulance attendants.

E. If all ambulance services that have been granted authority to operate within the same service area or that have overlapping certificates of necessity apply for uniform rates and charges, the director may establish uniform rates and charges for the service area.

F. In consultation with the medical director of the emergency medical services and trauma system, the emergency medical services council and the medical direction commission, the director of the department of health services shall establish protocols for ambulance services to refer and advise a patient or transport a patient by the most appropriate means to the most appropriate provider of medical services based on the patient's condition. The protocols shall include triage and treatment protocols that allow all classifications of emergency medical care technicians responding to a person who has accessed 911, or a similar public dispatch number, for a condition that does not pose an immediate threat to life or limb to refer and advise a patient or transport a patient to the most appropriate health care institution as defined in section 36-401 based on the patient's condition, taking into consideration factors including patient choice, the patient's health care provider, specialized health care facilities and local protocols.

G. The director, when reviewing an ambulance service's response time compliance with its certificate of necessity, shall consider in addition to other factors the effect of hospital diversion, delayed emergency department admission and the number of ambulances engaged in response or transport in the affected area.

H. The department shall incorporate all of the following factors when calculating the proposed mileage rate:

1. The cost of licensure and registration of each ground ambulance vehicle.
2. The cost of fuel.
3. The cost of ground ambulance vehicle maintenance.
4. The cost of ground ambulance vehicle repair.
5. The cost of tires.
6. The cost of ground ambulance vehicle insurance.
7. The cost of mechanic wages, benefits and payroll taxes.
8. The cost of loan interest related to the ground ambulance vehicles.
9. The cost of the weighted allocation of overhead.
10. The cost of ground ambulance vehicle depreciation.
11. The cost of reserves for replacement of ground ambulance vehicles and equipment.

36-2240. Fees

Fees not to exceed the following amounts shall be paid by the owner of an ambulance service to the department for deposit in the state general fund to be available for legislative appropriation in order to carry out the provisions of this chapter:

1. One hundred dollars upon filing an application for a certificate of necessity.
2. Fifty dollars upon filing an application to amend, transfer or renew a certificate of necessity.
3. For the issuance of an initial certificate of necessity, two hundred dollars for each ambulance proposed to be operated by the ambulance service to which the certificate is granted.
4. An annual regulatory fee of two hundred dollars for each ambulance issued a certificate of registration pursuant to section 36-2212, to be collected at the same time as the certificate of registration fee imposed by section 36-2212.

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.

41-1092.11. 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.

D-1

ARIZONA GRAIN RESEARCH AND PROMOTION COUNCIL

Title 3, Chapter 9, Articles 2



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 4, 2023

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: March 15, 2023

SUBJECT: Arizona Grain Research & Promotion Council
Title 3, Chapter 9, Article 2

This Five-Year-Review Report (5YRR) from the Arizona Grain Research and Promotion Council (AGRPC) relates to rules in Title 3, Chapter 9, Article 2.

The Grain Research Council did not propose any changes to the rules in the last 5YRR of these rules.

As a reminder, this 5YRR was previously considered at the March 28, 2023 Study Session and April 4, 2023 Council Meeting. At those meetings the Council raised concerns regarding the Notary Requirement in R3-9-202. At the April 4, 2023 Council Meeting, the Council voted to table consideration of the 5YRR for Title 3, Chapter 9, Article 2, to allow the Grain & Research Council additional time to take the Council's comments and suggestions and allow them to discuss at their Council Meeting on April 18, 2023.

Proposed Action

In response to the questions raised by the Council at the March 28, 2023 Study Session, the AGRPC met on April 18, 2023 and had preliminary discussions regarding the notary requirement on the refund request form. The AGRPC agreed to consider a change to R3-9-202, but they indicate they need additional time to research historical records and processes. The

AGRPC will meet again in August 2023 to further discuss the issue, and if a rulemaking is necessary they will submit a Notice of Final Rulemaking to the Council by June 2024.

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes, the Council cites to both general and specific statutory authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

According to the Grain Research Council, the economic impact has not differed significantly from what was projected in the last economic impact statements prepared.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

According to the Grain Research Council, these rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Council indicates they did not receive any written criticisms to the rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Council indicates the rules are clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, the Council indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Council indicates the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Council indicates the rules are enforced as written.

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

No, the Council indicates the rules are not more stringent than federal laws.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. The rules do not require the issuance of a general permit or license.

11. Conclusion

As mentioned above, and in response to the Council's concerns raised, the AGRPC indicates they are considering the Council's proposed changes, but need additional time for research into historical records and processes. The AGRPC will meet again in August 2023 to further discuss the changes, and if a rulemaking is necessary they will submit a Notice of Final Rulemaking to the Council no later than June 2024.

Council staff recommends the Council to further discuss the proposed changes with the AGRPC.

KATIE HOBBS
Governor

DAVID SHARP
Chairman

Arizona Grain Research & Promotion Council

1110 W. Washington Street, Suite 450, Phoenix, Arizona 85007
(602) 542-3262 FAX (602) 542-5420

May 1, 2023

VIA EMAIL: grrc@azdoa.gov .
Nicole Sornsinsin, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Arizona Grain Research and Promotion Council, A.A.C. Title 3, Chapter 9, Article 2,
Five Year Review Report

Dear Ms. Sornsinsin:

Thank you for the consideration in allowing for the submission of a revised Five Year Review Report of the Arizona Grain Research and Promotion Council for A.A.C. Title 3, Chapter 9, Article 2.

The Council hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Lisa James at (602) 542-3262 or ljames@azda.gov.

Sincerely,



David Sharp,
Chairman

Enclosures: Revised Five-Year Review Report
Current Rules

**ARIZONA GRAIN RESEARCH
AND PROMOTION COUNCIL**

5 YEAR REVIEW REPORT

**A.A.C. TITLE 3, CHAPTER 9,
ARTICLE 2**

JANUARY 24, 2023

REVISED MAY 31, 2023

1. Authorization of the rule by existing statutes

All of the rules are authorized by A.R.S. § 3-584(C)(1).

2. The objective of each rule:

Rule	Objective
R3-9-201.	Definitions This rule is necessary to set forth the definition of particular terms used within Chapter 9, Article 2.
R3-9-202.	Fees; Grain Assessment and Refund This rule is necessary to establish the processes for prescribing the assessment fee, remitting the assessment fee and requesting a refund of the assessment fee.
R3-9-203.	Hearings This rule is necessary to establish the process for a party to dispute an assessment and penalty imposed by the Council and the process the Council will use to review and rectify the dispute.
R3-9-204.	Records This rule is necessary to set forth the location and accessibility of Council records.
R3-9-205.	Grants This rule is necessary to establish the process for the solicitation of grant applications, the criteria used for considering grant applications and the process used for awarding grant funds to successful applicants.

3. Are the rules effective in achieving their objectives? Yes X No

4. Are the rules consistent with other rules and statutes? Yes X No

5. Are the rules enforced as written? Yes X No

6. Are the rules clear, concise, and understandable? Yes X No

7. **Has the agency received written criticisms of the rules within the last five years?** Yes ____ No X

8. **Economic, small business, and consumer impact comparison:**

The economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ____ No X

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

No. There were no changes proposed.

11. **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 regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The AGRPC believes these rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. **Are the rules more stringent than corresponding federal laws?** Yes ____ No X

These rules are not more stringent than a corresponding federal law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

These rules comply with A.R.S. § 41-1037. No licenses, permits, or authorizations are issued under the rules.

14. **Proposed course of action**

On April 4, 2023, GRRC agreed to allow the AGRPC to submit a revised 5-year Review Report in response to questions raised at the March 28, 2023 Study Session. The AGRPC met on April 18, 2023 and had preliminary discussions regarding the notarized signature requirement on the refund request form. They agreed to consider a change to R3-9-202 but needed additional time for research into historical records and processes. If the AGRPC determines that a notary is still necessary for the form, it will consider a way to notarize and submit the form electronically.

The AGRPC will discuss the issue at their next quarterly meeting in August 2023 and if necessary a normal rulemaking process will be initiated no later than October 1, 2023. They will consider public comment received

and approve the proposed rule for submission to GRRC at their quarterly meeting in November 2023, and review and approve a final rulemaking for filing with the Secretary of State at their quarterly meeting in January 2024, with a final rulemaking completed no later than April 1, 2024.

TITLE 3. AGRICULTURE**CHAPTER 9. DEPARTMENT OF AGRICULTURE - AGRICULTURAL COUNCILS AND COMMISSIONS****ARTICLE 2. ARIZONA GRAIN RESEARCH AND PROMOTION COUNCIL****R3-9-201. Definitions**

In addition to the definitions in A.R.S. § 3-581, the following term applies to this Article:

“AGRPC” means the Arizona Grain Research and Promotion Council.

“Department” means the Arizona Department of Agriculture.

Historical Note

Adopted effective August 28, 1986 (Supp. 86-4). Section R3-9-201 renumbered from R3-13-201 (Supp. 91-4). Amended effective December 22, 1993 (Supp. 93-4). Former Section R3-9-201 renumbered to R3-9-202; new Section R3-9-201 made by final rulemaking at 9 A.A.R. 31, effective December 11, 2002 (Supp. 02-4). Amended by final rulemaking at 14 A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

R3-9-202. Fees; Grain Assessment and Refund

- A. The AGRPC shall annually prescribe the fee to be assessed per hundredweight of grain sold in Arizona within the limitations established under A.R.S. § 3-587.
- B. The person who pays the fee required under subsection (A) shall ensure that:
 1. The grain assessment fee is remitted to the AGRPC; and
 2. The following information is provided to the AGRPC on a form obtained from the Department:
 - a. First buyer's name, address, and telephone number;
 - b. Report date and months covered by the report;
 - c. Total amount remitted to the AGRPC for the reporting period;
 - d. Producer's name, address, and telephone number;
 - e. Type of grain and tonnage by grain type; and
 - f. First buyer's or designee's signature.
- C. Refund.
 1. A producer may request a refund as prescribed under A.R.S. § 3-592 and shall provide the following information to the AGRPC on a form obtained from the Department:
 - a. Producer's name, address, telephone number, and signature;
 - b. Name of the first buyer;
 - c. Amount of grain sold subject to the refund request; and
 - d. First buyer's or designee's notarized signature confirming the purchase, funds withheld, and date remitted to the AGRPC.
 2. An executive committee member shall authorize a refund as prescribed in A.R.S. § 3-592 if the person requesting the refund complies with the requirements of subsection (B)(1).

Historical Note

Section R3-9-202 renumbered from R3-9-201 and amended by final rulemaking at 9 A.A.R. 31, effective December 11, 2002 (Supp. 02-4). Amended by final rulemaking at 14 A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

R3-9-203. Hearings

- A. The AGRPC shall use the uniform administrative procedures of A.R.S. Title 41, Chapter 6, Article 10 to govern any hearing before the AGRPC required under A.R.S. § 3-591.
- B. A party may file a motion for rehearing or review under A.R.S. § 41-1092.09.
- C. The AGRPC shall grant a rehearing or review of an administrative law decision for any of the following causes materially affecting the moving party's rights:
 1. The decision is not justified by the evidence or is contrary to law;
 2. There is newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original proceeding;
 3. One or more of the following deprived the party of a fair hearing:
 - a. Irregularity or abuse of discretion in the conduct of the proceeding;
 - b. Misconduct of the AGRPC, the administrative law judge, or the prevailing party; or
 - c. Accident or surprise which could not have been prevented by ordinary prudence; or
 4. Excessive or insufficient sanction.
- D. The AGRPC may grant a rehearing or review to any or all of the parties. The rehearing or review may cover all or part of the issues for any of the reasons stated in subsection (C). An order granting a rehearing or review shall particularly state the grounds for granting the rehearing or review, and the rehearing or review shall cover only the grounds stated.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 31, effective December 11, 2002 (Supp. 02-4). Amended by final rulemaking at 14

Department of Agriculture – Agricultural Councils and Commissions
A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

R3-9-204. Records

The Department shall retain the AGRPC's records as prescribed in A.R.S. § 3-586. A record may be reviewed at the Department's main office, Monday through Friday, except an Arizona legal holiday, during the hours of 8:00 a.m. to 5:00 p.m. A copy of a record will be provided according to the provisions of A.R.S. § 39-121 et seq.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 31, effective December 11, 2002 (Supp. 02-4). Amended by final rulemaking at 14 A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

R3-9-205. Grants**A. Definitions.**

"Authorized signature" means the signature of an individual authorized to receive funds on behalf of an applicant and responsible for the execution of the applicant's project.

"Awardee" means an applicant to whom the AGRPC awards grant funds for a proposed project.

"Governmental unit" means any department, commission, council, board, bureau, committee, institution, agency, government corporation, or other establishment or official of the executive branch or corporation commission of this state, another state, or the federal government.

"Grant" means an award of financial support to an applicant according to A.R.S. § 3-584(C)(5).

"Grant award agreement" means a document advising an applicant of the amount of money awarded following receipt by the AGRPC of the applicant's signed acceptance of the award.

B. Grant application process.

1. The AGRPC shall award grants according to the competitive grant solicitation requirements of this Article.
2. The AGRPC shall post the grant application and manual on the AGRPC's web site at least four weeks before the due date of a grant application.
3. The AGRPC shall ensure that the grant application and manual contain the following items:
 - a. Grant topics related to AGRPC projects specified in A.R.S. § 3-584(C)(5);
 - b. A statement that the information contained in a grant application is not confidential;
 - c. A statement that the AGRPC funding source is primarily from assessments on the seed of barley and wheat of all classes produced in Arizona for use as food, feed, or seed or produced for any industrial or commercial use;
 - d. An application form including sections about the description of the grant project, scope of work to be performed, an authorized signature line, and a sample budget form;
 - e. A statement that the applicant shall not include overhead expenses in the budget for the proposed project;
 - f. The criteria that the AGRPC shall use to evaluate an application;
 - g. The date and time by which the applicant shall submit an application;
 - h. The anticipated date of the AGRPC award;
 - i. A copy of this Section consisting of grant solicitation procedures and requirements; and
 - j. Any other information necessary for the grant application.
4. The AGRPC shall not evaluate an application received by the AGRPC after the due date and time.

C. Criteria. The AGRPC shall consider the following when reviewing a grant application and deciding whether to award AGRPC funds:

1. The applicant's successful completion of prior research projects, if applicable;
2. The extent to which the proposed project identifies solutions to current issues facing the grain industry;
3. The extent to which the proposed project addresses future issues facing the grain industry;
4. The extent to which the proposed project addresses the findings of any industry surveys conducted within the previous year;
5. The appropriateness of the budget request in achieving the project objectives;
6. The appropriateness of the proposal time-frame to the stated project objectives; and
7. Relevant experience and qualifications of the applicant.

D. Public participation.

1. The AGRPC shall make all applications available for public inspection by the business day following the application due date.
2. Before awarding a grant, the AGRPC shall discuss, evaluate, and make a decision on grant applications and proposed projects at a meeting conducted under A.R.S. § 38-431 et seq.

E. Evaluation of grant applications.

1. The AGRPC may allow applicants to make oral or written presentations at the public meeting if time, applicant availability, and meeting space permit.
2. The AGRPC may modify an applicant's proposed project in awarding funding.
3. The AGRPC shall notify an applicant in writing of the AGRPC's decision to fund, modify, or deny funding for a proposed project within 10 business days of the AGRPC decision. The AGRPC shall notify applicants by the U.S. Postal Service, commercial delivery, electronic mail, or facsimile.

F. Awards and project monitoring.

Department of Agriculture – Agricultural Councils and Commissions

1. Before releasing grant funds, the AGRPC shall execute a grant award agreement with the awardee. The awardee shall agree to accept the grant's legal requirements and conditions and authorize the AGRPC to monitor the progress of the project by signing the grant award agreement.
 2. The AGRPC shall pay no more than 50% of the grant in the initial payment to the awardee.
 3. During the term of the project, the awardee shall inform the AGRPC of changes to the awardee's address, telephone number, or other contact information.
 4. The AGRPC may require an interim written report or oral presentation from the awardee during the term of the project.
 5. The AGRPC shall not award the grant funds remaining after the initial payment until the awardee submits to the AGRPC:
 - a. A final research report, and
 - b. An invoice for actual final project expenses not exceeding the remaining portion of the grant funds.
 6. The AGRPC shall make research findings and reports resulting from any grant awarded by the AGRPC available to Arizona grain producers.
- G.** Repayment. If the awardee does not complete the project as specified in the grant award agreement, the awardee shall return all unexpended grant funds within 30 days after receipt of a written request by the AGRPC.
- H.** Governmental units.
1. The AGRPC may request one or more governmental units to submit grant applications as prescribed in subsection (H)(3), without regard to subsections (B), (F)(2), and (F)(5).
 2. The AGRPC may issue grants to governmental units without regard to subsections (B), (F)(2), and (F)(5).
 3. A governmental unit may apply to the AGRPC for a grant when there is no pending request for grant applications under subsection (B) under the following conditions:
 - a. The application shall include a description of the project, the scope of work to be performed, a budget that does not include overhead expenses, and an authorized signature.
 - b. The application shall be available for public inspection upon receipt by the AGRPC.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4684, effective February 3, 2007 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

KATIE HOBBS
Governor

DAVID SHARP
Chairman

Arizona Grain Research & Promotion Council

1110 W. Washington Street, Suite 450, Phoenix, Arizona 85007
(602) 542-3262 FAX (602) 542-5420

May 1, 2023

VIA EMAIL: grrc@azdoa.gov .
Nicole Sornsinsin, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Arizona Grain Research and Promotion Council, A.A.C. Title 3, Chapter 9, Article 2,
Five Year Review Report

Dear Ms. Sornsinsin:

Thank you for the consideration in allowing for the submission of a revised Five Year Review Report of the Arizona Grain Research and Promotion Council for A.A.C. Title 3, Chapter 9, Article 2.

The Council hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Lisa James at (602) 542-3262 or ljames@azda.gov.

Sincerely,



David Sharp,
Chairman

Enclosures: Revised Five-Year Review Report
Current Rules

**ARIZONA GRAIN RESEARCH
AND PROMOTION COUNCIL**

5 YEAR REVIEW REPORT

**A.A.C. TITLE 3, CHAPTER 9,
ARTICLE 2**

JANUARY 24, 2023

REVISED MAY 17, 2023

1. Authorization of the rule by existing statutes

All of the rules are authorized by A.R.S. § 3-584(C)(1).

2. The objective of each rule:

Rule	Objective
R3-9-201.	Definitions This rule is necessary to set forth the definition of particular terms used within Chapter 9, Article 2.
R3-9-202.	Fees; Grain Assessment and Refund This rule is necessary to establish the processes for prescribing the assessment fee, remitting the assessment fee and requesting a refund of the assessment fee.
R3-9-203.	Hearings This rule is necessary to establish the process for a party to dispute an assessment and penalty imposed by the Council and the process the Council will use to review and rectify the dispute.
R3-9-204.	Records This rule is necessary to set forth the location and accessibility of Council records.
R3-9-205.	Grants This rule is necessary to establish the process for the solicitation of grant applications, the criteria used for considering grant applications and the process used for awarding grant funds to successful applicants.

3. Are the rules effective in achieving their objectives? Yes **X** No

4. Are the rules consistent with other rules and statutes? Yes **X** No

5. Are the rules enforced as written? Yes **X** No

6. Are the rules clear, concise, and understandable? Yes **X** No

7. **Has the agency received written criticisms of the rules within the last five years?** Yes ☐ No ☒
8. **Economic, small business, and consumer impact comparison:**
- The economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared.
9. **Has the agency received any business competitiveness analyses of the rules?** Yes ☐ No ☒
10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**
- No. There were no changes proposed.
11. **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 regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**
- The AGRPC believes these rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.
12. **Are the rules more stringent than corresponding federal laws?** Yes ☐ No ☒
- These rules are not more stringent than a corresponding federal law.
13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**
- These rules comply with A.R.S. § 41-1037. No licenses, permits, or authorizations are issued under the rules.
14. **Proposed course of action**
- On April 4, 2023, GRRC agreed to allow the AGRPC to submit a revised 5-year Review Report in response to questions raised at the March 28, 2023 Study Session. The AGRPC met on April 18, 2023 and had preliminary discussions regarding the notarized signature requirement on the refund request form. They agreed to consider a change to R3-9-202 but needed additional time for research into historical records and processes. If the AGRPC determines that a notary is still necessary for the form, it will consider a way to notarize and submit the form electronically. The AGRPC will meet again in August 2023 to discuss the issue and if necessary a rulemaking will be established no later than December 31, 2023 and completed no later than June 30, 2024.

TITLE 3. AGRICULTURE**CHAPTER 9. DEPARTMENT OF AGRICULTURE - AGRICULTURAL COUNCILS AND COMMISSIONS****ARTICLE 2. ARIZONA GRAIN RESEARCH AND PROMOTION COUNCIL****R3-9-201. Definitions**

In addition to the definitions in A.R.S. § 3-581, the following term applies to this Article:

“AGRPC” means the Arizona Grain Research and Promotion Council.

“Department” means the Arizona Department of Agriculture.

Historical Note

Adopted effective August 28, 1986 (Supp. 86-4). Section R3-9-201 renumbered from R3-13-201 (Supp. 91-4). Amended effective December 22, 1993 (Supp. 93-4). Former Section R3-9-201 renumbered to R3-9-202; new Section R3-9-201 made by final rulemaking at 9 A.A.R. 31, effective December 11, 2002 (Supp. 02-4). Amended by final rulemaking at 14 A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

R3-9-202. Fees; Grain Assessment and Refund

- A. The AGRPC shall annually prescribe the fee to be assessed per hundredweight of grain sold in Arizona within the limitations established under A.R.S. § 3-587.
- B. The person who pays the fee required under subsection (A) shall ensure that:
 1. The grain assessment fee is remitted to the AGRPC; and
 2. The following information is provided to the AGRPC on a form obtained from the Department:
 - a. First buyer’s name, address, and telephone number;
 - b. Report date and months covered by the report;
 - c. Total amount remitted to the AGRPC for the reporting period;
 - d. Producer’s name, address, and telephone number;
 - e. Type of grain and tonnage by grain type; and
 - f. First buyer’s or designee’s signature.
- C. Refund.
 1. A producer may request a refund as prescribed under A.R.S. § 3-592 and shall provide the following information to the AGRPC on a form obtained from the Department:
 - a. Producer’s name, address, telephone number, and signature;
 - b. Name of the first buyer;
 - c. Amount of grain sold subject to the refund request; and
 - d. First buyer’s or designee’s notarized signature confirming the purchase, funds withheld, and date remitted to the AGRPC.
 2. An executive committee member shall authorize a refund as prescribed in A.R.S. § 3-592 if the person requesting the refund complies with the requirements of subsection (B)(1).

Historical Note

Section R3-9-202 renumbered from R3-9-201 and amended by final rulemaking at 9 A.A.R. 31, effective December 11, 2002 (Supp. 02-4). Amended by final rulemaking at 14 A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

R3-9-203. Hearings

- A. The AGRPC shall use the uniform administrative procedures of A.R.S. Title 41, Chapter 6, Article 10 to govern any hearing before the AGRPC required under A.R.S. § 3-591.
- B. A party may file a motion for rehearing or review under A.R.S. § 41-1092.09.
- C. The AGRPC shall grant a rehearing or review of an administrative law decision for any of the following causes materially affecting the moving party’s rights:
 1. The decision is not justified by the evidence or is contrary to law;
 2. There is newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original proceeding;
 3. One or more of the following deprived the party of a fair hearing:
 - a. Irregularity or abuse of discretion in the conduct of the proceeding;
 - b. Misconduct of the AGRPC, the administrative law judge, or the prevailing party; or
 - c. Accident or surprise which could not have been prevented by ordinary prudence; or
 4. Excessive or insufficient sanction.
- D. The AGRPC may grant a rehearing or review to any or all of the parties. The rehearing or review may cover all or part of the issues for any of the reasons stated in subsection (C). An order granting a rehearing or review shall particularly state the grounds for granting the rehearing or review, and the rehearing or review shall cover only the grounds stated.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 31, effective December 11, 2002 (Supp. 02-4). Amended by final rulemaking at 14

Department of Agriculture – Agricultural Councils and Commissions
A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

R3-9-204. Records

The Department shall retain the AGRPC's records as prescribed in A.R.S. § 3-586. A record may be reviewed at the Department's main office, Monday through Friday, except an Arizona legal holiday, during the hours of 8:00 a.m. to 5:00 p.m. A copy of a record will be provided according to the provisions of A.R.S. § 39-121 et seq.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 31, effective December 11, 2002 (Supp. 02-4). Amended by final rulemaking at 14 A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

R3-9-205. Grants**A. Definitions.**

"Authorized signature" means the signature of an individual authorized to receive funds on behalf of an applicant and responsible for the execution of the applicant's project.

"Awardee" means an applicant to whom the AGRPC awards grant funds for a proposed project.

"Governmental unit" means any department, commission, council, board, bureau, committee, institution, agency, government corporation, or other establishment or official of the executive branch or corporation commission of this state, another state, or the federal government.

"Grant" means an award of financial support to an applicant according to A.R.S. § 3-584(C)(5).

"Grant award agreement" means a document advising an applicant of the amount of money awarded following receipt by the AGRPC of the applicant's signed acceptance of the award.

B. Grant application process.

1. The AGRPC shall award grants according to the competitive grant solicitation requirements of this Article.
2. The AGRPC shall post the grant application and manual on the AGRPC's web site at least four weeks before the due date of a grant application.
3. The AGRPC shall ensure that the grant application and manual contain the following items:
 - a. Grant topics related to AGRPC projects specified in A.R.S. § 3-584(C)(5);
 - b. A statement that the information contained in a grant application is not confidential;
 - c. A statement that the AGRPC funding source is primarily from assessments on the seed of barley and wheat of all classes produced in Arizona for use as food, feed, or seed or produced for any industrial or commercial use;
 - d. An application form including sections about the description of the grant project, scope of work to be performed, an authorized signature line, and a sample budget form;
 - e. A statement that the applicant shall not include overhead expenses in the budget for the proposed project;
 - f. The criteria that the AGRPC shall use to evaluate an application;
 - g. The date and time by which the applicant shall submit an application;
 - h. The anticipated date of the AGRPC award;
 - i. A copy of this Section consisting of grant solicitation procedures and requirements; and
 - j. Any other information necessary for the grant application.
4. The AGRPC shall not evaluate an application received by the AGRPC after the due date and time.

C. Criteria. The AGRPC shall consider the following when reviewing a grant application and deciding whether to award AGRPC funds:

1. The applicant's successful completion of prior research projects, if applicable;
2. The extent to which the proposed project identifies solutions to current issues facing the grain industry;
3. The extent to which the proposed project addresses future issues facing the grain industry;
4. The extent to which the proposed project addresses the findings of any industry surveys conducted within the previous year;
5. The appropriateness of the budget request in achieving the project objectives;
6. The appropriateness of the proposal time-frame to the stated project objectives; and
7. Relevant experience and qualifications of the applicant.

D. Public participation.

1. The AGRPC shall make all applications available for public inspection by the business day following the application due date.
2. Before awarding a grant, the AGRPC shall discuss, evaluate, and make a decision on grant applications and proposed projects at a meeting conducted under A.R.S. § 38-431 et seq.

E. Evaluation of grant applications.

1. The AGRPC may allow applicants to make oral or written presentations at the public meeting if time, applicant availability, and meeting space permit.
2. The AGRPC may modify an applicant's proposed project in awarding funding.
3. The AGRPC shall notify an applicant in writing of the AGRPC's decision to fund, modify, or deny funding for a proposed project within 10 business days of the AGRPC decision. The AGRPC shall notify applicants by the U.S. Postal Service, commercial delivery, electronic mail, or facsimile.

F. Awards and project monitoring.

Department of Agriculture – Agricultural Councils and Commissions

1. Before releasing grant funds, the AGRPC shall execute a grant award agreement with the awardee. The awardee shall agree to accept the grant's legal requirements and conditions and authorize the AGRPC to monitor the progress of the project by signing the grant award agreement.
 2. The AGRPC shall pay no more than 50% of the grant in the initial payment to the awardee.
 3. During the term of the project, the awardee shall inform the AGRPC of changes to the awardee's address, telephone number, or other contact information.
 4. The AGRPC may require an interim written report or oral presentation from the awardee during the term of the project.
 5. The AGRPC shall not award the grant funds remaining after the initial payment until the awardee submits to the AGRPC:
 - a. A final research report, and
 - b. An invoice for actual final project expenses not exceeding the remaining portion of the grant funds.
 6. The AGRPC shall make research findings and reports resulting from any grant awarded by the AGRPC available to Arizona grain producers.
- G.** Repayment. If the awardee does not complete the project as specified in the grant award agreement, the awardee shall return all unexpended grant funds within 30 days after receipt of a written request by the AGRPC.
- H.** Governmental units.
1. The AGRPC may request one or more governmental units to submit grant applications as prescribed in subsection (H)(3), without regard to subsections (B), (F)(2), and (F)(5).
 2. The AGRPC may issue grants to governmental units without regard to subsections (B), (F)(2), and (F)(5).
 3. A governmental unit may apply to the AGRPC for a grant when there is no pending request for grant applications under subsection (B) under the following conditions:
 - a. The application shall include a description of the project, the scope of work to be performed, a budget that does not include overhead expenses, and an authorized signature.
 - b. The application shall be available for public inspection upon receipt by the AGRPC.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4684, effective February 3, 2007 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

KATIE HOBBS
Governor

DAVID SHARP
Chairman

Arizona Grain Research & Promotion Council

1110 W. Washington Street, Suite 450, Phoenix, Arizona 85007
(602) 542-3262 FAX (602) 542-5420

January 25, 2023

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Arizona Grain Research and Promotion Council, A.A.C. Title 3, Chapter 9, Article 2,
Five Year Review Report

Dear Ms. Sornsins:

Please find enclosed the Five Year Review Report of the Arizona Grain Research and Promotion Council for A.A.C. Title 3, Chapter 9, Article 2 which is due on January 31, 2023.

The Council hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Lisa James at (602) 542-3262 or ljames@azda.gov.

Sincerely,



David Sharp,
Chairman

Enclosures: Five-Year Review Report
Current Rules

**ARIZONA GRAIN RESEARCH
AND PROMOTION COUNCIL**
5 YEAR REVIEW REPORT
A.A.C. TITLE 3, CHAPTER 9,
ARTICLE 2

JANUARY 24, 2023

1. Authorization of the rule by existing statutes

All of the rules are authorized by A.R.S. § 3-584(C)(1).

2. The objective of each rule:

Rule	Objective
R3-9-201.	Definitions This rule is necessary to set forth the definition of particular terms used within Chapter 9, Article 2.
R3-9-202.	Fees; Grain Assessment and Refund This rule is necessary to establish the processes for prescribing the assessment fee, remitting the assessment fee and requesting a refund of the assessment fee.
R3-9-203.	Hearings This rule is necessary to establish the process for a party to dispute an assessment and penalty imposed by the Council and the process the Council will use to review and rectify the dispute.
R3-9-204.	Records This rule is necessary to set forth the location and accessibility of Council records.
R3-9-205.	Grants This rule is necessary to establish the process for the solicitation of grant applications, the criteria used for considering grant applications and the process used for awarding grant funds to successful applicants.

3. Are the rules effective in achieving their objectives? Yes **X** No ____

4. Are the rules consistent with other rules and statutes? Yes **X** No ____

5. Are the rules enforced as written? Yes **X** No ____

6. Are the rules clear, concise, and understandable? Yes **X** No ____

7. **Has the agency received written criticisms of the rules within the last five years?** Yes ☐ No ☒
8. **Economic, small business, and consumer impact comparison:**
The economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared.
9. **Has the agency received any business competitiveness analyses of the rules?** Yes ☐ No ☒
10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**
No. There were no changes proposed.
11. **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 regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**
The Council believes these rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.
12. **Are the rules more stringent than corresponding federal laws?** Yes ☐ No ☒
These rules are not more stringent than a corresponding federal law.
13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**
These rules comply with A.R.S. § 41-1037. No licenses, permits, or authorizations are issued under the rules.
14. **Proposed course of action**
The Council does not propose any further action at this time.

TITLE 3. AGRICULTURE**CHAPTER 9. DEPARTMENT OF AGRICULTURE - AGRICULTURAL COUNCILS AND COMMISSIONS****ARTICLE 2. ARIZONA GRAIN RESEARCH AND PROMOTION COUNCIL****R3-9-201. Definitions**

In addition to the definitions in A.R.S. § 3-581, the following term applies to this Article:

“AGRPC” means the Arizona Grain Research and Promotion Council.

“Department” means the Arizona Department of Agriculture.

Historical Note

Adopted effective August 28, 1986 (Supp. 86-4). Section R3-9-201 renumbered from R3-13-201 (Supp. 91-4). Amended effective December 22, 1993 (Supp. 93-4). Former Section R3-9-201 renumbered to R3-9-202; new Section R3-9-201 made by final rulemaking at 9 A.A.R. 31, effective December 11, 2002 (Supp. 02-4). Amended by final rulemaking at 14 A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

R3-9-202. Fees; Grain Assessment and Refund

- A. The AGRPC shall annually prescribe the fee to be assessed per hundredweight of grain sold in Arizona within the limitations established under A.R.S. § 3-587.
- B. The person who pays the fee required under subsection (A) shall ensure that:
 - 1. The grain assessment fee is remitted to the AGRPC; and
 - 2. The following information is provided to the AGRPC on a form obtained from the Department:
 - a. First buyer’s name, address, and telephone number;
 - b. Report date and months covered by the report;
 - c. Total amount remitted to the AGRPC for the reporting period;
 - d. Producer’s name, address, and telephone number;
 - e. Type of grain and tonnage by grain type; and
 - f. First buyer’s or designee’s signature.
- C. Refund.
 - 1. A producer may request a refund as prescribed under A.R.S. § 3-592 and shall provide the following information to the AGRPC on a form obtained from the Department:
 - a. Producer’s name, address, telephone number, and signature;
 - b. Name of the first buyer;
 - c. Amount of grain sold subject to the refund request; and
 - d. First buyer’s or designee’s notarized signature confirming the purchase, funds withheld, and date remitted to the AGRPC.
 - 2. An executive committee member shall authorize a refund as prescribed in A.R.S. § 3-592 if the person requesting the refund complies with the requirements of subsection (B)(1).

Historical Note

Section R3-9-202 renumbered from R3-9-201 and amended by final rulemaking at 9 A.A.R. 31, effective December 11, 2002 (Supp. 02-4). Amended by final rulemaking at 14 A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

R3-9-203. Hearings

- A. The AGRPC shall use the uniform administrative procedures of A.R.S. Title 41, Chapter 6, Article 10 to govern any hearing before the AGRPC required under A.R.S. § 3-591.
- B. A party may file a motion for rehearing or review under A.R.S. § 41-1092.09.
- C. The AGRPC shall grant a rehearing or review of an administrative law decision for any of the following causes materially affecting the moving party’s rights:
 - 1. The decision is not justified by the evidence or is contrary to law;
 - 2. There is newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original proceeding;
 - 3. One or more of the following deprived the party of a fair hearing:
 - a. Irregularity or abuse of discretion in the conduct of the proceeding;
 - b. Misconduct of the AGRPC, the administrative law judge, or the prevailing party; or
 - c. Accident or surprise which could not have been prevented by ordinary prudence; or
 - 4. Excessive or insufficient sanction.
- D. The AGRPC may grant a rehearing or review to any or all of the parties. The rehearing or review may cover all or part of the issues for any of the reasons stated in subsection (C). An order granting a rehearing or review shall particularly state the grounds for granting the rehearing or review, and the rehearing or review shall cover only the grounds stated.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 31, effective December 11, 2002 (Supp. 02-4). Amended by final rulemaking at 14

Department of Agriculture – Agricultural Councils and Commissions
A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

R3-9-204. Records

The Department shall retain the AGRPC's records as prescribed in A.R.S. § 3-586. A record may be reviewed at the Department's main office, Monday through Friday, except an Arizona legal holiday, during the hours of 8:00 a.m. to 5:00 p.m. A copy of a record will be provided according to the provisions of A.R.S. § 39-121 et seq.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 31, effective December 11, 2002 (Supp. 02-4). Amended by final rulemaking at 14 A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

R3-9-205. Grants**A. Definitions.**

"Authorized signature" means the signature of an individual authorized to receive funds on behalf of an applicant and responsible for the execution of the applicant's project.

"Awardee" means an applicant to whom the AGRPC awards grant funds for a proposed project.

"Governmental unit" means any department, commission, council, board, bureau, committee, institution, agency, government corporation, or other establishment or official of the executive branch or corporation commission of this state, another state, or the federal government.

"Grant" means an award of financial support to an applicant according to A.R.S. § 3-584(C)(5).

"Grant award agreement" means a document advising an applicant of the amount of money awarded following receipt by the AGRPC of the applicant's signed acceptance of the award.

B. Grant application process.

1. The AGRPC shall award grants according to the competitive grant solicitation requirements of this Article.
2. The AGRPC shall post the grant application and manual on the AGRPC's web site at least four weeks before the due date of a grant application.
3. The AGRPC shall ensure that the grant application and manual contain the following items:
 - a. Grant topics related to AGRPC projects specified in A.R.S. § 3-584(C)(5);
 - b. A statement that the information contained in a grant application is not confidential;
 - c. A statement that the AGRPC funding source is primarily from assessments on the seed of barley and wheat of all classes produced in Arizona for use as food, feed, or seed or produced for any industrial or commercial use;
 - d. An application form including sections about the description of the grant project, scope of work to be performed, an authorized signature line, and a sample budget form;
 - e. A statement that the applicant shall not include overhead expenses in the budget for the proposed project;
 - f. The criteria that the AGRPC shall use to evaluate an application;
 - g. The date and time by which the applicant shall submit an application;
 - h. The anticipated date of the AGRPC award;
 - i. A copy of this Section consisting of grant solicitation procedures and requirements; and
 - j. Any other information necessary for the grant application.
4. The AGRPC shall not evaluate an application received by the AGRPC after the due date and time.

C. Criteria. The AGRPC shall consider the following when reviewing a grant application and deciding whether to award AGRPC funds:

1. The applicant's successful completion of prior research projects, if applicable;
2. The extent to which the proposed project identifies solutions to current issues facing the grain industry;
3. The extent to which the proposed project addresses future issues facing the grain industry;
4. The extent to which the proposed project addresses the findings of any industry surveys conducted within the previous year;
5. The appropriateness of the budget request in achieving the project objectives;
6. The appropriateness of the proposal time-frame to the stated project objectives; and
7. Relevant experience and qualifications of the applicant.

D. Public participation.

1. The AGRPC shall make all applications available for public inspection by the business day following the application due date.
2. Before awarding a grant, the AGRPC shall discuss, evaluate, and make a decision on grant applications and proposed projects at a meeting conducted under A.R.S. § 38-431 et seq.

E. Evaluation of grant applications.

1. The AGRPC may allow applicants to make oral or written presentations at the public meeting if time, applicant availability, and meeting space permit.
2. The AGRPC may modify an applicant's proposed project in awarding funding.
3. The AGRPC shall notify an applicant in writing of the AGRPC's decision to fund, modify, or deny funding for a proposed project within 10 business days of the AGRPC decision. The AGRPC shall notify applicants by the U.S. Postal Service, commercial delivery, electronic mail, or facsimile.

F. Awards and project monitoring.

Department of Agriculture – Agricultural Councils and Commissions

1. Before releasing grant funds, the AGRPC shall execute a grant award agreement with the awardee. The awardee shall agree to accept the grant's legal requirements and conditions and authorize the AGRPC to monitor the progress of the project by signing the grant award agreement.
 2. The AGRPC shall pay no more than 50% of the grant in the initial payment to the awardee.
 3. During the term of the project, the awardee shall inform the AGRPC of changes to the awardee's address, telephone number, or other contact information.
 4. The AGRPC may require an interim written report or oral presentation from the awardee during the term of the project.
 5. The AGRPC shall not award the grant funds remaining after the initial payment until the awardee submits to the AGRPC:
 - a. A final research report, and
 - b. An invoice for actual final project expenses not exceeding the remaining portion of the grant funds.
 6. The AGRPC shall make research findings and reports resulting from any grant awarded by the AGRPC available to Arizona grain producers.
- G.** Repayment. If the awardee does not complete the project as specified in the grant award agreement, the awardee shall return all unexpended grant funds within 30 days after receipt of a written request by the AGRPC.
- H.** Governmental units.
1. The AGRPC may request one or more governmental units to submit grant applications as prescribed in subsection (H)(3), without regard to subsections (B), (F)(2), and (F)(5).
 2. The AGRPC may issue grants to governmental units without regard to subsections (B), (F)(2), and (F)(5).
 3. A governmental unit may apply to the AGRPC for a grant when there is no pending request for grant applications under subsection (B) under the following conditions:
 - a. The application shall include a description of the project, the scope of work to be performed, a budget that does not include overhead expenses, and an authorized signature.
 - b. The application shall be available for public inspection upon receipt by the AGRPC.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4684, effective February 3, 2007 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

3-584. Powers and duties of the council

A. The council shall:

1. Meet at least once during each calendar quarter and more frequently on the call of the chairman, vice-chairman or any three members of the council.
2. Annually elect a chairman from among its members.
3. Elect a secretary and a treasurer from among its members.
4. Establish an executive committee, consisting of the chairman, secretary and treasurer. The executive committee shall act pursuant to direction received from the full council, or if the situation arises, the executive committee shall act and then bring the subject and its action before the full council at the next regular meeting of the council for review and ratification.
5. Establish fees to be assessed within the limits prescribed in section 3-587 to be held in trust in, and subject to the terms and conditions prescribed for, the Arizona grain research trust fund established by section 3-590.

B. Programs and projects authorized under this article may include:

1. Cooperation in state, regional, national or international activities with public or private organizations or individuals to assist in developing and expanding markets and reducing the cost of marketing grain and grain products.
2. Participation in research projects and programs to assist in reducing fresh water consumption, developing new grain varieties, improved production and handling methods, research and design of new or improved harvesting and handling equipment.
3. Any program or project that the council determines appropriate to provide education, publicity or other assistance to facilitate further development of the Arizona grain industry.

C. The council may:

1. Adopt administrative rules necessary to promptly and effectively administer this article.
2. Appoint subordinate officers and employees of the council, prescribe their duties and fix their compensation.
3. Accept donations of monies, property, services or other assistance from public or private sources for the purpose of furthering the objectives of this article. All donations of monies shall be held in trust in, and subject to the terms and conditions prescribed for, the Arizona grain research trust fund established by section 3-590.
4. Investigate and prosecute in the name of this state any action or suit to enforce the collection or ensure payment of the fees authorized and sue and be sued in the name of the council.
5. Make grants to research agencies for financing appropriate studies, research projects and programs to assist in reducing fresh water consumption, developing new grain varieties, improved production and handling methods and research and design of new or improved harvesting and handling equipment.

ARIZONA STATE BOARD OF DENTAL EXAMINERS

Title 4, Chapter 11, Articles 13 and 17



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 6, 2023

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 4, 2023

SUBJECT: ARIZONA STATE BOARD OF DENTAL EXAMINERS
Title 4, Chapter 11, Articles 13 and 17

Summary

This five year review report (5YRR) from the Arizona State Board of Dental Examiners (Board) covers eight (8) rules in Title 4, Chapter 11 Articles 13 and 17 related to General Anesthesia and Sedation (13) and Rehearing or Review (17).

The Board is assigned with the duty to protect the health, safety, and welfare of the public by licensing, regulating, and disciplining dental professionals to include issuing permits to dentists to administer anesthesia or sedation and standards to pass onsite evaluations. The Board also specifies standards for requesting a rehearing or review of a Board decision and provides information on how to exhaust administrative remedies prior to requesting judicial review.

Proposed Action

The rules in Article 13 were initially made or substantially amended in 2013 and reviewed with Article 17 in a 5YRR that was approved by the Council on May 7, 2019. In the prior 5YRR the Board found an incorrect cross reference to R4-11-1301(B) in R4-11-1306(A) and (A)(3), however the Board found that the incorrect cross reference only causes a minor issue with consistency and clarity and found no need to conduct a rulemaking at that time. The Board

is taking a similar position with this report and proposes to correct the cross reference when it is necessary to amend the rules for substantive reasons.

1. Has the agency analyzed whether the rules are authorized by statute?

The Board cites both general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Board currently licenses 5,476 dentists, 5,217 dental hygienists, and 21 dental consultants, certifies 9 denturists, and registers 463 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,937,500 during FY23. Stakeholders include dental professionals and their patients.

According to the Board, it correctly estimated the economic impact of the rules when they were last amended.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Board determined the probable benefits of the rules, protecting the health and safety of those receiving dental treatment under sedation and ensuring due process for those wanting to appeal a Board decision, are outweighed by the costs of the rules and impose minimal costs and burdens on those regulated by the rules. No licensee is required to obtain a sedation permit. Those who do so have determined for themselves that the benefits of being able to provide dental treatment using sedation outweigh the costs of the education and application requirements, required equipment, supplies, assistive personnel, and recordkeeping, and application fee. To further protect public safety, the rules require an onsite evaluation by the Board to be conducted and passed.

4. Has the agency received any written criticisms of the rules over the last five years?

The Board has received no written criticisms regarding the reviewed rules during the past five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Board indicates that the rules are generally clear, concise, and understandable with the following exceptions:

R4-11-1306(A) and (A)(3), have an incorrect cross reference to R4-11-1301(B). The correct cross reference is to R4-11-1301(C)(1).

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Board indicates that the rules are generally consistent with other rules and statutes with the following exceptions:

R4-11-1306(A) and (A)(3), have an incorrect cross reference to R4-11-1301(B). The correct cross reference is to R4-11-1301(C)(1).

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Board states the rules are effective in achieving its objectives.

8. Has the agency analyzed the current enforcement status of the rules?

The Board states the rules are enforced as written.

9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

The Board indicates that the rules are not more stringent than corresponding federal law as there are no corresponding federal statutes.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The Board states that the permits issued under Article 13 are general permits consistent with A.R.S. § 41-1037 because they are issued to qualified individuals to conduct activities that are substantially similar in nature.

11. Conclusion

As stated above, the Board indicates that the rules are generally clear, concise, and understandable and effective in achieving their objective. The Board has no plans to amend the rules until it is necessary to amend the rules for substantive reasons. The report meets the requirements of A.R.S. § 41-1056 and Council staff recommend approval of this report.



Arizona State Board of Dental Examiners

"Caring for the Public's Dental
Health and Professional Standards"

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May 31, 2023

Nicole Sornsin, Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Ave., Ste. 402
Phoenix, AZ 85007

RE: Five-year-review Report for 4 A.A.C. 11, Articles 13 and 17

In compliance with A.R.S. § 41-1056(A), the Arizona State Board of Dental Examiners (Board) has reviewed all of the rules in A.A.C. Title 4, Chapter 1, Articles 13 and 17 and, based on GRRC's May 31 Study Session, submits the enclosed, amended report to the Council for approval. The Board certifies that it is in compliance with A.R.S. § 41-1091. The Board contact person for this report is Ryan Edmonson, Executive Director, who may be reached at (602) 542-4493.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ryan Edmonson", with a stylized flourish at the end.

Ryan Edmonson
Executive Director
Arizona State Board of Dental Examiners

Enclosures: Five-Year Rule Review
Five-Year Rule Review Summary Table
Board's Current Statutes and Rules

BOARD OF DENTAL EXAMINERS

Five-year-review Report: A.A.C. Title 4, Chapter 11, Articles 13 and 17

February 2023

Five-year-review Report

A.A.C. Title 4. Professions and Occupations

Chapter 11. State Board of Dental Examiners

INTRODUCTION

The Board protects the health, safety, and welfare of the public by licensing, regulating, and disciplining dental professionals. The mission of the Board is to provide professional, courteous service and information to dental professionals and the public. The Board licenses dentists, dental therapists, and dental hygienists by examination or credential. The Board certifies denturists and registers business entities that offer dental services. The Board also issues permits to dentists to administer anesthesia or sedation or to operate a mobile facility or portable dental unit.

Statute that generally authorizes the agency to make rules: A.R.S. § 32-1207(A)(1)

1. Specific statute authorizing the rule:

R4-11-1301. A.R.S. § 32-1207(A)(14), (B)(3)(b), and (E)

R4-11-1302. A.R.S. § 32-1207(A)(14), (B)(3)(b), and (E)

R4-11-1303. A.R.S. § 32-1207(A)(14), (B)(3)(b), and (E)

R4-11-1304. A.R.S. § 32-1207(A)(14), (B)(3)(b), and (E)

R4-11-1305. A.R.S. § 32-1207(A)(14), (B)(3)(b), and (E)

R4-11-1306. A.R.S. § 32-1207(A)(14), (B)(3)(b), and (E)

R4-11-1307. A.R.S. § 32-1207(A)(14), (B)(3)(b), and (E)

R4-11-1701. A.R.S. § 32-1263.02(H)

2. Objective of the rule including the purpose for the existence of the rule:

R4-11-1301. General Anesthesia and Deep Sedation: The objective of this rule is to specify the requirements for obtaining a Section 1301 permit, which authorizes the administration of general anesthesia or deep sedation by any means. In addition to application and education requirements, the rule specifies required equipment, supplies, assistive personnel, and

recordkeeping. The rule also describes the standards for passing an onsite evaluation. These requirements are designed to protect the health and safety of individuals receiving sedation during a dental procedure.

R4-11-1302. Parenteral Sedation: The objective of this rule is to specify the requirements for obtaining a Section 1302 permit, which authorizes the administration of parenteral or moderate sedation. In addition to specifying limitations of action under a Section 1302 permit, the rule specifies application and education requirements, required equipment, supplies, assistive personnel, and recordkeeping. The rule also describes the standards for passing an onsite evaluation. These requirements are designed to protect the health and safety of individuals receiving sedation during a dental procedure.

R4-11-1303. Oral Sedation: The objective of this rule is to specify the requirements for obtaining a Section 1303 permit, which authorizes the administration of oral sedation. In addition to specifying when oral sedation may be used without a Section 1303 permit, the rule specifies application and education requirements, required equipment, supplies, assistive personnel, and recordkeeping. The rule also describes the standards for passing an onsite evaluation. These requirements are designed to protect the health and safety of individuals receiving sedation during a dental procedure.

R4-11-1304. Permit to Employ or Work with a Physician Anesthesiologist or Certified Registered Nurse Anesthetist (CRNA): The objective of this rule is to specify the requirements for a licensed dentist who does not hold a Section 1301, 1302, or 1303 permit to perform dental procedures for a patient under sedation by obtaining a Section 1304 permit, which authorizes the licensed dentist to employ a physician anesthesiologist or certified registered nurse anesthetist. In addition to application and education requirements, the rule specifies required equipment, supplies, assistive personnel, and recordkeeping. The rule also describes the standards for passing an onsite evaluation. These requirements are designed to protect the health and safety of individuals receiving sedation during a dental procedure.

R4-11-1305. Reports of Adverse Occurrences: The objective of this rule is to ensure permit holders know a report to the Board is required if a death or incident requiring emergency medical response occurs while sedation is used in a dental procedure. This requirement enables the Board to fulfill its statutory responsibility to monitor the safe practice of dentistry.

R4-11-1306. Education; Continued Competency: The objective of this rule is to provide additional detail about the education required to obtain a Section 1301 permit. The rule also specifies continuing education and practice requirements for maintaining a Section 1301, 1302, or 1303 permit. These requirements are to protect public health and safety by ensuring continued competence of a licensed dentist.

R4-11-1307. Renewal of Permit: The objective of this rule is to inform permit holders of the requirements for renewing the permit. This enables permit holders to comply timely with requirements and maintain authorization to administer sedation.

R4-11-1701. Procedure: The objective of this rule is to specify the procedures and standards for requesting a rehearing or review of a Board decision. This enables a licensee, certificate holder, or business entity to know how to exhaust administrative remedies before making application for judicial review under A.R.S. § 12-901.

3. Effectiveness of the rule in achieving the objective including a summary of any available data supporting the conclusion:

The Board determined the rules are effective in achieving their objectives.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency:

Except as noted in item 6, the Board determined the rules reviewed are consistent with both statutes and other Board rules. There are no federal statutes specifically applicable to the rules reviewed.

5. Agency enforcement policy including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement:

The Board enforces the rules as written.

6. Clarity, conciseness, and understandability of the rule:

The Board believes the rules are generally clear, concise, and understandable. In R4-11-1306(A) and (A)(3), the cross reference to R4-11-1301(B) is incorrect. The correct cross reference is to R4-11-1301(C)(1). However, it should be noted that the Board is currently undertaking a Notice of Proposed Rulemaking to amend all its rules related to the administration of anesthesia and sedation. The current NPR draft strikes all of the existing language, including the incorrect reference, in section 1306. All incorrect references will be corrected in the aforementioned NPR.

7. Summary of written criticisms of the rule received by the agency with the past five years, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods, and, written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute or beyond the authority of the agency to enact, and the result of the litigation of administrative proceedings:

The Board received no written criticisms regarding the reviewed rules during the past five years.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule:

The majority of the rules in Article 13 were last amended in 2013 at 19 A.A.R. 341. R4-1301, R4-11-1302, and R4-11-1303 were last amended in 2022 at 28 A.A.R. 1898. The Board concludes it correctly estimated the economic impact of the rules when they were most recently amended. The Board currently licenses 5,476 dentists, 5,217 dental hygienists, and

21 dental consultants, certifies 9 denturists, and registers 463 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,937,500 during FY23. There is no change from the economic impact the Board anticipated in the previous rulemakings.

The rule in Article 17 was last amended in 2016 at 21 A.A.R. 2971. The Board concludes it correctly estimated the economic impact of the rules when they were last amended.

9. 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:

No analysis was submitted.

10. How the agency completed the course of action indicated in the agency's previous 5YRR:

These rules were last reviewed in 2018 and with the exception of item 6, the Board did not propose any course of action at that time.

11. A determination after analysis 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:

The Board determined the probable benefits of the rules, protecting the health and safety of those receiving dental treatment under sedation and ensuring due process for those wanting to appeal a Board decision, are outweighed by the costs of the rules and impose minimal costs and burdens on those regulated by the rules. No licensee is required to obtain a sedation permit. Those who do so have determined for themselves that the benefits of being able to provide dental treatment using sedation outweigh the costs of the education and application requirements, required equipment, supplies, assistive personnel, and recordkeeping, and application fee. To further protect public safety, the rules require an onsite evaluation by the Board be conducted and passed.

A licensee who decides to file a motion for rehearing or review of a Board decision incurs the cost of filing the motion and if granted, participating in the rehearing or review. The licensee voluntarily files the motion because the licensee believes the potential benefits outweigh the costs.

12. A determination after analysis 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:
No federal law is directly applicable to the subject matter of the rules.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:
The permits issued under Article 13 are general permits consistent with A.R.S. § 41-1037 because they are issued to qualified individuals to conduct activities that are substantially similar in nature.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule or to make a new rule. If no issues are identified for a rule in the report, the agency may indicate that no action is necessary for the rule:
Because the incorrect cross reference in R4-11-1306(A) and (A)(3) causes only minor issues with consistency and understandability, the Board will correct the cross reference when it is necessary to amend the rules for substantive reasons. The Board determined none of the rules needs to be amended or repealed and no new rule needs to be made.

ARIZONA STATE BOARD OF DENTAL EXAMINERS

2023 Five-Year Review, Title 4, Chapter 11

Articles 13 and 17

Rule No.	Title	Last Revision	Eff.	Enf.	Consist.	Clear/Concise/understandable	Probable benefits/Least Burden	ARS Authority	EIS Comp.	Previous and Current Proposed Course of Action
R4-11-1301	General Anesthesia and Deep Sedation	September 12, 2022	Y	Y	Y	Y	Y	A.R.S. § 32-1207(A)(14), (B)(3)(b), and (E)	The Board currently licenses 5,476 dentists, 5,217 dental hygienists, and 21 dental consultants, certifies 9 denturists, and registers 463 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,937,500 during FY23. There is no change from the economic impact the Board anticipated in the previous rulemaking.	The Board did not propose a previous course of action and does not need to amend this rule at this time.

									During FY22, the Board collected \$889,921 in fees. Ten percent of this was deposited in the state's general fund.	
R4-11-1302	Parenteral Sedation	September 12, 2022	Y	Y	Y	Y	Y	A.R.S. § 32-1207(A)(14), (B)(3)(b), and (E)	The Board currently licenses 5,476 dentists, 5,217 dental hygienists, and 21 dental consultants, certifies 9 denturists, and registers 463 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,937,500 during FY23. There is no change from the economic impact the Board anticipated in the previous rulemaking.	The Board did not propose a previous course of action and does not need to amend this rule at this time.

									During FY22, the Board collected \$889,921 in fees. Ten percent of this was deposited in the state's general fund.	
R4-11-1303	Oral Sedation	September 12, 2022	Y	Y	Y	Y	Y	A.R.S. § 32-1207(A)(14), (B)(3)(b), and (E)	The Board currently licenses 5,476 dentists, 5,217 dental hygienists, and 21 dental consultants, certifies 9 denturists, and registers 463 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,937,500 during FY23. There is no change from the economic impact the Board anticipated in the previous rulemaking.	The Board did not propose a previous course of action and does not need to amend this rule at this time.

									During FY22, the Board collected \$889,921 in fees. Ten percent of this was deposited in the state's general fund.	
R4-11-1304	Permit to Employ or Work with a Physician Anesthesiologist or Certified Registered Nurse Anesthetist (CRNA)	April 6, 2013	Y	Y	Y	Y	Y	A.R.S. § 32-1207(A)(14), (B)(3)(b), and (E)	The Board currently licenses 5,476 dentists, 5,217 dental hygienists, and 21 dental consultants, certifies 9 denturists, and registers 463 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,937,500 during FY23. There is no change from the economic impact the Board anticipated in the previous rulemaking.	The Board did not propose a previous course of action and does not need to amend this rule at this time.

									During FY22, the Board collected \$889,921 in fees. Ten percent of this was deposited in the state's general fund.	
R4-11-1305	Reports of Adverse Occurrences	April 6, 2013	Y	Y	Y	Y	Y	A.R.S. § 32-1207(A)(14), (B)(3)(b), and (E)	The Board currently licenses 5,476 dentists, 5,217 dental hygienists, and 21 dental consultants, certifies 9 denturists, and registers 463 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,937,500 during FY23. There is no change from the economic impact the Board anticipated in the previous rulemaking.	The Board did not propose a previous course of action and does not need to amend this rule at this time.

									During FY22, the Board collected \$889,921 in fees. Ten percent of this was deposited in the state's general fund.	
R4-11-1306	Education; Continued Competency	April 6, 2013	Y	Y	Y	N The cross reference to R4-11-1301(B) should be updated to R4-11-1301(C)(1).	Y	A.R.S. § 32-1207(A)(14), (B)(3)(b), and (E)	The Board currently licenses 5,476 dentists, 5,217 dental hygienists, and 21 dental consultants, certifies 9 denturists, and registers 463 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,937,500 during FY23. There is no change from the economic impact the Board anticipated in the previous rulemaking.	<p>In the previous 5YRR the Board proposed to update the cross reference when it amended this rule for substantive changes.</p> <p>It should be noted that the Board is currently undertaking a Notice of Proposed Rulemaking to amend all its rules related to the administration of anesthesia and sedation. The current NPR draft strikes all of the existing language, including the incorrect reference, in section 1306. All incorrect references will be corrected in the aforementioned NPR.</p>

									During FY22, the Board collected \$889,921 in fees. Ten percent of this was deposited in the state's general fund.	
R4-11-1307	Renewal of Permit	April 6, 2013	Y	Y	Y	Y	Y	A.R.S. § 32-1207(A)(14), (B)(3)(b), and (E)	The Board currently licenses 5,476 dentists, 5,217 dental hygienists, and 21 dental consultants, certifies 9 denturists, and registers 463 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,937,500 during FY23. There is no change from the economic impact the Board anticipated in the previous rulemaking.	The Board did not propose a previous course of action and does not need to amend this rule at this time.

									During FY22, the Board collected \$889,921 in fees. Ten percent of this was deposited in the state's general fund.	
R4-11-1701	Procedure	January 2, 2016	Y	Y	Y	Y	Y	A.R.S. § 32-1263.02(H)	The Board currently licenses 5,476 dentists, 5,217 dental hygienists, and 21 dental consultants, certifies 9 denturists, and registers 463 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,937,500 during FY23. There is no change from the economic impact the Board anticipated in the previous rulemaking.	The Board did not propose a previous course of action and does not need to amend this rule at this time.

									During FY22, the Board collected \$889,921 in fees. Ten percent of this was deposited in the state's general fund.	
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ARIZONA

STATE BOARD OF DENTAL EXAMINERS



Statutes & Rules

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ARIZONA REVISED STATUTES

Dentistry – Chapter 11

Article 1 – Dental Board

32-1201. Definitions

In this chapter, unless the context otherwise requires:

1. "Affiliated practice dental hygienist" means any licensed dental hygienist who is able, pursuant to section 32-1289.01, to initiate treatment based on the dental hygienist's assessment of a patient's needs according to the terms of a written affiliated practice agreement with a dentist, to treat the patient without the presence of a dentist and to maintain a provider-patient relationship.
2. "Auxiliary personnel" means all dental assistants, dental technicians, dental x-ray technicians and other persons employed by dentists or firms and businesses providing dental services to dentists.
3. "Board" means the state board of dental examiners.
4. "Business entity" means a business organization that has an ownership that includes any persons who are not licensed or certified to provide dental services in this state, that offers to the public professional services regulated by the board and that is established pursuant to the laws of any state or foreign country.
5. "Dental assistant" means any person who acts as an assistant to a dentist, dental therapist or dental hygienist by rendering personal services to a patient that involve close proximity to the patient while the patient is under treatment or observation or undergoing diagnostic procedures.
6. "Dental hygienist" means any person who is licensed and engaged in the general practice of dental hygiene and all related and associated duties, including educational, clinical and therapeutic dental hygiene procedures.
7. "Dental incompetence" means lacking in sufficient dentistry knowledge or skills, or both, in that field of dentistry in which the dentist, dental therapist, denturist or dental hygienist concerned engages, to a degree likely to endanger the health of that person's patients.
8. "Dental laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, fabricates artificial teeth, prosthetic appliances or other mechanical and artificial contrivances designed to correct or alleviate injuries or defects, both developmental and acquired, disorders or deficiencies of the human oral cavity, teeth, investing tissues, maxilla or mandible or adjacent associated structures.
9. "Dental therapist" means any person who is licensed and engaged in the general practice of dental therapy and all related and associated duties, including educational, clinical and therapeutic dental therapy procedures.
10. "Dental x-ray laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, performs dental and maxillofacial radiography,

including cephalometrics, panoramic and maxillofacial tomography and other dental related nonfluoroscopic diagnostic imaging modalities.

11. "Dentistry", "dentist" and "dental" mean the general practice of dentistry and all specialties or restricted practices of dentistry.
12. "Denturist" means a person practicing denture technology pursuant to article 5 of this chapter.
13. "Disciplinary action" means regulatory sanctions that are imposed by the board in combination with, or as an alternative to, revocation or suspension of a license and that may include:
 - (a) Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted under this chapter.
 - (b) Imposition of restrictions on the scope of practice.
 - (c) Imposition of peer review and professional education requirements.
 - (d) Imposition of censure or probation requirements best adapted to protect the public welfare, which may include a requirement for restitution to the patient resulting from violations of this chapter or rules adopted under this chapter.
14. "Irregularities in billing" means submitting any claim, bill or government assistance claim to any patient, responsible party or third-party payor for dental services rendered that is materially false with the intent to receive unearned income as evidenced by any of the following:
 - (a) Charges for services not rendered.
 - (b) Any treatment date that does not accurately reflect the date when the service and procedures were actually completed.
 - (c) Any description of a dental service or procedure that does not accurately reflect the actual work completed.
 - (d) Any charge for a service or procedure that cannot be clinically justified or determined to be necessary.
 - (e) Any statement that is material to the claim and that the licensee knows is false or misleading.
 - (f) An abrogation of the copayment provisions of a dental insurance contract by a waiver of all or a part of the copayment from the patient if this results in an excessive or fraudulent charge to a third party or if the waiver is used as an enticement to receive dental services from that provider. This subdivision does not interfere with a contractual relationship between a third-party payor and a licensee or business entity registered with the board.
 - (g) Any other practice in billing that results in excessive or fraudulent charges to the patient.

15. "Letter of concern" means an advisory letter to notify a licensee or a registered business entity that, while the evidence does not warrant disciplinary action, the board believes that the licensee or registered business entity should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in board action against the practitioner's license or the business entity's registration. A letter of concern is not a disciplinary action. A letter of concern is a public document and may be used in a future disciplinary action.
16. "Licensed" means licensed pursuant to this chapter.
17. "Place of practice" means each physical location at which a person who is licensed pursuant to this chapter performs services subject to this chapter.
18. "Primary mailing address" means the address on file with the board and to which official board correspondence, notices or documents are delivered in a manner determined by the board.
19. "Recognized dental hygiene school" means a school that has a dental hygiene program with a minimum two academic year curriculum, or the equivalent of four semesters, and that is approved by the board and accredited by the American dental association commission on dental accreditation.
20. "Recognized dental school" means a dental school that is accredited by the American dental association commission on dental accreditation.
21. "Recognized dental therapy school" means a school that is accredited or that has received initial accreditation by the American dental association commission on dental accreditation.
22. "Recognized denturist school" means a denturist school that maintains standards of entrance, study and graduation and that is accredited by the United States department of education or the council on higher education accreditation.
23. "Supervised personnel" means all dental hygienists, dental assistants, dental laboratory technicians, dental therapists, denturists, dental x-ray laboratory technicians and other persons supervised by licensed dentists.
24. "Teledentistry" means the use of data transmitted through interactive audio, video or data communications for the purposes of examination, diagnosis, treatment planning, consultation and directing the delivery of treatment by dentists and dental providers in settings permissible under this chapter or specified in rules adopted by the board.

32-1201.01. Definition of unprofessional conduct

For the purposes of this chapter, "unprofessional conduct" means the following acts, whether occurring in this state or elsewhere:

1. Intentionally betraying a professional confidence or intentionally violating a privileged communication except as either of these may otherwise be required by law. This paragraph does not prevent members of the board from the full and free exchange of information with the licensing and disciplinary boards of other states, territories or districts of the United States or

foreign countries, with the Arizona state dental association or any of its component societies or with the dental societies of other states, counties, districts, territories or foreign countries.

2. Using controlled substances as defined in section 36-2501, narcotic drugs, dangerous drugs or marijuana as defined in section 13-3401, or hypnotic drugs, including acetylurea derivatives, barbituric acid derivatives, chloral, paraldehyde, phenylhydantoin derivatives, sulfonmethane derivatives or any compounds, mixtures or preparations that may be used for producing hypnotic effects, or alcohol to the extent that it affects the ability of the dentist, dental therapist, denturist or dental hygienist to practice that person's profession.
3. Prescribing, dispensing or using drugs for other than accepted dental therapeutic purposes or for other than medically indicated supportive therapy in conjunction with managing a patient's needs and in conjunction with the scope of practice prescribed in section 32-1202.
4. Committing gross malpractice or repeated acts constituting malpractice.
5. Acting or assuming to act as a member of the board if this is not true.
6. Procuring or attempting to procure a certificate of the national board of dental examiners or a license to practice dentistry or dental hygiene by fraud or misrepresentation or by knowingly taking advantage of the mistake of another.
7. Having professional connection with or lending one's name to an illegal practitioner of dentistry or any of the other healing arts.
8. Representing that a manifestly not correctable condition, disease, injury, ailment or infirmity can be permanently corrected, or that a correctable condition, disease, injury, ailment or infirmity can be corrected within a stated time, if this is not true.
9. Offering, undertaking or agreeing to correct, cure or treat a condition, disease, injury, ailment or infirmity by a secret means, method, device or instrumentality.
10. Refusing to divulge to the board, on reasonable notice and demand, the means, method, device or instrumentality used in treating a condition, disease, injury, ailment or infirmity.
11. Dividing a professional fee or offering, providing or receiving any consideration for patient referrals among or between dental care providers or dental care institutions or entities. This paragraph does not prohibit the division of fees among licensees who are engaged in a bona fide employment, partnership, corporate or contractual relationship for the delivery of professional services.
12. Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of dentistry.
13. Having a license refused, revoked or suspended or any other disciplinary action taken against a dentist by, or voluntarily surrendering a license in lieu of disciplinary action to, any other state, territory, district or country, unless the board finds that this action was not taken for reasons that relate to the person's ability to safely and skillfully practice dentistry or to any act of unprofessional conduct.

14. Committing any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public.
15. Obtaining a fee by fraud or misrepresentation, or wilfully or intentionally filing a fraudulent claim with a third party for services rendered or to be rendered to a patient.
16. Committing repeated irregularities in billing.
17. Employing unlicensed persons to perform or aiding and abetting unlicensed persons in performing work that can be done legally only by licensed persons.
18. Practicing dentistry under a false or assumed name in this state, other than as allowed by section 32-1262.
19. Wilfully or intentionally causing or allowing supervised personnel or auxiliary personnel operating under the licensee's supervision to commit illegal acts or perform an act or operation other than that allowed under article 4 of this chapter and rules adopted by the board pursuant to section 32-1282.
20. Committing the following advertising practices:
 - (a) Publishing or circulating, directly or indirectly, any false, fraudulent or misleading statements concerning the skill, methods or practices of the licensee or of any other person.
 - (b) Advertising in any manner that tends to deceive or defraud the public.
21. Failing to dispense drugs and devices in compliance with article 6 of this chapter.
22. Failing to comply with a board order, including an order of censure or probation.
23. Failing to comply with a board subpoena in a timely manner.
24. Failing or refusing to maintain adequate patient records.
25. Failing to allow properly authorized board personnel, on demand, to inspect the place of practice and examine and have access to documents, books, reports and records maintained by the licensee or certificate holder that relate to the dental practice or dental-related activity.
26. Refusing to submit to a body fluid examination as required through a monitored treatment program or pursuant to a board investigation into a licensee's or certificate holder's alleged substance abuse.
27. Failing to inform a patient of the type of material the dentist will use in the patient's dental filling and the reason why the dentist is using that particular filling.
28. Failing to report in writing to the board any evidence that a dentist, dental therapist, denturist or dental hygienist is or may be:

- (a) Professionally incompetent.
- (b) Engaging in unprofessional conduct.
- (c) Impaired by drugs or alcohol.
- (d) Mentally or physically unable to safely engage in the activities of a dentist, dental therapist, denturist or dental hygienist pursuant to this chapter.

29. Filing a false report pursuant to paragraph 28 of this section.

30. Practicing dentistry, dental therapy, dental hygiene or denturism in a business entity that is not registered with the board as required by section 32-1213.

31. Dispensing a schedule II controlled substance that is an opioid.

32. Providing services or procedures as a dental therapist that exceed the scope of practice or exceed the services or procedures authorized in the written collaborative practice agreement.

32-1202. Scope of practice; practice of dentistry

For the purposes of this chapter, the practice of dentistry is the diagnosis, surgical or nonsurgical treatment and performance of related adjunctive procedures for any disease, pain, deformity, deficiency, injury or physical condition of the human tooth or teeth, alveolar process, gums, lips, cheek, jaws, oral cavity and associated tissues of the oral maxillofacial facial complex, including removing stains, discolorations and concretions and administering botulinum toxin type A and dermal fillers to the oral maxillofacial complex for therapeutic or cosmetic purposes.

32-1203. State board of dental examiners; qualifications of members; terms

- A. The state board of dental examiners is established consisting of six licensed dentists, two licensed dental hygienists, two public members and one business entity member appointed by the governor for a term of four years, to begin and end on January 1.
- B. Before appointment by the governor, a prospective member of the board shall submit a full set of fingerprints to the governor for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.
- C. The business entity member and the public members may participate in all board proceedings and determinations, except in the preparing, giving or grading of examinations for licensure. Dental hygienist board members may participate in all board proceedings and determinations, except in the preparing, giving and grading of examinations that do not relate to dental hygiene procedures.
- D. A board member shall not serve more than two consecutive terms.
- E. For the purposes of this section, business entity member does not include a person who is licensed pursuant to this chapter.

32-1204. Removal from office

The governor may remove a member of the board for persistent neglect of duty, incompetency, unfair, biased, partial or dishonorable conduct, or gross immorality. Conviction of a felony or revocation of the dental license of a member of the board shall ipso facto terminate his membership.

32-1205. Organization; meetings; quorum; staff

A. The board shall elect from its membership a president and a vice-president who shall act also as secretary-treasurer.

B. Board meetings shall be conducted pursuant to title 38, chapter 3, article 3.1. A majority of the board constitutes a quorum. Beginning September 1, 2015, meetings held pursuant to this subsection shall be audio recorded and the audio recording shall be posted to the board's website within five business days after the meeting.

C. The board may employ an executive director, subject to title 41, chapter 4, article 4 and legislative appropriation.

D. The board or the executive director may employ personnel, as necessary, subject to title 41, chapter 4, article 4 and legislative appropriation.

32-1206. Compensation of board members; investigation committee members

A. Members of the board are entitled to receive compensation in the amount of \$250 for each day actually spent in performing necessary work authorized by the board and all expenses necessarily and properly incurred while performing this work.

B. Members of an investigation committee established by the board may receive compensation in the amount of \$100 for each committee meeting.

32-1207. Powers and duties; executive director; immunity; fees; definition

A. The board shall:

1. Adopt rules that are not inconsistent with this chapter for regulating its own conduct, for holding examinations and for regulating the practice of dentists and supervised personnel and registered business entities, provided that:

(a) Regulation of supervised personnel is based on the degree of education and training of the supervised personnel, the state of scientific technology available and the necessary degree of supervision of the supervised personnel by dentists.

(b) Except as provided pursuant to sections 32-1276.03 and 32-1281, only licensed dentists may perform diagnosis and treatment planning, prescribe medication and perform surgical procedures on hard and soft tissues.

(c) Only a licensed dentist, a dental therapist either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement or a dental hygienist in consultation with a dentist may perform examinations, oral health assessments and treatment sequencing for dental hygiene procedures.

2. Adopt a seal.

3. Maintain a record that is available to the board at all times of its acts and proceedings, including the issuance, denial, renewal, suspension or revocation of licenses and the disposition of complaints. The

existence of a pending complaint or investigation shall not be disclosed to the public. Records of complaints shall be available to the public, except only as follows:

(a) If the board dismisses or terminates a complaint, the record of the complaint shall not be available to the public.

(b) If the board has issued a nondisciplinary letter of concern, the record of the complaint shall be available to the public only for a period of five years after the date the board issued the letter of concern.

(c) If the board has required additional nondisciplinary continuing education pursuant to section 32-1263.01 but has not taken further action, the record of the complaint shall be available to the public only for a period of five years after the licensee satisfies this requirement.

(d) If the board has assessed a nondisciplinary civil penalty pursuant to section 32-1208 but has not taken further action, the record of the complaint shall be available to the public only for a period of five years after the licensee satisfies this requirement.

4. Establish a uniform and reasonable standard of minimum educational requirements consistent with the accreditation standards of the American dental association commission on dental accreditation to be observed by dental schools, dental therapy schools and dental hygiene schools in order to be classified as recognized dental schools, dental therapy schools or dental hygiene schools.

5. Establish a uniform and reasonable standard of minimum educational requirements that are consistent with the accreditation standards of the United States department of education or the council on higher education accreditation and that must be observed by denture technology schools in order to be classified as recognized denture technology schools.

6. Determine the reputability and classification of dental schools, dental therapy schools, dental hygiene schools and denture technology schools in accordance with their compliance with the standard set forth in paragraph 4 or 5 of this subsection, whichever is applicable.

7. Issue licenses to persons who the board determines are eligible for licensure pursuant to this chapter.

8. Determine the eligibility of applicants for restricted permits and issue restricted permits to those found eligible.

9. Pursuant to section 32-1263.02, investigate charges of misconduct on the part of licensees and persons to whom restricted permits have been issued.

10. Issue a letter of concern, which is not a disciplinary action but refers to practices that may lead to a violation and to disciplinary action.

11. Issue decrees of censure, fix periods and terms of probation, suspend or revoke licenses, certificates and restricted permits, as the facts may warrant, and reinstate licenses, certificates and restricted permits in proper cases.

12. Collect and disburse monies.

13. Perform all other duties that are necessary to enforce this chapter and that are not specifically or by necessary implication delegated to another person.

14. Establish criteria for the renewal of permits issued pursuant to board rules relating to general anesthesia and sedation.

B. The board may:

1. Sue and be sued.

2. Issue subpoenas, including subpoenas to the custodian of patient records, compel attendance of witnesses, administer oaths and take testimony concerning all matters within the board's jurisdiction. If a person refuses to obey a subpoena issued by the board, the refusal shall be certified to the superior court and proceedings shall be instituted for contempt of court.

3. Adopt rules:

(a) Prescribing requirements for continuing education for renewal of all licenses issued pursuant to this chapter.

(b) Prescribing educational and experience prerequisites for administering intravenous or intramuscular drugs for the purpose of sedation or for using general anesthetics in conjunction with a dental treatment procedure.

(c) Prescribing requirements for obtaining licenses for retired licensees or licensees who have a disability, including the triennial license renewal fee.

4. Hire consultants to assist the board in the performance of its duties and employ persons to provide investigative, professional and clerical assistance as the board deems necessary.

5. Contract with other state or federal agencies as required to carry out the purposes of this chapter.

6. If determined by the board, order physical, psychological, psychiatric and competency evaluations of licensed dentists, dental therapists and dental hygienists, certified denturists and applicants for licensure and certification at the expense of those individuals.

7. Establish an investigation committee consisting of not more than eleven licensees who are in good standing, who are appointed by the board and who serve at the pleasure of the board to investigate any complaint submitted to the board, initiated by the board or delegated by the board to the investigation committee pursuant to this chapter.

C. The executive director or the executive director's designee may:

1. Issue and renew licenses, certificates and permits to applicants who meet the requirements of this chapter.

2. Initiate an investigation if evidence appears to demonstrate that a dentist, dental therapist, dental hygienist, denturist or restricted permit holder may be engaged in unprofessional conduct or may be unable to safely practice dentistry.

3. Initiate an investigation if evidence appears to demonstrate that a business entity may be engaged in unethical conduct.

4. Subject to board approval, enter into a consent agreement with a dentist, dental therapist, denturist, dental hygienist or restricted permit holder if there is evidence of unprofessional conduct.

5. Subject to board approval, enter into a consent agreement with a business entity if there is evidence of unethical conduct.

6. Refer cases to the board for a formal interview.

7. If delegated by the board, enter into a stipulation agreement with a person under the board's jurisdiction for the treatment, rehabilitation and monitoring of chemical substance abuse or misuse.

D. Members of the board are personally immune from liability with respect to all acts done and actions taken in good faith and within the scope of their authority.

E. The board by rule shall require that a licensee obtain a permit for applying general anesthesia, semiconscious sedation or conscious sedation, shall establish and collect a fee of not more than \$300 to cover administrative costs connected with issuing the permit and shall conduct inspections to ensure compliance.

F. The board by rule may establish and collect fees for license verification, board meeting agendas and minutes, published lists and mailing labels.

G. This section does not prohibit the board from conducting its authorized duties in a public meeting.

H. For the purposes of this section:

1. "Good standing" means that a person holds an unrestricted and unencumbered license that has not been suspended or revoked pursuant to this chapter.

2. "Record of complaint" means the document reflecting the final disposition of a complaint or investigation.

32-1208. Failure to respond to subpoena; civil penalty

In addition to any disciplinary action authorized by statute, the board may assess a nondisciplinary civil penalty in an amount not to exceed five hundred dollars for a licensee who fails to respond to a subpoena issued by the board pursuant to this chapter.

32-1209. Admissibility of records in evidence

A copy of any part of the recorded proceedings of the board certified by the executive director, or a certificate by the executive director that any asserted or purported record, name, license number, restricted permit number or action is not entered in the recorded proceedings of the board, may be admitted as evidence in any court in this state. A person making application and paying a fee set by the board may procure from the executive director a certified copy of any portion of the records of the board unless these records are classified as confidential as provided by law. Unless otherwise provided by law, all records concerning an investigation, examination materials, records of

examination grading and applicants' performance and transcripts of educational institutions concerning applicants are confidential and are not public records. "Records of applicants' performance" does not include records of whether an applicant passed or failed an examination.

32-1210. Annual report

A. Not later than October 1 of each year, the board shall make an annual written report to the governor for the preceding year that includes the following information:

1. The number of licensed dentists in the state.
2. The number of licenses issued during the preceding year and to whom issued.
3. The number of examinations held and the dates of the examinations.
4. The facts with respect to accusations filed with the board, of hearings held in connection with those accusations and the results of those hearings.
5. The facts with respect to prosecution of persons charged with violations of this chapter.
6. A full and complete statement of financial transactions of the board.
7. Any other matters that the board wishes to include in the report or that the governor requires.

B. On request of the governor the board shall submit a supplemental report.

32-1212. Dental board fund

A. Except as provided in subsection C of this section, pursuant to sections 35-146 and 35-147, the executive director of the board shall each month deposit ten per cent of all fees, fines and other revenue received by the board, in the state general fund and deposit the remaining ninety per cent in the dental board fund.

B. Monies deposited in the dental board fund shall be subject to the provisions of section 35-143.01.

C. Monies from administrative penalties received pursuant to section 32-1263.01 shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

32-1213. Business entities; registration; renewal; civil penalty; exceptions

A. A business entity may not offer dental services pursuant to this chapter unless:

1. The entity is registered with the board pursuant to this section.
2. The services are conducted by a licensee pursuant to this chapter.

B. The business entity must file a registration application on a form provided by the board. The application must include:

1. A description of the entity's services offered to the public.
 2. The name of any dentist who is authorized to provide and who is responsible for providing the dental services offered at each office.
 3. The names and addresses of the officers and directors of the business entity.
 4. A registration fee prescribed by the board in rule.
- C. A business entity must file a separate registration application and pay a fee for each branch office in this state.
- D. A registration expires three years after the date the board issues the registration. A business entity that wishes to renew a registration must submit an application for renewal as prescribed by the board on a triennial basis on a form provided by the board before the expiration date. An entity that fails to renew the registration before the expiration date is subject to a late fee as prescribed by the board by rule. The board may stagger the dates for renewal applications.
- E. The business entity must notify the board in writing within thirty days after any change:
1. In the entity's name, address or telephone number.
 2. In the officers or directors of the business entity.
 3. In the name of any dentist who is authorized to provide and who is responsible for providing the dental services in any facility.
- F. The business entity shall establish a written protocol for the secure storage, transfer and access of the dental records of the business entity's patients. This protocol must include, at a minimum, procedures for:
1. Notifying patients of the future locations of their records if the business entity terminates or sells the practice.
 2. Disposing of unclaimed dental records.
 3. The timely response to requests by patients for copies of their records.
- G. The business entity must notify the board within thirty days after the dissolution of any registered business entity or the closing or relocation of any facility and must disclose to the board the entity's procedure by which its patients may obtain their records.
- H. The board may do any of the following pursuant to its disciplinary procedures if an entity violates the board's statutes or rules:
1. Refuse to issue a registration.
 2. Suspend or revoke a registration.

3. Impose a civil penalty of not more than \$2,000 for each violation.
 4. Enter a decree of censure.
 5. Issue an order prescribing a period and terms of probation that are best adapted to protect the public welfare and that may include a requirement for restitution to a patient for a violation of this chapter or rules adopted pursuant to this chapter.
 6. Issue a letter of concern if a business entity's actions may cause the board to take disciplinary action.
- I. The board shall deposit, pursuant to sections 35-146 and 35-147, civil penalties collected pursuant to this section in the state general fund.
- J. This section does not apply to:
1. A sole proprietorship or partnership that consists exclusively of dentists who are licensed pursuant to this chapter.
 2. Any of the following entities licensed under title 20:
 - (a) A service corporation.
 - (b) An insurer authorized to transact disability insurance.
 - (c) A prepaid dental plan organization that does not provide directly for prepaid dental services.
 - (d) A health care services organization that does not provide directly for dental services.
 3. A professional corporation or professional limited liability company, the shares of which are exclusively owned by dentists who are licensed pursuant to this chapter and that is formed to engage in the practice of dentistry pursuant to title 10, chapter 20 or title 29 relating to professional limited liability companies.
 4. A facility regulated by the federal government or a state, district or territory of the United States.
 5. An administrator or executor of the estate of a deceased dentist or a person who is legally authorized to act for a dentist who has been adjudicated to be mentally incompetent for not more than one year after the date the board receives notice of the dentist's death or incapacitation pursuant to section 32-1270.
- K. A facility that offers dental services to the public by persons licensed under this chapter shall be registered by the board unless the facility is any of the following:
1. Owned by a dentist who is licensed pursuant to this chapter.
 2. Regulated by the federal government or a state, district or territory of the United States.

L. Except for issues relating to insurance coding and billing that require the name, signature and license number of the dentist providing treatment, this section does not:

1. Authorize a licensee in the course of providing dental services for an entity registered pursuant to this section to disregard or interfere with a policy or practice established by the entity for the operation and management of the business.

2. Authorize an entity registered pursuant to this section to establish or enforce a business policy or practice that may interfere with the clinical judgment of the licensee in providing dental services for the entity or may compromise a licensee's ability to comply with this chapter.

M. The board shall adopt rules that provide a method for the board to receive the assistance and advice of business entities licensed pursuant to this chapter in all matters relating to the regulation of business entities.

N. An individual currently holding a surrendered or revoked license to practice dentistry or dental hygiene in any state or jurisdiction in the United States may not have a majority ownership interest in the business entity registered pursuant to this section. Revocation and surrender of licensure shall be limited to disciplinary actions resulting in loss of license or surrender of license instead of disciplinary action. Dentists or dental hygienists affected by this subsection shall have one year after the surrender or revocation to divest themselves of their ownership interest. This subsection does not apply to publicly held companies. For the purposes of this subsection, "majority ownership interest" means an ownership interest greater than fifty percent.

Article 2 – Licensure

32-1231. Persons not required to be licensed

This chapter does not prohibit:

1. A dentist, dental therapist or dental hygienist who is officially employed in the service of the United States from practicing dentistry in the dentist's, dental therapist's or dental hygienist's official capacity, within the scope of that person's authority, on persons who are enlisted in, directly connected with or under the immediate control of some branch of service of the United States.

2. A person, whether or not licensed by this state, from practicing dental therapy either:

- (a) In the discharge of official duties on behalf of the United States government, including the United States department of veterans affairs, the United States public health service and the Indian health service.

- (b) While employed by tribal health programs authorized pursuant to Public Law 93-638 or urban Indian health programs.

3. An intern or student of dentistry, dental therapy or dental hygiene from operating in the clinical departments or laboratories of a recognized dental school, dental therapy school, dental hygiene school or hospital under the supervision of a dentist.

4. An unlicensed person from performing for a licensed dentist merely mechanical work on inert matter not within the oral cavity in the construction, making, alteration or repairing of any artificial dental substitute or any dental restorative or corrective appliance, if the casts or impressions for that work

have been furnished by a licensed dentist and the work is directly supervised by the dentist for whom done or under a written authorization signed by the dentist, but the burden of proving that written authorization or direct supervision is on the person charged with having violated this provision.

5. A clinician who is not licensed in this state from giving demonstrations, before bona fide dental societies, study clubs and groups of professional students, that are free to the persons on whom made.

6. The state director of dental public health from performing the director's administrative duties as prescribed by law.

7. A dentist or dental hygienist to whom a restricted permit has been issued from practicing dentistry or dental hygiene in this state as provided in sections 32-1237 and 32-1292.

8. A dentist, dental therapist or dental hygienist from practicing for educational purposes on behalf of a recognized dental school, recognized dental therapy school or recognized dental hygiene school.

32-1232. Qualifications of applicant; application; fee; fingerprint clearance card

A. An applicant for licensure shall meet the requirements of section 32-1233 and shall hold a diploma conferring a degree of doctor of dental medicine or doctor of dental surgery from a recognized dental school.

B. Each candidate shall submit a written application to the board accompanied by a nonrefundable Arizona dental jurisprudence examination fee of \$300. The board shall waive this fee for candidates who are holders of valid restricted permits. Each candidate shall also obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

C. The board may deny an application for a license, for license renewal or for a restricted permit if the applicant:

1. Has committed any act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of any act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for a license, for license renewal or for a restricted permit if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a license to the applicant until the investigation is resolved.

32-1233. Applicants for licensure; examination requirements

An applicant for licensure shall have passed all of the following:

1. The written national dental board examinations.
2. A clinical examination administered by a state or regional testing agency in the United States within five years preceding filing the application.
3. The Arizona dental jurisprudence examination.

32-1234. Dental consultant license

A. A person may apply for a dental consultant license if the applicant demonstrates to the board's satisfaction that the applicant:

1. Has continuously held a license to practice dentistry for at least twenty-five years issued by one or more states or territories of the United States or the District of Columbia but is not currently licensed to practice dentistry in Arizona.
2. Has not had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
3. Is not currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
4. Has not surrendered, relinquished or given up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
5. Meets the applicable requirements of section 32-1232.
6. Meets the requirements of section 32-1233, paragraph 1. If an applicant has taken a state written theory examination instead of the written national dental board examinations, the applicant must provide the board with official documentation of passing the written theory examinations in the state where the applicant holds a current license. The board shall then determine the applicant's eligibility for a license pursuant to this section.
7. Meets the application requirements as prescribed in rule by the board.

B. The board shall suspend an application for a dental consultant license if the applicant is currently under investigation by a dental regulatory board in another jurisdiction in the United States. The board shall not issue or deny a license to the applicant until the investigation is resolved.

C. A person to whom a dental consultant license is issued shall practice dentistry only in the course of the person's employment or on behalf of an entity licensed under title 20 with the practice limited to supervising or conducting utilization review or other claims or case management activity on behalf of the entity licensed pursuant to title 20. A person who holds a dental consultant license is prohibited from providing direct patient care.

D. This section does not require a person to apply for or hold a dental consultant license in order for that person to serve as a consultant to or engage in claims review activity for an entity licensed pursuant to title 20.

E. Except as provided in subsection B of this section, a dental consultant licensee is subject to all of the provisions of this chapter that are applicable to licensed dentists.

32-1235. Reinstatement of license or certificate; application for previously denied license or certificate

A. On written application the board may issue a new license or certificate to a dentist, dental therapist, dental hygienist or denturist whose license or certificate was previously suspended or revoked by the board or surrendered by the applicant if the applicant demonstrates to the board's satisfaction that the applicant is completely rehabilitated with respect to the conduct that was the basis for the suspension, revocation or surrender. In making its decision, the board shall determine:

1. That the applicant has not engaged in any conduct during the suspension, revocation or surrender period that would have constituted a basis for revocation pursuant to section 32-1263.

2. If a criminal conviction was a basis for the suspension, revocation or surrender, that the applicant's civil rights have been fully restored pursuant to statute or any other applicable recognized judicial or gubernatorial order.

3. That the applicant has made restitution to any aggrieved person as ordered by a court of competent jurisdiction.

4. That the applicant demonstrates any other standard of rehabilitation the board determines is appropriate.

B. Except as provided in subsection C of this section, a person may not submit an application for reinstatement less than five years after the date of suspension, revocation or surrender.

C. The board shall vacate its previous order to suspend or revoke a license or certificate if that suspension or revocation was based on a conviction of a felony or an offense involving moral turpitude and that conviction has been reversed on appeal. The person may submit an application for reinstatement as soon as the court enters the reversal.

D. An applicant for reinstatement must comply with all initial licensing or certification requirements prescribed by this chapter.

E. A person whose application for a license or certificate has been denied for failure to meet academic requirements may apply for licensure or certification not less than two years after the denial.

F. A person whose application for a license has been denied pursuant to section 32-1232, subsection C may apply for licensure not less than five years after the denial.

32-1236. Dentist triennial licensure; continuing education; license reinstatement; license for each place of practice; notice of change of address or place of practice; retired and disabled license status; penalties

A. Except as provided in section 32-4301, a license expires thirty days after the licensee's birth month every third year. On or before the last day of the licensee's birth month every third year, every licensed dentist shall submit to the board a complete renewal application and pay a license renewal fee of not more than \$650, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this subsection does not apply to a retired dentist or to a dentist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the licensee's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birth month.

C. A person applying for licensure for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birth month. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent licensure renewal shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a \$100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this chapter.

E. Each licensee must provide to the board in writing both of the following:

1. A primary mailing address.
2. The address for each place of practice.

F. A licensee maintaining more than one place of practice shall obtain from the board a duplicate license for each office. A fee set by the board shall be charged for each duplicate license. The licensee shall notify the board in writing within ten days after opening the additional place or places of practice. The board shall impose a penalty of \$50 for failure to notify the board.

G. A licensee who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes on payment of a reduced renewal fee as prescribed by the board by rule.

H. A licensee applying for retired or disabled status shall:

1. Relinquish any prescribing privileges and shall attest by affidavit that the licensee has surrendered to the United States drug enforcement administration any registration issued pursuant to the federal controlled substances act and has surrendered to the board any registration issued pursuant to section 36-2606.

2. If the licensee holds a permit to dispense drugs and devices pursuant to section 32-1298, surrender that permit to the board.

3. Attest by affidavit that the licensee is not currently engaged in the practice of dentistry.

I. A licensee who changes the licensee's primary mailing address or place of practice address shall notify the board of that change in writing within ten days. The board shall impose a penalty of \$50 if a licensee fails to notify the board of the change within that time. The board shall increase the penalty imposed to \$100 if a licensee fails to notify it of the change within thirty days.

32-1237. Restricted permit

A person may apply for a restricted permit if the applicant demonstrates to the board's satisfaction that the applicant:

1. Has a pending contract with a recognized charitable dental clinic or organization that offers dental services without compensation or at a rate that only reimburses the clinic for dental supplies and overhead costs and the applicant will receive no compensation for dental services provided at the clinic or organization.

2. Has a license to practice dentistry issued by another state or territory of the United States or the District of Columbia.

3. Has been actively engaged in one or more of the following for three years immediately preceding the application:

(a) The practice of dentistry.

(b) An approved dental residency training program.

(c) Postgraduate training deemed by the board equivalent to an approved dental residency training program.

4. Is competent and proficient to practice dentistry.

5. Meets the requirements of section 32-1232, subsection A, other than the requirement to meet section 32-1233.

32-1238. Issuance of restricted permit

A restricted permit may be issued by the board without examination or payment of fee for a period not to exceed one year or until June 30th, whichever is lesser, and shall automatically expire at that time. The board may, in its discretion and pursuant to rules or regulations not inconsistent with this chapter, renew such restricted permit for periods not to exceed one year.

32-1239. Practice under restricted permit

A person to whom a restricted permit is issued shall be entitled to practice dentistry only in the course of his employment by a recognized charitable dental clinic or organization as approved by the board, on the following conditions:

1. He shall file a copy of his employment contract with the board and such contract shall contain the following provisions:

(a) That applicant understands and acknowledges that if his employment by the charitable dental clinic or organization is terminated prior to the expiration of his restricted permit, his restricted permit will be automatically revoked and he will voluntarily surrender the permit to the board and will no longer be eligible to practice unless or until he has satisfied the requirements of section 32-1237 or has successfully passed the examination as provided in this article.

(b) He shall be employed by a dental clinic or organization organized and operated for charitable purposes offering dental services without compensation. The term "employed" as used in this subdivision shall include the performance of dental services without compensation.

(c) He shall be subject to all the provisions of this chapter applicable to licensed dentists.

32-1240. Licensure by credential; examinations; waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting an application for licensure pursuant to this chapter and the other state or testing agency maintains a standard of licensure that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall define what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed.

B. The applicant shall pay a licensure by credential fee of not more than two thousand dollars as prescribed by the board.

32-1241. Training permits; qualified military health professionals

A. The board shall issue a training permit to a qualified military health professional who is practicing dentistry in the United States armed forces and who is discharging the health professional's official duties by participating in a clinical training program based at a civilian hospital affiliated with the United States department of defense.

B. Before the board issues the training permit, the qualified military health professional must submit a written statement from the United States department of defense that the applicant:

1. Is a member of the United States armed forces who is performing duties for and at the direction of the United States department of defense at a location in this state approved by the United States department of defense.

2. Has a current license or is credentialed to practice dentistry in a jurisdiction of the United States.

3. Meets all required qualification standards prescribed pursuant to 10 United States Code section 1094(d) relating to the licensure requirements for health professionals.

4. Has not had a license to practice revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

5. Is not currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

6. Has not surrendered, relinquished or given up a license in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter. This paragraph does not prevent the board from considering the request for a training permit of a qualified military health professional who surrendered, relinquished or gave up a license in lieu of disciplinary action by a regulatory board in another jurisdiction if that regulatory board subsequently reinstated the qualified military health professional's license.

C. The qualified military health professional may not open an office or designate a place to meet patients or receive calls relating to the practice of dentistry in this state outside of the facilities and programs of the approved civilian hospital.

D. The qualified military health professional may not practice outside of the professional's scope of practice.

E. A training permit issued pursuant to this section is valid for one year. The qualified military health professional may apply annually to the board to renew the permit. With each application to renew the qualified military health professional must submit a written statement from the United States department of defense asking the board for continuation of the training permit.

F. The board may not impose a fee to issue or renew a training permit to a qualified military health professional pursuant to this section.

Article 3 – Regulation

32-1261. Practicing without license; classification

Except as otherwise provided a person is guilty of a class 6 felony who, without a valid license or business entity registration as prescribed by this chapter:

1. Practices dentistry or any branch of dentistry as described in section 32-1202.

2. In any manner or by any means, direct or indirect, advertises, represents or claims to be engaged or ready and willing to engage in that practice as described in section 32-1202.

3. Manages, maintains or carries on, in any capacity or by any arrangement, a practice, business, office or institution for the practice of dentistry, or that is advertised, represented or held out to the public for that purpose.

32-1262. Corporate practice; display of name and license receipt or license; duplicate licenses; fee

A. It is lawful to practice dentistry as a professional corporation or professional limited liability company.

B. It is lawful to practice dentistry as a business organization if the business organization is registered as a business entity pursuant to this chapter.

C. It is lawful to practice dentistry under a name other than that of the licensed practitioners if the name is not deceptive or misleading.

D. If practicing as a professional corporation or professional limited liability company, the name and address of record of the dentist owners of the practice shall be conspicuously displayed at the entrance to each owned location.

E. If practicing as a business organization that is registered as a business entity pursuant to section 32-1213, the receipt for the current registration period must be conspicuously displayed at the entrance to each place of practice.

F. A licensee's receipt for the current licensure period shall be displayed in the licensee's place of practice in a manner that is always readily observable by patients or visitors and shall be exhibited to members of the board or to duly authorized agents of the board on request. The receipt for the licensure period immediately preceding shall be kept on display until replaced by the receipt for the current period. During the year in which the licensee is first licensed and until the receipt for the following period is received, the license shall be displayed in lieu of the receipt.

G. If a dentist maintains more than one place of practice, the board may issue one or more duplicate licenses or receipts on payment of a fee fixed by the board not exceeding twenty-five dollars for each duplicate.

H. If a licensee legally changes the licensee's name from that in which the license was originally issued, the board, on satisfactory proof of the change and surrender of the original license, if obtainable, may issue a new license in the new name and shall charge the established fee for duplicate licenses.

32-1263. Grounds for disciplinary action; definition

A. The board may invoke disciplinary action against any person who is licensed under this chapter for any of the following reasons:

1. Unprofessional conduct as defined in section 32-1201.01.

2. Conviction of a felony or of a misdemeanor involving moral turpitude, in which case the record of conviction or a certified copy is conclusive evidence.

3. Physical or mental incompetence to practice pursuant to this chapter.

4. Committing or aiding, directly or indirectly, a violation of or noncompliance with any provision of this chapter or of any rules adopted by the board pursuant to this chapter.

5. Dental incompetence as defined in section 32-1201.

B. This section does not establish a cause of action against a licensee or a registered business entity that makes a report of unprofessional conduct or unethical conduct in good faith.

C. The board may take disciplinary action against a business entity that is registered pursuant to this chapter for unethical conduct.

D. For the purposes of this section, "unethical conduct" means the following acts occurring in this state or elsewhere:

1. Failing to report in writing to the board any evidence that a dentist, dental therapist, denturist or dental hygienist is or may be professionally incompetent, is or may be guilty of unprofessional conduct, is or may be impaired by drugs or alcohol or is or may be mentally or physically unable to safely engage in the permissible activities of a dentist, dental therapist, denturist or dental hygienist.

2. Falsely reporting to the board that a dentist, dental therapist, denturist or dental hygienist is or may be guilty of unprofessional conduct, is or may be impaired by drugs or alcohol or is or may be mentally or physically unable to safely engage in the permissible activities of a dentist, dental therapist, denturist or dental hygienist.

3. Obtaining or attempting to obtain a registration or registration renewal by fraud or by misrepresentation.

4. Knowingly filing with the board any application, renewal or other document that contains false information.

5. Failing to register or failing to submit a renewal registration with the board pursuant to section 32-1213.

6. Failing to provide the following persons with access to any place for which a registration has been issued or for which an application for a registration has been submitted in order to conduct a site investigation, inspection or audit:

(a) The board or its employees or agents.

(b) An authorized federal or state official.

7. Failing to notify the board of a change in officers and directors, a change of address or a change in the dentists providing services pursuant to section 32-1213, subsection E.

8. Failing to provide patient records pursuant to section 32-1264.

9. Obtaining a fee by fraud or misrepresentation or wilfully or intentionally filing a fraudulent claim with a third party for services rendered or to be rendered to a patient.

10. Engaging in repeated irregularities in billing.

11. Engaging in the following advertising practices:

(a) Publishing or circulating, directly or indirectly, any false or fraudulent or misleading statements concerning the skill, methods or practices of a registered business entity, a licensee or any other person.

(b) Advertising in any manner that tends to deceive or defraud the public.

12. Failing to comply with a board subpoena in a timely manner.

13. Failing to comply with a final board order, including a decree of censure, a period or term of probation, a consent agreement or a stipulation.

14. Employing or aiding and abetting unlicensed persons to perform work that must be done by a person licensed pursuant to this chapter.

15. Engaging in any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public.

16. Engaging in a policy or practice that interferes with the clinical judgment of a licensee providing dental services for a business entity or compromising a licensee's ability to comply with this chapter.

17. Engaging in a practice by which a dental hygienist, dental therapist or dental assistant exceeds the scope of practice or restrictions included in a written collaborative practice agreement.

32-1263.01. Types of disciplinary action; letter of concern; judicial review; notice; removal of notice; violation; classification

A. The board may take any one or a combination of the following disciplinary actions against any person licensed under this chapter:

1. Revocation of license to practice.

2. Suspension of license to practice.

3. Entering a decree of censure, which may require that restitution be made to an aggrieved party.

4. Issuance of an order fixing a period and terms of probation best adapted to protect the public health and safety and to rehabilitate the licensed person. The order fixing a period and terms of probation may require that restitution be made to the aggrieved party.

5. Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted under this chapter.

6. Imposition of a requirement for restitution of fees to the aggrieved party.

7. Imposition of restrictions on the scope of practice.

8. Imposition of peer review and professional education requirements.

9. Imposition of community service.

B. The board may issue a letter of concern if a licensee's continuing practices may cause the board to take disciplinary action. The board may also issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

C. Failure to comply with any order of the board, including an order of censure or probation, is cause for suspension or revocation of a license.

D. All disciplinary and final nondisciplinary actions or orders, not including letters of concern or advisory letters, issued by the board against a licensee or certificate holder shall be posted to that licensee's or certificate holder's profile on the board's website. For the purposes of this subsection, only final nondisciplinary actions and orders that are issued after January 1, 2018 shall be posted.

E. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

F. If the state board of dental examiners acts to modify any dentist's prescription-writing privileges, it shall immediately notify the Arizona state board of pharmacy of the modification.

G. The board may post a notice of its suspension or revocation of a license at the licensee's place of business. This notice shall remain posted for sixty days. A person who removes this notice without board or court authority before that time is guilty of a class 3 misdemeanor.

H. A licensee or certificate holder shall respond in writing to the board within twenty days after a notice of hearing is served. A licensee who fails to answer the charges in a complaint and notice of hearing issued pursuant to this article and title 41, chapter 6, article 10 is deemed to admit the acts charged in the complaint, and the board may revoke or suspend the license without a hearing.

32-1263.02. Investigation and adjudication of complaints; disciplinary action; civil penalty; immunity; subpoena authority; definitions

A. The board on its own motion, or the investigation committee if established by the board, may investigate any evidence that appears to show the existence of any of the causes or grounds for disciplinary action as provided in section 32-1263. The board or investigation committee may investigate any complaint that alleges the existence of any of the causes or grounds for disciplinary action as provided in section 32-1263. The board shall not act on its own motion or on a complaint received by the board if the allegation of unprofessional conduct, unethical conduct or any other violation of this chapter against a licensee occurred more than four years before the complaint is received by the board. The four-year time limitation does not apply to:

1. Medical malpractice settlements or judgments, allegations of sexual misconduct or an incident or occurrence that involved a felony, diversion of a controlled substance or impairment while practicing by the licensee.

2. The board's consideration of the specific unprofessional conduct related to the licensee's failure to disclose conduct or a violation as required by law.

B. At the request of the complainant, the board or investigation committee shall not disclose to the respondent the complainant name unless the information is essential to proceedings conducted pursuant to this article.

C. The board or investigation committee shall conduct necessary investigations, including interviews between representatives of the board or investigation committee and the licensee with respect to any information obtained by or filed with the board under subsection A of this section or obtained by the board or investigation committee during the course of an investigation. The results of the investigation conducted by the investigation committee, including any recommendations from the investigation committee for disciplinary action against any licensee, shall be forwarded to the board for its review.

D. The board or investigation committee may designate one or more persons of appropriate competence to assist the board or investigation committee with any aspect of an investigation.

E. If, based on the information the board receives under subsection A or C of this section, the board finds that the public health, safety or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, the board may order a summary suspension of a licensee's license pursuant to section 41-1092.11 pending proceedings for revocation or other action.

F. If a complaint refers to quality of care, the patient may be referred for a clinical evaluation at the discretion of the board or the investigation committee.

G. If, after completing its investigation or review pursuant to this section, the board finds that the information provided pursuant to subsection A or C of this section is insufficient to merit disciplinary action against a licensee, the board may take any of the following actions:

1. Dismiss the complaint.

2. Issue a nondisciplinary letter of concern to the licensee.

3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

4. Assess a nondisciplinary civil penalty in an amount not to exceed \$500 if the complaint involves the licensee's failure to respond to a board subpoena.

H. If, after completing its investigation or review pursuant to this section, the board finds that the information provided pursuant to subsection A or C of this section is sufficient to merit disciplinary action against a licensee, the board may request that the licensee participate in a formal interview before the board. If the licensee refuses or accepts the invitation for a formal interview and the results indicate that grounds may exist for revocation or suspension, the board shall issue a formal complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. If, after completing a formal interview, the board finds that the protection of the public requires emergency action, it may order a summary suspension of the license pursuant to section 41-1092.11 pending formal revocation proceedings or other action authorized by this section.

I. If, after completing a formal interview, the board finds that the information provided under subsection A or C of this section is insufficient to merit suspension or revocation of the license, it may take any of the following actions:

1. Dismiss the complaint.
2. Order disciplinary action pursuant to section 32-1263.01, subsection A.
3. Enter into a consent agreement with the licensee for disciplinary action.
4. Order nondisciplinary continuing education pursuant to section 32-1263.01, subsection B.
5. Issue a nondisciplinary letter of concern to the licensee.

J. A copy of the board's order issued pursuant to this section shall be given to the complainant and to the licensee. Pursuant to title 41, chapter 6, article 10, the licensee may petition for rehearing or review.

K. Any person who in good faith makes a report or complaint as provided in this section to the board or to any person or committee acting on behalf of the board is not subject to liability for civil damages as a result of the report.

L. The board, through its president or the president's designee, may issue subpoenas to compel the attendance of witnesses and the production of documents and may administer oaths, take testimony and receive exhibits in evidence in connection with an investigation initiated by the board or a complaint filed with the board. In case of disobedience to a subpoena, the board may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of documentary evidence.

M. Patient records, including clinical records, medical reports, laboratory statements and reports, files, films, reports or oral statements relating to diagnostic findings or treatment of patients, any information from which a patient or a patient's family may be identified or information received and records kept by the board as a result of the investigation procedures taken pursuant to this chapter, are not available to the public.

N. The board may charge the costs of formal hearings conducted pursuant to title 41, chapter 6, article 10 to a licensee it finds to be in violation of this chapter.

O. The board may accept the surrender of an active license from a licensee who is subject to a board investigation and who admits in writing to any of the following:

1. Being unable to safely engage in the practice of dentistry.
2. Having committed an act of unprofessional conduct.
3. Having violated this chapter or a board rule.

P. In determining the appropriate disciplinary action under this section, the board may consider any previous nondisciplinary and disciplinary actions against a licensee.

Q. If a licensee who is currently providing dental services for a registered business entity believes that the registered business entity has engaged in unethical conduct as defined pursuant to section 32-1263, subsection D, paragraph 16, the licensee must do both of the following before filing a complaint with the board:

1. Notify the registered business entity in writing that the licensee believes that the registered business entity has engaged in a policy or practice that interferes with the clinical judgment of the licensee or that compromises the licensee's ability to comply with the requirements of this chapter. The licensee shall specify in the notice the reasons for this belief.

2. Provide the registered business entity with at least ten calendar days to respond in writing to the assertions made pursuant to paragraph 1 of this subsection.

R. A licensee who files a complaint pursuant to subsection Q of this section shall provide the board with a copy of the licensee's notification and the registered business entity's response, if any.

S. A registered business entity may not take any adverse employment action against a licensee because the licensee complies with the requirements of subsection Q of this section.

T. For the purposes of this section:

1. "License" includes a certificate issued pursuant to this chapter.

2. "Licensee" means a dentist, dental therapist, dental hygienist, denturist, dental consultant, restricted permit holder or business entity regulated pursuant to this chapter.

32-1263.03. Investigation committee; complaints; termination; review

A. If established by the board, the investigation committee may terminate a complaint if the investigation committee's review indicates that the complaint is without merit and that termination is appropriate.

B. The investigation committee may not terminate a complaint if a court has entered a medical malpractice judgment against a licensee.

C. At each regularly scheduled board meeting, the investigation committee shall provide to the board a list of each complaint the investigation committee terminated pursuant to subsection A of this section since the preceding board meeting. On review, the board shall approve, modify or reject the investigation committee's action.

D. A person who is aggrieved by an action taken by the investigation committee pursuant to subsection A of this section may file a written request that the board review that action. The request must be filed within thirty days after that person is notified of the investigation committee's action by personal delivery or, if the notification is mailed to that person's last known residence or place of business, within thirty-five days after the date on the notification. At the next regular board meeting, the board shall review the investigation committee's action. On review, the board shall approve, modify or reject the investigation committee's action.

32-1264. Maintenance of records

A. A person who is licensed or certified pursuant to this chapter shall make and maintain legible written records concerning all diagnoses, evaluations and treatments of each patient of record. A licensee or certificate holder shall maintain records that are stored or produced electronically in retrievable paper form. These records shall include:

1. All treatment notes, including current health history and clinical examinations.
2. Prescription and dispensing information, including all drugs, medicaments and dental materials used for patient care.
3. Diagnosis and treatment planning.
4. Dental and periodontal charting. Specialist charting must include areas of requested care and notation of visual oral examination describing any areas of potential pathology or radiographic irregularities.
5. All radiographs.

B. Records are available for review and for treatment purposes to the dentist, dental therapist, dental hygienist or denturist providing care.

C. On request, the licensee or certificate holder shall allow properly authorized board personnel to have access to the licensee's or certificate holder's place of practice to conduct an inspection and must make the licensee's or certificate holder's records, books and documents available to the board free of charge as part of an investigation process.

D. Within fifteen business days after a patient's written request, that patient's dentist, dental therapist, dental hygienist or denturist or a registered business entity shall transfer legible and diagnostic quality copies of that patient's records to another licensee or certificate holder or that patient. The patient may be charged for the reasonable costs of copying and forwarding these records. A dentist, dental therapist, dental hygienist, denturist or registered business entity may require that payment of reproduction costs be made in advance, unless the records are necessary for continuity of care, in which case the records shall not be withheld. Copies of records shall not be withheld because of an unpaid balance for dental services.

E. Unless otherwise required by law, a person who is licensed or certified pursuant to this chapter or a business entity that is registered pursuant to this chapter must retain the original or a copy of a patient's dental records as follows:

1. If the patient is an adult, for at least six years after the last date the adult patient received dental services from that provider.
2. If the patient is a child, for at least three years after the child's eighteenth birthday or for at least six years after the last date the child received dental services from the provider, whichever occurs later.

32-1265. Interpretation of chapter

Nothing in this chapter shall be construed to abridge a license issued under laws of this state relating to medicine or surgery.

32-1266. Prosecution of violations

The attorney general shall act for the board in all matters requiring legal assistance, but the board may employ other or additional counsel in its own behalf. The board shall assist prosecuting officers in enforcement of this chapter, and in so doing may engage suitable persons to assist in investigations and in the procurement and presentation of evidence. Subpoenas or other orders issued by the board may be served by any officer empowered to serve processes, who shall receive the fees prescribed by law. Expenditures made in carrying out provisions of this section shall be paid from the dental board fund.

32-1267. Use of fraudulent instruments; classification

A person is guilty of a class 5 felony who:

1. Knowingly presents to or files with the board as his own a diploma, degree, license, certificate or identification belonging to another, or which is forged or fraudulent.
2. Exhibits or displays any instrument described in paragraph 1 with intent that it be used as evidence of the right of such person to practice dentistry in this state.
3. With fraudulent intent alters any instrument described in paragraph 1 or uses or attempts to use it when so altered.
4. Sells, transfers or offers to sell or transfer, or who purchases, procures or offers to purchase or procure a diploma, license, certificate or identification, with intent that it be used as evidence of the right to practice dentistry in this state by a person other than the one to whom it belongs or is issued.

32-1268. Violations; classification; required proof

A. A person is guilty of a class 2 misdemeanor who:

1. Employs, contracts with, or by any means procures the assistance of, or association with, for the purpose of practicing dentistry, a person not having a valid license therefor.
2. Fails to obey a summons or other order regularly and properly issued by the board.
3. Violates any provision of this chapter for which the penalty is not specifically prescribed.

B. In a prosecution or hearing under this chapter, it is necessary to prove only a single act of violation and not a general course of conduct, and where the violation is continued over a period of one or more days each day constitutes a separate violation subject to the penalties prescribed in this chapter.

32-1269. Violation; classification; injunctive relief

A. A person convicted under this chapter is guilty of a class 2 misdemeanor unless another classification is specifically prescribed in this chapter. Violations shall be prosecuted by the county attorney and tried before the superior court in the county in which the violation occurs.

B. In addition to penalties provided in this chapter, the courts of the state are vested with jurisdiction to prevent and restrain violations of this chapter as nuisances per se, and the county attorneys shall, and the board may, institute proceedings in equity to prevent and restrain violations. A person damaged, or threatened with loss or injury, by reason of a violation of this chapter is entitled to obtain injunctive relief in any court of competent jurisdiction against any damage or threatened loss or injury by reason of a violation of this chapter.

32-1270. Deceased or incapacitated dentists; notification

A. An administrator or executor of the estate of a deceased dentist, or a person who is legally authorized to act for a dentist who has been adjudicated to be mentally incompetent, must notify the board within sixty days after the dentist's death or incapacitation. The administrator or executor may employ a licensed dentist for a period of not more than one year to:

1. Continue the deceased or incapacitated dentist's practice.
2. Conclude the affairs of the deceased or incapacitated dentist, including the sale of any assets.

B. An administrator or executor operating a practice pursuant to this section for more than one year must register as a business entity pursuant to section 32-1213.

32-1271. Marking of dentures for identification; retention and release of information

A. Every complete upper or lower denture fabricated by a licensed dentist, or fabricated pursuant to the dentist's work order, must be marked with the patient's name unless the patient objects. The marking must be done during fabrication and must be permanent, legible and cosmetically acceptable. The dentist or the dental laboratory shall determine the location of the marking and the methods used to implant or apply it. The dentist must inform the patient that the marking is used only to identify the patient, and the patient may choose which marking is to appear on the dentures.

B. The dentist must retain the records of marked dentures and may not release the records to any person except to law enforcement officers in any emergency that requires personal identification by means of dental records or to anyone authorized by the patient to receive this information.

Article 3.1 – Licensing and Regulation of Dental Therapists

32-1276. Definitions

In this article, unless the context otherwise requires:

1. "Applicant" means a person who is applying for licensure to practice dental therapy in this state.
2. "Direct supervision" means that a licensed dentist is present in the office and available to provide treatment or care to a patient and observe a dental therapist's work.
3. "Licensee" means a person who holds a license to practice dental therapy in this state.

32-1276.01. Application for licensure; requirements; fingerprint clearance card; denial or suspension of application

A. An applicant for licensure as a dental therapist in this state shall do all of the following:

1. Apply to the board on a form prescribed by the board.
2. Verify under oath that all statements in the application are true to the applicant's knowledge.
3. Enclose with the application:
 - (a) A recent photograph of the applicant.
 - (b) The application fee established by the board by rule.

B. The board may grant a license to practice dental therapy to an applicant who meets all of the following requirements:

1. Is licensed as a dental hygienist pursuant to article 4 of this chapter.
2. Graduates from a dental therapy education program that is accredited by or holds an initial accreditation from the American dental association commission on dental accreditation and that is offered through an accredited higher education institution recognized by the United States department of education.
3. Successfully passes, both of the following:
 - (a) Within five years before filing the application, a clinical examination in dental therapy administered by a state or testing agency in the United States.
 - (b) The Arizona dental jurisprudence examination.
4. Is not subject to any grounds for denial of the application under this chapter.
5. Obtains a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1.
6. Meets all requirements for licensure established by the board by rule.

C. The board may deny an application for licensure or license renewal if the applicant:

1. Has committed an act that would be cause for censure, probation or suspension or revocation of a license under this chapter.
2. While unlicensed, committed or aided and abetted the commission of an act for which a license is required by this chapter.
3. Knowingly made any false statement in the application.

4. Has had a license to practice dental therapy revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently suspended or restricted by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental therapy instead of having disciplinary action taken against the applicant by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for licensure if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue a license or deny an application for licensure until the investigation is completed.

32-1276.02. Dental therapist triennial licensure; continuing education; license renewal and reinstatement; fees; civil penalties; retired and disabled license status

A. Except as provided in section 32-4301, a license issued under this article expires thirty days after the licensee's birth month every third year. On or before the last day of the licensee's birth month every third year, each licensed dental therapist shall submit to the board a complete renewal application and pay a license renewal fee established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this subsection does not apply to a retired dental therapist or to a dental therapist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the licensee's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birth month of the expiration year.

C. An applicant for a dental therapy license for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birthday. This fee may not exceed one-third of the fee prescribed pursuant to subsection A of this section. Subsequent applications shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a \$100 penalty. When the license is issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this article.

E. A licensee shall notify the board in writing within ten days after the licensee changes the primary mailing address listed with the board. The board shall impose a civil penalty of \$50 if a licensee fails to notify the board of the change within that time. The board shall increase the civil penalty to \$100 if a licensee fails to notify the board of the change within thirty days.

F. A licensee who is at least sixty-five years of age and who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes by paying a reduced renewal fee as prescribed by the board by rule.

G. A licensee is not required to maintain a dental hygienist license.

32-1276.03. Practice of dental therapy; authorized procedures; supervision requirements; restrictions

A. A person is deemed to be a practicing dental therapist if the person does any of the acts or performs any operations included in the general practice of dental therapists or dental therapy or any related and associated duties.

B. Either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement, a licensed dental therapist may do any of the following:

1. Perform oral evaluations and assessments of dental disease and formulate individualized treatment plans.
2. Perform comprehensive charting of the oral cavity.
3. Provide oral health instruction and disease prevention education, including motivational interviewing, nutritional counseling and dietary analysis.
4. Expose and process dental radiographic images.
5. Perform dental prophylaxis, scaling, root planing and polishing procedures.
6. Dispense and administer oral and topical nonnarcotic analgesics and anti-inflammatory and antibiotic medications as prescribed by a licensed health care provider.
7. Apply topical preventive and prophylactic agents, including fluoride varnishes, antimicrobial agents, silver diamine fluoride and pit and fissure sealants.
8. Perform pulp vitality testing.
9. Apply desensitizing medicaments or resins.
10. Fabricate athletic mouth guards and soft occlusal guards.
11. Change periodontal dressings.
12. Administer nitrous oxide analgesics and local anesthetics.

13. Perform simple extraction of erupted primary teeth.
14. Perform nonsurgical extractions of periodontally diseased permanent teeth that exhibit plus three or grade three mobility and that are not impacted, fractured, unerupted or in need of sectioning for removal.
15. Perform emergency palliative treatments of dental pain that is related to care or a service described in this section.
16. Prepare and place direct restorations in primary and permanent teeth.
17. Fabricate and place single-tooth temporary crowns.
18. Prepare and place preformed crowns on primary teeth.
19. Perform indirect and direct pulp capping on permanent teeth.
20. Perform indirect pulp capping on primary teeth.
21. Perform suturing and suture removal.
22. Provide minor adjustments and repairs on removable prostheses.
23. Place and remove space maintainers.
24. Perform all functions of a dental assistant and expanded function dental assistant.
25. Perform other related services and functions that are authorized by the supervising dentist within the dental therapist's scope of practice and for which the dental therapist is trained.
26. Provide referrals.
27. Perform any other duties of a dental therapist that are authorized by the board by rule.

C. A dental therapist may not:

1. Dispense or administer a narcotic drug.
2. Independently bill for services to any individual or third-party payor.

D. A person may not claim to be a dental therapist unless that person is licensed as a dental therapist under this article.

32-1276.04. Dental therapists; clinical practice; supervising dentists; written collaborative practice agreements

A. A dental therapist may practice only in the following practice settings or locations, including mobile dental units, that are operated or served by any of the following:

1. A federally qualified community health center.
2. A health center program that has received a federal look-alike designation.
3. A community health center.
4. A nonprofit dental practice or a nonprofit organization that provides dental care to low-income and underserved individuals.
5. A private dental practice that provides dental care for community health center patients of record who are referred by the community health center.

B. A dental therapist may practice in this state either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement. Before a dental therapist may enter into a written collaborative practice agreement, the dental therapist shall complete one thousand hours of dental therapy clinical practice under the direct supervision of a dentist who is licensed in this state and shall provide documentation satisfactory to the board of having completed this requirement.

C. A practicing dentist who holds an active license pursuant to this chapter and a licensed dental therapist who holds an active license pursuant to this article may enter into a written collaborative practice agreement for the delivery of dental therapy services. The supervising dentist shall provide or arrange for another dentist or specialist to provide any service needed by the dental therapist's patient that exceeds the dental therapist's authorized scope of practice.

D. A dentist may not enter into more than four separate written collaborative practice agreements for the delivery of dental therapy services.

E. A written collaborative practice agreement between a dentist and a dental therapist shall do all of the following:

1. Address any limit on services and procedures to be performed by the dental therapist, including types of populations and any age-specific or procedure-specific practice protocol, including case selection criteria, assessment guidelines and imaging frequency.
2. Address any limit on practice settings established by the supervising dentist and the level of supervision required for various services or treatment settings.
3. Establish practice protocols, including protocols for informed consent, recordkeeping, managing medical emergencies and providing care to patients with complex medical conditions, including requirements for consultation before initiating care.
4. Establish protocols for quality assurance, administering and dispensing medications and supervising dental assistants.
5. Include specific protocols to govern situations in which the dental therapist encounters a patient requiring treatment that exceeds the dental therapist's authorized scope of practice or the limits imposed by the collaborative practice agreement.
6. Specify that the extraction of permanent teeth may be performed only under the direct supervision of a dentist and consistent with section 32-1276.03, subsection B, paragraph 14.

F. Except as provided in section 32-1276.03, subsection B, paragraph 14, to the extent authorized by the supervising dentist in the written collaborative practice agreement, a dental therapist may practice dental therapy procedures authorized under this article in a practice setting in which the supervising dentist is not on-site and has not previously examined the patient or rendered a diagnosis.

G. The written collaborative practice agreement must be signed and maintained by both the supervising dentist and the dental therapist and may be updated and amended as necessary by both the supervising dentist and dental therapist. The supervising dentist and dental therapist shall submit a copy of the agreement and any amendment to the agreement to the board.

32-1276.05. Dental therapists; supervising dentists; collaborative practice relationships

A. A dentist who holds an active license pursuant to this chapter and a dental therapist who holds an active license pursuant to this article may enter into a collaborative practice relationship through a written collaborative practice agreement for the delivery of dental therapy services.

B. Each dental practice shall disclose to a patient whether the patient is scheduled to see the dentist or dental therapist.

C. Each dentist in a collaborative practice relationship shall:

1. Be available to provide appropriate contact, communication and consultation with the dental therapist.
2. Adopt procedures to provide timely referral of patients whom the dental therapist refers to a licensed dentist for examination. The dentist to whom the patient is referred shall be geographically available to see the patient.

D. Each dental therapist in a collaborative practice relationship shall:

1. Perform only those duties within the terms of the written collaborative practice agreement.
2. Maintain an appropriate level of contact with the supervising dentist.

E. The dental therapist and the supervising dentist shall notify the board of the beginning of the collaborative practice relationship and provide the board with a copy of the written collaborative practice agreement and any amendments to the agreement within thirty days after the effective date of the agreement or amendment. The dental therapist and supervising dentist shall also notify the board within thirty days after the termination date of the written collaborative practice agreement if the date is different than the termination date provided in the agreement.

F. Subject to the terms of the written collaborative practice agreement, a dental therapist may perform all dental therapy procedures authorized in section 32-1276.03. The dentist's presence, examination, diagnosis and treatment plan are not required unless specified by the written collaborative practice agreement.

32-1276.06. Practicing without a license; violation; classification

It is a class 6 felony for a person to practice dental therapy in this state unless the person has obtained a license from the board as provided in this article.

32-1276.07. Licensure by credential; examination waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting the application for licensure pursuant to this article and the other state or testing agency maintains a standard of licensure or certification that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall prescribe what constitutes active practice.
2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed or certified.

B. The applicant shall pay a licensure by credential fee as established by the board in rule.

C. An applicant under this section is not required to obtain a dental hygienist license in this state if the board determines that the applicant otherwise meets the requirements for dental therapist licensure.

32-1276.08. Dental therapy schools; credit for prior experience or coursework

Notwithstanding any other law, a recognized dental therapy school may grant advanced standing or credit for prior learning to a student who has prior experience or has completed coursework that the school determines is equivalent to didactic and clinical education in its accredited program.

Article 4 – Licensing and Regulation of Dental Hygienists

32-1281. Practicing as dental hygienist; supervision requirements; definitions

A. A person is deemed to be practicing as a dental hygienist if the person does any of the acts or performs any of the operations included in the general practice of dental hygienists, dental hygiene and all related and associated duties.

B. A licensed dental hygienist may perform the following:

1. Prophylaxis.
2. Scaling.
3. Closed subgingival curettage.
4. Root planing.
5. Administering local anesthetics and nitrous oxide.
6. Inspecting the oral cavity and surrounding structures for the purposes of gathering clinical data to facilitate a diagnosis.
7. Periodontal screening or assessment.

8. Recording clinical findings.
9. Compiling case histories.
10. Exposing and processing dental radiographs.
11. All functions authorized and deemed appropriate for dental assistants.
12. Except as provided in paragraph 13 of this subsection, those restorative functions permissible for an expanded function dental assistant if qualified pursuant to section 32-1291.01.
13. Placing interim therapeutic restorations after successfully completing a course at an institution accredited by the commission on dental accreditation of the American dental association.

C. The board by rule shall prescribe the circumstances under which a licensed dental hygienist may:

1. Apply preventive and therapeutic agents to the hard and soft tissues.
2. Use emerging scientific technology and prescribe the necessary training, experience and supervision to operate newly developed scientific technology. A dentist who supervises a dental hygienist whose duties include the use of emerging scientific technology must have training on using the emerging technology that is equal to or greater than the training the dental hygienist is required to obtain.
3. Perform other procedures not specifically authorized by this section.

D. Except as provided in subsections E, F and I of this section, a dental hygienist shall practice under the general supervision of a dentist who is licensed pursuant to this chapter.

E. A dental hygienist may practice under the general supervision of a physician who is licensed pursuant to chapter 13 or 17 of this title in an inpatient hospital setting.

F. A dental hygienist may perform the following procedures on meeting the following criteria and under the following conditions:

1. Administering local anesthetics under the direct supervision of a dentist who is licensed pursuant to this chapter after:

- (a) The dental hygienist successfully completes a course in administering local anesthetics that includes didactic and clinical components in both block and infiltration techniques offered by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association.

- (b) The dental hygienist successfully completes an examination in local anesthesia given by the western regional examining board or a written and clinical examination of another state or regional examination that is substantially equivalent to the requirements of this state, as determined by the board.

(c) The board issues to the dental hygienist a local anesthesia certificate on receipt of proof that the requirements of subdivisions (a) and (b) of this paragraph have been met.

2. Administering local anesthetics under general supervision to a patient of record if all of the following are true:

(a) The dental hygienist holds a local anesthesia certificate issued by the board.

(b) The patient is at least eighteen years of age.

(c) The patient has been examined by a dentist who is licensed pursuant to this chapter within the previous twelve months.

(d) There has been no change in the patient's medical history since the last examination. If there has been a change in the patient's medical history within that time, the dental hygienist must consult with the dentist before administering local anesthetics.

(e) The supervising dentist who performed the examination has approved the patient for being administered local anesthetics by the dental hygienist under general supervision and has documented this approval in the patient's record.

3. Administering nitrous oxide analgesia under the direct supervision of a dentist who is licensed pursuant to this chapter after:

(a) The dental hygienist successfully completes a course in administering nitrous oxide analgesia that includes didactic and clinical components offered by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association.

(b) The board issues to the dental hygienist a nitrous oxide analgesia certificate on receipt of proof that the requirements of subdivision (a) of this paragraph have been met.

G. The board may issue local anesthesia and nitrous oxide analgesia certificates to a licensed dental hygienist on receipt of evidence satisfactory to the board that the dental hygienist holds a valid certificate or credential in good standing in the respective procedure issued by a licensing board of another jurisdiction of the United States.

H. A dental hygienist may perform dental hygiene procedures in the following settings:

1. On a patient of record of a dentist within that dentist's office.

2. Except as prescribed in section 32-1289.01, in a health care facility, long-term care facility, public health agency or institution, public or private school or homebound setting on patients who have been examined by a dentist within the previous year.

3. In an inpatient hospital setting pursuant to subsection E of this section.

I. A dental hygienist may provide dental hygiene services under an affiliated practice relationship with a dentist as prescribed in section 32-1289.01.

J. For the purposes of this article:

1. "Assessment" means a limited, clinical inspection that is performed to identify possible signs of oral or systemic disease, malformation or injury and the potential need for referral for diagnosis and treatment, and may include collecting clinical information to facilitate an examination, diagnosis and treatment plan by a dentist.

2. "Direct supervision" means that the dentist is present in the office while the dental hygienist is treating a patient and is available for consultation regarding procedures that the dentist authorizes and for which the dentist is responsible.

3. "General supervision" means:

(a) That the dentist is available for consultation, whether or not the dentist is in the dentist's office, over procedures that the dentist has authorized and for which the dentist remains responsible.

(b) With respect to an inpatient hospital setting, that a physician who is licensed pursuant to chapter 13 or 17 of this title is available for consultation, whether or not the physician is physically present at the hospital.

4. "Interim therapeutic restoration" means a provisional restoration that is placed to stabilize a primary or permanent tooth and that consists of removing soft material from the tooth using only hand instrumentation, without using rotary instrumentation, and subsequently placing an adhesive restorative material.

5. "Screening" means determining an individual's need to be seen by a dentist for diagnosis and does not include an examination, diagnosis or treatment planning.

32-1282. Administration and enforcement

A. So far as applicable, the board shall have the same powers and duties in administering and enforcing this article that it has under section 32-1207 in administering and enforcing articles 1, 2 and 3 of this chapter.

B. The board shall adopt rules that provide a method for the board to receive the assistance and advice of dental hygienists licensed pursuant to this chapter in all matters relating to the regulation of dental hygienists.

32-1283. Disposition of revenues

The provisions of section 32-1212 shall apply to all fees, fines and other revenues received by the board under this article.

32-1284. Qualifications of applicant; application; fee; fingerprint clearance card; rules; denial or suspension of application

A. An applicant for licensure as a dental hygienist shall be at least eighteen years of age, shall meet the requirements of section 32-1285 and shall present to the board evidence of graduation or a certificate of satisfactory completion in a course or curriculum in dental hygiene from a recognized dental hygiene school. A candidate shall make written application to the board accompanied by a

nonrefundable Arizona dental jurisprudence examination fee of \$100. The board shall waive this fee for candidates who are holders of valid restricted permits. Each candidate shall also obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

B. The board shall adopt rules that govern the practice of dental hygienists and that are not inconsistent with this chapter.

C. The board may deny an application for licensure or an application for license renewal if the applicant:

1. Has committed an act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of an act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dental hygiene revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental hygiene instead of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for a license if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a license to the applicant until the investigation is resolved.

32-1285. Applicants for licensure; examination requirements

An applicant for licensure shall have passed all of the following:

1. The national dental hygiene board examination.

2. A clinical examination administered by a state or regional testing agency in the United States within five years preceding filing the application.

3. The Arizona dental jurisprudence examination.

32-1286. Recognized dental hygiene schools; credit for prior learning

Notwithstanding any law to the contrary, a recognized dental hygiene school may grant advanced standing or credit for prior learning to a student who has prior experience or course work that the school determines is equivalent to didactic and clinical education in its accredited program.

32-1287. Dental hygienist triennial licensure; continuing education; license reinstatement; notice of change of address; penalties; retired and disabled license status

A. Except as provided in section 32-4301, a license expires thirty days after the licensee's birth month every third year. On or before the last day of the licensee's birth month every third year, every licensed dental hygienist shall submit to the board a complete renewal application and pay a license renewal fee of not more than \$325, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this section does not apply to a retired hygienist or a hygienist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the licensee's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birth month of the expiration year.

C. A person applying for a license for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birth month. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent registrations shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a \$100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this chapter.

E. A licensee shall notify the board in writing within ten days after the licensee changes the primary mailing address listed with the board. The board shall impose a penalty of \$50 if a licensee fails to notify the board of the change within that time. The board shall increase the penalty imposed to \$100 if a licensee fails to notify it of the change within thirty days.

F. A licensee who is over sixty-five years of age and who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes on payment of a reduced renewal fee as prescribed by the board by rule.

32-1288. Practicing without license; classification

It is a class 1 misdemeanor for a person to practice dental hygiene in this state unless the person has obtained a license from the board as provided in this article.

32-1289. Employment of dental hygienist by public agency, institution or school

A. A public health agency or institution or a public or private school authority may employ dental hygienists to perform necessary dental hygiene procedures under either direct or general supervision pursuant to section 32-1281.

B. A dental hygienist employed by or working under contract or as a volunteer for a public health agency or institution or a public or private school authority before an examination by a dentist may perform a screening or assessment and apply sealants and topical fluoride.

32-1289.01. Dental hygienists; affiliated practice relationships; rules; definition

A. A dentist who holds an active license pursuant to this chapter and a dental hygienist who holds an active license pursuant to this article may enter into an affiliated practice relationship to deliver dental hygiene services.

B. A dental hygienist shall satisfy all of the following to be eligible to enter into an affiliated practice relationship with a dentist pursuant to this section to deliver dental hygiene services in an affiliated practice relationship:

1. Hold an active license in good standing pursuant to this article.
2. Enter into an affiliated practice relationship with a dentist who holds an active license pursuant to this chapter.
3. Be actively engaged in dental hygiene practice for at least five hundred hours in each of the two years immediately preceding the affiliated practice relationship.

C. An affiliated practice agreement between a dental hygienist and a dentist shall be in writing and:

1. Shall identify at least the following:

(a) The affiliated practice settings in which the dental hygienist may deliver services pursuant to the affiliated practice relationship.

(b) The services to be provided and any procedures and standing orders the dental hygienist must follow. The standing orders shall include the circumstances in which a patient may be seen by the dental hygienist.

(c) The conditions under which the dental hygienist may administer local anesthesia and provide root planing.

(d) Circumstances under which the affiliated practice dental hygienist must consult with the affiliated practice dentist before initiating further treatment on patients who have not been seen by a dentist within twelve months after the initial treatment by the affiliated practice dental hygienist.

2. May include protocols for supervising dental assistants.

D. The following requirements apply to all dental hygiene services provided through an affiliated practice relationship:

1. Patients who have been assessed by the affiliated practice dental hygienist shall be directed to the affiliated practice dentist for diagnosis, treatment or planning that is outside the dental hygienist's scope of practice, and the affiliated practice dentist may make any necessary referrals to other dentists.

2. The affiliated practice dental hygienist shall consult with the affiliated practice dentist if the proposed treatment is outside the scope of the agreement.

3. The affiliated practice dental hygienist shall consult with the affiliated practice dentist before initiating treatment on patients presenting with a complex medical history or medication regimen.

4. The patient shall be informed in writing that the dental hygienist providing the care is a licensed dental hygienist and that the care does not take the place of a diagnosis or treatment plan by a dentist.

E. A contract for dental hygiene services with licensees who have entered into an affiliated practice relationship pursuant to this section may be entered into only by:

1. A health care organization or facility.

2. A long-term care facility.

3. A public health agency or institution.

4. A public or private school authority.

5. A government-sponsored program.

6. A private nonprofit or charitable organization.

7. A social service organization or program.

F. An affiliated practice dental hygienist may not provide dental hygiene services in a setting that is not listed in subsection E of this section.

G. Each dentist in an affiliated practice relationship shall:

1. Be available to provide an appropriate level of contact, communication and consultation with the affiliated practice dental hygienist during the business hours of the affiliated practice dental hygienist.

2. Adopt standing orders applicable to dental hygiene procedures that may be performed and populations that may be treated by the affiliated practice dental hygienist under the terms of the applicable affiliated practice agreement and to be followed by the affiliated practice dental hygienist in each affiliated practice setting in which the affiliated practice dental hygienist performs dental hygiene services under the affiliated practice relationship.

3. Adopt procedures to provide timely referral of patients referred by the affiliated practice dental hygienist to a licensed dentist for examination and treatment planning. If the examination and treatment planning is to be provided by the dentist, that treatment shall be scheduled in an appropriate time frame. The affiliated practice dentist or the dentist to whom the patient is referred shall be geographically available to see the patient.

4. Not permit the provision of dental hygiene services by more than six affiliated practice dental hygienists at any one time.

H. Each affiliated practice dental hygienist, when practicing under an affiliated practice relationship:

1. May perform only those duties within the terms of the affiliated practice relationship.

2. Shall maintain an appropriate level of contact, communication and consultation with the affiliated practice dentist.

3. Is responsible and liable for all services rendered by the affiliated practice dental hygienist under the affiliated practice relationship.

I. The affiliated practice dental hygienist and the affiliated practice dentist shall notify the board of the beginning of the affiliated practice relationship and provide the board with a copy of the agreement and any amendments to the agreement within thirty days after the effective date of the agreement or amendment. The affiliated practice dental hygienist and the affiliated practice dentist shall also notify the board within thirty days after the termination date of the affiliated practice relationship if this date is different than the agreement termination date.

J. Subject to the terms of the written affiliated practice agreement entered into between a dentist and a dental hygienist, a dental hygienist may:

1. Perform all dental hygiene procedures authorized by this chapter, except for performing any diagnostic procedures that are required to be performed by a dentist and administering nitrous oxide. The dentist's presence and an examination, diagnosis and treatment plan are not required unless specified by the affiliated practice agreement.

2. Supervise dental assistants, including dental assistants who are certified to perform functions pursuant to section 32-1291.

K. The board shall adopt rules regarding participation in affiliated practice relationships by dentists and dental hygienists that specify the following:

1. Additional continuing education requirements that must be satisfied by a dental hygienist.

2. Additional standards and conditions that may apply to affiliated practice relationships.

3. Compliance with the dental practice act and rules adopted by the board.

L. For the purposes of this section, "affiliated practice relationship" means the delivery of dental hygiene services, pursuant to an agreement, by a dental hygienist who is licensed pursuant to this article and who refers the patient to a dentist who is licensed pursuant to this chapter for any necessary further diagnosis, treatment and restorative care.

32-1290. Grounds for censure, probation, suspension or revocation of license; procedure

After a hearing pursuant to title 41, chapter 6, article 10, the board may suspend or revoke the license issued to a person under this article or censure or place on probation any such person for any of the causes set forth as grounds for censure, probation, suspension or revocation in section 32-1263.

32-1291. Dental assistants; regulation; duties

A. A dental assistant may expose radiographs for dental diagnostic purposes under either the general supervision of a dentist or the direct supervision of an affiliated practice dental hygienist licensed pursuant to this chapter if the assistant has passed an examination approved by the board.

B. A dental assistant may polish the natural and restored surfaces of the teeth under either the general supervision of a dentist or the direct supervision of an affiliated practice dental hygienist licensed pursuant to this chapter if the assistant has passed an examination approved by the board.

32-1291.01. Expanded function dental assistants; training and examination requirements; duties

A. A dental assistant may perform expanded functions after meeting one of the following:

1. Successfully completing a board-approved expanded function dental assistant training program at an institution accredited by the American dental association commission on dental accreditation and on successfully completing examinations in dental assistant expanded functions approved by the board.

2. Providing both:

(a) Evidence of currently holding or having held within the preceding ten years a license, registration, permit or certificate in expanded functions in restorative procedures issued by another state or jurisdiction in the United States.

(b) Proof acceptable to the board of clinical experience in the expanded functions listed in subsection B of this section.

B. Expanded functions include the placement, contouring and finishing of direct restorations or the placement and cementation of prefabricated crowns following the preparation of the tooth by a licensed dentist. The restorative materials used shall be determined by the dentist.

C. An expanded function dental assistant may place interim therapeutic restorations under the general supervision and direction of a licensed dentist following a consultation conducted through teledentistry.

D. An expanded function dental assistant may apply sealants and fluoride varnish under the general supervision and direction of a licensed dentist.

E. A licensed dental hygienist may engage in expanded functions pursuant to section 32-1281, subsection B, paragraph 12 following a course of study and examination equivalent to that required for an expanded function dental assistant as specified by the board.

32-1292. Restricted permits; suspension; expiration; renewal

A. The board may issue a restricted permit to practice dental hygiene to an applicant who:

1. Has a pending contract with a recognized charitable dental clinic or organization that offers dental hygiene services without compensation or at a rate that reimburses the clinic only for dental supplies and overhead costs and the applicant will not receive compensation for dental hygiene services provided at the clinic or organization.
2. Has a license to practice dental hygiene issued by a regulatory jurisdiction in the United States.
3. Has been actively engaged in the practice of dental hygiene for three years immediately preceding the application.
4. Is, to the board's satisfaction, competent to practice dental hygiene.
5. Meets the requirements of section 32-1284, subsection A that do not relate to examination.

B. A person who holds a restricted permit issued by the board may practice dental hygiene only in the course of the person's employment by a recognized charitable dental clinic or organization approved by the board.

C. The applicant for a restricted permit must file a copy of the person's employment contract with the board that includes a statement signed by the applicant that the applicant:

1. Understands that if that person's employment is terminated before the restricted permit expires, the permit is automatically revoked and that person must voluntarily surrender the permit to the board and is no longer eligible to practice unless that person meets the requirements of sections 32-1284 and 32-1285 or passes the examination required in this article.
2. Must be employed without compensation by a dental clinic or organization that is operated for a charitable purpose.
3. Is subject to the provisions of this chapter that apply to the regulation of dental hygienists.

D. The board may deny an application for a restricted permit if the applicant:

1. Has committed an act that is a cause for disciplinary action pursuant to this chapter.
2. While unlicensed, committed or aided and abetted the commission of any act for which a license is required pursuant to this chapter.
3. Knowingly made a false statement in the application.
4. Has had a license to practice dental hygiene revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental hygiene instead of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

E. The board shall suspend an application for a restricted permit or an application for restricted permit renewal if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a restricted permit to the applicant until the investigation is resolved.

F. A restricted permit expires either one year after the date of issue or June 30, whichever date first occurs. The board may renew a restricted permit for terms that do not exceed one year.

32-1292.01. Licensure by credential; examinations; waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting an application for licensure pursuant to this chapter and the other state or testing agency maintains a standard of licensure that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall define what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed.

B. The applicant shall pay a licensure by credential fee of not more than one thousand dollars as prescribed by the board.

Article 5 – Certification and Regulation of Denturists

32-1293. Practicing as denturist; denture technology; dental laboratory technician

A. Notwithstanding the provisions of section 32-1202, nothing in this chapter shall be construed to prohibit a denturist certified pursuant to the provisions of this article from practicing denture technology.

B. A person is deemed to be practicing denture technology who:

1. Takes impressions and bite registrations for the purpose of or with a view to the making, producing, reproducing, construction, finishing, supplying, altering or repairing of complete upper or lower prosthetic dentures, or both, or removable partial dentures for the replacement of missing teeth.

2. Fits or advertises, offers, agrees, or attempts to fit any complete upper or lower prosthetic denture, or both, or adjusts or alters the fit of any full prosthetic denture, or fits or adjusts or alters the fit of removable partial dentures for the replacement of missing teeth.

C. In addition to the practices described in subsection B of this section, a person certified to practice denture technology may also construct, repair, reline, reproduce or duplicate full or partial prosthetic dentures or otherwise engage in the activities of a dental laboratory technician.

D. No person may perform an act described in subsection B of this section except a licensed dentist, a holder of a restricted permit pursuant to section 32-1238, a certified denturist or auxiliary personnel authorized to perform any such act by rule or regulation of the board pursuant to section 32-1207, subsection A, paragraph 1.

32-1294. Supervision by dentist; definitions; mouth preparation by dentist; liability; business association

A. A denturist may practice only in the office of a licensed dentist, denominated as such.

B. All work by a denturist shall be performed under the general supervision of a licensed dentist. For the purposes of this section, "general supervision" means the dentist is available for consultation in person or by phone during the performance of the procedures by a denturist pursuant to section 32-1293, subsection B. The dentist shall examine the patient initially, check the completed denture as to fit, form and function and perform such other procedures as the board may specify by rule or regulation. For the purposes of this section "completed denture" means a relined, rebased, duplicated or repaired denture or a new denture. Both the dentist and the denturist shall certify that the dentist has performed the initial examination and the final fitting as required in this subsection, and retain the certification in the patient's file.

C. When taking impressions or bite registrations for the purpose of constructing removable partial dentures or when checking the fit of a partial denture, all mouth preparation must be done by the dentist. The denturist is specifically prohibited from performing any cutting or surgery on hard or soft tissue in the mouth. By rule and regulation the board may further regulate the practice of the denturist in regard to removable partial dentures.

D. No more than two denturists may perform their professional duties under a dentist's general supervision at any one time.

E. A licensed dentist supervising a denturist shall be personally liable for any consequences arising from the performance of the denturist's duties.

F. A certified denturist and the dentist supervising his work may make any lawful agreement between themselves regarding fees, compensation and business association.

G. Any sign, advertisement or other notice displaying the name of the office must include the name of the responsible dentist.

32-1295. Board of dental examiners; additional powers and duties

A. In addition to other powers and duties prescribed by this chapter, the board shall:

1. As far as applicable, exercise the same powers and duties in administering and enforcing this article as it exercises under section 32-1207 in administering and enforcing other articles of this chapter.

2. Determine the eligibility of applicants for certification and issue certificates to applicants who it determines are qualified for certification.

3. Investigate charges of misconduct on the part of certified denturists.

4. Issue decrees of censure, fix periods and terms of probation, suspend or revoke certificates as the facts may warrant and reinstate certificates in proper cases.

B. The board may:

1. Adopt rules prescribing requirements for continuing education for renewal of all certificates issued pursuant to this article.

2. Hire consultants to assist the board in the performance of its duties.

C. In all matters relating to discipline and certifying of denturists and the approval of examinations, the board, by rule, shall provide for receiving the assistance and advice of denturists who have been previously certified pursuant to this chapter.

32-1296. Qualifications of applicant

A. To be eligible for certification to practice denture technology an applicant shall:

1. Hold a high school diploma or its equivalent.

2. Present to the board evidence of graduation from a recognized denturist school or a certificate of satisfactory completion of a course or curriculum in denture technology from a recognized denturist school.

3. Pass a board-approved examination.

B. A candidate for certification shall submit a written application to the board that includes a nonrefundable Arizona dental jurisprudence examination fee as prescribed by the board.

32-1297.01. Application for certification; fingerprint clearance card; denial; suspension

A. Each applicant for certification shall submit a written application to the board accompanied by a nonrefundable jurisprudence examination fee and obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

B. The board may deny an application for certification or for certification renewal if the applicant:

1. Has committed any act that would be cause for censure, probation, suspension or revocation of a certificate under this chapter.

2. Has knowingly made any false statement in the application.

3. While uncertified, has committed or aided and abetted the commission of any act for which a certificate is required under this chapter.

4. Has had a certificate to practice denture technology revoked by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a certificate to practice denture technology in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

C. The board shall suspend an application for certification if the applicant is currently under investigation by a denturist regulatory board in another jurisdiction. The board shall not issue or deny certification to the applicant until the investigation is resolved.

32-1297.03. Qualification for reexamination

An applicant for examination who has previously failed two or more examinations, as a condition of eligibility to take any further examination, shall furnish to the board satisfactory evidence of having successfully completed additional training in a recognized denturist school or refresher courses approved by the board or the board's testing agency.

32-1297.04. Fees

The board shall establish and collect fees, not to exceed the following amounts:

1. For an examination in jurisprudence, two hundred fifty dollars.
2. For each replacement or duplicate certificate, twenty-five dollars.

32-1297.05. Disposition of revenues

The provisions of section 32-1212 shall apply to all fees, penalties and other revenues received by the board under this article.

32-1297.06. Denturist certification; continuing education; certificate reinstatement; certificate for each place of practice; notice of change of address or place of practice; penalties

A. Except as provided in section 32-4301, a certification expires thirty days after the certificate holder's birth month every third year. On or before the last day of the certificate holder's birth month every third year, every certified denturist shall submit to the board a complete renewal application and shall pay a certificate renewal fee of not more than \$300, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a certificate holder at the time of certification renewal. This requirement does not apply to a retired denturist or to a denturist with a disability.

B. A certificate holder shall include a written affidavit with the renewal application that affirms that the certificate holder complies with board rules relating to continuing education requirements. A certificate holder is not required to complete the written affidavit if the certificate holder received an initial certification within the year immediately preceding the expiration date of the certificate or the certificate holder is in disabled status. If the certificate holder is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the certificate holder includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the certificate holder's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the certificate expires thirty days after the certificate holder's birth month of the expiration year.

C. A person applying for a certificate for the first time in this state shall pay a prorated fee for the period remaining until the certificate holder's next birth month. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent certifications shall be conducted pursuant to this section.

D. An expired certificate may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the certificate with payment of the renewal fee and a \$100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to certification only for the remainder of the applicable three-year period. If a person does not reinstate a certificate pursuant to this subsection, the person must reapply for certification pursuant to this chapter.

E. Each certificate holder must provide to the board in writing both of the following:

1. A primary mailing address.
2. The address for each place of practice.

F. A certificate holder maintaining more than one place of practice shall obtain from the board a duplicate certificate for each office. The board shall set and charge a fee for each duplicate certificate. A certificate holder shall notify the board in writing within ten days after opening an additional place of practice.

G. A certificate holder shall notify the board in writing within ten days after changing a primary mailing address or place of practice address listed with the board. The board shall impose a \$50 penalty if a certificate holder fails to notify the board of the change within that time. The board shall increase the penalty imposed to \$100 if a certificate holder fails to notify it of the change within thirty days.

32-1297.07. Discipline; procedure

A. After a hearing pursuant to title 41, chapter 6, article 10, the board may suspend or revoke the license issued to a person under this article or censure or place on probation any person for any of the causes set forth as grounds for censure, probation, suspension or revocation in section 32-1263.

B. The board on its own motion may investigate any evidence which appears to show the existence of any of the causes set forth in section 32-1263. The board shall investigate the report under oath of any person which appears to show the existence of any of the causes set forth in section 32-1263. Any person reporting pursuant to this section who provides the information in good faith shall not be subject to liability for civil damages as a result.

C. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

32-1297.08. Injunction

A. An injunction shall issue to enjoin the practice of denture technology by any of the following:

1. One neither certified to practice as a denturist nor licensed to practice as a dentist.
2. One certified as a denturist from practicing without proper supervision by a dentist as required by this article.
3. A denturist whose continued practice will or might cause irreparable damage to the public health and safety prior to the time proceedings pursuant to section 32-1297.07 could be instituted and completed.

B. A petition for injunction shall be filed by the board in the superior court for Maricopa county or in the county where the defendant resides or is found. Any citizen is also entitled to obtain injunctive relief in any court of competent jurisdiction because of the threat of injury to the public health and welfare.

C. Issuance of an injunction shall not relieve the respondent from being subject to any other proceedings provided for by law.

32-1297.09. Violations; classification

A person is guilty of a class 2 misdemeanor who:

1. Not licensed as a dentist, practices denture technology without certification as provided by this article.
2. Exhibits or displays a certificate, diploma, degree or identification of another or a forged or fraudulent certificate, diploma, degree or identification with the intent that it be used as evidence of the right of such person to practice as a denturist in this state.
3. Fails to obey a summons or other order regularly and properly issued by the board.
4. Is a licensed dentist responsible for a denturist under this article who fails to personally supervise the work of the denturist.

Article 6 – Dispensing of Drugs and Devices

32-1298. Dispensing of drugs and devices; conditions; civil penalty; definition

A. A dentist may dispense drugs, except schedule II controlled substances that are opioids, and devices kept by the dentist if:

1. All drugs are dispensed in packages labeled with the following information:
 - (a) The dispensing dentist's name, address and telephone number.

(b) The date the drug is dispensed.

(c) The patient's name.

(d) The name and strength of the drug, directions for its use and any cautionary statements.

2. The dispensing dentist enters into the patient's dental record the name and strength of the drug dispensed, the date the drug is dispensed and the therapeutic reason.

3. The dispensing dentist keeps all drugs in a locked cabinet or room, controls access to the cabinet or room by a written procedure and maintains an ongoing inventory of its contents.

B. Except in an emergency situation, a dentist who dispenses drugs for a profit without being registered by the board to do so is subject to a civil penalty by the board of not less than three hundred dollars and not more than one thousand dollars for each transaction and is prohibited from further dispensing for a period of time as prescribed by the board.

C. Before dispensing a drug pursuant to this section, the patient shall be given a written prescription on which appears the following statement in bold type: "This prescription may be filled by the prescribing dentist or by a pharmacy of your choice."

D. A dentist shall dispense for profit only to the dentist's own patient and only for conditions being treated by that dentist. The dentist shall provide direct supervision of an attendant involved in the dispensing process. For the purposes of this subsection, "direct supervision" means that a dentist is present and makes the determination as to the legitimacy or advisability of the drugs or devices to be dispensed.

E. This section shall be enforced by the board, which shall establish rules regarding labeling, recordkeeping, storage and packaging of drugs that are consistent with the requirements of chapter 18 of this title. The board may conduct periodic inspections of dispensing practices to ensure compliance with this section and applicable rules.

F. For the purposes of this section, "dispense" means the delivery by a dentist of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.

Article 7 – Rehabilitation

32-1299. Substance abuse treatment and rehabilitation program; private contract; funding; confidential stipulation agreement

A. The board may establish a confidential program for the treatment and rehabilitation of dentists, dental therapists, denturists and dental hygienists who are impaired by alcohol or drug abuse. This program shall include education, intervention, therapeutic treatment and posttreatment monitoring and support.

B. The board may contract with other organizations to operate the program established pursuant to this section. A contract with a private organization shall include the following requirements:

1. Periodic reports to the board regarding treatment program activity.

2. Release to the board on demand of all treatment records.
 3. Periodic reports to the board regarding each dentist's, dental therapist's, denturist's or dental hygienist's diagnosis and prognosis and recommendations for continuing care, treatment and supervision.
 4. Immediate reporting to the board of the name of an impaired practitioner whom the treating organization believes to be a danger to self or others.
 5. Immediate reporting to the board of the name of a practitioner who refuses to submit to treatment or whose impairment is not substantially alleviated through treatment.
- C. The board may allocate an amount of not more than twenty dollars annually or sixty dollars triennially from each fee it collects from the renewal of active licenses for the operation of the program established by this section.
- D. A dentist, dental therapist, denturist or hygienist who, in the opinion of the board, is impaired by alcohol or drug abuse shall agree to enter into a confidential nondisciplinary stipulation agreement with the board. The board shall place a licensee or certificate holder on probation if the licensee or certificate holder refuses to enter into a stipulation agreement with the board and may take other action as provided by law. The board may also refuse to issue a license or certificate to an applicant if the applicant refuses to enter into a stipulation agreement with the board.
- E. In the case of a licensee or certificate holder who is impaired by alcohol or drug abuse after completing a second monitoring program pursuant to a stipulation agreement under subsection D of this section, the board shall determine whether:
1. To refer the matter for a formal hearing for the purpose of suspending or revoking the license or certificate.
 2. The licensee or certificate holder should be placed on probation for a minimum of one year with restrictions necessary to ensure public safety.
 3. To enter into another stipulation agreement under subsection D of this section with the licensee or certificate holder.

Article 8 – Mobile Dental Facilities and Portable Dental Units

32-1299.21. Definitions

In this article, unless the context otherwise requires:

1. "Mobile dental facility" means a facility in which dentistry is practiced and that is routinely towed, moved or transported from one location to another.
2. "Permit holder" means a dentist, dental hygienist, denturist or registered business entity that is authorized by this chapter to offer dental services in this state or a nonprofit organization, school district or school or institution of higher education that may employ a licensee to provide dental services and that is authorized by this article to operate a mobile dental facility or portable dental unit.
3. "Portable dental unit" means a nonfacility in which dental equipment used in the practice of dentistry is transported to and used on a temporary basis at an out-of-office location.

32-1299.22. Mobile dental facilities; portable dental units; permits; exceptions

A. Beginning January 1, 2012, every mobile dental facility and, except as provided in subsection B, every provider, program or entity using portable dental units in this state must obtain a permit pursuant to this article.

B. A licensee who does not hold a permit for a mobile dental facility or portable dental unit may provide dental services if:

1. Occasional services are provided to a patient of record of a fixed dental office who is treated outside of the dental office.
2. Services are provided by a federal, state or local government agency.
3. Occasional services are performed outside of the licensee's office without charge to a patient or a third party.
4. Services are provided to a patient by an accredited dental or dental hygiene school.
5. The licensee holds a valid permit to provide mobile dental anesthesia services.
6. The licensee is an affiliated practice dental hygienist.

32-1299.23. Permit application; fees; renewal; notification of changes

A. An individual or entity that seeks a permit to operate a mobile dental facility or portable dental unit must submit an application on a form provided by the board and pay an annual registration fee prescribed by the board by rule. The permit must be renewed annually not later than the last day of the month in which the permit was issued. Permits not renewed by the expiration date are subject to a late fee as prescribed by the board by rule.

B. A permit holder shall notify the board of any change in address or contact person within ten days after that change. The board shall impose a penalty as prescribed by the board by rule if the permit holder fails to notify the board of that change within that time.

C. If ownership of the mobile dental facility or portable dental unit changes, the prior permit is invalid and a new permit application must be submitted.

32-1299.24. Standards of operation and practice

A. A permit holder must:

1. Comply with all applicable federal, state and local laws, regulations and ordinances dealing with radiographic equipment, flammability, sanitation, zoning and construction standards, including construction standards relating to required access for persons with disabilities.
2. Establish written protocols for follow-up care for patients who are treated in a mobile dental facility or through a portable dental unit. The protocols must include referrals for treatment in a dental office that is permanently established within a reasonable geographic area and may include follow-up care by the mobile dental facility or portable dental unit.
3. Ensure that each mobile dental facility or portable dental unit has access to communication equipment that will enable dental personnel to contact appropriate assistance in an emergency.
4. Identify a person who is licensed pursuant to this chapter, who is responsible to supervise treatment and who, if required by law, will be present when dental services are rendered. This paragraph does

not prevent supervision by a dentist providing services or supervision pursuant to the exceptions prescribed in section 32-1231.

5. Display in or on the mobile dental facility or portable dental unit a current valid permit issued pursuant to this article in a manner that is readily observable by patients or visitors.

6. Provide a means of communication during and after business hours to enable the patient or the parent or guardian of a patient to contact the permit holder of the mobile dental facility or portable dental unit for emergency care, follow-up care or information about treatment received.

7. Comply with all requirements for maintenance of records pursuant to section 32-1264 and all other statutory requirements applicable to health care providers and patient records. All records, whether in paper or electronic form, if not in transit, must be maintained in a permanent, secure facility. Records of prior treatment must be readily available during subsequent treatment visits whenever practicable.

8. Ensure that all dentists, dental hygienists and denturists working in the mobile dental facility or portable dental unit hold a valid, current license issued by the board and that all delegated duties are within their respective scopes of practice as prescribed by the applicable laws of this state.

9. Maintain a written or electronic record detailing each location where services are provided, including:

(a) The street address of the service location.

(b) The dates of each session.

(c) The number of patients served.

(d) The types of dental services provided and the quantity of each service provided.

10. Provide to the board or its representative within ten days after a request for a record the written or electronic record required pursuant to paragraph 9 of this subsection.

11. Comply with current recommended infection control practices for dentistry as published by the national centers for disease control and prevention and as adopted by the board.

B. A mobile dental facility or portable dental unit must:

1. Contain equipment and supplies that are appropriate to the scope and level of treatment provided.

2. Have ready access to an adequate supply of potable water.

C. A permit holder or licensee who fails to comply with applicable statutes and rules governing the practice of dentistry, dental hygiene and denturism, the requirements for registered business entities or the requirements of this article is subject to disciplinary action for unethical or unprofessional conduct, as applicable.

32-1299.25. Informed consent; information for patients

A. The permit holder of a mobile dental facility or portable dental unit must obtain appropriate informed consent, in writing or by verbal communication, that is recorded by an electronic or digital device from the patient or the parent or guardian of the patient authorizing specific treatment before it is performed. The signed consent form or verbal communication shall be maintained as part of the patient's record as required in section 32-1264.

B. If services are provided to a minor, the signed consent form or verbal communication must inform the parent or guardian that the treatment of the minor by the mobile dental facility or portable dental unit may affect future benefits the minor may receive under private insurance, the Arizona health care cost containment system or the children's health insurance program.

C. At the conclusion of each patient's visit, the permit holder of a mobile dental facility or portable dental unit shall provide each patient with an information sheet that must contain:

1. Pertinent contact information as required by this section.
2. The name of the dentist or dental hygienist, or both, who provided services.
3. A description of the treatment rendered, including billed service codes, fees associated with treatment and tooth numbers if appropriate.
4. If necessary, referral information to another dentist as required by this article.

D. If the patient or the minor patient's parent or guardian has provided written consent to an institutional facility to access the patient's dental health records, the permit holder shall provide the institution with a copy of the information sheet provided in subsection C.

32-1299.26. Disciplinary actions; cessation of operation

A. A permit holder for a mobile dental facility or portable dental unit that provides dental services to a patient shall refer the patient for follow-up treatment with a licensed dentist or the permit holder if treatment is clinically indicated. A permit holder or licensee who fails to comply with this subsection commits an act of unprofessional conduct or unethical conduct and is subject to disciplinary action pursuant to section 32-1263, subsection A, paragraph 1 or subsection C.

B. The board may do any of the following pursuant to its disciplinary procedures if a mobile dental facility or portable dental unit violates any statute or board rule:

1. Refuse to issue a permit.
2. Suspend or revoke a permit.
3. Impose a civil penalty of not more than two thousand dollars for each violation.

C. If a mobile dental facility or portable dental unit ceases operations, the permit holder must notify the board within thirty days after the last day of operation and must report on the disposition of patient records and charts. In accordance with applicable laws and rules, the permit holder must also notify all active patients of the disposition of records and make reasonable arrangements for the transfer of patient records, including copies of radiographs, to a succeeding practitioner or, if requested, to the patient. For the purposes of this subsection, "active patient" means any person whom the permit holder has examined, treated, cared for or consulted with during the two year period before the discontinuation of practice.

ARIZONA ADMINISTRATIVE CODE (Rules)

Title 4. Professions and Occupations

Chapter 11. State Board of Dental Examiners

ARTICLE 1. DEFINITIONS

R4-11-101. Definitions

The following definitions, and definitions in A.R.S. § 32-1201, apply to this Chapter:

“Analgesia” means a state of decreased sensibility to pain produced by using nitrous oxide (N₂O) and oxygen (O₂) with or without local anesthesia.

“Application” means, for purposes of Article 3 only, forms designated as applications and all documents an additional information the Board requires to be submitted with an application.

“Business Entity” means a business organization that offers to the public professional services regulated by the Board and is established under the laws of any state or foreign country, including a sole practitioner, partnership, limited liability partnership, corporation, and limited liability company, unless specifically exempted by A.R.S. § 32-1213(J).

“Calculus” means a hard mineralized deposit attached to the teeth.

“Certificate holder” means a denturist who practices denture technology under A.R.S. Title 32, Chapter 11, Article 5.

“Charitable Dental Clinic or Organization” means a non-profit organization meeting the requirements of 26 U.S.C. 501(c)(3) and providing dental or dental hygiene services.

“Clinical evaluation” means a dental examination of a patient named in a complaint regarding the patient’s dental condition as it exists at the time the examination is performed.

“Closed subgingival curettage” means the removal of the inner surface of the soft tissue wall of a periodontal pocket in a situation where a flap of tissue has not been intentionally or surgically opened.

“Controlled substance” has the meaning prescribed in A.R.S. § 36-2501(A)(3).

“Credit hour” means one clock hour of participation in a recognized continuing dental education program.

“Deep sedation” is a drug-induced depression of consciousness during which a patient cannot be easily aroused but responds purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. The patient may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is maintained.

“Dental laboratory technician” or “dental technician” has the meaning prescribed in A.R.S. § 32-1201(7).

“Dentist of record” means a dentist who examines, diagnoses, and formulates treatment plans for a patient and may provide treatment to the patient.

“Designee” means a person to whom the Board delegates authority to act on the Board’s behalf regarding a particular task specified by this Chapter.

“Direct supervision” means, for purposes of Article 7 only, that a licensed dentist is present in the office and available to provide immediate treatment or care to a patient and observe a dental assistant’s work.

“Disabled” means a dentist, dental hygienist, or denturist has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism due to a permanent medical disability and based on a physician’s order.

“Dispense for profit” means selling a drug or device for any amount above the administrative overhead costs to inventory.

“Documentation of attendance” means documents that contain the following information:

Name of sponsoring entity;

Course title;

Number of credit hours;

Name of speaker; and

Date, time, and location of the course.

“Drug” means:

Articles recognized, or for which standards or specifications are prescribed, in the official compendium;

Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in the human body;

Articles other than food intended to affect the structure of any function of the human body; or

Articles intended for use as a component of any articles specified in this definition but does not include devices or components, parts, or accessories of devices.

“Emerging scientific technology” means any technology used in the treatment of oral disease that is not currently generally accepted or taught in a recognized dental or dental hygiene school and use of the technology poses material risks.

“Epithelial attachment” means the layer of cells that extends apically from the depth of the gingival (gum) sulcus (crevice) along the tooth, forming an organic attachment.

“Ex-parte communication” means a written or oral communication between a decision maker, fact finder, or Board member and one party to the proceeding, in the absence of other parties.

“General anesthesia” is a drug-induced loss of consciousness during which the patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. The patient often requires assistance in maintaining a patent airway, and positive-pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

“General supervision” means, for purposes of Article 7 only, a licensed dentist is available for consultation, whether or not the dentist is in the office, regarding procedures or treatment that the dentist authorizes and for which the dentist remains responsible.

“Homebound patient” means a person who is unable to receive dental care in a dental office as a result of a medically diagnosed disabling physical or mental condition.

“Irreversible procedure” means a single treatment, or a step in a series of treatments, that causes change in the affected hard or soft tissues and is permanent or may require reconstructive or corrective procedures to correct the changes.

“Jurisdiction” means the Board’s power to investigate and rule on complaints that allege grounds for disciplinary action under A.R.S. Title 32, Chapter 11 or this Chapter.

“Licensee” means a dentist, dental hygienist, dental consultant, retired licensee, or person who holds a restricted permit under A.R.S. §§ 32-1237 or 32-1292.

“Local anesthesia” is the elimination of sensations, such as pain, in one part of the body by the injection of an anesthetic drug.

“Minimal sedation” is a minimally depressed level of consciousness that retains a patient’s ability to independently and continuously maintain an airway and respond appropriately to light tactile stimulation, not limited to reflex withdrawal from a painful stimulus, or verbal command and that is produced by a pharmacological or non-pharmacological method or a combination thereof. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected. In accord with this particular definition, the drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely.

“Moderate sedation” is a drug-induced depression of consciousness during which a patient responds purposefully to verbal commands either alone or accompanied by light tactile stimulation, not limited to reflex withdrawal from a painful stimulus. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is maintained. The drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Repeated dosing of a drug before the effects of previous dosing can be fully recognized may result in a greater alteration of the state of consciousness than intended by the permit holder.

“Nitrous oxide analgesia” means nitrous oxide (N₂O/O₂) as an inhalation analgesic.

“Nonsurgical periodontal treatment” means plaque removal, plaque control, supragingival and subgingival scaling, root planing, and the adjunctive use of chemical agents.

“Official compendium” means the latest revision of the United States Pharmacopeia and the National Formulary and any current supplement.

“Oral sedation” is the enteral administration of a drug or non-drug substance or combination inhalation and enterally administered drug or non-drug substance in a dental office or dental clinic to achieve minimal or moderate sedation.

“Parenteral sedation” is a minimally depressed level of consciousness that allows the patient to retain the ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and is induced by a pharmacological or non-pharmacological method or a combination of both methods of administration in which the drug bypasses the gastrointestinal tract.

“Patient of record” means a patient who has undergone a complete dental evaluation performed by a licensed dentist.

“Periodontal examination and assessment” means to collect and correlate clinical signs and patient symptoms that point to either the presence of or the potential for periodontal disease.

“Periodontal pocket” means a pathologic fissure bordered on one side by the tooth and on the opposite side by crevicular epithelium and limited in its depth by the epithelial attachment.

“Plaque” means a film-like sticky substance composed of mucoid secretions containing bacteria and toxic products, dead tissue cells, and debris.

“Polish” means, for the purposes of A.R.S. § 32-1291(B) only, a procedure limited to the removal of plaque and extrinsic stain from exposed natural and restored tooth surfaces that utilizes an appropriate rotary instrument with rubber cup or brush and polishing agent. A licensee or dental assistant shall not represent that this procedure alone constitutes an oral prophylaxis.

“Prescription-only device” means:

- Any device that is restricted by the federal act, as defined in A.R.S. § 32-1901, to use only under the supervision of a medical practitioner; or
- Any device required by the federal act, as defined in A.R.S. § 32-1901, to bear on its label the legend “Rx Only.”

“Prescription-only drug” does not include a controlled substance but does include:

- Any drug that, because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner;
- Any drug that is limited by an approved new drug application under the federal act or A.R.S. § 32-1962 to use under the supervision of a medical practitioner;
- Every potentially harmful drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer; or
- Any drug required by the federal act to bear on its label the legend “RX Only.”

“President’s designee” means the Board’s executive director, an investigator, or a Board member acting on behalf of the Board president.

“Preventative and therapeutic agents” means substances used in relation to dental hygiene procedures that affect the hard or soft oral tissues to aid in preventing or treating oral disease.

“Prophylaxis” means a scaling and polishing procedure performed on patients with healthy tissues to remove coronal plaque, calculus, and stains.

“Public member” means a person who is not a dentist, dental hygienist, dental assistant, denturist, or dental technician.

“Recognized continuing dental education” means a program whose content directly relates to the art and science of oral health and treatment, provided by a recognized dental school as defined in A.R.S. § 32-1201(18), recognized dental hygiene school as defined in A.R.S. § 32-1201(17), or recognized denturist school as defined in A.R.S. § 32-1201(19), or sponsored by a national or state dental, dental hygiene, or denturist association, American Dental Association, Continuing Education Recognition Program (ADA CERP) or Academy of General Dentistry, Program Approval

for Continuing Education (AGDPACE) approved provider, dental, dental hygiene, or denturist study club, governmental agency, commercial dental supplier, non-profit organization, accredited hospital, or programs or courses approved by other state, district, or territorial dental licensing boards.

“Restricted permit holder” means a dentist who meets the requirements of A.R.S. § 32-1237 or a dental hygienist who meets the requirements of A.R.S. § 32-1292 and is issued a restricted permit by the Board.

“Retired” means a dentist, dental hygienist, or denturist is at least 65 years old and has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism.

“Root planing” means a definitive treatment procedure designed to remove cementum or surface dentin that is rough, impregnated with calculus, or contaminated with toxins or microorganisms.

“Scaling” means use of instruments on the crown and root surfaces of the teeth to remove plaque, calculus, and stains from these surfaces.

“Section 1301 permit” means a permit to administer general anesthesia and deep sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Section 1302 permit” means a permit to administer parenteral sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Section 1303 permit” means a permit to administer oral sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Section 1304 permit” means a permit to employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Study club” means a group of at least five Arizona licensed dentists, dental hygienists, or denturists who provide written course materials or a written outline for a continuing education presentation that meets the requirements of Article 12.

“Treatment records” means all documentation related directly or indirectly to the dental treatment of a patient.

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-02 renumbered as Section R4-11-102 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-101 renumbered to R4-11-201, new Section R4-11-101 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 334 and at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

R4-11-102. Renumbered

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-02 renumbered as Section R4-11-102 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-102 renumbered to R4-11-202 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-103. Renumbered

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-03 renumbered as Section R4-11-103 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-103 renumbered to R4-11-203 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-104. Repealed

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-04 renumbered as Section R4-11-104 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-104 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-105. Repealed

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-05 renumbered as Section R4-11-105 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-105 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 2. LICENSURE BY CREDENTIAL

R4-11-201. Clinical Examination; Requirements

A. If an applicant is applying under A.R.S. §§ 32-1240(A) or 32-1292.01(A), the Board shall ensure that the applicant has passed the clinical examination of another state, United States territory, District of Columbia or a regional testing agency. Satisfactory completion of the clinical examination may be demonstrated by one of the following:

1. Certified documentation, sent directly from another state, United States territory, District of Columbia or a regional testing agency, that confirms successful completion of the clinical examination or multiple examinations administered by the state, United States territory, District of Columbia or regional testing agency. The certified documentation shall contain the name of the applicant, date of examination or examinations and proof of a passing score; or
2. Certified documentation sent directly from another state, United States territory or District of Columbia dental board that shows the applicant passed that state's, United States territory's or District of Columbia's clinical examination before that state's, United States territory's or District of Columbia's participation in a regional examination. The certified documentation shall contain the name of applicant, date of examination or examinations and proof of a passing score.

B. An applicant shall meet the licensure requirements in R4-11-301 and R4-11-303.

Historical Note

Former Rule 2a; Amended effective November 20, 1979 (Supp. 79-6). Amended effective November 28, 1980 (Supp. 80-6). Former Section R4-11-11 renumbered as Section R4-11-201 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-201 renumbered to R4-11-301, new Section R4-11-201 renumbered from R4-11-101 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-202. Dental Licensure by Credential; Application

A. A dentist applying under A.R.S. § 32-1240(A) shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.

B. A dentist applying under A.R.S. § 32-1240(A)(1) shall:

1. Have a current dental license in another state, territory or district of the United States;
2. Submit a written affidavit affirming that the dentist has practiced dentistry for a minimum of 5000 hours during the five years immediately before applying for licensure by credential. For purposes of this subsection, dental practice includes experience as a dental educator at a dental program accredited by the American Dental Association Commission on Dental Accreditation or employment as a dentist in a public health setting;
3. Submit a written affidavit affirming that the applicant has complied with the continuing dental education requirement of the state in which the applicant is currently licensed; and

4. Provide evidence regarding the clinical examination by complying with R4-11- 201(A)(1).
- C. A dentist applying under A.R.S. § 32-1240(A)(2) shall submit certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board that contains the name of applicant, date of examination or examinations and proof of a passing score.
- D. For any application submitted under A.R.S. § 32-1240(A), the Board may request additional clarifying evidence required under the applicable subsection in R4-11-201(A)(1).
- E. An applicant for dental licensure by credential shall pay the fee prescribed in A.R.S. § 32-1240, except the fee is reduced by 50% for applicants who will be employed or working under contract in:1. Commit to a three-year, exclusive service period,
 1. Underserved areas, such as declared or eligible Health Professional Shortage Areas (HPSAs); or
 2. Other facilities caring for underserved populations as recognized by the Arizona Department of Health Services and approved by the Board.
- F. An applicant for dental licensure by credential who works in areas or facilities described in subsection (E) shall:
 1. Commit to a three-year, exclusive service period,
 2. File a copy of a contract or employment verification statement with the Board, and
 3. As a licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.
- G. A licensee's failure to comply with the requirements in subsection (F) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

Historical Note

Former Rule 2b; Former Section R4-11-12 renumbered as Section R4-11-202 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-202 repealed, new Section R4-11-202 renumbered from R4-11-102 and the heading amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Labeling changes made to reflect current style requirements (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-203. Dental Hygienist Licensure by Credential; Application

- A. A dental hygienist applying under A.R.S. § 32-1292.01(A) shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.
- B. A dental hygienist applying under A.R.S. § 32-1292.01(A)(1) shall:
 1. Have a current dental hygienist license in another state, territory, or district of the United States;
 2. Submit a written affidavit affirming that the applicant has practiced as a dental hygienist for a minimum of 1000 hours during the two years immediately before applying for licensure by credential. For purposes of this subsection, dental hygienist practice includes experience as a dental hygienist educator at a dental program accredited by the American Dental Association Commission on Dental Accreditation or employment as a dental hygienist in a public health setting;
 3. Submit a written affidavit affirming that the applicant has complied with the continuing dental hygienist education requirement of the state in which the applicant is currently licensed; and
 4. Provide evidence regarding the clinical examination by complying with one of the subsections in R4-11- 201(A)(1).
- C. A dental hygienist applying under A.R.S. § 32-1292.01(A)(2) shall submit certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board that contains the name of applicant, date of examination or examinations and proof of a passing score.

D. For any application submitted under A.R.S. § 32-1292.01(A), the Board may request additional clarifying evidence as required under R4-11-201(A).

E. An applicant for dental hygienist licensure by credential shall pay the fee prescribed in A.R.S. § 32-1292.01, except the fee is reduced by 50% for applicants who will be employed or working under contract in:

1. Underserved areas such as declared or eligible Health Professional Shortage Areas (HPSAs); or
2. Other facilities caring for underserved populations, as recognized by the Arizona Department of Health Services and approved by the Board.

F. An applicant for dental hygienist licensure by credential who works in areas or facilities described in subsection (E) shall:

1. Commit to a three-year exclusive service period,
2. File a copy of a contract or employment verification statement with the Board, and
3. As a Licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

G. A licensee's failure to comply with the requirements in R4-11-203(F) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

Historical Note

Former Rule 2c; Former Section R4-11-13 repealed, new Section R4-11-13 adopted effective November 20, 1979 (Supp. 79-6). Amended effective October 30, 1980 (Supp. 80-5). Former Section R4-11-13 renumbered as Section R4-11-203 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-203 renumbered to R4-11-302, new Section R4-11-203 renumbered from R4-11-103 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-204. Dental Assistant Radiography Certification by Credential

Eligibility. To be eligible for dental assistant radiography certification by credential, an applicant shall have a current certificate or other form of approval for taking dental radiographs, issued by a professional licensing agency in another state, United States territory or the District of Columbia that required successful completion of a written dental radiography examination.

Historical Note

Former Rule 2d; Former Section R4-11-14 repealed, new Section R4-11-14 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-14 renumbered as Section R4-11-204, repealed, and new Section R4-11-204 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-204 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-205. Application for Dental Assistant Radiography Certification by Credential

A. An applicant for dental assistant radiography certification by credential shall provide to the Board a completed application, on a form furnished by the Board that contains the following information:

1. A sworn statement of the applicant's eligibility, and
2. A letter from the issuing institution that verifies compliance with R4-11-204.

B. Based upon review of information provided under subsection (A), the Board or its designee shall request that an applicant for dental assistant radiography certification by credential provide a copy of a certified document that indicates the reason for a name change if the applicant's documentation contains different names.

Historical Note

Former Rule 2e; Former Section R4-11-15 renumbered as Section R4-11-205 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-205 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-206. Repealed

Historical Note

Former Rule 2f; Amended as an emergency effective July 7, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-4). Former emergency adoption now adopted and amended effective September 7, 1979 (Supp. 79-5). Former Section R4-11-16 renumbered as Section R4-11-206 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-206 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-207. Repealed

Historical Note

Former Rule 2g; Former Section R4-11-17 renumbered as Section R4-11-207, repealed, and new Section R4-11-207 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-207 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-208. Repealed

Historical Note

Former Section R4-11-20 repealed, new Section R4-11-20 adopted effective May 12, 1977 (Supp. 77-3). Amended effective October 30, 1980 (Supp. 80-5). Former Section R4-11-20 renumbered as Section R4-11-208 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-208 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-209. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-19 renumbered as R4-11-209 and repealed. Former Section R4-11-21 renumbered as Section R4-11-209 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-209 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-210. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Amended effective June 7, 1978 (Supp. 78-3). Former Section R4-11-22 renumbered as Section R4-11-210 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-210 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-211. Repealed

Historical Note

Adopted effective August 26, 1977 (Supp. 77-4). Former Section R4-11-23 renumbered as Section R4-11-211 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-211 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-212. Repealed

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-24 renumbered as Section R4-11-212 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-212 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-213. Repealed

Historical Note

Adopted as an emergency effective July 7, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-4). Former emergency adoption now adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-25 renumbered as Section R4-11-213, repealed, and new Section R4-11-213 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-213 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-214. Repealed

Historical Note

Former Rule 2h; Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-18 renumbered as Section R4-11-214 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-214 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-215. Repealed

Historical Note

Adopted effective June 16, 1982 (Supp. 82-3). Former Section R4-11-215 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-216. Repealed

Historical Note

Adopted effective June 16, 1982 (Supp. 82-3). Former Section R4-11-216 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 3. EXAMINATION, LICENSING QUALIFICATIONS, APPLICATION AND RENEWAL, TIME-FRAMES

R4-11-301. Application

A. An applicant for licensure or certification shall provide the following information and documentation:

1. A sworn statement of the applicant's qualifications for the license or certificate on a form provided by the Board;
2. A photograph of the applicant that is no more than 6 months old;
3. An official, sealed transcript sent directly to the Board from either:
 - a. The applicant's dental, dental hygiene, or denturist school, or
 - b. A verified third-party transcript provider.
4. Except for a dental consultant license applicant, dental and dental hygiene license applicants provide proof of successfully completing a clinical examination by submitting:
 - a. If applying for dental licensure by examination, a copy of the certificate or score card from the Western Regional Examining Board, indicating that the applicant passed the Western Regional Examining Board examination within the five years immediately before the date the application is filed with the Board;
 - b. If applying for dental hygiene licensure by examination, a copy of the certificate or scorecard from the Western Regional Examining Board or an Arizona Board-approved clinical examination administered by a state, United States territory, District of Columbia or regional testing agency. The certificate or scorecard must indicate that the applicant passed the examination within the five years immediately before the date the application is filed with the Board; or
 - c. If applying for licensure by credential, certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board containing the name of the applicant, date of examination or examinations and proof of a passing score;

5. Except for a dental consultant license applicant as provided in A.R.S. § 32-1234(A)(7), dental and dental hygiene license applicants must have an official score card sent directly from the National Board examination to the Board;
 6. A copy showing the expiration date of the applicant's current cardiopulmonary resuscitation healthcare provider level certificate from the American Red Cross, the American Heart Association, or another certifying agency that follows the same procedures, standards, and techniques for CPR training and certification as the American Red Cross or American Heart Association;
 7. A license or certification verification from any other jurisdiction in which an applicant is licensed or certified, sent directly from that jurisdiction to the Board. If the license verification cannot be sent directly to the Board from the other jurisdiction, the applicant must submit a written affidavit affirming that the license verification submitted was issued by the other jurisdiction;
 8. If a dental or dental hygiene applicant has been licensed in another jurisdiction for more than six months, a copy of the self-inquiry from the National Practitioner Data Bank that is no more than 30 days old;
 9. If a denturist applicant has been certified in another jurisdiction for more than six months, a copy of the self-inquiry from the Health Integrity and Protection Data Bank that is no more than 30 days old;
 10. If the applicant is in the military or employed by the United States government, a letter of endorsement from the applicant's commanding officer or supervisor that confirms the applicant's military service or United States government employment record; and
 11. The jurisprudence examination fee.
- B. The Board may request that an applicant provide:
1. An official copy of the applicant's dental, dental hygiene, or denturist school diploma;
 2. A copy of a certified document that indicates the reason for a name change if the applicant's application contains different names,
 3. Written verification of the applicant's work history, and
 4. A copy of a high school diploma or equivalent certificate.
- C. An applicant shall pass the Arizona jurisprudence examination with a minimum score of 75%.

Historical Note

Former Rule 3A; Former Section R4-11-29 repealed, new Section R4-11-29 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-29 renumbered as Section R4-11-301 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-301 repealed, new Section R4-11-301 renumbered from R4-11-201 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-302. Repealed

Historical Note

Former Rule 3B; Former Section R4-11-30 repealed, new Section R4-11-30 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-30 renumbered as Section R4-11-302 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-302 repealed, new Section R4-11-302 renumbered from R4-11-203 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-303. Application Processing Procedures: Issuance, Denial, and Renewal of Dental Licenses, Dental Therapy Licenses, Restricted Permits, Dental Hygiene Licenses, Dental Consultant Licenses, Denturist Certificates, Drug or Device Dispensing Registrations, Business Entity Registration and Mobile Dental Facility and Portable Dental Unit Permits

A. The Board office shall complete an administrative completeness review within 30 calendar days of the date of receipt of an application for a license, certificate, permit, or registration.

1. Within 30 calendar days of receiving an initial or renewal application for a dental license, restricted permit, dental hygiene license, dental consultant license, denturist certificate, Business Entity registration, mobile dental facility or portable dental unit permit, the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.
 2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 30 calendar day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
 3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 30 calendar days after receipt by the Board office.
- B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.
- C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 30 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a license, certificate, permit, or registration shall apply again as required in R4-11-301.
- D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of A.A.C. Title 4, Chapter 11, Article 3.
- E. The Board shall complete a substantive review of the applicant's qualifications in no more than 90 calendar days from the date on which the administrative completeness review of an application package is complete.
1. If the Board finds an applicant to be eligible for a license, certificate, permit, or registration and grants the license, certificate, permit, or registration, the Board office shall notify the applicant in writing.
 2. If the Board finds an applicant to be ineligible for a license, certificate, permit, or registration, the Board office shall issue a written notice of denial to the applicant that includes:
 - a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
 - b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
 - c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
 - d. The name and telephone number of an agency contact person who can answer questions regarding the application process.
 3. If the Board finds deficiencies during the substantive review of an application package, the Board office may issue a comprehensive written request to the applicant for additional documentation. An additional supplemental written request for information may be issued upon mutual agreement between the Board or Board office and the applicant.
 4. The 90-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received. The applicant shall submit the additional documentation before the next regularly scheduled Board meeting.
 5. If the applicant and the Board office mutually agree in writing, the 90-day substantive review time-frame may be extended once for no more than 28 days.
- F. The following time-frames apply for an initial or renewal application governed by this Section:
1. Administrative completeness review time-frame: 30 calendar days.
 2. Substantive review time-frame: 90 calendar days.
 3. Overall time-frame: 120 calendar days.

G. An applicant whose license is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

Former Rule 3C; Former Section R4-11-31 renumbered as Section R4-11-303 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-303 repealed, new Section R4-11-303 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-304. Application Processing Procedures: Issuance and Denial of Dental Assistant Certificates Radiography Certification by Credential

A. Within 30 calendar days of receiving an application from an applicant for a dental assistant radiography certification by credential, the Board or its designee shall notify the applicant, in writing, that the application package is complete or incomplete. If the package is incomplete, the notice shall specify what information is missing.

B. An applicant with an incomplete application package shall supply the missing information within 60 calendar days from the date of the notice. If the applicant fails to do so, an applicant shall begin the application process anew.

C. Upon receipt of all missing information, within 10 calendar days, the Board or its designee shall notify the applicant, in writing, that the application is complete.

D. The Board or its designee shall not process an application until the applicant has fully complied with the requirements of this Article.

E. The Board or its designee shall notify an applicant, in writing, whether the certificate is granted or denied, no later than 90 calendar days after the date of the notice advising the applicant that the package is complete.

F. The notice of denial shall inform the applicant of the following:

1. The reason for the denial, with a citation to the statute or rule which requires the applicant to pass the examination;
2. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
3. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
4. The name and telephone number of an agency contact person or a designee who can answer questions regarding the application process.

G. The following time-frames apply for certificate applications governed by this Section:

1. Administrative completeness review time-frame: 24 calendar days.
2. Substantive review time-frame: 90 calendar days.
3. Overall time-frame: 114 calendar days.

H. An applicant whose certificate is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

Former Rule 3D; Former Section R4-11-32 renumbered as Section R4-11-304 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-304 repealed, new Section R4-11-304 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-305. Application Processing Procedures: Issuance, Denial, and Renewal of General Anesthesia and Deep Sedation Permits, Parenteral Sedation Permits, Oral Sedation Permits, and Permit to Employ a Physician Anesthesiologist or Certified Registered Nurse Anesthetist

A. The Board office shall complete an administrative completeness review within 24 days from the date of the receipt of an application for a permit.

1. Within 30 calendar days of receiving an initial or renewal application for a general anesthesia and deep sedation permit, parenteral sedation permit, oral sedation permit or permit to employ a physician anesthesiologist or CRNA the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.
2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 24-day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 24 days after receipt by the Board office.

B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.

C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 10 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a permit shall apply again as required in A.A.C. Title 4, Chapter 11, Article 13.

D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of this Section and A.A.C. Title 4, Chapter 11, Article 13.

E. The Board shall complete a substantive review of the applicant's qualifications in no more than 120 calendar days from the date on which the administrative completeness review of an application package is complete.

1. If the Board finds an applicant to be eligible for a permit and grants the permit, the Board office shall notify the applicant in writing.
2. If the Board finds an applicant to be ineligible for a permit, the Board office shall issue a written notice of denial to the applicant that includes:
 - a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
 - b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
 - c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
 - d. The name and telephone number of an agency contact person who can answer questions regarding the application process.
3. If the Board finds deficiencies during the substantive review of an application package, the Board office shall issue a comprehensive written request to the applicant for additional documentation.
4. The 120-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received.
5. If the applicant and the Board office mutually agree in writing, the 120-day substantive review time-frame may be extended once for no more than 36 days.

F. The following time-frames apply for an initial or renewal application governed by this Section:

1. Administrative completeness review time-frame: 24 calendar days.
2. Substantive review time-frame: 120 calendar days.
3. Overall time-frame: 144 calendar days.

Historical Note

New Section R4-11-305 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

ARTICLE 4. FEES

R4-11-401. Retired or Disabled Licensure Renewal Fee

As expressly authorized under A.R.S. § 32-1207(B)(3)(c), the licensure renewal fee for a retired or disabled dentist or dental hygienist is \$15.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-42 renumbered as Section R4-11-401 and repealed effective July 29, 1981 (Supp. 81-4). Adopted effective February 16, 1995 (Supp. 95-1). Former Section R4-11-401 repealed, new Section R4-11-401 renumbered from R4-11-901 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-402. Business Entity Fees

As expressly authorized under A.R.S. § 32-1213, the Board establishes and shall collect the following fees from a Business Entity offering dental services paid by credit card on the Board's website or by money order or cashier's check::

1. Initial triennial registration, \$300 per location;
2. Renewal of triennial registration, \$300 per location; and
3. Late triennial registration renewal, \$100 per location in addition to the fee under subsection (2).

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-43 renumbered as Section R4-11-402, repealed, and new Section R4-11-402 adopted effective July 29, 1981 (Supp. 81-4). Amended effective February 16, 1995 (Supp. 95-1). Former Section R4-11-402 renumbered to R4-11-601, new Section R4-11-402 renumbered from R4-11-902 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-403. Licensing Fees

A. As expressly authorized under A.R.S. §§ 32-1236, 32-1276.02, 32-1287, and 32-1297.06, the Board establishes and shall collect the following licensing fees:

1. Dentist triennial renewal fee: \$510;
2. Dentist prorated initial license fee: \$110;
3. Dental hygienist triennial renewal fee: \$255;
4. Dental hygienist prorated initial license fee: \$55;
5. Denturist triennial renewal fee: \$233; and
6. Denturist prorated initial license fee: \$46.

B. The following license-related fees are established in or expressly authorized by statute. The Board shall collect the fees:

1. Jurisprudence examination fee:
 - a. Dentists: \$300;
 - b. Dental Hygienists: \$100; and
 - c. Denturists: \$250.
2. Licensure by credential fee:
 - a. Dentists: \$2,000; and
 - b. Dental hygienists: \$1,000.
3. Penalty to reinstate an expired license or certificate: \$100 for a dentist, dental hygienist, or denturist in addition to renewal fee specified under subsection (A).
4. Penalty for a dentist, dental hygienist, or denturist who fails to notify Board of a change of mailing address:
 - a. Failure after 10 days: \$50; and
 - b. Failure after 30 days: \$100.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-44 renumbered as Section R4-11-403 and repealed effective July 29, 1981 (Supp. 81-4). Adopted effective February 16, 1995 (Supp. 95-1). Former Section R4-11-403 renumbered to R4-11-602, new Section R4-11-403 renumbered from R4-11-903 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1). New Section made by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-404. Repealed

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-45 renumbered as Section R4-11-404 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-404 renumbered from R4-11-904 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1).

R4-11-405. Charges for Board Services

The Board shall charge the following for the services provided paid by credit card on the Board's website or by money order or cashier's check:

1. Duplicate license: \$25;
2. Duplicate certificate: \$25;
3. License verification: \$25;
4. Copy of audio recording: \$10;
5. Photocopies (per page): \$.25;
6. Mailing lists of Licensees in digital format: \$100.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-46 repealed, new Section R4-11-46 adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-46 renumbered as Section R4-11-405 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-405 renumbered from R4-11-905 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 22 A.A.R.

3697, effective February 6, 2017 (Supp. 16-4). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-406. Anesthesia and Sedation Permit Fees

A. As expressly authorized under A.R.S. § 32-1207, the Board establishes and shall collect the following fees:

1. Section 1301 permit fee: \$300 plus \$25 for each additional location;
2. Section 1302 permit fee: \$300 plus \$25 for each additional location;
3. Section 1303 permit fee: \$300 plus \$25 for each additional location; and
4. Section 1304 permit fee: \$300 plus \$25 for each additional location.

B. Upon successful completion of an initial onsite evaluation and upon receipt of the required permit fee, the Board shall issue a separate Section 1301, 1302, 1303, or 1304 permit to a dentist for each location requested by the dentist. A permit expires on December 31 of every fifth year.

C. Permit renewal fees:

1. Section 1301 permit renewal fee: \$300 plus \$25 for each additional location;
2. Section 1302 permit renewal fee: \$300 plus \$25 for each additional location;
3. Section 1303 permit renewal fee: \$300 plus \$25 for each additional location; and
4. Section 1304 permit renewal fee: \$300 plus \$25 for each additional location.

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-47 renumbered as Section R4-11-406 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-406 renumbered from R4-11-906 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section R4-11-406 renumbered from R4-11-407 and amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 4130, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-407. Renumbered

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-48 renumbered as Section R4-11-407 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-407 renumbered from R4-11-909 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section R4-11-407 renumbered to R4-11-406 by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1).

R4-11-408. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-49 renumbered as Section R4-11-408 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1).

R4-11-409. Repealed

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 5. DENTISTS

R4-11-501. Dentist of Record

A. A dentist of record shall ensure that each patient record has the treatment records for a patient treated in any dental office, clinic, hospital dental clinic, or charitable organization that offers dental services, and the full name of a dentist who is responsible for all of the patient's treatment.

B. A dentist of record shall obtain a patient's consent to change the treatment plan before changing the treatment plan that the patient originally agreed to, including any additional costs the patient may incur because of the change.

C. When a dentist who is a dentist of record decides to leave the practice of dentistry or a particular place of practice in which the dentist is the dentist of record, the dentist shall ensure before leaving the practice that a new dentist of record is entered on each patient record.

D. A dentist of record is responsible for the care given to a patient while the dentist was the dentist of record even after being replaced as the dentist of record by another dentist.

E. A dentist of record shall:

1. Remain responsible for the care of a patient during the course of treatment; and
2. Be available to the patient through the dentist's office, an emergency number, an answering service, or a substituting dentist.

F. A dentist's failure to comply with subsection (E) constitutes patient abandonment, and the Board may impose discipline under A.R.S. Title 32, Chapter 11, Article 3.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-62 renumbered as Section R4-11-501 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-501 repealed, new Section R4-11-501 renumbered from R4-11-1102 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-502. Affiliated Practice

A. A dentist in a private for profit setting shall not enter into more than 15 affiliated practice relationships under A.R.S. § 32-1289 at one time.

B. There is no limit to the number of affiliated practice relationships a dentist may enter into when working in a government, public health, or non-profit organization under Section 501(C)(3) of the Internal Revenue Code.

C. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.

D. The affiliated practice agreement shall include a provision for a substitute dentist in addition to the requirements of A.R.S. § 32-1289(F), to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, or consultation with the affiliated practice dental hygienist.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-63 renumbered as Section R4-11-502 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-502 renumbered to R4-11-701 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1).

R4-11-503. Repealed

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-64 repealed, new Section R4-11-64 adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-64 renumbered as Section R4-11-503 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-503 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-504. Renumbered

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-65 repealed, new Section R4-11-65 adopted effective May 23, 1976 (Supp. 76-2). Former Section R4-11-65 renumbered as Section R4-11-504, repealed, and new Section R4-11-504 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-504 renumbered to R4-11-702 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-505. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-66 renumbered as Section R4-11-505 and repealed effective July 29, 1981 (Supp. 81-4).

R4-11-506. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-67 renumbered as Section R4-11-506 and repealed effective July 29, 1981 (Supp. 81-4).

ARTICLE 6. DENTAL HYGIENISTS

R4-11-601. Duties and Qualifications

A. A dental hygienist may apply Preventative and Therapeutic Agents under the general supervision of a licensed dentist.

B. A dental hygienist may perform a procedure not specifically authorized by A.R.S. § 32-1281 when all of the following conditions are satisfied:

1. The procedure is recommended or prescribed by the supervising dentist;
2. The dental hygienist has received instruction, training, or education to perform the procedure in a safe manner; and
3. The procedure is performed under the general supervision of a licensed dentist.

C. A dental hygienist shall not perform an Irreversible Procedure.

D. To qualify to use Emerging Scientific Technology as authorized by A.R.S. § 32-1281(C)(2), a dental hygienist shall successfully complete a course of study that meets the following criteria:

1. Is a course offered by a recognized dental school as defined in A.R.S. § 32-1201, a recognized dental hygiene school as defined in A.R.S. § 32-1201, or sponsored by a national or state dental or dental hygiene association or government agency;
2. Includes didactic instruction with a written examination;
3. Includes hands-on clinical instruction; and
4. Is technology that is scientifically based and supported by studies published in peer reviewed dental journals.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-82 renumbered as Section R4-11-601 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-601 repealed, new Section R4-11-601 renumbered from R4-11-402 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-602. Care of Homebound Patients

Dental hygienists treating homebound patients shall provide only treatment prescribed by the dentist of record in the diagnosis and treatment plan. The diagnosis and treatment plan shall be based on examination data obtained not more than 12 months before the treatment is administered.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-83 renumbered as Section R4-11-602 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-602 renumbered to R4-11-1001, new Section R4-11-602 renumbered from R4-11-403 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-603. Limitation on Number Supervised

A dentist shall not supervise more than three dental hygienists at a time.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-84 renumbered as Section R4-11-603 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-603 renumbered to R4-11-1002, new Section R4-11-603 renumbered from R4-11-408 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-604. Selection Committee and Process

A. The Board shall appoint a selection committee to screen candidates for the dental hygiene committee. The selection committee consists of three members. The Board shall appoint at least two members who are dental hygienists and one member who is a current Board member. The Board shall fill any vacancy for the unexpired portion of the term.

B. Each selection committee member's term is one year.

C. By majority vote, the selection committee shall nominate each candidate for the dental hygiene committee and transmit a list of names to the Board for approval, including at least one alternate.

Historical Note

New Section R4-11-604 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-605. Dental Hygiene Committee

A. The Board shall appoint seven members to the dental hygiene committee as follows:

1. One dentist appointed at the annual December Board meeting, currently serving as a Board member, for a one year term;
2. One dental hygienist appointed at the annual December Board meeting, currently serving as a Board member and possessing the qualifications required in Article 6, for a one-year term;
3. Four dental hygienists that possess the qualifications required in Article 6; and
4. One lay person.

B. Except for members appointed as prescribed in subsections (A)(1) and (2), the Board shall appoint dental hygiene committee members for staggered terms of three years, beginning January 1, 1999, and limit each member to two consecutive terms. The Board shall fill any vacancy for the unexpired portion of the term.

C. The dental hygiene committee shall annually elect a chairperson at the first meeting convened during the calendar year.

Historical Note

New Section R4-11-605 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-606. Candidate Qualifications and Submissions

A. A dental hygienist who seeks membership on the dental hygiene committee shall possess a license in good standing, issued by the Board.

B. A dental hygienist who is not a Board member and qualifies under subsection (A) shall submit a letter of intent and resume to the Board.

C. The selection committee shall consider all of the following criteria when nominating a candidate for the dental hygiene committee:

1. Geographic representation,
2. Experience in postsecondary curriculum analysis and course development,
3. Public health experience, and
4. Dental hygiene clinical experience.

Historical Note

New Section R4-11-606 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-607. Duties of the Dental Hygiene Committee

A. The committee shall advise the Board on all matters relating to the regulation of dental hygienists.

B. In performing the duty in subsection (A), the committee may:

1. Act as a liaison for the Board, promoting communication and providing a forum for discussion of dental hygiene regulatory issues;
2. Review applications, syllabi, and related materials and make recommendations to the Board regarding certification of courses in Local Anesthesia, Nitrous Oxide Analgesia, and suture placement under Article 6 and other procedures which may require certification under Article 6;
3. Review documentation submitted by dental hygienists to determine compliance with the continuing education requirement for license renewal under Article 12 and make recommendations to the Board regarding compliance;
4. Make recommendations to the Board concerning statute and rule development which affect dental hygienists' education, licensure, regulation, or practice;
5. Provide advice to the Board on standards and scope of practice which affect dental hygiene practice;
6. Provide ad hoc committees to the Board upon request;
7. Request that the Board consider recommendations of the committee at the next regularly scheduled Board meeting; and
8. Make recommendations to the Board for approval of dental hygiene consultants.

C. Committee members who are licensed dentists or dental hygienists may serve as dental hygiene examiners or Board consultants.

D. The committee shall meet at least two times per calendar year. The chairperson or the president of the Board, or their respective designees, may call a meeting of the committee.

E. The Board may assign additional duties to the committee.

Historical Note

New Section R4-11-607 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-608. Dental Hygiene Consultants

After submission of a current curriculum vitae or resume and approval by the Board, dental hygiene consultants may:

1. Act as dental hygiene examiners for the clinical portion of the dental hygiene examination;
2. Act as dental hygiene examiners for the Local Anesthesia portion of the dental hygiene examination;
3. Participate in Board-related procedures, including Clinical Evaluations, investigation of complaints concerning infection control, insurance fraud, or the practice of supervised personnel, and any other procedures not directly related to evaluating a dentist's quality of care; and
4. Participate in onsite office evaluations for infection control, as part of a team.

Historical Note

New Section R4-11-608 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-609. Affiliated Practice

A. To perform dental hygiene services under an affiliated practice relationship pursuant to A.R.S. § 32-1289.01, a dental hygienist shall:

1. Provide evidence to the Board of successfully completing a total of 12 hours of Recognized Continuing Dental Education that consists of the following subject areas:
 - a. A minimum of four hours in medical emergencies; and
 - b. A minimum of eight hours in at least two of the following areas:
 - i. Pediatric or other special health care needs,
 - ii. Preventative dentistry, or
 - iii. Public health community-based dentistry, and
2. Hold a current certificate in basic cardiopulmonary resuscitation (CPR).

B. A dental hygienist shall complete the required continuing dental education before entering an affiliated practice relationship. The dental hygienist shall complete the continuing dental education in subsection (A) before renewing the dental hygienist's license. The dental hygienist may take the continuing dental education online but shall not exceed the allowable hours indicated in R4-11-1209(B)(1).

C. To comply with A.R.S. § 32-1287(E) and this Section, a dental hygienist shall submit a completed affidavit on a form supplied by the Board office. Board staff shall review the affidavit to determine compliance with all requirements.

D. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.

E. The affiliated practice agreement shall include a provision for a substitute dentist, to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, and consultation with the affiliated practice dental hygienist.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

ARTICLE 7. DENTAL ASSISTANTS

R4-11-701. Procedures and Functions Performed by a Dental Assistant under Supervision

A. A dental assistant may perform the following procedures and functions under the direct supervision of a licensed dentist:

1. Place dental material into a patient's mouth in response to a licensed dentist's instruction;
2. Cleanse the supragingival surface of the tooth in preparation for:
 - a. The placement of bands, crowns, and restorations;
 - b. Dental dam application;
 - c. Acid etch procedures; and
 - d. Removal of dressings and packs;
3. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments;
4. Remove temporary cement, interim restorations, and periodontal dressings with hand instruments;
5. Remove sutures;
6. Place and remove dental dams and matrix bands;
7. Fabricate and place interim restorations with temporary cement;
8. Apply sealants;

9. Apply topical fluorides;
 10. Prepare a patient for nitrous oxide and oxygen analgesia administration upon the direct instruction and presence of a dentist; or
 11. Observe a patient during nitrous oxide analgesia as instructed by the dentist.
- B. A dental assistant may perform the following procedures and functions under the general supervision of a licensed dentist:
1. Train or instruct patients in oral hygiene techniques, preventive procedures, dietary counseling for caries and plaque control, and provide pre-and post-operative instructions relative to specific office treatment;
 2. Collect and record information pertaining to extraoral conditions; and
 3. Collect and record information pertaining to existing intraoral conditions.

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-100 renumbered as Section R4-11-701 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-701 renumbered to R4-11-1701, new Section R4-11-701 renumbered from R4-11-502 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-702. Limitations on Procedures or Functions Performed by a Dental Assistant under Supervision

A dental assistant shall not perform the following procedures or functions:

1. A procedure which by law only licensed dentists, licensed dental hygienists, or certified denturists can perform;
2. Intraoral carvings of dental restorations or prostheses;
3. Final jaw registrations;
4. Taking final impressions for any activating orthodontic appliance, fixed or removable prosthesis;
5. Activating orthodontic appliances; or
6. An irreversible procedure.

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-101 renumbered as Section R4-11-702 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-702 repealed, new Section R4-11-702 renumbered from R4-11-504 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-703. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-102 renumbered as Section R4-11-703 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-703 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-704. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-103 renumbered as Section R4-11-704 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-704 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-705. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-104 renumbered as Section R4-11-705 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-705 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-706. Repealed**Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-105 renumbered as Section R4-11-706 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-706 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-707. Repealed**Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-106 renumbered as Section R4-11-707 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-707 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-708. Repealed**Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-107 renumbered as Section R4-11-708 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-708 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-709. Repealed**Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-108 renumbered as Section R4-11-709 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-709 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-710. Repealed**Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-109 renumbered as Section R4-11-710 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-710 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 8. DENTURISTS**R4-11-801. Expired****Historical Note**

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-120 renumbered as Section R4-11-801 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-801 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-801 repealed, new Section R4-11-801 renumbered from R4-11-1201 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-802. Expired**Historical Note**

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-121 renumbered as Section R4-11-802 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-802 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-802 renumbered to R4-11-1301, new Section R4-11-802 renumbered from R4-11-1202 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-803. Renumbered

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-122 renumbered as Section R4-11-803 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-803 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4- 11-803 renumbered to R4-11-1302 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-804. Renumbered

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-123 renumbered as Section R4-11-804 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-804 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Former Section R4-11-804 renumbered to R4-11-1303 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-805. Renumbered

Historical Note

Adopted as filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-805 renumbered to R4-11-1304 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-806. Renumbered

Historical Note

Adopted effective May 17, 1995 (Supp. 95-2). Former Section R4-11-806 renumbered to R4-11-1305 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 9. RESTRICTED PERMITS

R4-11-901. Application for Restricted Permit

A. An applicant for a restricted permit shall provide the following information and documentation on a form provided by the Board:

1. A sworn statement of the applicant's qualifications for a restricted permit;
2. A photograph of the applicant that is no more than six months old;
3. A letter from any other jurisdiction in which an applicant is licensed or certified verifying that the applicant is licensed or certified in that jurisdiction, sent directly from that jurisdiction to the Board;
4. If the applicant is in the military or employed by the United States government, a letter from the applicant's commanding officer or supervisor verifying the applicant is licensed or certified by the military or United States government;
5. A copy of the applicant's current cardiopulmonary resuscitation certification that meets the requirements of R4-11-301(A)(6); and
6. A copy of the applicant's pending contract with a Charitable Dental Clinic or Organization offering dental or dental hygiene services.

B. The Board may request that an applicant provide a copy of a certified document that indicates the reason for a name change if the applicant's application contains different names.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-130 renumbered as Section R4-11-901, repealed, and new Section R4-11-901 adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-901 renumbered to R4-11-401, new Section R4-11-901 renumbered from R4-11-1001 and amended by final rulemaking at 5 A.A.R. 580,

effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 28 A.A.R.1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-902. Issuance of a Restricted Permit

Before issuing a restricted permit under A.R.S. §§ 32-1237 through 32-1239 or 32-1292, the Board shall investigate the statutory qualifications of the charitable dental clinic or organization. The Board shall not recognize a dental clinic or organization under A.R.S. §§ 32-1237 through 32-1239 or 32-1292 as a charitable dental clinic or organization permitted to employ dentists or dental hygienists not licensed in Arizona who hold restricted permits unless the Board makes the following findings of fact:

1. That the entity is a dental clinic or organization offering professional dental or dental hygiene services in a manner consistent with the public health;
2. That the dental clinic or organization offering dental or dental hygiene services is operated for charitable purposes only, offering dental or dental hygiene services either without compensation to the clinic or organization or with compensation at the minimum rate to provide only reimbursement for dental supplies and overhead costs;
3. That the persons performing dental or dental hygiene services for the dental clinic or organization do so without compensation; and
4. That the charitable dental clinic or organization operates in accordance with applicable provisions of law.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-131 renumbered as Section R4-11- 902, repealed, and new Section R4-11-902 adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-902 renumbered to R4-11-402, new Section R4-11-902 renumbered from R4-11-1002 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-903. Recognition of a Charitable Dental Clinic Organization

In order for the Board to make the findings required in R4-11-902, the charitable clinic or organization shall provide information to the Board, such as employment contracts with restricted permit holders, Articles and Bylaws, and financial records.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-132 renumbered as Section R4-11- 903, repealed, and new Section R4-11-903 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11- 903 renumbered to R4-11-403, new Section R4-11-903 renumbered from R4-11-1003 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-904. Determination of Minimum Rate

In determining whether professional services are provided at the minimum rate to provide reimbursement for dental supplies and overhead costs under A.R.S. §§ 32-1237(1) or 32-1292(A)(1), the Board shall obtain and review information relating to the actual cost of dental supplies to the dental clinic or organization, the actual overhead costs of the dental clinic or organization, the amount of charges for the dental or dental hygiene services offered, and any other information relevant to its inquiry.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-133 renumbered as Section R4-11- 904 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-904

renumbered to R4-11-404, new Section R4-11-904 renumbered from R4-11-1004 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-905. Expired

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-134 renumbered as Section R4-11- 905 without change effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Former Section R4-11-905 renumbered to R4-11-405, new Section R4-11-905 renumbered from R4-11-1005 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17- 3).

R4-11-906. Expired

Historical Note

Adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-4). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-906 renumbered to R4-11- 406, new Section R4-11-906 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-907. Repealed

Historical Note

Adopted effective April 4, 1986 (Supp. 86-2). Former Section R4-11-907 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-908. Repealed

Historical Note

Adopted effective April 4, 1986 (Supp. 86-2). Former Section R4-11-908 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-909. Renumbered

Historical Note

Adopted effective May 17, 1995 (Supp. 95-2). Former Section R4-11-909 renumbered to R4-11-407 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 10. DENTAL TECHNICIANS

R4-11-1001. Expired

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-140 renumbered as Section R4-11- 1001 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11- 1001 renumbered to R4-11- 901, new Section R4-11-1001 renumbered from R4-11- 602 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-1002. Expired

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-141 renumbered as Section R4-11- 1002 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11- 1002 renumbered to R4-11- 902, new Section R4-11-1002 renumbered from R4-11- 603 and amended

by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-1003. Renumbered

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-142 renumbered as Section R4-11- 1003 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1003 renumbered to R4-11-903 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1004. Renumbered

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-143 renumbered as Section R4-11- 1004 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1004 renumbered to R4-11-904 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1005. Renumbered

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-144 renumbered as Section R4-11- 1005 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1005 renumbered to R4-11-905 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1006. Repealed

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 11. ADVERTISING

R4-11-1101. Advertising

A dentist may advertise specific dental services or certification in a non-specialty area only if the advertisement includes the phrase “Services provided by an Arizona licensed general dentist.” A dental hygienist may advertise specific dental hygiene services only if the advertisement includes the phrase “Services provided by an Arizona licensed dental hygienist.” A denturist may advertise specific denture services only if the advertisement includes the phrase “Services provided by an Arizona certified denturist.”

Historical Note

Adopted effective July 29, 1981 (Supp. 81-4). Amended by repealing the former guideline on “Management of Craniomandibular Disorders” and adopting a new guideline effective June 16, 1982 (Supp. 82-3). Repealed effective November 20, 1992 (Supp. 92-4). Former Section R4-11-1101 repealed, new Section R4-11-1101 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05- 1).

R4-11-1102. Advertising as a Recognized Specialist

A. A dentist may advertise as a specialist or use the terms “specialty” or “specialist” to describe professional services only if the dentist limits the dentist’s practice exclusively to one or more specialty area that are:

1. Recognized by a board that certifies specialists for the area of specialty; and
2. Accredited by the Commission on Dental Accreditation of the American Dental Association.

B. The following specialty areas meet the requirements of subsection (A):

1. Endodontics,

2. Oral and maxillofacial surgery,
3. Orthodontics and dentofacial orthopedics,
4. Pediatric dentistry,
5. Periodontics,
6. Prosthodontics,
7. Dental Public Health,
8. Oral and Maxillofacial Pathology, and
9. Oral and Maxillofacial Radiology.

C. For purposes of this Article, a dentist who wishes to advertise as a specialist or a multiple-specialist in a recognized field under subsection (B) shall meet the criteria in one or more of the following categories:

1. Grandfathered: A dentist who declared a specialty area before December 31, 1964, according to requirements established by the American Dental Association, and has a practice limited to a dentistry area approved by the American Dental Association;
2. Educationally qualified: A dentist who has successfully completed an educational program of two or more years in a specialty area accredited by the Commission on Dental Accreditation of the American Dental Association, as specified by the Council on Dental Education of the American Dental Association;
3. Board eligible: A dentist who has met the guidelines of a specialty board that operates in accordance with the requirements established by the American Dental Association in a specialty area recognized by the Board, if the specialty board:
 - a. Has established examination requirements and standards,
 - b. Appraised an applicant's qualifications,
 - c. Administered comprehensive examinations, and
 - d. Upon completion issues a certificate to a dentist who has achieved diplomate status;
 or
4. Board certified: A dentist who has met the requirements of a specialty board referenced in subsection (C)(3), and who has received a certificate from the specialty board, indicating the dentist has achieved diplomate status.

D. A dentist, dental hygienist, or denturist whose advertising implies that services rendered in a dental office are of a specialty area other than those listed in subsection (B) and recognized by a specialty board that has been accredited by the Commission on Dental Accreditation of the American Dental Association violates this Article and A.R.S. § 32-1201(18)(u), and is subject to discipline under A.R.S. Title 32, Chapter 11.

Historical Note

Adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1102 renumbered to R4-11-501 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1103. Reserved

R4-11-1104. Repealed

Historical Note

Adopted effective November 25, 1985 (Supp. 85-6). Former Section R4-11-1104 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1105. Repealed

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 12. CONTINUING DENTAL EDUCATION AND RENEWAL REQUIREMENTS

R4-11-1201. Continuing Dental Education

A. A licensee or certificate holder shall:

1. Satisfy a continuing dental education requirement that is designed to provide an understanding of current developments, skills, procedures, or treatment related to the licensee's or certificate holder's practice; and
2. Complete the recognized continuing dental education required by this Article each renewal period.

B. A licensee or certificate holder receiving an initial license or certificate shall complete the prescribed credit hours of recognized continuing dental education by the end of the first full renewal period.

Historical Note

Adopted effective May 21, 1982 (Supp. 82-3). Former Section R4-11-1201 renumbered to R4-11-801, new Section R4-11-1201 renumbered from R4-11-1402 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1202. Continuing Dental Education Compliance and Renewal Requirements

A. When applying for a renewal license, certificate, or restricted permit, a Licensee, dentist, or Restricted Permit holder shall complete a renewal application provided by the Board.

B. Before receiving a renewal license or certificate, each Licensee or dentist shall possess a current form of one of the following:

1. A current cardiopulmonary resuscitation healthcare provider level certificate from the American Red Cross, the American Heart Association, or another certifying agency;
2. Advanced cardiac life support course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application; or
3. Pediatric advanced life support course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application.

C. A Licensee or dentist shall include an affidavit affirming the Licensee's or dentist's completion of the prescribed Credit Hours of Recognized Continuing Dental Education with a renewal application. A Licensee or dentist shall include on the affidavit the Licensee's or dentist's name, license or certificate number, the number of hours completed in each category, and the total number of hours completed for activities defined in R4-11-1209(A)(4).

D. A Licensee or dentist shall submit a written request for an extension before the renewal deadline prescribed in A.R.S. §§ 32-1236, 32-1276.02, 32-1287, and 32-1297.06. If a Licensee or dentist fails to meet the Credit Hours requirement because of military service, dental or religious missionary activity, residence in a foreign country, or other extenuating circumstances as determined by the Board, the Board, upon written request, may grant an extension of time to complete the Recognized Continuing Dental Education Credit Hour requirement.

E. The Board shall:

1. Only accept Recognized Continuing Dental Education credits accrued during the prescribed period immediately before license or certificate renewal, and
2. Not allow Recognized Continuing Dental Education credit accrued in a renewal period in excess of the amount required in this Article to be carried forward to the next renewal period.

F. A Licensee or dentist shall maintain Documentation of Attendance for each program for which credit is claimed that verifies the Recognized Continuing Dental Education Credit Hours the Licensee or dentist participated in during the most recently completed renewal period.

G. Each year, the Board shall audit continuing dental education requirement compliance on a random basis or when information is obtained which indicates a Licensee or dentist may not be in compliance with this Article. A Licensee or dentist selected for audit shall provide the Board with Documentation

of Attendance that shows compliance with the continuing dental education requirements within 35 calendar days from the date the Board issues notice of the audit by certified mail.

H. If a Licensee or dentist is found to not be in compliance with the continuing dental education requirements, the Board may take any disciplinary or non-disciplinary action authorized by A.R.S. Title 32, Chapter 11.

Historical Note

Adopted effective May 21, 1982 (Supp. 82-3). Former Section R4-11-1202 renumbered to R4-11-802, new Section R4-11-1202 renumbered from R4-11-1403 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 21 A.A.R. 921, effective August 3, 2015 (Supp. 15-2). Amended by final rulemaking at 28 A.A.R. 344 (February 4, 2022), effective March 14, 2022 (Supp. 22-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1203. Dentists and Dental Consultants

Dentists and dental consultants shall complete 63 hours of Recognized Continuing Dental Education in each renewal period as follows:

1. At least 36 Credit Hours in any one or more of the following areas: Dental and medical health, preventive services, dental diagnosis and treatment planning, dental recordkeeping, dental clinical procedures, managing medical emergencies, pain management, dental public health, and courses in corrective and restorative oral health and basic dental sciences, which may include current research, new concepts in dentistry, chemical dependency, tobacco cessation, and behavioral and biological sciences that are oriented to dentistry. A Licensee who holds a permit to administer General Anesthesia, Deep Sedation, Parenteral Sedation, or Oral Sedation who is required to obtain continuing education pursuant to Article 13 may apply those Credit Hours to the requirements of this Section;
2. No more than 15 Credit Hours in one or more of the following areas: Dental practice organization and management, patient management skills, and methods of health care delivery;
3. At least three Credit Hours in opioid education;
4. At least three Credit Hours in infectious diseases or infectious disease control;
5. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support or pediatric advanced life support. Coursework may be completed online if the course requires a physical demonstration of skills; and
6. At least three Credit Hours in ethics or Arizona dental jurisprudence.

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3). New Section R4-11-1203 renumbered from R4-11-1404 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1204. Dental Hygienists

A. A dental hygienist shall complete 45 Credit Hours of Recognized Continuing Dental Education in each renewal period as follows:

1. At least 25 Credit Hours in any one or more of the following areas: Dental and medical health, and dental hygiene services, periodontal disease, care of implants, maintenance of cosmetic restorations and sealants, radiology safety and techniques, managing medical emergencies,

pain management, dental recordkeeping, dental public health, and new concepts in dental hygiene;

2. No more than 11 Credit Hours in one or more of the following areas: Dental hygiene practice organization and management, patient management skills, and methods of health care delivery;
3. At least three Credit Hours in one or more of the following areas: chemical dependency, tobacco cessation, ethics, risk management, or Arizona dental jurisprudence;
4. At least three Credit Hours in infectious diseases or infectious disease control; and
5. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support and pediatric advanced life support. Coursework may be completed online if the course requires a physical demonstration of skills.

B. A Licensee who performs dental hygiene services under an affiliated practice relationship who is required to obtain continuing education under R4-11-609 may apply those Credit Hours to the requirements of this Section.

Historical Note

New Section R4-11-1204 renumbered from R4-11-1405 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1205. Denturists

Denturists shall complete 27 Credit Hours of Recognized Continuing Dental Education in each renewal period as follows:

1. At least 15 Credit Hours in any one or more of the following areas: Medical and dental health, laboratory procedures, clinical procedures, dental recordkeeping, removable prosthetics, pain management, dental public health, and new technology in dentistry;
2. No more than three Credit Hours in one or more of the following areas: Denturist practice organization and management, patient management skills, and methods of health care delivery;
3. At least one Credit Hour in chemical dependency, which may include tobacco cessation;
4. At least two Credit Hours in infectious diseases or infectious disease control;
5. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support and pediatric advanced life support. Coursework may be completed online if the course requires a physical demonstration of skills; and
6. At least three Credit Hours in ethics or Arizona dental jurisprudence.

Historical Note

New Section R4-11-1205 renumbered from R4-11-1406 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1206. Restricted Permit Holders - Dental

In addition to the requirements in R4-11-1202, a dental Restricted Permit Holder shall comply with the following requirements:

1. When applying for renewal under A.R.S. § 32-1238, the Restricted Permit Holder shall provide information to the Board that the Restricted Permit Holder has completed 15 Credit Hours of Recognized Continuing Dental Education yearly.

2. To determine whether to grant the renewal, the Board shall only consider Recognized Continuing Dental Education credits accrued during the 36 months immediately before the renewal deadline prescribed in A.R.S. § 32-1236.
3. A dental Restricted Permit Holder shall complete the 15 hours of Recognized Continuing Dental Education before renewal as follows:
 - a. At least six Credit Hours in one or more of the subjects enumerated in R4-11-1203(1);
 - b. No more than three Credit Hours in one or more of the subjects enumerated in R4-11-1203(2);
 - c. At least one Credit Hour in the subjects enumerated in R4-11-1203(3);
 - d. At least one Credit Hour in the subjects enumerated in R4-11-1203(4).
 - e. At least three Credit Hours in the subjects enumerated in R4-11-1203(5); and
 - f. At least one Credit Hour in the subjects enumerated in R4-11-1203(6).

Historical Note

New Section R4-11-1206 renumbered from R4-11-1407 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 344 (February 4, 2022), effective March 14, 2022 (Supp. 22-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1207. Restricted Permit Holders - Dental Hygiene

In addition to the requirements in R4-11-1202, a dental hygiene Restricted Permit Holder shall comply with the following:

1. When applying for renewal under A.R.S. § 32-1292, the Restricted Permit Holder shall provide information to the Board that the Restricted Permit Holder has completed nine Credit Hours of Recognized Continuing Dental Education yearly.
2. To determine whether to grant renewal, the Board shall only consider Recognized Continuing Dental Education credits accrued during the 36 months immediately before the renewal deadline prescribed in A.R.S. § 32-1287.
3. A dental hygiene Restricted Permit Holder shall complete the nine hours of Recognized Continuing Dental Education before renewal as follows:
 - a. At least three Credit Hours in one or more of the subjects enumerated in R4-11-1204(1);
 - b. No more than three Credit Hours in one or more of the subjects enumerated in R4-11-1204(2);
 - c. At least one Credit Hour in the subjects enumerated in R4-11-1204(3);
 - d. At least two Credit Hours in the subjects enumerated in R4-11-1204(4) and
 - e. At least three Credit Hours in the subjects enumerated in R4-11-1204(5).

Historical Note

New Section R4-11-1207 renumbered from R4-11-1408 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 344 (February 4, 2022), effective March 14, 2022 (Supp. 22-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1208. Retired Licensees or Retired Denturists

A Retired Licensee or Retired denturist shall:

1. Except for the number of Credit Hours required, comply with the requirements in R4-11-1202; and

2. When applying for renewal under A.R.S. § 32-1236 for a dentist, A.R.S. § 32-1276.02 for a dental therapist, A.R.S. § 32-1287 for a dental hygienist, and A.R.S. § 32-1297.06 for a denturist, provide information to the Board that the Retired Licensee or Retired denturist has completed the following Credit Hours of Recognized Continuing Dental Education per renewal period:
 - a. Dentist – 24 Credit Hours of which no less than three credit hours shall be for cardiopulmonary resuscitation-healthcare provider level;
 - b. Dental therapist - 21 Credit Hours of which no less than three Credit Hours shall be for cardiopulmonary resuscitation- healthcare provider level;
 - c. Dental hygienist - 18 Credit Hours of which no less than three credit hours shall be for cardiopulmonary resuscitation-healthcare provider level; and
 - d. Denturist – six Credit Hours of which no less than three credit hours shall be for cardiopulmonary resuscitation-healthcare provider level.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1209. Types of Courses

A. A Licensee or denturist shall obtain Recognized Continuing Dental Education from one or more of the following activities:

1. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry;
2. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry by means of audio-video technology in which the Licensee is provided all seminar, symposium, lecture or program materials and the technology permits attendees to fully participate; or
3. Curricula designed to prepare for specialty board certification as a specialist or recertification examinations or advanced training at an accredited institution as defined in A.R.S. Title 32, Chapter 11; and
4. Subject to the limitations in subsection (B), any of the following activities that provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry:
 - a. A correspondence course, video, internet or similar self-study course, if the course includes an examination and the Licensee or denturist passes the examination;
 - b. Participation on the Board, in Board complaint investigations including Clinical Evaluations or anesthesia and sedation permit evaluations;
 - c. Participation in peer review of a national or state dental, dental therapy, dental hygiene, or denturist association or participation in quality of care or utilization review in a hospital, institution, or governmental agency;
 - d. Providing dental-related instruction to dental, dental therapy, dental hygiene, or denturist students, or allied health professionals in a recognized dental school, recognized dental therapy school, recognized dental hygiene school, or recognized denturist school or providing dental-related instruction sponsored by a national, state, or local dental, dental therapy, dental hygiene, or denturist association;
 - e. Publication or presentation of a dental paper, report, or book authored by the Licensee or denturist that provides information on current developments, skills, procedures, or treatment related to the practice of dentistry. A Licensee or denturist may claim Credit Hours:
 - i. Only once for materials presented;
 - ii. Only if the date of publication or original presentation was during the applicable renewal period; and
 - iii. One Credit Hour for each hour of preparation, writing, and presentation; or

- f. Providing dental, dental therapy, dental hygiene, or denturist services in a Board-recognized Charitable Dental Clinic or Organization.
- B. The following limitations apply to the total number of Credit Hours earned per renewal period in any combination of the activities listed in subsection (A)(4):
- 1. Dentists no more than 21 hours;
 - 2. Dental therapists, no more than 18 hours;
 - 3. Dental hygienists, no more than 15 hours;
 - 4. Denturists, no more than nine hours;
 - 5. Retired or Restricted Permit Holder dentists, dental therapists, or dental hygienists, no more than two hours; and
 - 6. Retired denturists, no more than two hours.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R.1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

ARTICLE 13. GENERAL ANESTHESIA AND SEDATION

R4-11-1301. General Anesthesia and Deep Sedation

A. Before administering General Anesthesia, or Deep Sedation by any means, in a dental office or dental clinic, a dentist shall possess a Section 1301 Permit issued by the Board. The dentist may renew a Section 1301 Permit every five years by complying with R4-11-1307.

B. To obtain or renew a Section 1301 Permit, a dentist shall:

- 1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3), and R4-11-1307, includes:
 - a. General information about the applicant such as:
 - i. Name;
 - ii. Home and office addresses and telephone numbers;
 - iii. Limitations of practice;
 - iv. Hospital affiliations;
 - v. Denial, curtailment, revocation, or suspension of hospital privileges;
 - vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
 - vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
 - b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
- 2. On forms provided by the Board, provide a dated and signed affidavit attesting that any office or dental clinic where the dentist will administer General Anesthesia or Deep Sedation:
 - a. Contains the following properly operating equipment and supplies during the provision of General Anesthesia and Deep Sedation:
 - i. Emergency Drugs;
 - ii. Electrocardiograph monitor;
 - iii. Pulse oximeter;
 - iv. Cardiac defibrillator or automated external defibrillator;
 - v. Positive pressure oxygen and supplemental oxygen;
 - vi. Suction equipment, including endotracheal, tonsillar, or pharyngeal and emergency backup medical suction device;
 - vii. Laryngoscope, multiple blades, backup batteries, and backup bulbs;
 - viii. Endotracheal tubes and appropriate connectors;
 - ix. Magill forceps;
 - x. Oropharyngeal and nasopharyngeal airways;
 - xi. Auxiliary lighting;

- xii. Stethoscope; and
 - xiii. Blood pressure monitoring device; and
 - b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring General Anesthesia or Deep Sedation shall hold a current course completion confirmation in cardiopulmonary resuscitation healthcare provider level;
 - 3. Hold a valid license to practice dentistry in this state;
 - 4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration; and
 - 5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
 - a. Advanced cardiac life support from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
 - b. Pediatric advanced life support in a practice treating pediatric patients; or
 - c. A recognized continuing education course in advanced airway management.
- C. Initial applicants shall meet one or more of the following conditions by submitting to the Board verification of meeting the condition directly from the issuing institution:
- 1. Complete, within the three years before submitting the permit application, a full credit load, as defined by the training program, during one calendar year of training, in anesthesiology or related academic subjects, beyond the undergraduate dental school level in a training program described in R4-11-1306(A), offered by a hospital accredited by the Joint Commission on Accreditation of Hospitals Organization, or sponsored by a university accredited by the American Dental Association Commission on Dental Accreditation;
 - 2. Be, within the three years before submitting the permit application, a Diplomate of the American Board of Oral and Maxillofacial Surgeons or eligible for examination by the American Board of Oral and Maxillofacial surgeons, a Fellow of the American Association of Oral and Maxillofacial surgeons, a Fellow of the American Dental Society of Anesthesiology, a Diplomate of the National Dental Board of Anesthesiology, or a Diplomate of the American Dental Board of Anesthesiology; or
 - 3. For an applicant who completed the requirements of subsections (C)(1) or (C)(2) more than three years before submitting the permit application, provide the following documentation:
 - a. On a form provided by the Board, a written affidavit affirming that the applicant has administered General Anesthesia or Deep Sedation to a minimum of 25 patients within the year before submitting the permit application or 75 patients within the last five years before submitting the permit application;
 - b. A copy of the General Anesthesia or Deep Sedation permit in effect in another state or certification of military training in General Anesthesia or Deep Sedation from the applicant's commanding officer; and
 - c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(a) through (f).
- D. After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer General Anesthesia or Deep Sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, a Section 1301 Permit shall be issued to the applicant.
- 1. The onsite evaluation team shall consist of:
 - a. Two dentists who are Board members, or Board designees for initial applications; or
 - b. One dentist who is a Board member or Board designee for renewal applications.
 - 2. The onsite team shall evaluate the following:
 - a. The availability of equipment and personnel as specified in subsection (B)(2);

- b. Proper administration of General Anesthesia or Deep Sedation to a patient by the applicant in the presence of the evaluation team;
 - c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
 - d. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of Controlled Substances;
 - e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient specified in subsection (D)(2)(b); and
 - f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
3. The evaluation team shall recommend one of the following:
 - a. Pass. Successful completion of the onsite evaluation;
 - b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
 - c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
 - d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
 - e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing education with the subject matter outlined in R4-11- 1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.
 4. The onsite evaluation of an additional dental office or dental clinic in which General Anesthesia or Deep Sedation is administered by an existing Section 1301 Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
 5. A Section 1301 mobile permit may be issued if a Section 1301 Permit holder travels to dental offices or dental clinics to provide anesthesia or Deep Sedation. The applicant must submit a completed affidavit verifying:
 - a. That the equipment and supplies for the provision of anesthesia or Deep Sedation as required in subsection (B)(2)(a) either travel with the Section 1301 Permit holder or are in place and in appropriate condition at the dental office or dental clinic where anesthesia or Deep Sedation is provided, and
 - b. Compliance with subsection (B)(2)(b).
- E. A Section 1301 Permit holder shall keep an anesthesia or Deep Sedation record for each General Anesthesia and Deep Sedation procedure that includes the following entries:
1. Pre-operative and post-operative electrocardiograph documentation;
 2. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
 3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
 4. A list of all medications given, with dosage and time intervals, and route and site of administration;
 5. Type of catheter or portal with gauge;
 6. Indicate nothing by mouth or time of last intake of food or water;
 7. Consent form; and

8. Time of discharge and status, including name of escort.
- F. The Section 1301 Permit holder, for intravenous access, shall use a new infusion set, including a new infusion line and new bag of fluid, for each patient.
- G. The Section 1301 Permit holder shall utilize supplemental oxygen for patients receiving General Anesthesia or Deep Sedation for the duration of the procedure.
- H. The Section 1301 Permit holder shall continuously supervise the patient from the initiation of anesthesia or Deep Sedation until termination of the anesthesia or Deep Sedation procedure and oxygenation, ventilation, and circulation are stable. The Section 1301 Permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.
- I. A Section 1301 Permit holder may employ the following health care professionals to provide anesthesia or sedation services and shall ensure that the health care professional continuously supervises the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation, and circulation are stable:
1. An allopathic or osteopathic physician currently licensed in Arizona by the Arizona Medical Board or the Arizona Board of Osteopathic Examiners who has successfully completed a residency program in anesthesiology approved by the American Council on Graduate Medical Education or the American Osteopathic Association or who is certified by either the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology and is credentialed with anesthesia privileges through an Arizona licensed medical facility, or
 2. A Certified Registered Nurse Anesthetist currently licensed in Arizona who provides services under the Nurse Practice Act in A.R.S. Title 32, Chapter 15.
- J. A Section 1301 Permit holder may also administer parenteral sedation without obtaining a Section 1302 Permit.

Historical Note

New Section R4-11-1301 renumbered from R4-11-802 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1302. Parenteral Sedation

- A. Before administering parenteral sedation in a dental office or dental clinic, a dentist shall possess a Section 1302 Permit issued by the Board. The dentist may renew a Section 1302 permit every five years by complying with R4-11-1307.
1. A Section 1301 Permit holder may also administer parenteral sedation.
 2. A Section 1302 Permit holder shall not administer or employ any agents which have a narrow margin for maintaining consciousness including, but not limited to, ultrashort acting barbiturates, propofol, parenteral ketamine, or similarly acting Drugs, agents, or techniques, or any combination thereof that would likely render a patient deeply sedated, generally anesthetized or otherwise not meeting the conditions of Moderate Sedation.
- B. To obtain or renew a Section 1302 Permit, the dentist shall:
1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:
 - a. General information about the applicant such as:
 - i. Name;
 - ii. Home and office addresses and telephone numbers;
 - iii. Limitations of practice;
 - iv. Hospital affiliations;
 - v. Denial, curtailment, revocation, or suspension of hospital privileges;
 - vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and

- vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
 - b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
 - 2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer parenteral sedation by intravenous or intramuscular route:
 - a. Contains the following properly operating equipment and supplies during the provision of parenteral sedation by the permit holder or General Anesthesia or Deep Sedation by a physician anesthesiologist or Certified Registered Nurse Anesthetist:
 - i. Emergency Drugs;
 - ii. Positive pressure oxygen and supplemental oxygen;
 - iii. Stethoscope;
 - iv. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
 - v. Oropharyngeal and nasopharyngeal airways;
 - vi. Pulse oximeter;
 - vii. Auxiliary lighting;
 - viii. Blood pressure monitoring device; and
 - ix. Cardiac defibrillator or automated external defibrillator; and
 - b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
 - i. Holds a current course completion confirmation in cardiopulmonary resuscitation health care provider level;
 - ii. Is present during the parenteral sedation procedure; and
 - iii. After the procedure, monitors the patient until discharge;
 - 3. Hold a valid license to practice dentistry in this state;
 - 4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration;
 - 5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
 - a. Advanced cardiac life support from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
 - b. Pediatric advanced life support in a practice treating pediatric patients; or
 - c. A recognized continuing education course in advanced airway management.
- C. Initial applicants shall meet one of the following conditions:
- 1. Successfully complete Board-recognized undergraduate, graduate, or postgraduate education within the three years before submitting the permit application, that includes the following:
 - a. Sixty didactic hours of basic parenteral sedation to include:
 - i. Physical evaluation;
 - ii. Management of medical emergencies;
 - iii. The importance of and techniques for maintaining proper documentation; and
 - iv. Monitoring and the use of monitoring equipment; and
 - b. Hands-on administration of parenteral sedative medications to at least 20 patients in a manner consistent with this Section; or
 - 2. An applicant who completed training in parenteral sedation more than three years before submitting the permit application shall provide the following documentation:
 - a. On a form provided by the Board, a written affidavit affirming that the applicant has administered parenteral sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;

- b. A copy of the parenteral sedation permit in effect in another state or certification of military training in parenteral sedation from the applicant's commanding officer; and
 - c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(b) through (f).
- D. After submitting the application and written evidence of compliance with requirements outlined in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer parenteral sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1302 Permit to the applicant.
- 1. The onsite evaluation team shall consist of:
 - a. Two dentists who are Board members, or Board designees for initial applications, or
 - b. One dentist who is a Board member or Board designee for renewal applications.
 - 2. The onsite team shall evaluate the following:
 - a. The availability of equipment and personnel as specified in subsection (B)(2);
 - b. Proper administration of parenteral sedation to a patient by the applicant in the presence of the evaluation team;
 - c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
 - d. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of all Controlled Substances;
 - e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient receiving parenteral sedation as specified in subsection (D)(2)(b); and
 - f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
 - 3. The evaluation team shall recommend one of the following:
 - a. Pass. Successful completion of the onsite evaluation;
 - b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
 - c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
 - d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
 - e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing education with the subject matter outlined in R4-11-1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.
 - 4. The onsite evaluation of an additional dental office or dental clinic in which parenteral sedation is administered by an existing Section 1302 Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
 - 5. A Section 1302 mobile permit may be issued if a Section 1302 Permit holder travels to dental offices or dental clinics to provide parenteral sedation. The applicant must submit a completed affidavit verifying:

- a. That the equipment and supplies for the provision of parenteral sedation as required in R4-11- 1302(B)(2)(a) either travel with the Section 1302 Permit holder or are in place and in appropriate working condition at the dental office or dental clinic where parenteral sedation is provided, and
 - b. Compliance with R4-11-1302(B)(2)(b).
- E. A Section 1302 Permit holder shall keep a parenteral sedation record for each parenteral sedation procedure that:
 - 1. Includes the following entries:
 - a. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
 - b. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
 - c. A list of all medications given, with dosage and time intervals and route and site of administration;
 - d. Type of catheter or portal with gauge;
 - e. Indicate nothing by mouth or time of last intake of food or water;
 - f. Consent form; and
 - g. Time of discharge and status, including name of escort; and
 - 2. May include pre-operative and post-operative electrocardiograph report.
- F. The Section 1302 Permit holder shall establish intravenous access on each patient receiving parenteral sedation utilizing a new infusion set, including a new infusion line and new bag of fluid.
- G. The Section 1302 Permit holder shall utilize supplemental oxygen for patients receiving parenteral sedation for the duration of the procedure.
- H. The Section 1302 Permit holder shall continuously supervise the patient from the initiation of parenteral sedation until termination of the parenteral sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1302 Permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.
- I. A Section 1302 Permit holder may employ a health care professional as specified in R4-11-1301(I).

Historical Note

New Section R4-11-1302 renumbered from R4-11-803 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1303. Oral Sedation

- A. Before administering Oral Sedation in a dental office or dental clinic, a dentist shall possess a Section 1303 Permit issued by the Board. The dentist may renew a Section 1303 Permit every five years by complying with R4-11-1307.
 - 1. A Section 1301 Permit holder or Section 1302 Permit holder may also administer Oral Sedation without obtaining a Section 1303 Permit.
 - 2. The administration of a single Drug for Minimal Sedation does not require a Section 1303 Permit if:
 - a. The administered dose is within the Food and Drug Administration's maximum recommended dose as printed in the Food and Drug Administration's approved labeling for unmonitored home use;
 - i. Incremental multiple doses of the Drug may be administered until the desired effect is reached, but does not exceed the maximum recommended dose; and
 - ii. During Minimal Sedation, a single supplemental dose may be administered. The supplemental dose may not exceed one-half of the initial dose and the total aggregate dose may not exceed one and one-half times the Food and Drug Administration's maximum recommended dose on the date of treatment; and
 - b. Nitrous oxide/oxygen may be administered in addition to the oral Drug as long as the

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- combination does not exceed Minimal Sedation.
- B. To obtain or renew a Section 1303 Permit, a dentist shall:
1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:
 - a. General information about the applicant such as:
 - i. Name;
 - ii. Home and office addresses and telephone numbers;
 - iii. Limitations of practice;
 - iv. Hospital affiliations;
 - v. Denial, curtailment, revocation, or suspension of hospital privileges;
 - vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
 - vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
 - b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
 2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer Oral Sedation:
 - a. Contains the following properly operating equipment and supplies during the provision of sedation:
 - i. Emergency Drugs;
 - ii. Cardiac defibrillator or automated external defibrillator;
 - iii. Positive pressure oxygen and supplemental oxygen;
 - iv. Stethoscope;
 - v. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
 - vi. Pulse oximeter;
 - vii. Blood pressure monitoring device; and
 - viii. Auxiliary lighting; and
 - b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
 - i. Holds a current certificate in cardiopulmonary resuscitation healthcare provider level;
 - ii. Is present during the Oral Sedation procedure; and
 - iii. After the procedure, monitors the patient until discharge;
 3. Hold a valid license to practice dentistry in this state;
 4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration;
 5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
 - a. Cardiopulmonary resuscitation healthcare provider level from the American Heart Association, American Red Cross, or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
 - b. Pediatric advanced life support in a practice treating pediatric patients; or
 - c. A recognized continuing education course in advanced airway management.
- C. Initial applicants shall meet one of the following by submitting to the Board verification of meeting the condition directly from the issuing institution:
1. Complete a Board-recognized post-doctoral residency program that includes documented training in Oral Sedation within the last three years before submitting the permit application; or
 2. Complete a Board recognized post-doctoral residency program that includes documented training in Oral Sedation more than three years before submitting the permit application shall provide the following documentation:
 - a. On a form provided by the Board, a written affidavit affirming that the applicant has administered Oral Sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;

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- b. A copy of the Oral Sedation permit in effect in another state or certification of military training in Oral Sedation from the applicant's commanding officer; and
 - c. On a form provided by the Board, a written affidavit affirming the completion of 30 hours of continuing education taken within the last five years as outlined in R4-11-1306(C)(1)(a) through (f); or
 3. Provide proof of participation in 30 clock hours of Board- recognized undergraduate, graduate, or post-graduate education in Oral Sedation within the three years before submitting the permit application that includes:
 - a. Training in basic Oral Sedation,
 - b. Pharmacology,
 - c. Physical evaluation,
 - d. Management of medical emergencies,
 - e. The importance of and techniques for maintaining proper documentation, and
 - f. Monitoring and the use of monitoring equipment.
 - D. After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1303 Permit to the applicant.
 1. The onsite evaluation team shall consist of:
 - a. For initial applications, two dentists who are Board members, or Board designees.
 - b. For renewal applications, one dentist who is a Board member, or Board designee.
 2. The onsite team shall evaluate the following:
 - a. The availability of equipment and personnel as specified in subsection (B)(2);
 - b. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
 - c. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of Controlled Substances;
 - d. Proper recordkeeping as specified in subsection (E) by reviewing the forms that document the Oral Sedation record; and
 - e. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
 3. The evaluation team shall recommend one of the following:
 - a. Pass. Successful completion of the onsite evaluation;
 - b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substance, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before permit will be issued;
 - c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency; or
 - d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency.
 4. The onsite evaluation of an additional dental office or dental clinic in which Oral Sedation is administered by a Section 1303 Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
 5. A Section 1303 mobile permit may be issued if the Section 1303 Permit holder travels to dental offices or dental clinics to provide Oral Sedation. The applicant must submit a completed affidavit verifying:
 - a. That the equipment and supplies for the provision of Oral Sedation as required in R4-11-1303(B)(2)(a) either travel with the Section 1303 Permit holder or are in place and

- in appropriate condition at the dental office or dental clinic where Oral Sedation is provided, and
- b. Compliance with R4-11-1303(B)(2)(b).
- E. A Section 1303 Permit holder shall keep an Oral Sedation record for each Oral Sedation procedure that:
1. Includes the following entries:
 - a. Pre-operative, intra-operative, and post-operative, pulse oximeter oxygen saturation and pulse rate documentation;
 - b. Pre-operative and post-operative blood pressure;
 - c. Documented reasons for not taking vital signs if a patient's behavior or emotional state prevents monitoring personnel from taking vital signs;
 - d. List of all medications given, including dosage and time intervals;
 - e. Patient's weight;
 - f. Consent form;
 - g. Special notes, such as, nothing by mouth or last intake of food or water; and
 - h. Time of discharge and status, including name of escort; and
 2. May include the following entries:
 - a. Pre-operative and post-operative electrocardiograph report; and
 - b. Intra-operative blood pressures.
- F. The Section 1303 Permit holder shall utilize supplemental oxygen for patients receiving Oral Sedation for the duration of the procedure.
- G. The Section 1303 Permit holder shall ensure the continuous supervision of the patient from the administration of Oral Sedation until oxygenation, ventilation and circulation are stable and the patient is appropriately responsive for discharge from the dental office or dental clinic.
- H. A Section 1303 Permit holder may employ a health care professional to provide anesthesia services, if all of the following conditions are met:
1. The physician anesthesiologist or Certified Registered Nurse Anesthetist meets the requirements as specified in R4-11-1301(I);
 2. The Section 1303 Permit holder has completed course- work within the two years prior to submitting the permit application in one or more of the following:
 - a. Advanced cardiac life support from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
 - b. Pediatric advanced life support in a practice treating pediatric patients;
 - c. A recognized continuing education course in advanced airway management;
 3. The Section 1303 Permit holder ensures that:
 - a. The dental office or clinic contains the equipment and supplies listed in R4-11-1304(B)(2)(a) during the provision of anesthesia or sedation by the physician anesthesiologist or Certified Registered Nurse Anesthetist;
 - b. The anesthesia or sedation record contains all the entries listed in R4-11-1304(D);
 - c. For intravenous access, the physician anesthesiologist or Certified Registered Nurse Anesthetist uses a new infusion set, including a new infusion line and new bag of fluid for each patient; and
 - d. The patient is continuously supervised from the administration of anesthesia or sedation until the termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1303 Permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guide- lines for discharge.

Historical Note

New Section R4-11-1303 renumbered from R4-11-805 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4- 11-1303 renumbered to R4-11-1304; new Section R4-11- 1303 made by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1304. Permit to Employ or Work with a Physician Anesthesiologist or Certified Registered Nurse Anesthetist (CRNA)

- A. This Section does not apply to a Section 1301 permit holder or a Section 1302 permit holder practicing under the provisions of R4-11-1302(I) or a Section 1303 permit holder practicing under the provisions of R4-11-1303(H). A dentist may utilize a physician anesthesiologist or certified registered nurse anesthetist (CRNA) for anesthesia or sedation services while the dentist provides treatment in the dentist's office or dental clinic after obtaining a Section 1304 permit issued by the Board.
1. The physician anesthesiologist or CRNA meets the requirements as specified in R4-11-1301(I).
 2. The dentist permit holder shall provide all dental treatment and ensure that the physician anesthesiologist or CRNA remains on the dental office or dental clinic premises until any patient receiving anesthesia or sedation services is discharged.
 3. A dentist may renew a Section 1304 permit every five years by complying with R4-11-1307.
- B. To obtain or renew a Section 1304 permit, a dentist shall:
1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307 includes:
 - a. General information about the applicant such as:
 - i. Name;
 - ii. Home and office addresses and telephone numbers;
 - iii. Limitations of practice;
 - iv. Hospital affiliations;
 - v. Denial, curtailment, revocation, or suspension of hospital privileges;
 - vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
 - vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
 - b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
 2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist provides treatment during administration of general anesthesia or sedation by a physician anesthesiologist or CRNA:
 - a. Contains the following properly operating equipment and supplies during the provision of general anesthesia and sedation:
 - i. Emergency drugs;
 - ii. Electrocardiograph monitor;
 - iii. Pulse oximeter;
 - iv. Cardiac defibrillator or automated external defibrillator (AED);
 - v. Positive pressure oxygen and supplemental continuous flow oxygen;
 - vi. Suction equipment, including endotracheal, tonsillar or pharyngeal and emergency backup medical suction device;
 - vii. Laryngoscope, multiple blades, backup batteries and backup bulbs;
 - viii. Endotracheal tubes and appropriate connectors;
 - ix. Magill forceps;
 - x. Oropharyngeal and nasopharyngeal airways;
 - xi. Auxiliary lighting;
 - xii. Stethoscope; and
 - xiii. Blood pressure monitoring device; and
 - b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring general anesthesia or sedation shall hold a current completion confirmation in cardiopulmonary resuscitation (CPR) Health Care Provider level;
 3. Hold a valid license to practice dentistry in this state; and
 4. Provide confirmation of completing coursework within the last two years prior to submitting the permit application in one or more of the following:
 - a. Advanced cardiac life support (ACLS) from the American Heart Association or another

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- agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
 - b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
 - c. A recognized continuing education course in advanced airway management.
- C. After submitting the application and written evidence of compliance with requirements in subsection (B) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue the applicant a Section 1304 permit.
- 1. The onsite evaluation team shall consist of one dentist who is a Board member, or Board designee.
 - 2. The onsite team shall evaluate the following:
 - a. The availability of equipment and personnel as specified in subsection (B)(2);
 - b. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of controlled substances; and
 - c. Proper recordkeeping as specified in subsection (E) by reviewing previous anesthesia or sedation records.
 - 3. The evaluation team shall recommend one of the following:
 - a. Pass. Successful completion of the onsite evaluation; or
 - b. Conditional approval for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued.
 - 4. The evaluation of an additional dental office or dental clinic in which a Section 1304 permit holder provides treatment during the administration general anesthesia or sedation by a physician anesthesiologist or CRNA may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (B)(2).
- D. A Section 1304 permit holder shall keep an anesthesia or sedation record for each general anesthesia and sedation procedure that includes the following entries:
- 1. Pre-operative and post-operative electrocardiograph documentation;
 - 2. Pre-operative, intra-operative, and post-operative, pulse oximeter documentation;
 - 3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation; and
 - 4. A list of all medications given, with dosage and time intervals and route and site of administration;
 - 5. Type of catheter or portal with gauge;
 - 6. Indicate nothing by mouth or time of last intake of food or water;
 - 7. Consent form; and
 - 8. Time of discharge and status, including name of escort.
- E. For intravenous access, a Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA uses a new infusion set, including a new infusion line and new bag of fluid for each patient.
- F. A Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA utilizes supplemental continuous flow oxygen for patients receiving general anesthesia or sedation for the duration of the procedure.
- G. The Section 1304 permit holder shall continuously supervise the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1304 permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guidelines for discharge.

Historical Note

New Section R4-11-1304 renumbered from R4-11-805 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4- 11-1304 renumbered to R4-11-1305; new Section R4-11- 1304 renumbered from R4-11-1303 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section repealed; new Section made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1305. Reports of Adverse Occurrences

If a death, or incident requiring emergency medical response, occurs in a dental office or dental clinic during the administration of or recovery from general anesthesia, deep sedation, moderate sedation, or minimal sedation, the permit holder and the treating dentist involved shall submit a complete report of the incident to the Board within 10 days after the occurrence.

Historical Note

New Section R4-11-1305 renumbered from R4-11-806 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4- 11-1305 renumbered to R4-11-1306; new Section R4-11- 1305 renumbered from R4-11-1304 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section repealed; new Section made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1306. Education; Continued Competency

- A. To obtain a Section 1301, permit by satisfying the education requirement of R4-11-1301(B)(6), a dentist shall successfully complete an advanced graduate or post-graduate education program in pain control.
1. The program shall include instruction in the following subject areas:
 - a. Anatomy and physiology of the human body and its response to the various pharmacologic agents used in pain control;
 - b. Physiological and psychological risks for the use of various modalities of pain control;
 - c. Psychological and physiological need for various forms of pain control and the potential response to pain control procedures;
 - d. Techniques of local anesthesia, sedation, and general anesthesia, and psychological management and behavior modification, as they relate to pain control in dentistry; and
 - e. Handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway, and cardiopulmonary resuscitation.
 2. The program shall consist of didactic and clinical training. The didactic component of the program shall:
 - a. Be the same for all dentists, whether general practitioners or specialists; and
 - b. Include each subject area listed in subsection (A)(1).
 3. The program shall provide at least one calendar year of training as prescribed in R4-11-1301(B)(6)(a).
- B. To maintain a Section 1301 or 1302 permit under R4-11-1301 or R4-11-1302 a permit holder shall:
1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
 - a. General anesthesia,
 - b. Parenteral sedation,
 - c. Physical evaluation,
 - d. Medical emergencies,
 - e. Monitoring and use of monitoring equipment, or
 - f. Pharmacology of drugs and non-drug substances used in general anesthesia or parenteral sedation; and
 2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
 - a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
 - b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
 - c. A recognized continuing education course in advanced airway management;
 3. Complete at least 10 general anesthesia, deep sedation or parenteral sedation cases a calendar year; and
 4. Apply a maximum of six hours from subsection (B)(2) toward the continuing education requirements for subsection (B)(1).

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- C. To maintain a Section 1303 permit issued under R4-11-1303, a permit holder shall:
1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
 - a. Oral sedation,
 - b. Physical evaluation,
 - c. Medical emergencies,
 - d. Monitoring and use of monitoring equipment, or
 - e. Pharmacology of oral sedation drugs and non-drug substances; and
 2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
 - a. Cardiopulmonary resuscitation (CPR) Health Care Provider level from the American Heart Association, American Red Cross or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
 - b. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
 - c. Pediatric advanced life support (PALS);
 - d. A recognized continuing education course in advanced airway management; and
 3. Complete at least 10 oral sedation cases a calendar year.

Historical Note

Section R4-11-1306 renumbered from R4-11-1305 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1307. Renewal of Permit

- A. To renew a Section 1301, 1302, or 1303 permit, the permit holder shall:
1. Provide written documentation of compliance with the applicable continuing education requirements in R4-11-1306;
 2. Provide written documentation of compliance with the continued competency requirements in R4-11-1306;
 3. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1301, R4-11-1302, or R4-11-1303; and
 4. Not less than 90 days before the expiration of a permit holder's current permit, arrange for an onsite evaluation as described in R4-11-1301, R4-11-1302, or R4-11-1303.
- B. To renew a Section 1304 permit, the permit holder shall:
1. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1304; and
 2. Not less than 90 days before the expiration of a permit holder's current permit, arrange for an onsite evaluation as described in R4-11-1304.
- C. After the permit holder successfully completes the evaluation and submits the required affidavits, the Board shall renew a Section 1301, 1302, 1303, 1304 permit, as applicable.
- D. The Board may stagger due dates for renewal applications.

Historical Note

Made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

ARTICLE 14. DISPENSING DRUGS AND DEVICES

R4-11-1401. Prescribing

- A. In addition to the requirements of A.R.S. § 32-1298(C), a dentist shall ensure that a prescription order contains the following information:
1. Date of issuance;
 2. Name and address of the patient to whom the prescription is issued;
 3. Name, strength, dosage form, and quantity of the drug or name and quantity of the device prescribed;
 4. Name and address of the dentist prescribing the drug; and
 5. Drug Enforcement Administration registration number of the dentist, if prescribing a controlled substance.
- B. Before dispensing a drug or device, a dentist shall present to the patient a written prescription for the drug or device being dispensed that includes on the prescription the following statement in bold type: "This prescription may be filled by the prescribing dentist or by a pharmacy of your choice."

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1401 repealed, new Section R4-11-1401 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp.05-1).

R4-11-1402. Labeling and Dispensing

- A. A dentist shall include the following information on the label of all drugs and devices dispensed:
1. The dentist's name, address, and telephone number;
 2. The serial number;
 3. The date the drug or device is dispensed;
 4. The patient's name;
 5. Name, strength, and quantity of drug or name and quantity of device dispensed;
 6. The name of the drug or device manufacturer or distributor;
 7. Directions for use and cautionary statement necessary for safe and effective use of the drug or device; and
 8. If a controlled substance is prescribed, the cautionary statement "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed."
- B. Before delivery to the patient, the dentist shall prepare and package the drug or device to ensure compliance with the prescription and personally inform the patient of the name of the drug or device, directions for its use, precautions, and storage requirements.
- C. A dentist shall purchase all dispensed drugs and devices from a manufacturer, distributor, or pharmacy that is properly licensed in this state or one of the other 49 states, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States of America.
- D. When dispensing a prescription drug or device from a prescription order, a dentist shall perform the following professional practices:
1. Verify the legality and pharmaceutical feasibility of dispensing a drug based upon:
 - a. A patient's allergies,
 - b. Incompatibilities with a patient's currently taken medications,
 - c. A patient's use of unusual quantities of dangerous drugs or narcotics, and
 - d. The frequency of refills;
 2. Verify that the dosage is within proper limits;
 3. Interpret the prescription order;
 4. Prepare, package, and label, or assume responsibility for preparing, packaging, and labeling, the drug or device dispensed under each prescription order;
 5. Check the label to verify that the label precisely communicates the prescriber's directions and hand-initial each label;
 6. Record, or assume responsibility for recording, the serial number and date dispensed on the front of the original prescription order; and
 7. Record on the original prescription order the name or initials of the dentist who dispensed the order.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1402 renumbered to R4-11-1201, new Section R4-11-1402 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1403. Storage and Packaging

A dentist shall:

1. Keep all prescription-only drugs and devices in a secured area and control access to the secured area by written procedure. The dentist shall make the written procedure available to the Board or its authorized agents on demand for inspection or copying;
2. Keep all controlled substances secured in a locked cabinet or room, control access to the cabinet or room by written procedure, and maintain an ongoing inventory of the contents. The dentist shall make the written procedure available to the Board or its authorized agents on demand for inspection or copying;
3. Maintain drug storage areas so that the temperature in the drug storage areas does not exceed 85° F;
4. Not dispense a drug or device that has expired or is improperly labeled;
5. Not redispense a drug or device that has been returned;
6. Dispense a drug or device:
 - a. In a prepackaged container or light-resistant container with a consumer safety cap, unless the patient or patient's representative requests a non-safety cap; and
 - b. With a label that is mechanically or electronically printed;
7. Destroy an outdated, deteriorated, or defective controlled substance according to Drug Enforcement Administration regulations or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration; and
8. Destroy an outdated, deteriorated, or defective non-controlled substance drug or device by returning it to the supplier or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1403 renumbered to R4-11-1202, new Section R4-11-1403 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1404. Recordkeeping

A. A dentist shall:

1. Chronologically date and sequentially number prescription orders in the order that the drugs or devices are originally dispensed;
 2. Sequentially file orders separately from patient records, as follows:
 - a. File Schedule II drug orders separately from all other prescription orders;
 - b. File Schedule III, IV, and V drug orders separately from all other prescription orders; and
 - c. File all other prescription orders separately from orders specified in subsections (A)(2)(a) and (b);
 3. Record the name of the manufacturer or distributor of the drug or device dispensed on each prescription order and label;
 4. Record the name or initials of the dentist dispensing the drug or device on each prescription order and label; and
 5. Record the date the drug or device is dispensed on each prescription order and label.
- B. A dentist shall record in the patient's dental record the name, dosage form, and strength of the drug or device dispensed, the quantity or volume dispensed, the date the drug or device is dispensed, and the dental therapeutic reasons for dispensing the drug or device.
- C. A dentist shall maintain:

1. Purchase records of all drugs and devices for three years from the date purchased; and
 2. Dispensing records of all drugs and devices for three years from the date dispensed.
- D. A dentist who dispenses controlled substances:
1. Shall inventory Schedule II, III, IV, and V controlled substances as prescribed by A.R.S. § 36-2523;
 2. Shall perform a controlled substance inventory on March 1 annually, if directed by the Board, and at the opening or closing of a dental practice;
 3. Shall maintain the inventory for three years from the inventory date;
 4. May use one inventory book for all controlled substances;
 5. When conducting an inventory of Schedule II controlled substances, shall take an exact count;
 6. When conducting an inventory of Schedule III, IV, and V controlled substances, shall take an exact count or may take an estimated count if the stock container contains fewer than 1001 units.
- E. A dentist shall maintain invoices for drugs and devices dispensed for three years from the date of the invoices, filed as follows:
1. File Schedule II controlled substance invoices separately from records that are not Schedule II controlled substance invoices;
 2. File Schedule III, IV, and V controlled substance invoices separately from records that are not Schedule III, IV, and V controlled substance invoices; and
 3. File all non-controlled substance invoices separately from the invoices referenced in subsections (E)(1) and (2).
- F. A dentist shall file Drug Enforcement Administration order form (DEA Form 222) for a controlled substance sequentially and separately from every other record.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1404 renumbered to R4-11-1203, new Section R4-11-1404 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1405. Compliance

- A. A dentist who determines that there has been a theft or loss of Drugs or Controlled Substances from the dentist's office shall immediately notify a local law enforcement agency and the Board and provide written notice of the theft or loss in the following manner:
1. For non-Controlled Substance Drug theft or loss, provide the law enforcement agency and the Board with a written report explaining the theft or loss; or
 2. For Controlled Substance theft or loss, complete a Drug Enforcement Administration's 106 form; and
 3. Provide copies of the Drug Enforcement Administration's 106 form to the Drug Enforcement Administration and the Board within one day of the discovery.
- B. A dentist who dispenses Drugs or devices in a manner inconsistent with this Article is subject to discipline under A.R.S. Title 32, Chapter 11, Article 3.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1405 renumbered to R4-11-1204, new Section R4-11-1405 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1406. Dispensing for Profit Registration and Renewal

- A. A dentist who is currently licensed to practice dentistry in Arizona may dispense controlled substances, prescription-only drugs, and prescription-only devices for profit only after providing

the Board the following information:

1. A completed registration form that includes the following information:
 - a. The dentist's name and dental license number;
 - b. A list of the types of drugs and devices to be dispensed for profit, including controlled substances; and
 - c. Locations where the dentist desires to dispense the drugs and devices for profit; and
 2. A copy of the dentist's current Drug Enforcement Administration Certificate of Registration for each dispensing location from which the dentist desires to dispense the drugs and devices for profit.
- B. The Board shall issue a numbered certificate indicating the dentist is registered with the Board to dispense drugs and devices for profit.
- C. A dentist shall renew a registration to dispense drugs and devices for profit by complying with the requirements in subsection (A) before the dentist's license renewal date. When a dentist has made timely and complete application for the renewal of a registration, the dentist may continue to dispense until the Board approves or denies the application. Failure to renew a registration shall result in immediate loss of dispensing for profit privileges.

Historical Note

Adopted effective July 21, 1995; inadvertently not published with Supp. 95-3 (Supp. 95-4). Former Section R4- 11-1406 renumbered to R4-11-1205, new Section R4-11- 1406 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1407. Renumbered

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1407 renumbered to R4-11-1206 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1408. Renumbered

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1408 renumbered to R4-11-1207 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1409. Repealed

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1409 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 15. COMPLAINTS, INVESTIGATIONS, DISCIPLINARY ACTION

R4-11-1501. Ex-parte Communication

A complainant, licensee, certificate holder, business entity or mobile dental permit holder against whom a complaint is filed, shall not engage in ex-parte communication by means of a written or oral communication between a decision maker, fact finder, or Board member and only one party to the proceeding.

Historical Note

New Section R4-11-1501 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

R4-11-1502. Dental Consultant Qualifications

A dentist, dental hygienist, or denturist approved as a Board dental consultant shall:

1. Possess a valid license or certificate to practice in Arizona;
2. Have practiced at least five years in Arizona; and
3. Not have been disciplined by the Board within the past five years.

Historical Note

New Section R4-11-1502 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

R4-11-1503. Initial Complaint Review

A. The Board's procedures for complaint notification are:

1. Board personnel shall notify the complainant and licensee, certificate holder, business entity or mobile dental permit holder by certified U.S. Mail when the following occurs:
 - a. A formal interview is scheduled,
 - b. The complaint is tabled,
 - c. A postponement or continuance is granted, and
 - d. A subpoena, notice, or order is issued.
2. Board personnel shall provide the licensee, certificate holder, business entity, or mobile dental permit holder with a copy of the complaint.
3. If a complaint alleges a violation of the state or federal criminal code, the Board shall refer the complaint to the proper law enforcement agency.

B. The Board's procedures for complaints referred to clinical evaluation are:

1. Except as provided in subsection (B)(1)(a), the president's designee shall appoint one or more dental consultants to perform a clinical evaluation. If there is more than one dental consultant, the dental consultants do not need to be present at the same time.
 - a. If the complaint involves a dental hygienist, denturist, or dentist who is a recognized specialist in one of the areas listed in R4-11-1102(B), the president's designee shall appoint a dental consultant from that area of practice or specialty.
 - b. The Board shall not disclose the identity of the licensee to a dental consultant performing a clinical examination before the Board receives the dental consultant's report.
2. The dental consultant shall prepare and submit a clinical evaluation report. The president's designee shall provide a copy of the clinical evaluation report to the licensee or certificate holder. The licensee or certificate holder may submit a written response to the clinical evaluation report.

Historical Note

New Section R4-11-1503 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

R4-11-1504. Postponement of Interview

A. The licensee, certificate holder, business entity, or mobile dental permit holder may request a postponement of a formal interview. The Board or its designee shall grant a postponement until the next regularly scheduled Board meeting if the licensee, certificate holder, business entity, or mobile dental permit holder makes a postponement request and the request:

1. Is made in writing,
2. States the reason for the postponement, and
3. Is received by the Board within 15 calendar days after the date the respondent received the formal interview request.

B. Within 48 hours of receipt of a request for postponement of a formal interview, the Board or its designee shall:

1. Review and either deny or approve the request for postponement; and
2. Notify in writing the complainant and licensee, certificate holder, business entity, or mobile dental permit holder of the decision to either deny or approve the request for postponement.

Historical Note

New Section R4-11-1504 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 3669, effective April 30, 2003 (Supp. 03-3). New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

ARTICLE 16. EXPIRED

R4-11-1601. Expired

Historical Note

New Section R4-11-1601 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 14 A.A.R. 3183, effective April 30, 2008.

ARTICLE 17. REHEARING OR REVIEW

R4-11-1701. Procedure

- A. Except as provided in subsection (F), a licensee, certificate holder, or business entity who is aggrieved by an order issued by the Board may file a written motion for rehearing or review with the Board, pursuant to A.R.S. Title 41, Chapter 6, Article 10, specifying the grounds for rehearing or review.
- B. A licensee, certificate holder, or business entity filing a motion for rehearing or review under this rule may amend the motion at any time before it is ruled upon by the Board. The opposing party may file a response within 15 days after the date the motion for rehearing or review is filed. The Board may require that the parties file supplemental memoranda explaining the issues raised in the motion, and may permit oral argument.
- C. The Board may grant a rehearing or review of the order for any of the following causes materially affecting a licensee, certificate holder, or business entity's rights:
 - 1. Irregularity in the proceedings of the Board or any order or abuse of discretion, which deprived a licensee, certificate holder, or business entity of a fair hearing;
 - 2. Misconduct of the Board, its personnel, the administrative law judge, or the prevailing party;
 - 3. Accident or surprise which could not have been prevented by ordinary prudence;
 - 4. Excessive or insufficient penalties;
 - 5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding;
 - 6. That the findings of fact or decision is arbitrary, capricious, or an abuse of discretion;
 - 7. That the findings of fact or decision is not justified by the evidence or is contrary to law; or
 - 8. Newly discovered, material evidence which could not, with reasonable diligence, have been discovered and produced at the original hearing.
- D. The Board may affirm or modify the order or grant a rehearing or review to all or part of the issues for any of the reasons in subsection (C). The Board, within the time for filing a motion for rehearing or review, may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. An order granting a rehearing or review shall specify the grounds on which rehearing or review is granted, and any rehearing or review shall cover only those matters specified.
- E. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after such service, serve opposing affidavits.
- F. If the Board makes specific findings that the immediate effectiveness of the order is necessary for the preservation of public health and safety and that a rehearing or review is impracticable, unnecessary, or contrary to the public interest, the order may be issued as a final order without an opportunity for a rehearing or review. If an order is issued as a final order without an opportunity or rehearing or review, the aggrieved party shall make an application for judicial review of the order within the time limits permitted for application for judicial review of the Board's final order.
- G. The Board shall rule on the motion for rehearing or review within 15 days after the response has been filed, or at the Board's next meeting after the motion is received, whichever is later.

Historical Note

New Section R4-11-1701 renumbered from R4-11-701 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 21 A.A.R. 2971, effective January 2, 2016 (Supp. 15-4).

ARTICLE 18. BUSINESS ENTITIES

R4-11-1801. Application

Before offering dental services, a business entity required to be registered under A.R.S. § 32-1213 shall apply for registration on an application form supplied by the Board. In addition to the requirements of A.R.S. § 32-1213(B) and the fee under R4-11-402, the registration application shall include a sworn statement from the applicant that:

1. The information provided by the business entity is true and correct, and
2. No information is omitted from the application.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1802. Display of Registration

- A. A business entity shall ensure that the receipt for the current registration period is:
 1. Conspicuously displayed in the dental practice in a manner that is always readily observable by patients and visitors, and
 2. Exhibited to members of the Board or to duly authorized agents of the Board on request.
- B. A business entity's receipt for the licensure period immediately preceding shall be kept on display until replaced by the receipt for the current period.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).



Arizona State Board of Dental Examiners

"Caring for the Public's Dental
Health and Professional Standards"

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April 3, 2023

Nicole Sornsin, Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Ave., Ste. 402
Phoenix, AZ 85007

RE: Five-year-review Report for 4 A.A.C. 11, Articles 13 and 17

In compliance with A.R.S. § 41-1056(A), the Arizona State Board of Dental Examiners (Board) has reviewed all of the rules in A.A.C. Title 4, Chapter 1, Articles 13 and 17 and submits the enclosed report to the Council for approval. The Board certifies that it is in compliance with A.R.S. § 41-1091. The Board contact person for this report is Ryan Edmonson, Executive Director, who may be reached at (602) 542-4493.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ryan Edmonson", is written over a light blue horizontal line.

Ryan Edmonson
Executive Director
Arizona State Board of Dental Examiners

Enclosures: Five-Year Rule Review
Five-Year Rule Review Summary Table
Board's Current Statutes and Rules

BOARD OF DENTAL EXAMINERS

Five-year-review Report: A.A.C. Title 4, Chapter 11, Articles 13 and 17

February 2023

Five-year-review Report

A.A.C. Title 4. Professions and Occupations

Chapter 11. State Board of Dental Examiners

INTRODUCTION

The Board protects the health, safety, and welfare of the public by licensing, regulating, and disciplining dental professionals. The mission of the Board is to provide professional, courteous service and information to dental professionals and the public. The Board licenses dentists, dental therapists, and dental hygienists by examination or credential. The Board certifies denturists and registers business entities that offer dental services. The Board also issues permits to dentists to administer anesthesia or sedation or to operate a mobile facility or portable dental unit.

Statute that generally authorizes the agency to make rules: A.R.S. § 32-1207(A)(1)

1. Specific statute authorizing the rule:

R4-11-1301. A.R.S. § 32-1207(A)(14), (B)(3)(b), and (E)

R4-11-1302. A.R.S. § 32-1207(A)(14), (B)(3)(b), and (E)

R4-11-1303. A.R.S. § 32-1207(A)(14), (B)(3)(b), and (E)

R4-11-1304. A.R.S. § 32-1207(A)(14), (B)(3)(b), and (E)

R4-11-1305. A.R.S. § 32-1207(A)(14), (B)(3)(b), and (E)

R4-11-1306. A.R.S. § 32-1207(A)(14), (B)(3)(b), and (E)

R4-11-1307. A.R.S. § 32-1207(A)(14), (B)(3)(b), and (E)

R4-11-1701. A.R.S. § 32-1263.02(H)

2. Objective of the rule including the purpose for the existence of the rule:

R4-11-1301. General Anesthesia and Deep Sedation: The objective of this rule is to specify the requirements for obtaining a Section 1301 permit, which authorizes the administration of general anesthesia or deep sedation by any means. In addition to application and education requirements, the rule specifies required equipment, supplies, assistive personnel, and

recordkeeping. The rule also describes the standards for passing an onsite evaluation. These requirements are designed to protect the health and safety of individuals receiving sedation during a dental procedure.

R4-11-1302. Parenteral Sedation: The objective of this rule is to specify the requirements for obtaining a Section 1302 permit, which authorizes the administration of parenteral or moderate sedation. In addition to specifying limitations of action under a Section 1302 permit, the rule specifies application and education requirements, required equipment, supplies, assistive personnel, and recordkeeping. The rule also describes the standards for passing an onsite evaluation. These requirements are designed to protect the health and safety of individuals receiving sedation during a dental procedure.

R4-11-1303. Oral Sedation: The objective of this rule is to specify the requirements for obtaining a Section 1303 permit, which authorizes the administration of oral sedation. In addition to specifying when oral sedation may be used without a Section 1303 permit, the rule specifies application and education requirements, required equipment, supplies, assistive personnel, and recordkeeping. The rule also describes the standards for passing an onsite evaluation. These requirements are designed to protect the health and safety of individuals receiving sedation during a dental procedure.

R4-11-1304. Permit to Employ or Work with a Physician Anesthesiologist or Certified Registered Nurse Anesthetist (CRNA): The objective of this rule is to specify the requirements for a licensed dentist who does not hold a Section 1301, 1302, or 1303 permit to perform dental procedures for a patient under sedation by obtaining a Section 1304 permit, which authorizes the licensed dentist to employ a physician anesthesiologist or certified registered nurse anesthetist. In addition to application and education requirements, the rule specifies required equipment, supplies, assistive personnel, and recordkeeping. The rule also describes the standards for passing an onsite evaluation. These requirements are designed to protect the health and safety of individuals receiving sedation during a dental procedure.

R4-11-1305. Reports of Adverse Occurrences: The objective of this rule is to ensure permit holders know a report to the Board is required if a death or incident requiring emergency medical response occurs while sedation is used in a dental procedure. This requirement enables the Board to fulfill its statutory responsibility to monitor the safe practice of dentistry.

R4-11-1306. Education; Continued Competency: The objective of this rule is to provide additional detail about the education required to obtain a Section 1301 permit. The rule also specifies continuing education and practice requirements for maintaining a Section 1301, 1302, or 1303 permit. These requirements are to protect public health and safety by ensuring continued competence of a licensed dentist.

R4-11-1307. Renewal of Permit: The objective of this rule is to inform permit holders of the requirements for renewing the permit. This enables permit holders to comply timely with requirements and maintain authorization to administer sedation.

R4-11-1701. Procedure: The objective of this rule is to specify the procedures and standards for requesting a rehearing or review of a Board decision. This enables a licensee, certificate holder, or business entity to know how to exhaust administrative remedies before making application for judicial review under A.R.S. § 12-901.

3. Effectiveness of the rule in achieving the objective including a summary of any available data supporting the conclusion:

The Board determined the rules are effective in achieving their objectives.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency:

Except as noted in item 6, the Board determined the rules reviewed are consistent with both statutes and other Board rules. There are no federal statutes specifically applicable to the rules reviewed.

5. Agency enforcement policy including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement:

The Board enforces the rules as written.

6. Clarity, conciseness, and understandability of the rule:

The Board believes the rules are generally clear, concise, and understandable. In R4-11-1306(A) and (A)(3), the cross reference to R4-11-1301(B) is incorrect. The correct cross reference is to R4-11-1301(C)(1).

7. Summary of written criticisms of the rule received by the agency with the past five years, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods, and, written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute or beyond the authority of the agency to enact, and the result of the litigation of administrative proceedings:

The Board received no written criticisms regarding the reviewed rules during the past five years.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule:

The majority of the rules in Article 13 were last amended in 2013 at 19 A.A.R. 341. R4-1301, R4-11-1302, and R4-11-1303 were last amended in 2022 at 28 A.A.R. 1898. The Board concludes it correctly estimated the economic impact of the rules when they were most recently amended. The Board currently licenses 5,476 dentists, 5,217 dental hygienists, and 21 dental consultants, certifies 9 denturists, and registers 463 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,937,500 during FY23. There is no change from the economic impact the Board anticipated in the previous rulemakings.

The rule in Article 17 was last amended in 2016 at 21 A.A.R. 2971. The Board concludes it correctly estimated the economic impact of the rules when they were last amended.

9. 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:

No analysis was submitted.

10. How the agency completed the course of action indicated in the agency's previous 5YRR:

These rules were last reviewed in 2018 and with the exception of item 6, the Board did not propose any course of action at that time.

11. A determination after analysis 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:

The Board determined the probable benefits of the rules, protecting the health and safety of those receiving dental treatment under sedation and ensuring due process for those wanting to appeal a Board decision, are outweighed by the costs of the rules and impose minimal costs and burdens on those regulated by the rules. No licensee is required to obtain a sedation permit. Those who do so have determined for themselves that the benefits of being able to provide dental treatment using sedation outweigh the costs of the education and application requirements, required equipment, supplies, assistive personnel, and recordkeeping, and application fee. To further protect public safety, the rules require an onsite evaluation by the Board be conducted and passed.

A licensee who decides to file a motion for rehearing or review of a Board decision incurs the cost of filing the motion and if granted, participating in the rehearing or review. The licensee voluntarily files the motion because the licensee believes the potential benefits outweigh the costs.

12. A determination after analysis 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:

No federal law is directly applicable to the subject matter of the rules.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

The permits issued under Article 13 are general permits consistent with A.R.S. § 41-1037 because they are issued to qualified individuals to conduct activities that are substantially similar in nature.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule or to make a new rule. If no issues are identified for a rule in the report, the agency may indicate that no action is necessary for the rule:

Because the incorrect cross reference in R4-11-1306(A) and (A)(3) causes only minor issues with consistency and understandability, the Board will correct the cross reference when it is necessary to amend the rules for substantive reasons. The Board determined none of the rules needs to be amended or repealed and no new rule needs to be made.

ARIZONA STATE BOARD OF DENTAL EXAMINERS

2023 Five-Year Review, Title 4, Chapter 11

Articles 13 and 17

Rule No.	Title	Last Revision	Eff.	Enf.	Consist.	Clear/Concise/understandable	Probable benefits/Least Burden	ARS Authority	EIS Comp.	Previous and Current Proposed Course of Action
R4-11-1301	General Anesthesia and Deep Sedation	September 12, 2022	Y	Y	Y	Y	Y	A.R.S. § 32-1207(A)(14), (B)(3)(b), and (E)	The Board currently licenses 5,476 dentists, 5,217 dental hygienists, and 21 dental consultants, certifies 9 denturists, and registers 463 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,937,500 during FY23. There is no change from the economic impact the Board anticipated in the previous rulemaking.	The Board did not propose a previous course of action and does not need to amend this rule at this time.

									During FY22, the Board collected \$889,921 in fees. Ten percent of this was deposited in the state's general fund.	
R4-11-1302	Parenteral Sedation	September 12, 2022	Y	Y	Y	Y	Y	A.R.S. § 32-1207(A)(14), (B)(3)(b), and (E)	The Board currently licenses 5,476 dentists, 5,217 dental hygienists, and 21 dental consultants, certifies 9 denturists, and registers 463 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,937,500 during FY23. There is no change from the economic impact the Board anticipated in the previous rulemaking.	The Board did not propose a previous course of action and does not need to amend this rule at this time.

									During FY22, the Board collected \$889,921 in fees. Ten percent of this was deposited in the state's general fund.	
R4-11-1303	Oral Sedation	September 12, 2022	Y	Y	Y	Y	Y	A.R.S. § 32-1207(A)(14), (B)(3)(b), and (E)	The Board currently licenses 5,476 dentists, 5,217 dental hygienists, and 21 dental consultants, certifies 9 denturists, and registers 463 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,937,500 during FY23. There is no change from the economic impact the Board anticipated in the previous rulemaking.	The Board did not propose a previous course of action and does not need to amend this rule at this time.

									During FY22, the Board collected \$889,921 in fees. Ten percent of this was deposited in the state's general fund.	
R4-11-1304	Permit to Employ or Work with a Physician Anesthesiologist or Certified Registered Nurse Anesthetist (CRNA)	April 6, 2013	Y	Y	Y	Y	Y	A.R.S. § 32-1207(A)(14), (B)(3)(b), and (E)	The Board currently licenses 5,476 dentists, 5,217 dental hygienists, and 21 dental consultants, certifies 9 denturists, and registers 463 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,937,500 during FY23. There is no change from the economic impact the Board anticipated in the previous rulemaking.	The Board did not propose a previous course of action and does not need to amend this rule at this time.

									During FY22, the Board collected \$889,921 in fees. Ten percent of this was deposited in the state's general fund.	
R4-11-1305	Reports of Adverse Occurrences	April 6, 2013	Y	Y	Y	Y	Y	A.R.S. § 32-1207(A)(14), (B)(3)(b), and (E)	The Board currently licenses 5,476 dentists, 5,217 dental hygienists, and 21 dental consultants, certifies 9 denturists, and registers 463 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,937,500 during FY23. There is no change from the economic impact the Board anticipated in the previous rulemaking.	The Board did not propose a previous course of action and does not need to amend this rule at this time.

									During FY22, the Board collected \$889,921 in fees. Ten percent of this was deposited in the state's general fund.	
R4-11-1306	Education; Continued Competency	April 6, 2013	Y	Y	Y	N The cross reference to R4-11-1301(B) should be updated to R4-11-1301(C)(1).	Y	A.R.S. § 32-1207(A)(14), (B)(3)(b), and (E)	The Board currently licenses 5,476 dentists, 5,217 dental hygienists, and 21 dental consultants, certifies 9 denturists, and registers 463 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,937,500 during FY23. There is no change from the economic impact the Board anticipated in the previous rulemaking.	<p>In the previous 5YRR the Board proposed to update the cross reference when it amended this rule for substantive changes.</p> <p>The Board has not needed to amend this rule for substantive changes since the previous 5YRR and will update the cross reference when it amends the rule for substantive changes in the future.</p>

									During FY22, the Board collected \$889,921 in fees. Ten percent of this was deposited in the state's general fund.	
R4-11-1307	Renewal of Permit	April 6, 2013	Y	Y	Y	Y	Y	A.R.S. § 32-1207(A)(14), (B)(3)(b), and (E)	The Board currently licenses 5,476 dentists, 5,217 dental hygienists, and 21 dental consultants, certifies 9 denturists, and registers 463 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,937,500 during FY23. There is no change from the economic impact the Board anticipated in the previous rulemaking.	The Board did not propose a previous course of action and does not need to amend this rule at this time.

									During FY22, the Board collected \$889,921 in fees. Ten percent of this was deposited in the state's general fund.	
R4-11-1701	Procedure	January 2, 2016	Y	Y	Y	Y	Y	A.R.S. § 32-1263.02(H)	The Board currently licenses 5,476 dentists, 5,217 dental hygienists, and 21 dental consultants, certifies 9 denturists, and registers 463 business entities. The Board is authorized to have 11 FTEs and was appropriated \$1,937,500 during FY23. There is no change from the economic impact the Board anticipated in the previous rulemaking.	The Board did not propose a previous course of action and does not need to amend this rule at this time.

									During FY22, the Board collected \$889,921 in fees. Ten percent of this was deposited in the state's general fund.	
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ARIZONA

STATE BOARD OF DENTAL EXAMINERS



Statutes & Rules

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ARIZONA REVISED STATUTES

Dentistry – Chapter 11

Article 1 – Dental Board

32-1201. Definitions

In this chapter, unless the context otherwise requires:

1. "Affiliated practice dental hygienist" means any licensed dental hygienist who is able, pursuant to section 32-1289.01, to initiate treatment based on the dental hygienist's assessment of a patient's needs according to the terms of a written affiliated practice agreement with a dentist, to treat the patient without the presence of a dentist and to maintain a provider-patient relationship.
2. "Auxiliary personnel" means all dental assistants, dental technicians, dental x-ray technicians and other persons employed by dentists or firms and businesses providing dental services to dentists.
3. "Board" means the state board of dental examiners.
4. "Business entity" means a business organization that has an ownership that includes any persons who are not licensed or certified to provide dental services in this state, that offers to the public professional services regulated by the board and that is established pursuant to the laws of any state or foreign country.
5. "Dental assistant" means any person who acts as an assistant to a dentist, dental therapist or dental hygienist by rendering personal services to a patient that involve close proximity to the patient while the patient is under treatment or observation or undergoing diagnostic procedures.
6. "Dental hygienist" means any person who is licensed and engaged in the general practice of dental hygiene and all related and associated duties, including educational, clinical and therapeutic dental hygiene procedures.
7. "Dental incompetence" means lacking in sufficient dentistry knowledge or skills, or both, in that field of dentistry in which the dentist, dental therapist, denturist or dental hygienist concerned engages, to a degree likely to endanger the health of that person's patients.
8. "Dental laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, fabricates artificial teeth, prosthetic appliances or other mechanical and artificial contrivances designed to correct or alleviate injuries or defects, both developmental and acquired, disorders or deficiencies of the human oral cavity, teeth, investing tissues, maxilla or mandible or adjacent associated structures.
9. "Dental therapist" means any person who is licensed and engaged in the general practice of dental therapy and all related and associated duties, including educational, clinical and therapeutic dental therapy procedures.
10. "Dental x-ray laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, performs dental and maxillofacial radiography,

including cephalometrics, panoramic and maxillofacial tomography and other dental related nonfluoroscopic diagnostic imaging modalities.

11. "Dentistry", "dentist" and "dental" mean the general practice of dentistry and all specialties or restricted practices of dentistry.
12. "Denturist" means a person practicing denture technology pursuant to article 5 of this chapter.
13. "Disciplinary action" means regulatory sanctions that are imposed by the board in combination with, or as an alternative to, revocation or suspension of a license and that may include:
 - (a) Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted under this chapter.
 - (b) Imposition of restrictions on the scope of practice.
 - (c) Imposition of peer review and professional education requirements.
 - (d) Imposition of censure or probation requirements best adapted to protect the public welfare, which may include a requirement for restitution to the patient resulting from violations of this chapter or rules adopted under this chapter.
14. "Irregularities in billing" means submitting any claim, bill or government assistance claim to any patient, responsible party or third-party payor for dental services rendered that is materially false with the intent to receive unearned income as evidenced by any of the following:
 - (a) Charges for services not rendered.
 - (b) Any treatment date that does not accurately reflect the date when the service and procedures were actually completed.
 - (c) Any description of a dental service or procedure that does not accurately reflect the actual work completed.
 - (d) Any charge for a service or procedure that cannot be clinically justified or determined to be necessary.
 - (e) Any statement that is material to the claim and that the licensee knows is false or misleading.
 - (f) An abrogation of the copayment provisions of a dental insurance contract by a waiver of all or a part of the copayment from the patient if this results in an excessive or fraudulent charge to a third party or if the waiver is used as an enticement to receive dental services from that provider. This subdivision does not interfere with a contractual relationship between a third-party payor and a licensee or business entity registered with the board.
 - (g) Any other practice in billing that results in excessive or fraudulent charges to the patient.

15. "Letter of concern" means an advisory letter to notify a licensee or a registered business entity that, while the evidence does not warrant disciplinary action, the board believes that the licensee or registered business entity should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in board action against the practitioner's license or the business entity's registration. A letter of concern is not a disciplinary action. A letter of concern is a public document and may be used in a future disciplinary action.
16. "Licensed" means licensed pursuant to this chapter.
17. "Place of practice" means each physical location at which a person who is licensed pursuant to this chapter performs services subject to this chapter.
18. "Primary mailing address" means the address on file with the board and to which official board correspondence, notices or documents are delivered in a manner determined by the board.
19. "Recognized dental hygiene school" means a school that has a dental hygiene program with a minimum two academic year curriculum, or the equivalent of four semesters, and that is approved by the board and accredited by the American dental association commission on dental accreditation.
20. "Recognized dental school" means a dental school that is accredited by the American dental association commission on dental accreditation.
21. "Recognized dental therapy school" means a school that is accredited or that has received initial accreditation by the American dental association commission on dental accreditation.
22. "Recognized denturist school" means a denturist school that maintains standards of entrance, study and graduation and that is accredited by the United States department of education or the council on higher education accreditation.
23. "Supervised personnel" means all dental hygienists, dental assistants, dental laboratory technicians, dental therapists, denturists, dental x-ray laboratory technicians and other persons supervised by licensed dentists.
24. "Teledentistry" means the use of data transmitted through interactive audio, video or data communications for the purposes of examination, diagnosis, treatment planning, consultation and directing the delivery of treatment by dentists and dental providers in settings permissible under this chapter or specified in rules adopted by the board.

32-1201.01. Definition of unprofessional conduct

For the purposes of this chapter, "unprofessional conduct" means the following acts, whether occurring in this state or elsewhere:

1. Intentionally betraying a professional confidence or intentionally violating a privileged communication except as either of these may otherwise be required by law. This paragraph does not prevent members of the board from the full and free exchange of information with the licensing and disciplinary boards of other states, territories or districts of the United States or

foreign countries, with the Arizona state dental association or any of its component societies or with the dental societies of other states, counties, districts, territories or foreign countries.

2. Using controlled substances as defined in section 36-2501, narcotic drugs, dangerous drugs or marijuana as defined in section 13-3401, or hypnotic drugs, including acetylurea derivatives, barbituric acid derivatives, chloral, paraldehyde, phenylhydantoin derivatives, sulfonmethane derivatives or any compounds, mixtures or preparations that may be used for producing hypnotic effects, or alcohol to the extent that it affects the ability of the dentist, dental therapist, denturist or dental hygienist to practice that person's profession.
3. Prescribing, dispensing or using drugs for other than accepted dental therapeutic purposes or for other than medically indicated supportive therapy in conjunction with managing a patient's needs and in conjunction with the scope of practice prescribed in section 32-1202.
4. Committing gross malpractice or repeated acts constituting malpractice.
5. Acting or assuming to act as a member of the board if this is not true.
6. Procuring or attempting to procure a certificate of the national board of dental examiners or a license to practice dentistry or dental hygiene by fraud or misrepresentation or by knowingly taking advantage of the mistake of another.
7. Having professional connection with or lending one's name to an illegal practitioner of dentistry or any of the other healing arts.
8. Representing that a manifestly not correctable condition, disease, injury, ailment or infirmity can be permanently corrected, or that a correctable condition, disease, injury, ailment or infirmity can be corrected within a stated time, if this is not true.
9. Offering, undertaking or agreeing to correct, cure or treat a condition, disease, injury, ailment or infirmity by a secret means, method, device or instrumentality.
10. Refusing to divulge to the board, on reasonable notice and demand, the means, method, device or instrumentality used in treating a condition, disease, injury, ailment or infirmity.
11. Dividing a professional fee or offering, providing or receiving any consideration for patient referrals among or between dental care providers or dental care institutions or entities. This paragraph does not prohibit the division of fees among licensees who are engaged in a bona fide employment, partnership, corporate or contractual relationship for the delivery of professional services.
12. Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of dentistry.
13. Having a license refused, revoked or suspended or any other disciplinary action taken against a dentist by, or voluntarily surrendering a license in lieu of disciplinary action to, any other state, territory, district or country, unless the board finds that this action was not taken for reasons that relate to the person's ability to safely and skillfully practice dentistry or to any act of unprofessional conduct.

14. Committing any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public.
15. Obtaining a fee by fraud or misrepresentation, or wilfully or intentionally filing a fraudulent claim with a third party for services rendered or to be rendered to a patient.
16. Committing repeated irregularities in billing.
17. Employing unlicensed persons to perform or aiding and abetting unlicensed persons in performing work that can be done legally only by licensed persons.
18. Practicing dentistry under a false or assumed name in this state, other than as allowed by section 32-1262.
19. Wilfully or intentionally causing or allowing supervised personnel or auxiliary personnel operating under the licensee's supervision to commit illegal acts or perform an act or operation other than that allowed under article 4 of this chapter and rules adopted by the board pursuant to section 32-1282.
20. Committing the following advertising practices:
 - (a) Publishing or circulating, directly or indirectly, any false, fraudulent or misleading statements concerning the skill, methods or practices of the licensee or of any other person.
 - (b) Advertising in any manner that tends to deceive or defraud the public.
21. Failing to dispense drugs and devices in compliance with article 6 of this chapter.
22. Failing to comply with a board order, including an order of censure or probation.
23. Failing to comply with a board subpoena in a timely manner.
24. Failing or refusing to maintain adequate patient records.
25. Failing to allow properly authorized board personnel, on demand, to inspect the place of practice and examine and have access to documents, books, reports and records maintained by the licensee or certificate holder that relate to the dental practice or dental-related activity.
26. Refusing to submit to a body fluid examination as required through a monitored treatment program or pursuant to a board investigation into a licensee's or certificate holder's alleged substance abuse.
27. Failing to inform a patient of the type of material the dentist will use in the patient's dental filling and the reason why the dentist is using that particular filling.
28. Failing to report in writing to the board any evidence that a dentist, dental therapist, denturist or dental hygienist is or may be:

- (a) Professionally incompetent.
- (b) Engaging in unprofessional conduct.
- (c) Impaired by drugs or alcohol.
- (d) Mentally or physically unable to safely engage in the activities of a dentist, dental therapist, denturist or dental hygienist pursuant to this chapter.

29. Filing a false report pursuant to paragraph 28 of this section.

30. Practicing dentistry, dental therapy, dental hygiene or denturism in a business entity that is not registered with the board as required by section 32-1213.

31. Dispensing a schedule II controlled substance that is an opioid.

32. Providing services or procedures as a dental therapist that exceed the scope of practice or exceed the services or procedures authorized in the written collaborative practice agreement.

32-1202. Scope of practice; practice of dentistry

For the purposes of this chapter, the practice of dentistry is the diagnosis, surgical or nonsurgical treatment and performance of related adjunctive procedures for any disease, pain, deformity, deficiency, injury or physical condition of the human tooth or teeth, alveolar process, gums, lips, cheek, jaws, oral cavity and associated tissues of the oral maxillofacial facial complex, including removing stains, discolorations and concretions and administering botulinum toxin type A and dermal fillers to the oral maxillofacial complex for therapeutic or cosmetic purposes.

32-1203. State board of dental examiners; qualifications of members; terms

- A. The state board of dental examiners is established consisting of six licensed dentists, two licensed dental hygienists, two public members and one business entity member appointed by the governor for a term of four years, to begin and end on January 1.
- B. Before appointment by the governor, a prospective member of the board shall submit a full set of fingerprints to the governor for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.
- C. The business entity member and the public members may participate in all board proceedings and determinations, except in the preparing, giving or grading of examinations for licensure. Dental hygienist board members may participate in all board proceedings and determinations, except in the preparing, giving and grading of examinations that do not relate to dental hygiene procedures.
- D. A board member shall not serve more than two consecutive terms.
- E. For the purposes of this section, business entity member does not include a person who is licensed pursuant to this chapter.

32-1204. Removal from office

The governor may remove a member of the board for persistent neglect of duty, incompetency, unfair, biased, partial or dishonorable conduct, or gross immorality. Conviction of a felony or revocation of the dental license of a member of the board shall ipso facto terminate his membership.

32-1205. Organization; meetings; quorum; staff

A. The board shall elect from its membership a president and a vice-president who shall act also as secretary-treasurer.

B. Board meetings shall be conducted pursuant to title 38, chapter 3, article 3.1. A majority of the board constitutes a quorum. Beginning September 1, 2015, meetings held pursuant to this subsection shall be audio recorded and the audio recording shall be posted to the board's website within five business days after the meeting.

C. The board may employ an executive director, subject to title 41, chapter 4, article 4 and legislative appropriation.

D. The board or the executive director may employ personnel, as necessary, subject to title 41, chapter 4, article 4 and legislative appropriation.

32-1206. Compensation of board members; investigation committee members

A. Members of the board are entitled to receive compensation in the amount of \$250 for each day actually spent in performing necessary work authorized by the board and all expenses necessarily and properly incurred while performing this work.

B. Members of an investigation committee established by the board may receive compensation in the amount of \$100 for each committee meeting.

32-1207. Powers and duties; executive director; immunity; fees; definition

A. The board shall:

1. Adopt rules that are not inconsistent with this chapter for regulating its own conduct, for holding examinations and for regulating the practice of dentists and supervised personnel and registered business entities, provided that:

(a) Regulation of supervised personnel is based on the degree of education and training of the supervised personnel, the state of scientific technology available and the necessary degree of supervision of the supervised personnel by dentists.

(b) Except as provided pursuant to sections 32-1276.03 and 32-1281, only licensed dentists may perform diagnosis and treatment planning, prescribe medication and perform surgical procedures on hard and soft tissues.

(c) Only a licensed dentist, a dental therapist either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement or a dental hygienist in consultation with a dentist may perform examinations, oral health assessments and treatment sequencing for dental hygiene procedures.

2. Adopt a seal.

3. Maintain a record that is available to the board at all times of its acts and proceedings, including the issuance, denial, renewal, suspension or revocation of licenses and the disposition of complaints. The

existence of a pending complaint or investigation shall not be disclosed to the public. Records of complaints shall be available to the public, except only as follows:

(a) If the board dismisses or terminates a complaint, the record of the complaint shall not be available to the public.

(b) If the board has issued a nondisciplinary letter of concern, the record of the complaint shall be available to the public only for a period of five years after the date the board issued the letter of concern.

(c) If the board has required additional nondisciplinary continuing education pursuant to section 32-1263.01 but has not taken further action, the record of the complaint shall be available to the public only for a period of five years after the licensee satisfies this requirement.

(d) If the board has assessed a nondisciplinary civil penalty pursuant to section 32-1208 but has not taken further action, the record of the complaint shall be available to the public only for a period of five years after the licensee satisfies this requirement.

4. Establish a uniform and reasonable standard of minimum educational requirements consistent with the accreditation standards of the American dental association commission on dental accreditation to be observed by dental schools, dental therapy schools and dental hygiene schools in order to be classified as recognized dental schools, dental therapy schools or dental hygiene schools.

5. Establish a uniform and reasonable standard of minimum educational requirements that are consistent with the accreditation standards of the United States department of education or the council on higher education accreditation and that must be observed by denture technology schools in order to be classified as recognized denture technology schools.

6. Determine the reputability and classification of dental schools, dental therapy schools, dental hygiene schools and denture technology schools in accordance with their compliance with the standard set forth in paragraph 4 or 5 of this subsection, whichever is applicable.

7. Issue licenses to persons who the board determines are eligible for licensure pursuant to this chapter.

8. Determine the eligibility of applicants for restricted permits and issue restricted permits to those found eligible.

9. Pursuant to section 32-1263.02, investigate charges of misconduct on the part of licensees and persons to whom restricted permits have been issued.

10. Issue a letter of concern, which is not a disciplinary action but refers to practices that may lead to a violation and to disciplinary action.

11. Issue decrees of censure, fix periods and terms of probation, suspend or revoke licenses, certificates and restricted permits, as the facts may warrant, and reinstate licenses, certificates and restricted permits in proper cases.

12. Collect and disburse monies.

13. Perform all other duties that are necessary to enforce this chapter and that are not specifically or by necessary implication delegated to another person.

14. Establish criteria for the renewal of permits issued pursuant to board rules relating to general anesthesia and sedation.

B. The board may:

1. Sue and be sued.

2. Issue subpoenas, including subpoenas to the custodian of patient records, compel attendance of witnesses, administer oaths and take testimony concerning all matters within the board's jurisdiction. If a person refuses to obey a subpoena issued by the board, the refusal shall be certified to the superior court and proceedings shall be instituted for contempt of court.

3. Adopt rules:

(a) Prescribing requirements for continuing education for renewal of all licenses issued pursuant to this chapter.

(b) Prescribing educational and experience prerequisites for administering intravenous or intramuscular drugs for the purpose of sedation or for using general anesthetics in conjunction with a dental treatment procedure.

(c) Prescribing requirements for obtaining licenses for retired licensees or licensees who have a disability, including the triennial license renewal fee.

4. Hire consultants to assist the board in the performance of its duties and employ persons to provide investigative, professional and clerical assistance as the board deems necessary.

5. Contract with other state or federal agencies as required to carry out the purposes of this chapter.

6. If determined by the board, order physical, psychological, psychiatric and competency evaluations of licensed dentists, dental therapists and dental hygienists, certified denturists and applicants for licensure and certification at the expense of those individuals.

7. Establish an investigation committee consisting of not more than eleven licensees who are in good standing, who are appointed by the board and who serve at the pleasure of the board to investigate any complaint submitted to the board, initiated by the board or delegated by the board to the investigation committee pursuant to this chapter.

C. The executive director or the executive director's designee may:

1. Issue and renew licenses, certificates and permits to applicants who meet the requirements of this chapter.

2. Initiate an investigation if evidence appears to demonstrate that a dentist, dental therapist, dental hygienist, denturist or restricted permit holder may be engaged in unprofessional conduct or may be unable to safely practice dentistry.

3. Initiate an investigation if evidence appears to demonstrate that a business entity may be engaged in unethical conduct.

4. Subject to board approval, enter into a consent agreement with a dentist, dental therapist, denturist, dental hygienist or restricted permit holder if there is evidence of unprofessional conduct.

5. Subject to board approval, enter into a consent agreement with a business entity if there is evidence of unethical conduct.

6. Refer cases to the board for a formal interview.

7. If delegated by the board, enter into a stipulation agreement with a person under the board's jurisdiction for the treatment, rehabilitation and monitoring of chemical substance abuse or misuse.

D. Members of the board are personally immune from liability with respect to all acts done and actions taken in good faith and within the scope of their authority.

E. The board by rule shall require that a licensee obtain a permit for applying general anesthesia, semiconscious sedation or conscious sedation, shall establish and collect a fee of not more than \$300 to cover administrative costs connected with issuing the permit and shall conduct inspections to ensure compliance.

F. The board by rule may establish and collect fees for license verification, board meeting agendas and minutes, published lists and mailing labels.

G. This section does not prohibit the board from conducting its authorized duties in a public meeting.

H. For the purposes of this section:

1. "Good standing" means that a person holds an unrestricted and unencumbered license that has not been suspended or revoked pursuant to this chapter.

2. "Record of complaint" means the document reflecting the final disposition of a complaint or investigation.

32-1208. Failure to respond to subpoena; civil penalty

In addition to any disciplinary action authorized by statute, the board may assess a nondisciplinary civil penalty in an amount not to exceed five hundred dollars for a licensee who fails to respond to a subpoena issued by the board pursuant to this chapter.

32-1209. Admissibility of records in evidence

A copy of any part of the recorded proceedings of the board certified by the executive director, or a certificate by the executive director that any asserted or purported record, name, license number, restricted permit number or action is not entered in the recorded proceedings of the board, may be admitted as evidence in any court in this state. A person making application and paying a fee set by the board may procure from the executive director a certified copy of any portion of the records of the board unless these records are classified as confidential as provided by law. Unless otherwise provided by law, all records concerning an investigation, examination materials, records of

examination grading and applicants' performance and transcripts of educational institutions concerning applicants are confidential and are not public records. "Records of applicants' performance" does not include records of whether an applicant passed or failed an examination.

32-1210. Annual report

A. Not later than October 1 of each year, the board shall make an annual written report to the governor for the preceding year that includes the following information:

1. The number of licensed dentists in the state.
2. The number of licenses issued during the preceding year and to whom issued.
3. The number of examinations held and the dates of the examinations.
4. The facts with respect to accusations filed with the board, of hearings held in connection with those accusations and the results of those hearings.
5. The facts with respect to prosecution of persons charged with violations of this chapter.
6. A full and complete statement of financial transactions of the board.
7. Any other matters that the board wishes to include in the report or that the governor requires.

B. On request of the governor the board shall submit a supplemental report.

32-1212. Dental board fund

A. Except as provided in subsection C of this section, pursuant to sections 35-146 and 35-147, the executive director of the board shall each month deposit ten per cent of all fees, fines and other revenue received by the board, in the state general fund and deposit the remaining ninety per cent in the dental board fund.

B. Monies deposited in the dental board fund shall be subject to the provisions of section 35-143.01.

C. Monies from administrative penalties received pursuant to section 32-1263.01 shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

32-1213. Business entities; registration; renewal; civil penalty; exceptions

A. A business entity may not offer dental services pursuant to this chapter unless:

1. The entity is registered with the board pursuant to this section.
2. The services are conducted by a licensee pursuant to this chapter.

B. The business entity must file a registration application on a form provided by the board. The application must include:

1. A description of the entity's services offered to the public.
 2. The name of any dentist who is authorized to provide and who is responsible for providing the dental services offered at each office.
 3. The names and addresses of the officers and directors of the business entity.
 4. A registration fee prescribed by the board in rule.
- C. A business entity must file a separate registration application and pay a fee for each branch office in this state.
- D. A registration expires three years after the date the board issues the registration. A business entity that wishes to renew a registration must submit an application for renewal as prescribed by the board on a triennial basis on a form provided by the board before the expiration date. An entity that fails to renew the registration before the expiration date is subject to a late fee as prescribed by the board by rule. The board may stagger the dates for renewal applications.
- E. The business entity must notify the board in writing within thirty days after any change:
1. In the entity's name, address or telephone number.
 2. In the officers or directors of the business entity.
 3. In the name of any dentist who is authorized to provide and who is responsible for providing the dental services in any facility.
- F. The business entity shall establish a written protocol for the secure storage, transfer and access of the dental records of the business entity's patients. This protocol must include, at a minimum, procedures for:
1. Notifying patients of the future locations of their records if the business entity terminates or sells the practice.
 2. Disposing of unclaimed dental records.
 3. The timely response to requests by patients for copies of their records.
- G. The business entity must notify the board within thirty days after the dissolution of any registered business entity or the closing or relocation of any facility and must disclose to the board the entity's procedure by which its patients may obtain their records.
- H. The board may do any of the following pursuant to its disciplinary procedures if an entity violates the board's statutes or rules:
1. Refuse to issue a registration.
 2. Suspend or revoke a registration.

3. Impose a civil penalty of not more than \$2,000 for each violation.
 4. Enter a decree of censure.
 5. Issue an order prescribing a period and terms of probation that are best adapted to protect the public welfare and that may include a requirement for restitution to a patient for a violation of this chapter or rules adopted pursuant to this chapter.
 6. Issue a letter of concern if a business entity's actions may cause the board to take disciplinary action.
- I. The board shall deposit, pursuant to sections 35-146 and 35-147, civil penalties collected pursuant to this section in the state general fund.
- J. This section does not apply to:
1. A sole proprietorship or partnership that consists exclusively of dentists who are licensed pursuant to this chapter.
 2. Any of the following entities licensed under title 20:
 - (a) A service corporation.
 - (b) An insurer authorized to transact disability insurance.
 - (c) A prepaid dental plan organization that does not provide directly for prepaid dental services.
 - (d) A health care services organization that does not provide directly for dental services.
 3. A professional corporation or professional limited liability company, the shares of which are exclusively owned by dentists who are licensed pursuant to this chapter and that is formed to engage in the practice of dentistry pursuant to title 10, chapter 20 or title 29 relating to professional limited liability companies.
 4. A facility regulated by the federal government or a state, district or territory of the United States.
 5. An administrator or executor of the estate of a deceased dentist or a person who is legally authorized to act for a dentist who has been adjudicated to be mentally incompetent for not more than one year after the date the board receives notice of the dentist's death or incapacitation pursuant to section 32-1270.
- K. A facility that offers dental services to the public by persons licensed under this chapter shall be registered by the board unless the facility is any of the following:
1. Owned by a dentist who is licensed pursuant to this chapter.
 2. Regulated by the federal government or a state, district or territory of the United States.

L. Except for issues relating to insurance coding and billing that require the name, signature and license number of the dentist providing treatment, this section does not:

1. Authorize a licensee in the course of providing dental services for an entity registered pursuant to this section to disregard or interfere with a policy or practice established by the entity for the operation and management of the business.

2. Authorize an entity registered pursuant to this section to establish or enforce a business policy or practice that may interfere with the clinical judgment of the licensee in providing dental services for the entity or may compromise a licensee's ability to comply with this chapter.

M. The board shall adopt rules that provide a method for the board to receive the assistance and advice of business entities licensed pursuant to this chapter in all matters relating to the regulation of business entities.

N. An individual currently holding a surrendered or revoked license to practice dentistry or dental hygiene in any state or jurisdiction in the United States may not have a majority ownership interest in the business entity registered pursuant to this section. Revocation and surrender of licensure shall be limited to disciplinary actions resulting in loss of license or surrender of license instead of disciplinary action. Dentists or dental hygienists affected by this subsection shall have one year after the surrender or revocation to divest themselves of their ownership interest. This subsection does not apply to publicly held companies. For the purposes of this subsection, "majority ownership interest" means an ownership interest greater than fifty percent.

Article 2 – Licensure

32-1231. Persons not required to be licensed

This chapter does not prohibit:

1. A dentist, dental therapist or dental hygienist who is officially employed in the service of the United States from practicing dentistry in the dentist's, dental therapist's or dental hygienist's official capacity, within the scope of that person's authority, on persons who are enlisted in, directly connected with or under the immediate control of some branch of service of the United States.

2. A person, whether or not licensed by this state, from practicing dental therapy either:

- (a) In the discharge of official duties on behalf of the United States government, including the United States department of veterans affairs, the United States public health service and the Indian health service.

- (b) While employed by tribal health programs authorized pursuant to Public Law 93-638 or urban Indian health programs.

3. An intern or student of dentistry, dental therapy or dental hygiene from operating in the clinical departments or laboratories of a recognized dental school, dental therapy school, dental hygiene school or hospital under the supervision of a dentist.

4. An unlicensed person from performing for a licensed dentist merely mechanical work on inert matter not within the oral cavity in the construction, making, alteration or repairing of any artificial dental substitute or any dental restorative or corrective appliance, if the casts or impressions for that work

have been furnished by a licensed dentist and the work is directly supervised by the dentist for whom done or under a written authorization signed by the dentist, but the burden of proving that written authorization or direct supervision is on the person charged with having violated this provision.

5. A clinician who is not licensed in this state from giving demonstrations, before bona fide dental societies, study clubs and groups of professional students, that are free to the persons on whom made.

6. The state director of dental public health from performing the director's administrative duties as prescribed by law.

7. A dentist or dental hygienist to whom a restricted permit has been issued from practicing dentistry or dental hygiene in this state as provided in sections 32-1237 and 32-1292.

8. A dentist, dental therapist or dental hygienist from practicing for educational purposes on behalf of a recognized dental school, recognized dental therapy school or recognized dental hygiene school.

32-1232. Qualifications of applicant; application; fee; fingerprint clearance card

A. An applicant for licensure shall meet the requirements of section 32-1233 and shall hold a diploma conferring a degree of doctor of dental medicine or doctor of dental surgery from a recognized dental school.

B. Each candidate shall submit a written application to the board accompanied by a nonrefundable Arizona dental jurisprudence examination fee of \$300. The board shall waive this fee for candidates who are holders of valid restricted permits. Each candidate shall also obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

C. The board may deny an application for a license, for license renewal or for a restricted permit if the applicant:

1. Has committed any act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of any act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for a license, for license renewal or for a restricted permit if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a license to the applicant until the investigation is resolved.

32-1233. Applicants for licensure; examination requirements

An applicant for licensure shall have passed all of the following:

1. The written national dental board examinations.
2. A clinical examination administered by a state or regional testing agency in the United States within five years preceding filing the application.
3. The Arizona dental jurisprudence examination.

32-1234. Dental consultant license

A. A person may apply for a dental consultant license if the applicant demonstrates to the board's satisfaction that the applicant:

1. Has continuously held a license to practice dentistry for at least twenty-five years issued by one or more states or territories of the United States or the District of Columbia but is not currently licensed to practice dentistry in Arizona.
2. Has not had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
3. Is not currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
4. Has not surrendered, relinquished or given up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
5. Meets the applicable requirements of section 32-1232.
6. Meets the requirements of section 32-1233, paragraph 1. If an applicant has taken a state written theory examination instead of the written national dental board examinations, the applicant must provide the board with official documentation of passing the written theory examinations in the state where the applicant holds a current license. The board shall then determine the applicant's eligibility for a license pursuant to this section.
7. Meets the application requirements as prescribed in rule by the board.

B. The board shall suspend an application for a dental consultant license if the applicant is currently under investigation by a dental regulatory board in another jurisdiction in the United States. The board shall not issue or deny a license to the applicant until the investigation is resolved.

C. A person to whom a dental consultant license is issued shall practice dentistry only in the course of the person's employment or on behalf of an entity licensed under title 20 with the practice limited to supervising or conducting utilization review or other claims or case management activity on behalf of the entity licensed pursuant to title 20. A person who holds a dental consultant license is prohibited from providing direct patient care.

D. This section does not require a person to apply for or hold a dental consultant license in order for that person to serve as a consultant to or engage in claims review activity for an entity licensed pursuant to title 20.

E. Except as provided in subsection B of this section, a dental consultant licensee is subject to all of the provisions of this chapter that are applicable to licensed dentists.

32-1235. Reinstatement of license or certificate; application for previously denied license or certificate

A. On written application the board may issue a new license or certificate to a dentist, dental therapist, dental hygienist or denturist whose license or certificate was previously suspended or revoked by the board or surrendered by the applicant if the applicant demonstrates to the board's satisfaction that the applicant is completely rehabilitated with respect to the conduct that was the basis for the suspension, revocation or surrender. In making its decision, the board shall determine:

1. That the applicant has not engaged in any conduct during the suspension, revocation or surrender period that would have constituted a basis for revocation pursuant to section 32-1263.

2. If a criminal conviction was a basis for the suspension, revocation or surrender, that the applicant's civil rights have been fully restored pursuant to statute or any other applicable recognized judicial or gubernatorial order.

3. That the applicant has made restitution to any aggrieved person as ordered by a court of competent jurisdiction.

4. That the applicant demonstrates any other standard of rehabilitation the board determines is appropriate.

B. Except as provided in subsection C of this section, a person may not submit an application for reinstatement less than five years after the date of suspension, revocation or surrender.

C. The board shall vacate its previous order to suspend or revoke a license or certificate if that suspension or revocation was based on a conviction of a felony or an offense involving moral turpitude and that conviction has been reversed on appeal. The person may submit an application for reinstatement as soon as the court enters the reversal.

D. An applicant for reinstatement must comply with all initial licensing or certification requirements prescribed by this chapter.

E. A person whose application for a license or certificate has been denied for failure to meet academic requirements may apply for licensure or certification not less than two years after the denial.

F. A person whose application for a license has been denied pursuant to section 32-1232, subsection C may apply for licensure not less than five years after the denial.

32-1236. Dentist triennial licensure; continuing education; license reinstatement; license for each place of practice; notice of change of address or place of practice; retired and disabled license status; penalties

A. Except as provided in section 32-4301, a license expires thirty days after the licensee's birth month every third year. On or before the last day of the licensee's birth month every third year, every licensed dentist shall submit to the board a complete renewal application and pay a license renewal fee of not more than \$650, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this subsection does not apply to a retired dentist or to a dentist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the licensee's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birth month.

C. A person applying for licensure for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birth month. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent licensure renewal shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a \$100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this chapter.

E. Each licensee must provide to the board in writing both of the following:

1. A primary mailing address.
2. The address for each place of practice.

F. A licensee maintaining more than one place of practice shall obtain from the board a duplicate license for each office. A fee set by the board shall be charged for each duplicate license. The licensee shall notify the board in writing within ten days after opening the additional place or places of practice. The board shall impose a penalty of \$50 for failure to notify the board.

G. A licensee who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes on payment of a reduced renewal fee as prescribed by the board by rule.

H. A licensee applying for retired or disabled status shall:

1. Relinquish any prescribing privileges and shall attest by affidavit that the licensee has surrendered to the United States drug enforcement administration any registration issued pursuant to the federal controlled substances act and has surrendered to the board any registration issued pursuant to section 36-2606.

2. If the licensee holds a permit to dispense drugs and devices pursuant to section 32-1298, surrender that permit to the board.

3. Attest by affidavit that the licensee is not currently engaged in the practice of dentistry.

I. A licensee who changes the licensee's primary mailing address or place of practice address shall notify the board of that change in writing within ten days. The board shall impose a penalty of \$50 if a licensee fails to notify the board of the change within that time. The board shall increase the penalty imposed to \$100 if a licensee fails to notify it of the change within thirty days.

32-1237. Restricted permit

A person may apply for a restricted permit if the applicant demonstrates to the board's satisfaction that the applicant:

1. Has a pending contract with a recognized charitable dental clinic or organization that offers dental services without compensation or at a rate that only reimburses the clinic for dental supplies and overhead costs and the applicant will receive no compensation for dental services provided at the clinic or organization.

2. Has a license to practice dentistry issued by another state or territory of the United States or the District of Columbia.

3. Has been actively engaged in one or more of the following for three years immediately preceding the application:

(a) The practice of dentistry.

(b) An approved dental residency training program.

(c) Postgraduate training deemed by the board equivalent to an approved dental residency training program.

4. Is competent and proficient to practice dentistry.

5. Meets the requirements of section 32-1232, subsection A, other than the requirement to meet section 32-1233.

32-1238. Issuance of restricted permit

A restricted permit may be issued by the board without examination or payment of fee for a period not to exceed one year or until June 30th, whichever is lesser, and shall automatically expire at that time. The board may, in its discretion and pursuant to rules or regulations not inconsistent with this chapter, renew such restricted permit for periods not to exceed one year.

32-1239. Practice under restricted permit

A person to whom a restricted permit is issued shall be entitled to practice dentistry only in the course of his employment by a recognized charitable dental clinic or organization as approved by the board, on the following conditions:

1. He shall file a copy of his employment contract with the board and such contract shall contain the following provisions:

(a) That applicant understands and acknowledges that if his employment by the charitable dental clinic or organization is terminated prior to the expiration of his restricted permit, his restricted permit will be automatically revoked and he will voluntarily surrender the permit to the board and will no longer be eligible to practice unless or until he has satisfied the requirements of section 32-1237 or has successfully passed the examination as provided in this article.

(b) He shall be employed by a dental clinic or organization organized and operated for charitable purposes offering dental services without compensation. The term "employed" as used in this subdivision shall include the performance of dental services without compensation.

(c) He shall be subject to all the provisions of this chapter applicable to licensed dentists.

32-1240. Licensure by credential; examinations; waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting an application for licensure pursuant to this chapter and the other state or testing agency maintains a standard of licensure that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall define what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed.

B. The applicant shall pay a licensure by credential fee of not more than two thousand dollars as prescribed by the board.

32-1241. Training permits; qualified military health professionals

A. The board shall issue a training permit to a qualified military health professional who is practicing dentistry in the United States armed forces and who is discharging the health professional's official duties by participating in a clinical training program based at a civilian hospital affiliated with the United States department of defense.

B. Before the board issues the training permit, the qualified military health professional must submit a written statement from the United States department of defense that the applicant:

1. Is a member of the United States armed forces who is performing duties for and at the direction of the United States department of defense at a location in this state approved by the United States department of defense.

2. Has a current license or is credentialed to practice dentistry in a jurisdiction of the United States.

3. Meets all required qualification standards prescribed pursuant to 10 United States Code section 1094(d) relating to the licensure requirements for health professionals.

4. Has not had a license to practice revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

5. Is not currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

6. Has not surrendered, relinquished or given up a license in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter. This paragraph does not prevent the board from considering the request for a training permit of a qualified military health professional who surrendered, relinquished or gave up a license in lieu of disciplinary action by a regulatory board in another jurisdiction if that regulatory board subsequently reinstated the qualified military health professional's license.

C. The qualified military health professional may not open an office or designate a place to meet patients or receive calls relating to the practice of dentistry in this state outside of the facilities and programs of the approved civilian hospital.

D. The qualified military health professional may not practice outside of the professional's scope of practice.

E. A training permit issued pursuant to this section is valid for one year. The qualified military health professional may apply annually to the board to renew the permit. With each application to renew the qualified military health professional must submit a written statement from the United States department of defense asking the board for continuation of the training permit.

F. The board may not impose a fee to issue or renew a training permit to a qualified military health professional pursuant to this section.

Article 3 – Regulation

32-1261. Practicing without license; classification

Except as otherwise provided a person is guilty of a class 6 felony who, without a valid license or business entity registration as prescribed by this chapter:

1. Practices dentistry or any branch of dentistry as described in section 32-1202.

2. In any manner or by any means, direct or indirect, advertises, represents or claims to be engaged or ready and willing to engage in that practice as described in section 32-1202.

3. Manages, maintains or carries on, in any capacity or by any arrangement, a practice, business, office or institution for the practice of dentistry, or that is advertised, represented or held out to the public for that purpose.

32-1262. Corporate practice; display of name and license receipt or license; duplicate licenses; fee

A. It is lawful to practice dentistry as a professional corporation or professional limited liability company.

B. It is lawful to practice dentistry as a business organization if the business organization is registered as a business entity pursuant to this chapter.

C. It is lawful to practice dentistry under a name other than that of the licensed practitioners if the name is not deceptive or misleading.

D. If practicing as a professional corporation or professional limited liability company, the name and address of record of the dentist owners of the practice shall be conspicuously displayed at the entrance to each owned location.

E. If practicing as a business organization that is registered as a business entity pursuant to section 32-1213, the receipt for the current registration period must be conspicuously displayed at the entrance to each place of practice.

F. A licensee's receipt for the current licensure period shall be displayed in the licensee's place of practice in a manner that is always readily observable by patients or visitors and shall be exhibited to members of the board or to duly authorized agents of the board on request. The receipt for the licensure period immediately preceding shall be kept on display until replaced by the receipt for the current period. During the year in which the licensee is first licensed and until the receipt for the following period is received, the license shall be displayed in lieu of the receipt.

G. If a dentist maintains more than one place of practice, the board may issue one or more duplicate licenses or receipts on payment of a fee fixed by the board not exceeding twenty-five dollars for each duplicate.

H. If a licensee legally changes the licensee's name from that in which the license was originally issued, the board, on satisfactory proof of the change and surrender of the original license, if obtainable, may issue a new license in the new name and shall charge the established fee for duplicate licenses.

32-1263. Grounds for disciplinary action; definition

A. The board may invoke disciplinary action against any person who is licensed under this chapter for any of the following reasons:

1. Unprofessional conduct as defined in section 32-1201.01.

2. Conviction of a felony or of a misdemeanor involving moral turpitude, in which case the record of conviction or a certified copy is conclusive evidence.

3. Physical or mental incompetence to practice pursuant to this chapter.

4. Committing or aiding, directly or indirectly, a violation of or noncompliance with any provision of this chapter or of any rules adopted by the board pursuant to this chapter.

5. Dental incompetence as defined in section 32-1201.

B. This section does not establish a cause of action against a licensee or a registered business entity that makes a report of unprofessional conduct or unethical conduct in good faith.

C. The board may take disciplinary action against a business entity that is registered pursuant to this chapter for unethical conduct.

D. For the purposes of this section, "unethical conduct" means the following acts occurring in this state or elsewhere:

1. Failing to report in writing to the board any evidence that a dentist, dental therapist, denturist or dental hygienist is or may be professionally incompetent, is or may be guilty of unprofessional conduct, is or may be impaired by drugs or alcohol or is or may be mentally or physically unable to safely engage in the permissible activities of a dentist, dental therapist, denturist or dental hygienist.

2. Falsely reporting to the board that a dentist, dental therapist, denturist or dental hygienist is or may be guilty of unprofessional conduct, is or may be impaired by drugs or alcohol or is or may be mentally or physically unable to safely engage in the permissible activities of a dentist, dental therapist, denturist or dental hygienist.

3. Obtaining or attempting to obtain a registration or registration renewal by fraud or by misrepresentation.

4. Knowingly filing with the board any application, renewal or other document that contains false information.

5. Failing to register or failing to submit a renewal registration with the board pursuant to section 32-1213.

6. Failing to provide the following persons with access to any place for which a registration has been issued or for which an application for a registration has been submitted in order to conduct a site investigation, inspection or audit:

(a) The board or its employees or agents.

(b) An authorized federal or state official.

7. Failing to notify the board of a change in officers and directors, a change of address or a change in the dentists providing services pursuant to section 32-1213, subsection E.

8. Failing to provide patient records pursuant to section 32-1264.

9. Obtaining a fee by fraud or misrepresentation or wilfully or intentionally filing a fraudulent claim with a third party for services rendered or to be rendered to a patient.

10. Engaging in repeated irregularities in billing.

11. Engaging in the following advertising practices:

(a) Publishing or circulating, directly or indirectly, any false or fraudulent or misleading statements concerning the skill, methods or practices of a registered business entity, a licensee or any other person.

(b) Advertising in any manner that tends to deceive or defraud the public.

12. Failing to comply with a board subpoena in a timely manner.

13. Failing to comply with a final board order, including a decree of censure, a period or term of probation, a consent agreement or a stipulation.

14. Employing or aiding and abetting unlicensed persons to perform work that must be done by a person licensed pursuant to this chapter.

15. Engaging in any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public.

16. Engaging in a policy or practice that interferes with the clinical judgment of a licensee providing dental services for a business entity or compromising a licensee's ability to comply with this chapter.

17. Engaging in a practice by which a dental hygienist, dental therapist or dental assistant exceeds the scope of practice or restrictions included in a written collaborative practice agreement.

32-1263.01. Types of disciplinary action; letter of concern; judicial review; notice; removal of notice; violation; classification

A. The board may take any one or a combination of the following disciplinary actions against any person licensed under this chapter:

1. Revocation of license to practice.

2. Suspension of license to practice.

3. Entering a decree of censure, which may require that restitution be made to an aggrieved party.

4. Issuance of an order fixing a period and terms of probation best adapted to protect the public health and safety and to rehabilitate the licensed person. The order fixing a period and terms of probation may require that restitution be made to the aggrieved party.

5. Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted under this chapter.

6. Imposition of a requirement for restitution of fees to the aggrieved party.

7. Imposition of restrictions on the scope of practice.

8. Imposition of peer review and professional education requirements.

9. Imposition of community service.

B. The board may issue a letter of concern if a licensee's continuing practices may cause the board to take disciplinary action. The board may also issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

C. Failure to comply with any order of the board, including an order of censure or probation, is cause for suspension or revocation of a license.

D. All disciplinary and final nondisciplinary actions or orders, not including letters of concern or advisory letters, issued by the board against a licensee or certificate holder shall be posted to that licensee's or certificate holder's profile on the board's website. For the purposes of this subsection, only final nondisciplinary actions and orders that are issued after January 1, 2018 shall be posted.

E. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

F. If the state board of dental examiners acts to modify any dentist's prescription-writing privileges, it shall immediately notify the Arizona state board of pharmacy of the modification.

G. The board may post a notice of its suspension or revocation of a license at the licensee's place of business. This notice shall remain posted for sixty days. A person who removes this notice without board or court authority before that time is guilty of a class 3 misdemeanor.

H. A licensee or certificate holder shall respond in writing to the board within twenty days after a notice of hearing is served. A licensee who fails to answer the charges in a complaint and notice of hearing issued pursuant to this article and title 41, chapter 6, article 10 is deemed to admit the acts charged in the complaint, and the board may revoke or suspend the license without a hearing.

32-1263.02. Investigation and adjudication of complaints; disciplinary action; civil penalty; immunity; subpoena authority; definitions

A. The board on its own motion, or the investigation committee if established by the board, may investigate any evidence that appears to show the existence of any of the causes or grounds for disciplinary action as provided in section 32-1263. The board or investigation committee may investigate any complaint that alleges the existence of any of the causes or grounds for disciplinary action as provided in section 32-1263. The board shall not act on its own motion or on a complaint received by the board if the allegation of unprofessional conduct, unethical conduct or any other violation of this chapter against a licensee occurred more than four years before the complaint is received by the board. The four-year time limitation does not apply to:

1. Medical malpractice settlements or judgments, allegations of sexual misconduct or an incident or occurrence that involved a felony, diversion of a controlled substance or impairment while practicing by the licensee.

2. The board's consideration of the specific unprofessional conduct related to the licensee's failure to disclose conduct or a violation as required by law.

B. At the request of the complainant, the board or investigation committee shall not disclose to the respondent the complainant name unless the information is essential to proceedings conducted pursuant to this article.

C. The board or investigation committee shall conduct necessary investigations, including interviews between representatives of the board or investigation committee and the licensee with respect to any information obtained by or filed with the board under subsection A of this section or obtained by the board or investigation committee during the course of an investigation. The results of the investigation conducted by the investigation committee, including any recommendations from the investigation committee for disciplinary action against any licensee, shall be forwarded to the board for its review.

D. The board or investigation committee may designate one or more persons of appropriate competence to assist the board or investigation committee with any aspect of an investigation.

E. If, based on the information the board receives under subsection A or C of this section, the board finds that the public health, safety or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, the board may order a summary suspension of a licensee's license pursuant to section 41-1092.11 pending proceedings for revocation or other action.

F. If a complaint refers to quality of care, the patient may be referred for a clinical evaluation at the discretion of the board or the investigation committee.

G. If, after completing its investigation or review pursuant to this section, the board finds that the information provided pursuant to subsection A or C of this section is insufficient to merit disciplinary action against a licensee, the board may take any of the following actions:

1. Dismiss the complaint.

2. Issue a nondisciplinary letter of concern to the licensee.

3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

4. Assess a nondisciplinary civil penalty in an amount not to exceed \$500 if the complaint involves the licensee's failure to respond to a board subpoena.

H. If, after completing its investigation or review pursuant to this section, the board finds that the information provided pursuant to subsection A or C of this section is sufficient to merit disciplinary action against a licensee, the board may request that the licensee participate in a formal interview before the board. If the licensee refuses or accepts the invitation for a formal interview and the results indicate that grounds may exist for revocation or suspension, the board shall issue a formal complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. If, after completing a formal interview, the board finds that the protection of the public requires emergency action, it may order a summary suspension of the license pursuant to section 41-1092.11 pending formal revocation proceedings or other action authorized by this section.

I. If, after completing a formal interview, the board finds that the information provided under subsection A or C of this section is insufficient to merit suspension or revocation of the license, it may take any of the following actions:

1. Dismiss the complaint.
2. Order disciplinary action pursuant to section 32-1263.01, subsection A.
3. Enter into a consent agreement with the licensee for disciplinary action.
4. Order nondisciplinary continuing education pursuant to section 32-1263.01, subsection B.
5. Issue a nondisciplinary letter of concern to the licensee.

J. A copy of the board's order issued pursuant to this section shall be given to the complainant and to the licensee. Pursuant to title 41, chapter 6, article 10, the licensee may petition for rehearing or review.

K. Any person who in good faith makes a report or complaint as provided in this section to the board or to any person or committee acting on behalf of the board is not subject to liability for civil damages as a result of the report.

L. The board, through its president or the president's designee, may issue subpoenas to compel the attendance of witnesses and the production of documents and may administer oaths, take testimony and receive exhibits in evidence in connection with an investigation initiated by the board or a complaint filed with the board. In case of disobedience to a subpoena, the board may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of documentary evidence.

M. Patient records, including clinical records, medical reports, laboratory statements and reports, files, films, reports or oral statements relating to diagnostic findings or treatment of patients, any information from which a patient or a patient's family may be identified or information received and records kept by the board as a result of the investigation procedures taken pursuant to this chapter, are not available to the public.

N. The board may charge the costs of formal hearings conducted pursuant to title 41, chapter 6, article 10 to a licensee it finds to be in violation of this chapter.

O. The board may accept the surrender of an active license from a licensee who is subject to a board investigation and who admits in writing to any of the following:

1. Being unable to safely engage in the practice of dentistry.
2. Having committed an act of unprofessional conduct.
3. Having violated this chapter or a board rule.

P. In determining the appropriate disciplinary action under this section, the board may consider any previous nondisciplinary and disciplinary actions against a licensee.

Q. If a licensee who is currently providing dental services for a registered business entity believes that the registered business entity has engaged in unethical conduct as defined pursuant to section 32-1263, subsection D, paragraph 16, the licensee must do both of the following before filing a complaint with the board:

1. Notify the registered business entity in writing that the licensee believes that the registered business entity has engaged in a policy or practice that interferes with the clinical judgment of the licensee or that compromises the licensee's ability to comply with the requirements of this chapter. The licensee shall specify in the notice the reasons for this belief.

2. Provide the registered business entity with at least ten calendar days to respond in writing to the assertions made pursuant to paragraph 1 of this subsection.

R. A licensee who files a complaint pursuant to subsection Q of this section shall provide the board with a copy of the licensee's notification and the registered business entity's response, if any.

S. A registered business entity may not take any adverse employment action against a licensee because the licensee complies with the requirements of subsection Q of this section.

T. For the purposes of this section:

1. "License" includes a certificate issued pursuant to this chapter.

2. "Licensee" means a dentist, dental therapist, dental hygienist, denturist, dental consultant, restricted permit holder or business entity regulated pursuant to this chapter.

32-1263.03. Investigation committee; complaints; termination; review

A. If established by the board, the investigation committee may terminate a complaint if the investigation committee's review indicates that the complaint is without merit and that termination is appropriate.

B. The investigation committee may not terminate a complaint if a court has entered a medical malpractice judgment against a licensee.

C. At each regularly scheduled board meeting, the investigation committee shall provide to the board a list of each complaint the investigation committee terminated pursuant to subsection A of this section since the preceding board meeting. On review, the board shall approve, modify or reject the investigation committee's action.

D. A person who is aggrieved by an action taken by the investigation committee pursuant to subsection A of this section may file a written request that the board review that action. The request must be filed within thirty days after that person is notified of the investigation committee's action by personal delivery or, if the notification is mailed to that person's last known residence or place of business, within thirty-five days after the date on the notification. At the next regular board meeting, the board shall review the investigation committee's action. On review, the board shall approve, modify or reject the investigation committee's action.

32-1264. Maintenance of records

A. A person who is licensed or certified pursuant to this chapter shall make and maintain legible written records concerning all diagnoses, evaluations and treatments of each patient of record. A licensee or certificate holder shall maintain records that are stored or produced electronically in retrievable paper form. These records shall include:

1. All treatment notes, including current health history and clinical examinations.
2. Prescription and dispensing information, including all drugs, medicaments and dental materials used for patient care.
3. Diagnosis and treatment planning.
4. Dental and periodontal charting. Specialist charting must include areas of requested care and notation of visual oral examination describing any areas of potential pathology or radiographic irregularities.
5. All radiographs.

B. Records are available for review and for treatment purposes to the dentist, dental therapist, dental hygienist or denturist providing care.

C. On request, the licensee or certificate holder shall allow properly authorized board personnel to have access to the licensee's or certificate holder's place of practice to conduct an inspection and must make the licensee's or certificate holder's records, books and documents available to the board free of charge as part of an investigation process.

D. Within fifteen business days after a patient's written request, that patient's dentist, dental therapist, dental hygienist or denturist or a registered business entity shall transfer legible and diagnostic quality copies of that patient's records to another licensee or certificate holder or that patient. The patient may be charged for the reasonable costs of copying and forwarding these records. A dentist, dental therapist, dental hygienist, denturist or registered business entity may require that payment of reproduction costs be made in advance, unless the records are necessary for continuity of care, in which case the records shall not be withheld. Copies of records shall not be withheld because of an unpaid balance for dental services.

E. Unless otherwise required by law, a person who is licensed or certified pursuant to this chapter or a business entity that is registered pursuant to this chapter must retain the original or a copy of a patient's dental records as follows:

1. If the patient is an adult, for at least six years after the last date the adult patient received dental services from that provider.
2. If the patient is a child, for at least three years after the child's eighteenth birthday or for at least six years after the last date the child received dental services from the provider, whichever occurs later.

32-1265. Interpretation of chapter

Nothing in this chapter shall be construed to abridge a license issued under laws of this state relating to medicine or surgery.

32-1266. Prosecution of violations

The attorney general shall act for the board in all matters requiring legal assistance, but the board may employ other or additional counsel in its own behalf. The board shall assist prosecuting officers in enforcement of this chapter, and in so doing may engage suitable persons to assist in investigations and in the procurement and presentation of evidence. Subpoenas or other orders issued by the board may be served by any officer empowered to serve processes, who shall receive the fees prescribed by law. Expenditures made in carrying out provisions of this section shall be paid from the dental board fund.

32-1267. Use of fraudulent instruments; classification

A person is guilty of a class 5 felony who:

1. Knowingly presents to or files with the board as his own a diploma, degree, license, certificate or identification belonging to another, or which is forged or fraudulent.
2. Exhibits or displays any instrument described in paragraph 1 with intent that it be used as evidence of the right of such person to practice dentistry in this state.
3. With fraudulent intent alters any instrument described in paragraph 1 or uses or attempts to use it when so altered.
4. Sells, transfers or offers to sell or transfer, or who purchases, procures or offers to purchase or procure a diploma, license, certificate or identification, with intent that it be used as evidence of the right to practice dentistry in this state by a person other than the one to whom it belongs or is issued.

32-1268. Violations; classification; required proof

A. A person is guilty of a class 2 misdemeanor who:

1. Employs, contracts with, or by any means procures the assistance of, or association with, for the purpose of practicing dentistry, a person not having a valid license therefor.
2. Fails to obey a summons or other order regularly and properly issued by the board.
3. Violates any provision of this chapter for which the penalty is not specifically prescribed.

B. In a prosecution or hearing under this chapter, it is necessary to prove only a single act of violation and not a general course of conduct, and where the violation is continued over a period of one or more days each day constitutes a separate violation subject to the penalties prescribed in this chapter.

32-1269. Violation; classification; injunctive relief

A. A person convicted under this chapter is guilty of a class 2 misdemeanor unless another classification is specifically prescribed in this chapter. Violations shall be prosecuted by the county attorney and tried before the superior court in the county in which the violation occurs.

B. In addition to penalties provided in this chapter, the courts of the state are vested with jurisdiction to prevent and restrain violations of this chapter as nuisances per se, and the county attorneys shall, and the board may, institute proceedings in equity to prevent and restrain violations. A person damaged, or threatened with loss or injury, by reason of a violation of this chapter is entitled to obtain injunctive relief in any court of competent jurisdiction against any damage or threatened loss or injury by reason of a violation of this chapter.

32-1270. Deceased or incapacitated dentists; notification

A. An administrator or executor of the estate of a deceased dentist, or a person who is legally authorized to act for a dentist who has been adjudicated to be mentally incompetent, must notify the board within sixty days after the dentist's death or incapacitation. The administrator or executor may employ a licensed dentist for a period of not more than one year to:

1. Continue the deceased or incapacitated dentist's practice.
2. Conclude the affairs of the deceased or incapacitated dentist, including the sale of any assets.

B. An administrator or executor operating a practice pursuant to this section for more than one year must register as a business entity pursuant to section 32-1213.

32-1271. Marking of dentures for identification; retention and release of information

A. Every complete upper or lower denture fabricated by a licensed dentist, or fabricated pursuant to the dentist's work order, must be marked with the patient's name unless the patient objects. The marking must be done during fabrication and must be permanent, legible and cosmetically acceptable. The dentist or the dental laboratory shall determine the location of the marking and the methods used to implant or apply it. The dentist must inform the patient that the marking is used only to identify the patient, and the patient may choose which marking is to appear on the dentures.

B. The dentist must retain the records of marked dentures and may not release the records to any person except to law enforcement officers in any emergency that requires personal identification by means of dental records or to anyone authorized by the patient to receive this information.

Article 3.1 – Licensing and Regulation of Dental Therapists

32-1276. Definitions

In this article, unless the context otherwise requires:

1. "Applicant" means a person who is applying for licensure to practice dental therapy in this state.
2. "Direct supervision" means that a licensed dentist is present in the office and available to provide treatment or care to a patient and observe a dental therapist's work.
3. "Licensee" means a person who holds a license to practice dental therapy in this state.

32-1276.01. Application for licensure; requirements; fingerprint clearance card; denial or suspension of application

A. An applicant for licensure as a dental therapist in this state shall do all of the following:

1. Apply to the board on a form prescribed by the board.
2. Verify under oath that all statements in the application are true to the applicant's knowledge.
3. Enclose with the application:
 - (a) A recent photograph of the applicant.
 - (b) The application fee established by the board by rule.

B. The board may grant a license to practice dental therapy to an applicant who meets all of the following requirements:

1. Is licensed as a dental hygienist pursuant to article 4 of this chapter.
2. Graduates from a dental therapy education program that is accredited by or holds an initial accreditation from the American dental association commission on dental accreditation and that is offered through an accredited higher education institution recognized by the United States department of education.
3. Successfully passes, both of the following:
 - (a) Within five years before filing the application, a clinical examination in dental therapy administered by a state or testing agency in the United States.
 - (b) The Arizona dental jurisprudence examination.
4. Is not subject to any grounds for denial of the application under this chapter.
5. Obtains a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1.
6. Meets all requirements for licensure established by the board by rule.

C. The board may deny an application for licensure or license renewal if the applicant:

1. Has committed an act that would be cause for censure, probation or suspension or revocation of a license under this chapter.
2. While unlicensed, committed or aided and abetted the commission of an act for which a license is required by this chapter.
3. Knowingly made any false statement in the application.

4. Has had a license to practice dental therapy revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently suspended or restricted by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental therapy instead of having disciplinary action taken against the applicant by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for licensure if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue a license or deny an application for licensure until the investigation is completed.

32-1276.02. Dental therapist triennial licensure; continuing education; license renewal and reinstatement; fees; civil penalties; retired and disabled license status

A. Except as provided in section 32-4301, a license issued under this article expires thirty days after the licensee's birth month every third year. On or before the last day of the licensee's birth month every third year, each licensed dental therapist shall submit to the board a complete renewal application and pay a license renewal fee established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this subsection does not apply to a retired dental therapist or to a dental therapist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the licensee's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birth month of the expiration year.

C. An applicant for a dental therapy license for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birthday. This fee may not exceed one-third of the fee prescribed pursuant to subsection A of this section. Subsequent applications shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a \$100 penalty. When the license is issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this article.

E. A licensee shall notify the board in writing within ten days after the licensee changes the primary mailing address listed with the board. The board shall impose a civil penalty of \$50 if a licensee fails to notify the board of the change within that time. The board shall increase the civil penalty to \$100 if a licensee fails to notify the board of the change within thirty days.

F. A licensee who is at least sixty-five years of age and who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes by paying a reduced renewal fee as prescribed by the board by rule.

G. A licensee is not required to maintain a dental hygienist license.

32-1276.03. Practice of dental therapy; authorized procedures; supervision requirements; restrictions

A. A person is deemed to be a practicing dental therapist if the person does any of the acts or performs any operations included in the general practice of dental therapists or dental therapy or any related and associated duties.

B. Either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement, a licensed dental therapist may do any of the following:

1. Perform oral evaluations and assessments of dental disease and formulate individualized treatment plans.
2. Perform comprehensive charting of the oral cavity.
3. Provide oral health instruction and disease prevention education, including motivational interviewing, nutritional counseling and dietary analysis.
4. Expose and process dental radiographic images.
5. Perform dental prophylaxis, scaling, root planing and polishing procedures.
6. Dispense and administer oral and topical nonnarcotic analgesics and anti-inflammatory and antibiotic medications as prescribed by a licensed health care provider.
7. Apply topical preventive and prophylactic agents, including fluoride varnishes, antimicrobial agents, silver diamine fluoride and pit and fissure sealants.
8. Perform pulp vitality testing.
9. Apply desensitizing medicaments or resins.
10. Fabricate athletic mouth guards and soft occlusal guards.
11. Change periodontal dressings.
12. Administer nitrous oxide analgesics and local anesthetics.

13. Perform simple extraction of erupted primary teeth.
14. Perform nonsurgical extractions of periodontally diseased permanent teeth that exhibit plus three or grade three mobility and that are not impacted, fractured, unerupted or in need of sectioning for removal.
15. Perform emergency palliative treatments of dental pain that is related to care or a service described in this section.
16. Prepare and place direct restorations in primary and permanent teeth.
17. Fabricate and place single-tooth temporary crowns.
18. Prepare and place preformed crowns on primary teeth.
19. Perform indirect and direct pulp capping on permanent teeth.
20. Perform indirect pulp capping on primary teeth.
21. Perform suturing and suture removal.
22. Provide minor adjustments and repairs on removable prostheses.
23. Place and remove space maintainers.
24. Perform all functions of a dental assistant and expanded function dental assistant.
25. Perform other related services and functions that are authorized by the supervising dentist within the dental therapist's scope of practice and for which the dental therapist is trained.
26. Provide referrals.
27. Perform any other duties of a dental therapist that are authorized by the board by rule.

C. A dental therapist may not:

1. Dispense or administer a narcotic drug.
2. Independently bill for services to any individual or third-party payor.

D. A person may not claim to be a dental therapist unless that person is licensed as a dental therapist under this article.

32-1276.04. Dental therapists; clinical practice; supervising dentists; written collaborative practice agreements

A. A dental therapist may practice only in the following practice settings or locations, including mobile dental units, that are operated or served by any of the following:

1. A federally qualified community health center.
2. A health center program that has received a federal look-alike designation.
3. A community health center.
4. A nonprofit dental practice or a nonprofit organization that provides dental care to low-income and underserved individuals.
5. A private dental practice that provides dental care for community health center patients of record who are referred by the community health center.

B. A dental therapist may practice in this state either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement. Before a dental therapist may enter into a written collaborative practice agreement, the dental therapist shall complete one thousand hours of dental therapy clinical practice under the direct supervision of a dentist who is licensed in this state and shall provide documentation satisfactory to the board of having completed this requirement.

C. A practicing dentist who holds an active license pursuant to this chapter and a licensed dental therapist who holds an active license pursuant to this article may enter into a written collaborative practice agreement for the delivery of dental therapy services. The supervising dentist shall provide or arrange for another dentist or specialist to provide any service needed by the dental therapist's patient that exceeds the dental therapist's authorized scope of practice.

D. A dentist may not enter into more than four separate written collaborative practice agreements for the delivery of dental therapy services.

E. A written collaborative practice agreement between a dentist and a dental therapist shall do all of the following:

1. Address any limit on services and procedures to be performed by the dental therapist, including types of populations and any age-specific or procedure-specific practice protocol, including case selection criteria, assessment guidelines and imaging frequency.
2. Address any limit on practice settings established by the supervising dentist and the level of supervision required for various services or treatment settings.
3. Establish practice protocols, including protocols for informed consent, recordkeeping, managing medical emergencies and providing care to patients with complex medical conditions, including requirements for consultation before initiating care.
4. Establish protocols for quality assurance, administering and dispensing medications and supervising dental assistants.
5. Include specific protocols to govern situations in which the dental therapist encounters a patient requiring treatment that exceeds the dental therapist's authorized scope of practice or the limits imposed by the collaborative practice agreement.
6. Specify that the extraction of permanent teeth may be performed only under the direct supervision of a dentist and consistent with section 32-1276.03, subsection B, paragraph 14.

F. Except as provided in section 32-1276.03, subsection B, paragraph 14, to the extent authorized by the supervising dentist in the written collaborative practice agreement, a dental therapist may practice dental therapy procedures authorized under this article in a practice setting in which the supervising dentist is not on-site and has not previously examined the patient or rendered a diagnosis.

G. The written collaborative practice agreement must be signed and maintained by both the supervising dentist and the dental therapist and may be updated and amended as necessary by both the supervising dentist and dental therapist. The supervising dentist and dental therapist shall submit a copy of the agreement and any amendment to the agreement to the board.

32-1276.05. Dental therapists; supervising dentists; collaborative practice relationships

A. A dentist who holds an active license pursuant to this chapter and a dental therapist who holds an active license pursuant to this article may enter into a collaborative practice relationship through a written collaborative practice agreement for the delivery of dental therapy services.

B. Each dental practice shall disclose to a patient whether the patient is scheduled to see the dentist or dental therapist.

C. Each dentist in a collaborative practice relationship shall:

1. Be available to provide appropriate contact, communication and consultation with the dental therapist.
2. Adopt procedures to provide timely referral of patients whom the dental therapist refers to a licensed dentist for examination. The dentist to whom the patient is referred shall be geographically available to see the patient.

D. Each dental therapist in a collaborative practice relationship shall:

1. Perform only those duties within the terms of the written collaborative practice agreement.
2. Maintain an appropriate level of contact with the supervising dentist.

E. The dental therapist and the supervising dentist shall notify the board of the beginning of the collaborative practice relationship and provide the board with a copy of the written collaborative practice agreement and any amendments to the agreement within thirty days after the effective date of the agreement or amendment. The dental therapist and supervising dentist shall also notify the board within thirty days after the termination date of the written collaborative practice agreement if the date is different than the termination date provided in the agreement.

F. Subject to the terms of the written collaborative practice agreement, a dental therapist may perform all dental therapy procedures authorized in section 32-1276.03. The dentist's presence, examination, diagnosis and treatment plan are not required unless specified by the written collaborative practice agreement.

32-1276.06. Practicing without a license; violation; classification

It is a class 6 felony for a person to practice dental therapy in this state unless the person has obtained a license from the board as provided in this article.

32-1276.07. Licensure by credential; examination waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting the application for licensure pursuant to this article and the other state or testing agency maintains a standard of licensure or certification that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall prescribe what constitutes active practice.
2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed or certified.

B. The applicant shall pay a licensure by credential fee as established by the board in rule.

C. An applicant under this section is not required to obtain a dental hygienist license in this state if the board determines that the applicant otherwise meets the requirements for dental therapist licensure.

32-1276.08. Dental therapy schools; credit for prior experience or coursework

Notwithstanding any other law, a recognized dental therapy school may grant advanced standing or credit for prior learning to a student who has prior experience or has completed coursework that the school determines is equivalent to didactic and clinical education in its accredited program.

Article 4 – Licensing and Regulation of Dental Hygienists

32-1281. Practicing as dental hygienist; supervision requirements; definitions

A. A person is deemed to be practicing as a dental hygienist if the person does any of the acts or performs any of the operations included in the general practice of dental hygienists, dental hygiene and all related and associated duties.

B. A licensed dental hygienist may perform the following:

1. Prophylaxis.
2. Scaling.
3. Closed subgingival curettage.
4. Root planing.
5. Administering local anesthetics and nitrous oxide.
6. Inspecting the oral cavity and surrounding structures for the purposes of gathering clinical data to facilitate a diagnosis.
7. Periodontal screening or assessment.

8. Recording clinical findings.

9. Compiling case histories.

10. Exposing and processing dental radiographs.

11. All functions authorized and deemed appropriate for dental assistants.

12. Except as provided in paragraph 13 of this subsection, those restorative functions permissible for an expanded function dental assistant if qualified pursuant to section 32-1291.01.

13. Placing interim therapeutic restorations after successfully completing a course at an institution accredited by the commission on dental accreditation of the American dental association.

C. The board by rule shall prescribe the circumstances under which a licensed dental hygienist may:

1. Apply preventive and therapeutic agents to the hard and soft tissues.

2. Use emerging scientific technology and prescribe the necessary training, experience and supervision to operate newly developed scientific technology. A dentist who supervises a dental hygienist whose duties include the use of emerging scientific technology must have training on using the emerging technology that is equal to or greater than the training the dental hygienist is required to obtain.

3. Perform other procedures not specifically authorized by this section.

D. Except as provided in subsections E, F and I of this section, a dental hygienist shall practice under the general supervision of a dentist who is licensed pursuant to this chapter.

E. A dental hygienist may practice under the general supervision of a physician who is licensed pursuant to chapter 13 or 17 of this title in an inpatient hospital setting.

F. A dental hygienist may perform the following procedures on meeting the following criteria and under the following conditions:

1. Administering local anesthetics under the direct supervision of a dentist who is licensed pursuant to this chapter after:

(a) The dental hygienist successfully completes a course in administering local anesthetics that includes didactic and clinical components in both block and infiltration techniques offered by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association.

(b) The dental hygienist successfully completes an examination in local anesthesia given by the western regional examining board or a written and clinical examination of another state or regional examination that is substantially equivalent to the requirements of this state, as determined by the board.

(c) The board issues to the dental hygienist a local anesthesia certificate on receipt of proof that the requirements of subdivisions (a) and (b) of this paragraph have been met.

2. Administering local anesthetics under general supervision to a patient of record if all of the following are true:

(a) The dental hygienist holds a local anesthesia certificate issued by the board.

(b) The patient is at least eighteen years of age.

(c) The patient has been examined by a dentist who is licensed pursuant to this chapter within the previous twelve months.

(d) There has been no change in the patient's medical history since the last examination. If there has been a change in the patient's medical history within that time, the dental hygienist must consult with the dentist before administering local anesthetics.

(e) The supervising dentist who performed the examination has approved the patient for being administered local anesthetics by the dental hygienist under general supervision and has documented this approval in the patient's record.

3. Administering nitrous oxide analgesia under the direct supervision of a dentist who is licensed pursuant to this chapter after:

(a) The dental hygienist successfully completes a course in administering nitrous oxide analgesia that includes didactic and clinical components offered by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association.

(b) The board issues to the dental hygienist a nitrous oxide analgesia certificate on receipt of proof that the requirements of subdivision (a) of this paragraph have been met.

G. The board may issue local anesthesia and nitrous oxide analgesia certificates to a licensed dental hygienist on receipt of evidence satisfactory to the board that the dental hygienist holds a valid certificate or credential in good standing in the respective procedure issued by a licensing board of another jurisdiction of the United States.

H. A dental hygienist may perform dental hygiene procedures in the following settings:

1. On a patient of record of a dentist within that dentist's office.

2. Except as prescribed in section 32-1289.01, in a health care facility, long-term care facility, public health agency or institution, public or private school or homebound setting on patients who have been examined by a dentist within the previous year.

3. In an inpatient hospital setting pursuant to subsection E of this section.

I. A dental hygienist may provide dental hygiene services under an affiliated practice relationship with a dentist as prescribed in section 32-1289.01.

J. For the purposes of this article:

1. "Assessment" means a limited, clinical inspection that is performed to identify possible signs of oral or systemic disease, malformation or injury and the potential need for referral for diagnosis and treatment, and may include collecting clinical information to facilitate an examination, diagnosis and treatment plan by a dentist.

2. "Direct supervision" means that the dentist is present in the office while the dental hygienist is treating a patient and is available for consultation regarding procedures that the dentist authorizes and for which the dentist is responsible.

3. "General supervision" means:

(a) That the dentist is available for consultation, whether or not the dentist is in the dentist's office, over procedures that the dentist has authorized and for which the dentist remains responsible.

(b) With respect to an inpatient hospital setting, that a physician who is licensed pursuant to chapter 13 or 17 of this title is available for consultation, whether or not the physician is physically present at the hospital.

4. "Interim therapeutic restoration" means a provisional restoration that is placed to stabilize a primary or permanent tooth and that consists of removing soft material from the tooth using only hand instrumentation, without using rotary instrumentation, and subsequently placing an adhesive restorative material.

5. "Screening" means determining an individual's need to be seen by a dentist for diagnosis and does not include an examination, diagnosis or treatment planning.

32-1282. Administration and enforcement

A. So far as applicable, the board shall have the same powers and duties in administering and enforcing this article that it has under section 32-1207 in administering and enforcing articles 1, 2 and 3 of this chapter.

B. The board shall adopt rules that provide a method for the board to receive the assistance and advice of dental hygienists licensed pursuant to this chapter in all matters relating to the regulation of dental hygienists.

32-1283. Disposition of revenues

The provisions of section 32-1212 shall apply to all fees, fines and other revenues received by the board under this article.

32-1284. Qualifications of applicant; application; fee; fingerprint clearance card; rules; denial or suspension of application

A. An applicant for licensure as a dental hygienist shall be at least eighteen years of age, shall meet the requirements of section 32-1285 and shall present to the board evidence of graduation or a certificate of satisfactory completion in a course or curriculum in dental hygiene from a recognized dental hygiene school. A candidate shall make written application to the board accompanied by a

nonrefundable Arizona dental jurisprudence examination fee of \$100. The board shall waive this fee for candidates who are holders of valid restricted permits. Each candidate shall also obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

B. The board shall adopt rules that govern the practice of dental hygienists and that are not inconsistent with this chapter.

C. The board may deny an application for licensure or an application for license renewal if the applicant:

1. Has committed an act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of an act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dental hygiene revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental hygiene instead of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for a license if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a license to the applicant until the investigation is resolved.

32-1285. Applicants for licensure; examination requirements

An applicant for licensure shall have passed all of the following:

1. The national dental hygiene board examination.

2. A clinical examination administered by a state or regional testing agency in the United States within five years preceding filing the application.

3. The Arizona dental jurisprudence examination.

32-1286. Recognized dental hygiene schools; credit for prior learning

Notwithstanding any law to the contrary, a recognized dental hygiene school may grant advanced standing or credit for prior learning to a student who has prior experience or course work that the school determines is equivalent to didactic and clinical education in its accredited program.

32-1287. Dental hygienist triennial licensure; continuing education; license reinstatement; notice of change of address; penalties; retired and disabled license status

A. Except as provided in section 32-4301, a license expires thirty days after the licensee's birth month every third year. On or before the last day of the licensee's birth month every third year, every licensed dental hygienist shall submit to the board a complete renewal application and pay a license renewal fee of not more than \$325, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this section does not apply to a retired hygienist or a hygienist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the licensee's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birth month of the expiration year.

C. A person applying for a license for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birth month. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent registrations shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a \$100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this chapter.

E. A licensee shall notify the board in writing within ten days after the licensee changes the primary mailing address listed with the board. The board shall impose a penalty of \$50 if a licensee fails to notify the board of the change within that time. The board shall increase the penalty imposed to \$100 if a licensee fails to notify it of the change within thirty days.

F. A licensee who is over sixty-five years of age and who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes on payment of a reduced renewal fee as prescribed by the board by rule.

32-1288. Practicing without license; classification

It is a class 1 misdemeanor for a person to practice dental hygiene in this state unless the person has obtained a license from the board as provided in this article.

32-1289. Employment of dental hygienist by public agency, institution or school

A. A public health agency or institution or a public or private school authority may employ dental hygienists to perform necessary dental hygiene procedures under either direct or general supervision pursuant to section 32-1281.

B. A dental hygienist employed by or working under contract or as a volunteer for a public health agency or institution or a public or private school authority before an examination by a dentist may perform a screening or assessment and apply sealants and topical fluoride.

32-1289.01. Dental hygienists; affiliated practice relationships; rules; definition

A. A dentist who holds an active license pursuant to this chapter and a dental hygienist who holds an active license pursuant to this article may enter into an affiliated practice relationship to deliver dental hygiene services.

B. A dental hygienist shall satisfy all of the following to be eligible to enter into an affiliated practice relationship with a dentist pursuant to this section to deliver dental hygiene services in an affiliated practice relationship:

1. Hold an active license in good standing pursuant to this article.
2. Enter into an affiliated practice relationship with a dentist who holds an active license pursuant to this chapter.
3. Be actively engaged in dental hygiene practice for at least five hundred hours in each of the two years immediately preceding the affiliated practice relationship.

C. An affiliated practice agreement between a dental hygienist and a dentist shall be in writing and:

1. Shall identify at least the following:

(a) The affiliated practice settings in which the dental hygienist may deliver services pursuant to the affiliated practice relationship.

(b) The services to be provided and any procedures and standing orders the dental hygienist must follow. The standing orders shall include the circumstances in which a patient may be seen by the dental hygienist.

(c) The conditions under which the dental hygienist may administer local anesthesia and provide root planing.

(d) Circumstances under which the affiliated practice dental hygienist must consult with the affiliated practice dentist before initiating further treatment on patients who have not been seen by a dentist within twelve months after the initial treatment by the affiliated practice dental hygienist.

2. May include protocols for supervising dental assistants.

D. The following requirements apply to all dental hygiene services provided through an affiliated practice relationship:

1. Patients who have been assessed by the affiliated practice dental hygienist shall be directed to the affiliated practice dentist for diagnosis, treatment or planning that is outside the dental hygienist's scope of practice, and the affiliated practice dentist may make any necessary referrals to other dentists.

2. The affiliated practice dental hygienist shall consult with the affiliated practice dentist if the proposed treatment is outside the scope of the agreement.

3. The affiliated practice dental hygienist shall consult with the affiliated practice dentist before initiating treatment on patients presenting with a complex medical history or medication regimen.

4. The patient shall be informed in writing that the dental hygienist providing the care is a licensed dental hygienist and that the care does not take the place of a diagnosis or treatment plan by a dentist.

E. A contract for dental hygiene services with licensees who have entered into an affiliated practice relationship pursuant to this section may be entered into only by:

1. A health care organization or facility.

2. A long-term care facility.

3. A public health agency or institution.

4. A public or private school authority.

5. A government-sponsored program.

6. A private nonprofit or charitable organization.

7. A social service organization or program.

F. An affiliated practice dental hygienist may not provide dental hygiene services in a setting that is not listed in subsection E of this section.

G. Each dentist in an affiliated practice relationship shall:

1. Be available to provide an appropriate level of contact, communication and consultation with the affiliated practice dental hygienist during the business hours of the affiliated practice dental hygienist.

2. Adopt standing orders applicable to dental hygiene procedures that may be performed and populations that may be treated by the affiliated practice dental hygienist under the terms of the applicable affiliated practice agreement and to be followed by the affiliated practice dental hygienist in each affiliated practice setting in which the affiliated practice dental hygienist performs dental hygiene services under the affiliated practice relationship.

3. Adopt procedures to provide timely referral of patients referred by the affiliated practice dental hygienist to a licensed dentist for examination and treatment planning. If the examination and treatment planning is to be provided by the dentist, that treatment shall be scheduled in an appropriate time frame. The affiliated practice dentist or the dentist to whom the patient is referred shall be geographically available to see the patient.

4. Not permit the provision of dental hygiene services by more than six affiliated practice dental hygienists at any one time.

H. Each affiliated practice dental hygienist, when practicing under an affiliated practice relationship:

1. May perform only those duties within the terms of the affiliated practice relationship.

2. Shall maintain an appropriate level of contact, communication and consultation with the affiliated practice dentist.

3. Is responsible and liable for all services rendered by the affiliated practice dental hygienist under the affiliated practice relationship.

I. The affiliated practice dental hygienist and the affiliated practice dentist shall notify the board of the beginning of the affiliated practice relationship and provide the board with a copy of the agreement and any amendments to the agreement within thirty days after the effective date of the agreement or amendment. The affiliated practice dental hygienist and the affiliated practice dentist shall also notify the board within thirty days after the termination date of the affiliated practice relationship if this date is different than the agreement termination date.

J. Subject to the terms of the written affiliated practice agreement entered into between a dentist and a dental hygienist, a dental hygienist may:

1. Perform all dental hygiene procedures authorized by this chapter, except for performing any diagnostic procedures that are required to be performed by a dentist and administering nitrous oxide. The dentist's presence and an examination, diagnosis and treatment plan are not required unless specified by the affiliated practice agreement.

2. Supervise dental assistants, including dental assistants who are certified to perform functions pursuant to section 32-1291.

K. The board shall adopt rules regarding participation in affiliated practice relationships by dentists and dental hygienists that specify the following:

1. Additional continuing education requirements that must be satisfied by a dental hygienist.

2. Additional standards and conditions that may apply to affiliated practice relationships.

3. Compliance with the dental practice act and rules adopted by the board.

L. For the purposes of this section, "affiliated practice relationship" means the delivery of dental hygiene services, pursuant to an agreement, by a dental hygienist who is licensed pursuant to this article and who refers the patient to a dentist who is licensed pursuant to this chapter for any necessary further diagnosis, treatment and restorative care.

32-1290. Grounds for censure, probation, suspension or revocation of license; procedure

After a hearing pursuant to title 41, chapter 6, article 10, the board may suspend or revoke the license issued to a person under this article or censure or place on probation any such person for any of the causes set forth as grounds for censure, probation, suspension or revocation in section 32-1263.

32-1291. Dental assistants; regulation; duties

A. A dental assistant may expose radiographs for dental diagnostic purposes under either the general supervision of a dentist or the direct supervision of an affiliated practice dental hygienist licensed pursuant to this chapter if the assistant has passed an examination approved by the board.

B. A dental assistant may polish the natural and restored surfaces of the teeth under either the general supervision of a dentist or the direct supervision of an affiliated practice dental hygienist licensed pursuant to this chapter if the assistant has passed an examination approved by the board.

32-1291.01. Expanded function dental assistants; training and examination requirements; duties

A. A dental assistant may perform expanded functions after meeting one of the following:

1. Successfully completing a board-approved expanded function dental assistant training program at an institution accredited by the American dental association commission on dental accreditation and on successfully completing examinations in dental assistant expanded functions approved by the board.

2. Providing both:

(a) Evidence of currently holding or having held within the preceding ten years a license, registration, permit or certificate in expanded functions in restorative procedures issued by another state or jurisdiction in the United States.

(b) Proof acceptable to the board of clinical experience in the expanded functions listed in subsection B of this section.

B. Expanded functions include the placement, contouring and finishing of direct restorations or the placement and cementation of prefabricated crowns following the preparation of the tooth by a licensed dentist. The restorative materials used shall be determined by the dentist.

C. An expanded function dental assistant may place interim therapeutic restorations under the general supervision and direction of a licensed dentist following a consultation conducted through teledentistry.

D. An expanded function dental assistant may apply sealants and fluoride varnish under the general supervision and direction of a licensed dentist.

E. A licensed dental hygienist may engage in expanded functions pursuant to section 32-1281, subsection B, paragraph 12 following a course of study and examination equivalent to that required for an expanded function dental assistant as specified by the board.

32-1292. Restricted permits; suspension; expiration; renewal

A. The board may issue a restricted permit to practice dental hygiene to an applicant who:

1. Has a pending contract with a recognized charitable dental clinic or organization that offers dental hygiene services without compensation or at a rate that reimburses the clinic only for dental supplies and overhead costs and the applicant will not receive compensation for dental hygiene services provided at the clinic or organization.
2. Has a license to practice dental hygiene issued by a regulatory jurisdiction in the United States.
3. Has been actively engaged in the practice of dental hygiene for three years immediately preceding the application.
4. Is, to the board's satisfaction, competent to practice dental hygiene.
5. Meets the requirements of section 32-1284, subsection A that do not relate to examination.

B. A person who holds a restricted permit issued by the board may practice dental hygiene only in the course of the person's employment by a recognized charitable dental clinic or organization approved by the board.

C. The applicant for a restricted permit must file a copy of the person's employment contract with the board that includes a statement signed by the applicant that the applicant:

1. Understands that if that person's employment is terminated before the restricted permit expires, the permit is automatically revoked and that person must voluntarily surrender the permit to the board and is no longer eligible to practice unless that person meets the requirements of sections 32-1284 and 32-1285 or passes the examination required in this article.
2. Must be employed without compensation by a dental clinic or organization that is operated for a charitable purpose.
3. Is subject to the provisions of this chapter that apply to the regulation of dental hygienists.

D. The board may deny an application for a restricted permit if the applicant:

1. Has committed an act that is a cause for disciplinary action pursuant to this chapter.
2. While unlicensed, committed or aided and abetted the commission of any act for which a license is required pursuant to this chapter.
3. Knowingly made a false statement in the application.
4. Has had a license to practice dental hygiene revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental hygiene instead of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

E. The board shall suspend an application for a restricted permit or an application for restricted permit renewal if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a restricted permit to the applicant until the investigation is resolved.

F. A restricted permit expires either one year after the date of issue or June 30, whichever date first occurs. The board may renew a restricted permit for terms that do not exceed one year.

32-1292.01. Licensure by credential; examinations; waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting an application for licensure pursuant to this chapter and the other state or testing agency maintains a standard of licensure that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall define what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed.

B. The applicant shall pay a licensure by credential fee of not more than one thousand dollars as prescribed by the board.

Article 5 – Certification and Regulation of Denturists

32-1293. Practicing as denturist; denture technology; dental laboratory technician

A. Notwithstanding the provisions of section 32-1202, nothing in this chapter shall be construed to prohibit a denturist certified pursuant to the provisions of this article from practicing denture technology.

B. A person is deemed to be practicing denture technology who:

1. Takes impressions and bite registrations for the purpose of or with a view to the making, producing, reproducing, construction, finishing, supplying, altering or repairing of complete upper or lower prosthetic dentures, or both, or removable partial dentures for the replacement of missing teeth.

2. Fits or advertises, offers, agrees, or attempts to fit any complete upper or lower prosthetic denture, or both, or adjusts or alters the fit of any full prosthetic denture, or fits or adjusts or alters the fit of removable partial dentures for the replacement of missing teeth.

C. In addition to the practices described in subsection B of this section, a person certified to practice denture technology may also construct, repair, relin, reproduce or duplicate full or partial prosthetic dentures or otherwise engage in the activities of a dental laboratory technician.

D. No person may perform an act described in subsection B of this section except a licensed dentist, a holder of a restricted permit pursuant to section 32-1238, a certified denturist or auxiliary personnel authorized to perform any such act by rule or regulation of the board pursuant to section 32-1207, subsection A, paragraph 1.

32-1294. Supervision by dentist; definitions; mouth preparation by dentist; liability; business association

A. A denturist may practice only in the office of a licensed dentist, denominated as such.

B. All work by a denturist shall be performed under the general supervision of a licensed dentist. For the purposes of this section, "general supervision" means the dentist is available for consultation in person or by phone during the performance of the procedures by a denturist pursuant to section 32-1293, subsection B. The dentist shall examine the patient initially, check the completed denture as to fit, form and function and perform such other procedures as the board may specify by rule or regulation. For the purposes of this section "completed denture" means a relined, rebased, duplicated or repaired denture or a new denture. Both the dentist and the denturist shall certify that the dentist has performed the initial examination and the final fitting as required in this subsection, and retain the certification in the patient's file.

C. When taking impressions or bite registrations for the purpose of constructing removable partial dentures or when checking the fit of a partial denture, all mouth preparation must be done by the dentist. The denturist is specifically prohibited from performing any cutting or surgery on hard or soft tissue in the mouth. By rule and regulation the board may further regulate the practice of the denturist in regard to removable partial dentures.

D. No more than two denturists may perform their professional duties under a dentist's general supervision at any one time.

E. A licensed dentist supervising a denturist shall be personally liable for any consequences arising from the performance of the denturist's duties.

F. A certified denturist and the dentist supervising his work may make any lawful agreement between themselves regarding fees, compensation and business association.

G. Any sign, advertisement or other notice displaying the name of the office must include the name of the responsible dentist.

32-1295. Board of dental examiners; additional powers and duties

A. In addition to other powers and duties prescribed by this chapter, the board shall:

1. As far as applicable, exercise the same powers and duties in administering and enforcing this article as it exercises under section 32-1207 in administering and enforcing other articles of this chapter.

2. Determine the eligibility of applicants for certification and issue certificates to applicants who it determines are qualified for certification.

3. Investigate charges of misconduct on the part of certified denturists.

4. Issue decrees of censure, fix periods and terms of probation, suspend or revoke certificates as the facts may warrant and reinstate certificates in proper cases.

B. The board may:

1. Adopt rules prescribing requirements for continuing education for renewal of all certificates issued pursuant to this article.

2. Hire consultants to assist the board in the performance of its duties.

C. In all matters relating to discipline and certifying of denturists and the approval of examinations, the board, by rule, shall provide for receiving the assistance and advice of denturists who have been previously certified pursuant to this chapter.

32-1296. Qualifications of applicant

A. To be eligible for certification to practice denture technology an applicant shall:

1. Hold a high school diploma or its equivalent.

2. Present to the board evidence of graduation from a recognized denturist school or a certificate of satisfactory completion of a course or curriculum in denture technology from a recognized denturist school.

3. Pass a board-approved examination.

B. A candidate for certification shall submit a written application to the board that includes a nonrefundable Arizona dental jurisprudence examination fee as prescribed by the board.

32-1297.01. Application for certification; fingerprint clearance card; denial; suspension

A. Each applicant for certification shall submit a written application to the board accompanied by a nonrefundable jurisprudence examination fee and obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

B. The board may deny an application for certification or for certification renewal if the applicant:

1. Has committed any act that would be cause for censure, probation, suspension or revocation of a certificate under this chapter.

2. Has knowingly made any false statement in the application.

3. While uncertified, has committed or aided and abetted the commission of any act for which a certificate is required under this chapter.

4. Has had a certificate to practice denture technology revoked by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a certificate to practice denture technology in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

C. The board shall suspend an application for certification if the applicant is currently under investigation by a denturist regulatory board in another jurisdiction. The board shall not issue or deny certification to the applicant until the investigation is resolved.

32-1297.03. Qualification for reexamination

An applicant for examination who has previously failed two or more examinations, as a condition of eligibility to take any further examination, shall furnish to the board satisfactory evidence of having successfully completed additional training in a recognized denturist school or refresher courses approved by the board or the board's testing agency.

32-1297.04. Fees

The board shall establish and collect fees, not to exceed the following amounts:

1. For an examination in jurisprudence, two hundred fifty dollars.
2. For each replacement or duplicate certificate, twenty-five dollars.

32-1297.05. Disposition of revenues

The provisions of section 32-1212 shall apply to all fees, penalties and other revenues received by the board under this article.

32-1297.06. Denturist certification; continuing education; certificate reinstatement; certificate for each place of practice; notice of change of address or place of practice; penalties

A. Except as provided in section 32-4301, a certification expires thirty days after the certificate holder's birth month every third year. On or before the last day of the certificate holder's birth month every third year, every certified denturist shall submit to the board a complete renewal application and shall pay a certificate renewal fee of not more than \$300, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a certificate holder at the time of certification renewal. This requirement does not apply to a retired denturist or to a denturist with a disability.

B. A certificate holder shall include a written affidavit with the renewal application that affirms that the certificate holder complies with board rules relating to continuing education requirements. A certificate holder is not required to complete the written affidavit if the certificate holder received an initial certification within the year immediately preceding the expiration date of the certificate or the certificate holder is in disabled status. If the certificate holder is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the certificate holder includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the certificate holder's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the certificate expires thirty days after the certificate holder's birth month of the expiration year.

C. A person applying for a certificate for the first time in this state shall pay a prorated fee for the period remaining until the certificate holder's next birth month. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent certifications shall be conducted pursuant to this section.

D. An expired certificate may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the certificate with payment of the renewal fee and a \$100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to certification only for the remainder of the applicable three-year period. If a person does not reinstate a certificate pursuant to this subsection, the person must reapply for certification pursuant to this chapter.

E. Each certificate holder must provide to the board in writing both of the following:

1. A primary mailing address.
2. The address for each place of practice.

F. A certificate holder maintaining more than one place of practice shall obtain from the board a duplicate certificate for each office. The board shall set and charge a fee for each duplicate certificate. A certificate holder shall notify the board in writing within ten days after opening an additional place of practice.

G. A certificate holder shall notify the board in writing within ten days after changing a primary mailing address or place of practice address listed with the board. The board shall impose a \$50 penalty if a certificate holder fails to notify the board of the change within that time. The board shall increase the penalty imposed to \$100 if a certificate holder fails to notify it of the change within thirty days.

32-1297.07. Discipline; procedure

A. After a hearing pursuant to title 41, chapter 6, article 10, the board may suspend or revoke the license issued to a person under this article or censure or place on probation any person for any of the causes set forth as grounds for censure, probation, suspension or revocation in section 32-1263.

B. The board on its own motion may investigate any evidence which appears to show the existence of any of the causes set forth in section 32-1263. The board shall investigate the report under oath of any person which appears to show the existence of any of the causes set forth in section 32-1263. Any person reporting pursuant to this section who provides the information in good faith shall not be subject to liability for civil damages as a result.

C. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

32-1297.08. Injunction

A. An injunction shall issue to enjoin the practice of denture technology by any of the following:

1. One neither certified to practice as a denturist nor licensed to practice as a dentist.
2. One certified as a denturist from practicing without proper supervision by a dentist as required by this article.
3. A denturist whose continued practice will or might cause irreparable damage to the public health and safety prior to the time proceedings pursuant to section 32-1297.07 could be instituted and completed.

B. A petition for injunction shall be filed by the board in the superior court for Maricopa county or in the county where the defendant resides or is found. Any citizen is also entitled to obtain injunctive relief in any court of competent jurisdiction because of the threat of injury to the public health and welfare.

C. Issuance of an injunction shall not relieve the respondent from being subject to any other proceedings provided for by law.

32-1297.09. Violations; classification

A person is guilty of a class 2 misdemeanor who:

1. Not licensed as a dentist, practices denture technology without certification as provided by this article.
2. Exhibits or displays a certificate, diploma, degree or identification of another or a forged or fraudulent certificate, diploma, degree or identification with the intent that it be used as evidence of the right of such person to practice as a denturist in this state.
3. Fails to obey a summons or other order regularly and properly issued by the board.
4. Is a licensed dentist responsible for a denturist under this article who fails to personally supervise the work of the denturist.

Article 6 – Dispensing of Drugs and Devices

32-1298. Dispensing of drugs and devices; conditions; civil penalty; definition

A. A dentist may dispense drugs, except schedule II controlled substances that are opioids, and devices kept by the dentist if:

1. All drugs are dispensed in packages labeled with the following information:
 - (a) The dispensing dentist's name, address and telephone number.

(b) The date the drug is dispensed.

(c) The patient's name.

(d) The name and strength of the drug, directions for its use and any cautionary statements.

2. The dispensing dentist enters into the patient's dental record the name and strength of the drug dispensed, the date the drug is dispensed and the therapeutic reason.

3. The dispensing dentist keeps all drugs in a locked cabinet or room, controls access to the cabinet or room by a written procedure and maintains an ongoing inventory of its contents.

B. Except in an emergency situation, a dentist who dispenses drugs for a profit without being registered by the board to do so is subject to a civil penalty by the board of not less than three hundred dollars and not more than one thousand dollars for each transaction and is prohibited from further dispensing for a period of time as prescribed by the board.

C. Before dispensing a drug pursuant to this section, the patient shall be given a written prescription on which appears the following statement in bold type: "This prescription may be filled by the prescribing dentist or by a pharmacy of your choice."

D. A dentist shall dispense for profit only to the dentist's own patient and only for conditions being treated by that dentist. The dentist shall provide direct supervision of an attendant involved in the dispensing process. For the purposes of this subsection, "direct supervision" means that a dentist is present and makes the determination as to the legitimacy or advisability of the drugs or devices to be dispensed.

E. This section shall be enforced by the board, which shall establish rules regarding labeling, recordkeeping, storage and packaging of drugs that are consistent with the requirements of chapter 18 of this title. The board may conduct periodic inspections of dispensing practices to ensure compliance with this section and applicable rules.

F. For the purposes of this section, "dispense" means the delivery by a dentist of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.

Article 7 – Rehabilitation

32-1299. Substance abuse treatment and rehabilitation program; private contract; funding; confidential stipulation agreement

A. The board may establish a confidential program for the treatment and rehabilitation of dentists, dental therapists, denturists and dental hygienists who are impaired by alcohol or drug abuse. This program shall include education, intervention, therapeutic treatment and posttreatment monitoring and support.

B. The board may contract with other organizations to operate the program established pursuant to this section. A contract with a private organization shall include the following requirements:

1. Periodic reports to the board regarding treatment program activity.

2. Release to the board on demand of all treatment records.
 3. Periodic reports to the board regarding each dentist's, dental therapist's, denturist's or dental hygienist's diagnosis and prognosis and recommendations for continuing care, treatment and supervision.
 4. Immediate reporting to the board of the name of an impaired practitioner whom the treating organization believes to be a danger to self or others.
 5. Immediate reporting to the board of the name of a practitioner who refuses to submit to treatment or whose impairment is not substantially alleviated through treatment.
- C. The board may allocate an amount of not more than twenty dollars annually or sixty dollars triennially from each fee it collects from the renewal of active licenses for the operation of the program established by this section.
- D. A dentist, dental therapist, denturist or hygienist who, in the opinion of the board, is impaired by alcohol or drug abuse shall agree to enter into a confidential nondisciplinary stipulation agreement with the board. The board shall place a licensee or certificate holder on probation if the licensee or certificate holder refuses to enter into a stipulation agreement with the board and may take other action as provided by law. The board may also refuse to issue a license or certificate to an applicant if the applicant refuses to enter into a stipulation agreement with the board.
- E. In the case of a licensee or certificate holder who is impaired by alcohol or drug abuse after completing a second monitoring program pursuant to a stipulation agreement under subsection D of this section, the board shall determine whether:
1. To refer the matter for a formal hearing for the purpose of suspending or revoking the license or certificate.
 2. The licensee or certificate holder should be placed on probation for a minimum of one year with restrictions necessary to ensure public safety.
 3. To enter into another stipulation agreement under subsection D of this section with the licensee or certificate holder.

Article 8 – Mobile Dental Facilities and Portable Dental Units

32-1299.21. Definitions

In this article, unless the context otherwise requires:

1. "Mobile dental facility" means a facility in which dentistry is practiced and that is routinely towed, moved or transported from one location to another.
2. "Permit holder" means a dentist, dental hygienist, denturist or registered business entity that is authorized by this chapter to offer dental services in this state or a nonprofit organization, school district or school or institution of higher education that may employ a licensee to provide dental services and that is authorized by this article to operate a mobile dental facility or portable dental unit.
3. "Portable dental unit" means a nonfacility in which dental equipment used in the practice of dentistry is transported to and used on a temporary basis at an out-of-office location.

32-1299.22. Mobile dental facilities; portable dental units; permits; exceptions

A. Beginning January 1, 2012, every mobile dental facility and, except as provided in subsection B, every provider, program or entity using portable dental units in this state must obtain a permit pursuant to this article.

B. A licensee who does not hold a permit for a mobile dental facility or portable dental unit may provide dental services if:

1. Occasional services are provided to a patient of record of a fixed dental office who is treated outside of the dental office.
2. Services are provided by a federal, state or local government agency.
3. Occasional services are performed outside of the licensee's office without charge to a patient or a third party.
4. Services are provided to a patient by an accredited dental or dental hygiene school.
5. The licensee holds a valid permit to provide mobile dental anesthesia services.
6. The licensee is an affiliated practice dental hygienist.

32-1299.23. Permit application; fees; renewal; notification of changes

A. An individual or entity that seeks a permit to operate a mobile dental facility or portable dental unit must submit an application on a form provided by the board and pay an annual registration fee prescribed by the board by rule. The permit must be renewed annually not later than the last day of the month in which the permit was issued. Permits not renewed by the expiration date are subject to a late fee as prescribed by the board by rule.

B. A permit holder shall notify the board of any change in address or contact person within ten days after that change. The board shall impose a penalty as prescribed by the board by rule if the permit holder fails to notify the board of that change within that time.

C. If ownership of the mobile dental facility or portable dental unit changes, the prior permit is invalid and a new permit application must be submitted.

32-1299.24. Standards of operation and practice

A. A permit holder must:

1. Comply with all applicable federal, state and local laws, regulations and ordinances dealing with radiographic equipment, flammability, sanitation, zoning and construction standards, including construction standards relating to required access for persons with disabilities.
2. Establish written protocols for follow-up care for patients who are treated in a mobile dental facility or through a portable dental unit. The protocols must include referrals for treatment in a dental office that is permanently established within a reasonable geographic area and may include follow-up care by the mobile dental facility or portable dental unit.
3. Ensure that each mobile dental facility or portable dental unit has access to communication equipment that will enable dental personnel to contact appropriate assistance in an emergency.
4. Identify a person who is licensed pursuant to this chapter, who is responsible to supervise treatment and who, if required by law, will be present when dental services are rendered. This paragraph does

not prevent supervision by a dentist providing services or supervision pursuant to the exceptions prescribed in section 32-1231.

5. Display in or on the mobile dental facility or portable dental unit a current valid permit issued pursuant to this article in a manner that is readily observable by patients or visitors.

6. Provide a means of communication during and after business hours to enable the patient or the parent or guardian of a patient to contact the permit holder of the mobile dental facility or portable dental unit for emergency care, follow-up care or information about treatment received.

7. Comply with all requirements for maintenance of records pursuant to section 32-1264 and all other statutory requirements applicable to health care providers and patient records. All records, whether in paper or electronic form, if not in transit, must be maintained in a permanent, secure facility. Records of prior treatment must be readily available during subsequent treatment visits whenever practicable.

8. Ensure that all dentists, dental hygienists and denturists working in the mobile dental facility or portable dental unit hold a valid, current license issued by the board and that all delegated duties are within their respective scopes of practice as prescribed by the applicable laws of this state.

9. Maintain a written or electronic record detailing each location where services are provided, including:

(a) The street address of the service location.

(b) The dates of each session.

(c) The number of patients served.

(d) The types of dental services provided and the quantity of each service provided.

10. Provide to the board or its representative within ten days after a request for a record the written or electronic record required pursuant to paragraph 9 of this subsection.

11. Comply with current recommended infection control practices for dentistry as published by the national centers for disease control and prevention and as adopted by the board.

B. A mobile dental facility or portable dental unit must:

1. Contain equipment and supplies that are appropriate to the scope and level of treatment provided.

2. Have ready access to an adequate supply of potable water.

C. A permit holder or licensee who fails to comply with applicable statutes and rules governing the practice of dentistry, dental hygiene and denturism, the requirements for registered business entities or the requirements of this article is subject to disciplinary action for unethical or unprofessional conduct, as applicable.

32-1299.25. Informed consent; information for patients

A. The permit holder of a mobile dental facility or portable dental unit must obtain appropriate informed consent, in writing or by verbal communication, that is recorded by an electronic or digital device from the patient or the parent or guardian of the patient authorizing specific treatment before it is performed. The signed consent form or verbal communication shall be maintained as part of the patient's record as required in section 32-1264.

B. If services are provided to a minor, the signed consent form or verbal communication must inform the parent or guardian that the treatment of the minor by the mobile dental facility or portable dental unit may affect future benefits the minor may receive under private insurance, the Arizona health care cost containment system or the children's health insurance program.

C. At the conclusion of each patient's visit, the permit holder of a mobile dental facility or portable dental unit shall provide each patient with an information sheet that must contain:

1. Pertinent contact information as required by this section.
2. The name of the dentist or dental hygienist, or both, who provided services.
3. A description of the treatment rendered, including billed service codes, fees associated with treatment and tooth numbers if appropriate.
4. If necessary, referral information to another dentist as required by this article.

D. If the patient or the minor patient's parent or guardian has provided written consent to an institutional facility to access the patient's dental health records, the permit holder shall provide the institution with a copy of the information sheet provided in subsection C.

32-1299.26. Disciplinary actions; cessation of operation

A. A permit holder for a mobile dental facility or portable dental unit that provides dental services to a patient shall refer the patient for follow-up treatment with a licensed dentist or the permit holder if treatment is clinically indicated. A permit holder or licensee who fails to comply with this subsection commits an act of unprofessional conduct or unethical conduct and is subject to disciplinary action pursuant to section 32-1263, subsection A, paragraph 1 or subsection C.

B. The board may do any of the following pursuant to its disciplinary procedures if a mobile dental facility or portable dental unit violates any statute or board rule:

1. Refuse to issue a permit.
2. Suspend or revoke a permit.
3. Impose a civil penalty of not more than two thousand dollars for each violation.

C. If a mobile dental facility or portable dental unit ceases operations, the permit holder must notify the board within thirty days after the last day of operation and must report on the disposition of patient records and charts. In accordance with applicable laws and rules, the permit holder must also notify all active patients of the disposition of records and make reasonable arrangements for the transfer of patient records, including copies of radiographs, to a succeeding practitioner or, if requested, to the patient. For the purposes of this subsection, "active patient" means any person whom the permit holder has examined, treated, cared for or consulted with during the two year period before the discontinuation of practice.

ARIZONA ADMINISTRATIVE CODE (Rules)

Title 4. Professions and Occupations

Chapter 11. State Board of Dental Examiners

ARTICLE 1. DEFINITIONS

R4-11-101. Definitions

The following definitions, and definitions in A.R.S. § 32-1201, apply to this Chapter:

“Analgesia” means a state of decreased sensibility to pain produced by using nitrous oxide (N₂O) and oxygen (O₂) with or without local anesthesia.

“Application” means, for purposes of Article 3 only, forms designated as applications and all documents an additional information the Board requires to be submitted with an application.

“Business Entity” means a business organization that offers to the public professional services regulated by the Board and is established under the laws of any state or foreign country, including a sole practitioner, partnership, limited liability partnership, corporation, and limited liability company, unless specifically exempted by A.R.S. § 32-1213(J).

“Calculus” means a hard mineralized deposit attached to the teeth.

“Certificate holder” means a denturist who practices denture technology under A.R.S. Title 32, Chapter 11, Article 5.

“Charitable Dental Clinic or Organization” means a non-profit organization meeting the requirements of 26 U.S.C. 501(c)(3) and providing dental or dental hygiene services.

“Clinical evaluation” means a dental examination of a patient named in a complaint regarding the patient’s dental condition as it exists at the time the examination is performed.

“Closed subgingival curettage” means the removal of the inner surface of the soft tissue wall of a periodontal pocket in a situation where a flap of tissue has not been intentionally or surgically opened.

“Controlled substance” has the meaning prescribed in A.R.S. § 36-2501(A)(3).

“Credit hour” means one clock hour of participation in a recognized continuing dental education program.

“Deep sedation” is a drug-induced depression of consciousness during which a patient cannot be easily aroused but responds purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. The patient may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is maintained.

“Dental laboratory technician” or “dental technician” has the meaning prescribed in A.R.S. § 32-1201(7).

“Dentist of record” means a dentist who examines, diagnoses, and formulates treatment plans for a patient and may provide treatment to the patient.

“Designee” means a person to whom the Board delegates authority to act on the Board’s behalf regarding a particular task specified by this Chapter.

“Direct supervision” means, for purposes of Article 7 only, that a licensed dentist is present in the office and available to provide immediate treatment or care to a patient and observe a dental assistant’s work.

“Disabled” means a dentist, dental hygienist, or denturist has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism due to a permanent medical disability and based on a physician’s order.

“Dispense for profit” means selling a drug or device for any amount above the administrative overhead costs to inventory.

“Documentation of attendance” means documents that contain the following information:

Name of sponsoring entity;

Course title;

Number of credit hours;

Name of speaker; and

Date, time, and location of the course.

“Drug” means:

Articles recognized, or for which standards or specifications are prescribed, in the official compendium;

Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in the human body;

Articles other than food intended to affect the structure of any function of the human body; or

Articles intended for use as a component of any articles specified in this definition but does not include devices or components, parts, or accessories of devices.

“Emerging scientific technology” means any technology used in the treatment of oral disease that is not currently generally accepted or taught in a recognized dental or dental hygiene school and use of the technology poses material risks.

“Epithelial attachment” means the layer of cells that extends apically from the depth of the gingival (gum) sulcus (crevice) along the tooth, forming an organic attachment.

“Ex-parte communication” means a written or oral communication between a decision maker, fact finder, or Board member and one party to the proceeding, in the absence of other parties.

“General anesthesia” is a drug-induced loss of consciousness during which the patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. The patient often requires assistance in maintaining a patent airway, and positive-pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

“General supervision” means, for purposes of Article 7 only, a licensed dentist is available for consultation, whether or not the dentist is in the office, regarding procedures or treatment that the dentist authorizes and for which the dentist remains responsible.

“Homebound patient” means a person who is unable to receive dental care in a dental office as a result of a medically diagnosed disabling physical or mental condition.

“Irreversible procedure” means a single treatment, or a step in a series of treatments, that causes change in the affected hard or soft tissues and is permanent or may require reconstructive or corrective procedures to correct the changes.

“Jurisdiction” means the Board’s power to investigate and rule on complaints that allege grounds for disciplinary action under A.R.S. Title 32, Chapter 11 or this Chapter.

“Licensee” means a dentist, dental hygienist, dental consultant, retired licensee, or person who holds a restricted permit under A.R.S. §§ 32-1237 or 32-1292.

“Local anesthesia” is the elimination of sensations, such as pain, in one part of the body by the injection of an anesthetic drug.

“Minimal sedation” is a minimally depressed level of consciousness that retains a patient’s ability to independently and continuously maintain an airway and respond appropriately to light tactile stimulation, not limited to reflex withdrawal from a painful stimulus, or verbal command and that is produced by a pharmacological or non-pharmacological method or a combination thereof. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected. In accord with this particular definition, the drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely.

“Moderate sedation” is a drug-induced depression of consciousness during which a patient responds purposefully to verbal commands either alone or accompanied by light tactile stimulation, not limited to reflex withdrawal from a painful stimulus. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is maintained. The drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Repeated dosing of a drug before the effects of previous dosing can be fully recognized may result in a greater alteration of the state of consciousness than intended by the permit holder.

“Nitrous oxide analgesia” means nitrous oxide (N₂O/O₂) as an inhalation analgesic.

“Nonsurgical periodontal treatment” means plaque removal, plaque control, supragingival and subgingival scaling, root planing, and the adjunctive use of chemical agents.

“Official compendium” means the latest revision of the United States Pharmacopeia and the National Formulary and any current supplement.

“Oral sedation” is the enteral administration of a drug or non-drug substance or combination inhalation and enterally administered drug or non-drug substance in a dental office or dental clinic to achieve minimal or moderate sedation.

“Parenteral sedation” is a minimally depressed level of consciousness that allows the patient to retain the ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and is induced by a pharmacological or non-pharmacological method or a combination of both methods of administration in which the drug bypasses the gastrointestinal tract.

“Patient of record” means a patient who has undergone a complete dental evaluation performed by a licensed dentist.

“Periodontal examination and assessment” means to collect and correlate clinical signs and patient symptoms that point to either the presence of or the potential for periodontal disease.

“Periodontal pocket” means a pathologic fissure bordered on one side by the tooth and on the opposite side by crevicular epithelium and limited in its depth by the epithelial attachment.

“Plaque” means a film-like sticky substance composed of mucoid secretions containing bacteria and toxic products, dead tissue cells, and debris.

“Polish” means, for the purposes of A.R.S. § 32-1291(B) only, a procedure limited to the removal of plaque and extrinsic stain from exposed natural and restored tooth surfaces that utilizes an appropriate rotary instrument with rubber cup or brush and polishing agent. A licensee or dental assistant shall not represent that this procedure alone constitutes an oral prophylaxis.

“Prescription-only device” means:

- Any device that is restricted by the federal act, as defined in A.R.S. § 32-1901, to use only under the supervision of a medical practitioner; or
- Any device required by the federal act, as defined in A.R.S. § 32-1901, to bear on its label the legend “Rx Only.”

“Prescription-only drug” does not include a controlled substance but does include:

- Any drug that, because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner;
- Any drug that is limited by an approved new drug application under the federal act or A.R.S. § 32-1962 to use under the supervision of a medical practitioner;
- Every potentially harmful drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer; or
- Any drug required by the federal act to bear on its label the legend “RX Only.”

“President’s designee” means the Board’s executive director, an investigator, or a Board member acting on behalf of the Board president.

“Preventative and therapeutic agents” means substances used in relation to dental hygiene procedures that affect the hard or soft oral tissues to aid in preventing or treating oral disease.

“Prophylaxis” means a scaling and polishing procedure performed on patients with healthy tissues to remove coronal plaque, calculus, and stains.

“Public member” means a person who is not a dentist, dental hygienist, dental assistant, denturist, or dental technician.

“Recognized continuing dental education” means a program whose content directly relates to the art and science of oral health and treatment, provided by a recognized dental school as defined in A.R.S. § 32-1201(18), recognized dental hygiene school as defined in A.R.S. § 32-1201(17), or recognized denturist school as defined in A.R.S. § 32-1201(19), or sponsored by a national or state dental, dental hygiene, or denturist association, American Dental Association, Continuing Education Recognition Program (ADA CERP) or Academy of General Dentistry, Program Approval

for Continuing Education (AGDPACE) approved provider, dental, dental hygiene, or denturist study club, governmental agency, commercial dental supplier, non-profit organization, accredited hospital, or programs or courses approved by other state, district, or territorial dental licensing boards.

“Restricted permit holder” means a dentist who meets the requirements of A.R.S. § 32-1237 or a dental hygienist who meets the requirements of A.R.S. § 32-1292 and is issued a restricted permit by the Board.

“Retired” means a dentist, dental hygienist, or denturist is at least 65 years old and has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism.

“Root planing” means a definitive treatment procedure designed to remove cementum or surface dentin that is rough, impregnated with calculus, or contaminated with toxins or microorganisms.

“Scaling” means use of instruments on the crown and root surfaces of the teeth to remove plaque, calculus, and stains from these surfaces.

“Section 1301 permit” means a permit to administer general anesthesia and deep sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Section 1302 permit” means a permit to administer parenteral sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Section 1303 permit” means a permit to administer oral sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Section 1304 permit” means a permit to employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Study club” means a group of at least five Arizona licensed dentists, dental hygienists, or denturists who provide written course materials or a written outline for a continuing education presentation that meets the requirements of Article 12.

“Treatment records” means all documentation related directly or indirectly to the dental treatment of a patient.

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-02 renumbered as Section R4-11-102 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-101 renumbered to R4-11-201, new Section R4-11-101 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 334 and at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

R4-11-102. Renumbered

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-02 renumbered as Section R4-11-102 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-102 renumbered to R4-11-202 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-103. Renumbered

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-03 renumbered as Section R4-11-103 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-103 renumbered to R4-11-203 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-104. Repealed

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-04 renumbered as Section R4-11-104 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-104 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-105. Repealed

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-05 renumbered as Section R4-11-105 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-105 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 2. LICENSURE BY CREDENTIAL

R4-11-201. Clinical Examination; Requirements

A. If an applicant is applying under A.R.S. §§ 32-1240(A) or 32-1292.01(A), the Board shall ensure that the applicant has passed the clinical examination of another state, United States territory, District of Columbia or a regional testing agency. Satisfactory completion of the clinical examination may be demonstrated by one of the following:

1. Certified documentation, sent directly from another state, United States territory, District of Columbia or a regional testing agency, that confirms successful completion of the clinical examination or multiple examinations administered by the state, United States territory, District of Columbia or regional testing agency. The certified documentation shall contain the name of the applicant, date of examination or examinations and proof of a passing score; or
2. Certified documentation sent directly from another state, United States territory or District of Columbia dental board that shows the applicant passed that state's, United States territory's or District of Columbia's clinical examination before that state's, United States territory's or District of Columbia's participation in a regional examination. The certified documentation shall contain the name of applicant, date of examination or examinations and proof of a passing score.

B. An applicant shall meet the licensure requirements in R4-11-301 and R4-11-303.

Historical Note

Former Rule 2a; Amended effective November 20, 1979 (Supp. 79-6). Amended effective November 28, 1980 (Supp. 80-6). Former Section R4-11-11 renumbered as Section R4-11-201 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-201 renumbered to R4-11-301, new Section R4-11-201 renumbered from R4-11-101 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-202. Dental Licensure by Credential; Application

A. A dentist applying under A.R.S. § 32-1240(A) shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.

B. A dentist applying under A.R.S. § 32-1240(A)(1) shall:

1. Have a current dental license in another state, territory or district of the United States;
2. Submit a written affidavit affirming that the dentist has practiced dentistry for a minimum of 5000 hours during the five years immediately before applying for licensure by credential. For purposes of this subsection, dental practice includes experience as a dental educator at a dental program accredited by the American Dental Association Commission on Dental Accreditation or employment as a dentist in a public health setting;
3. Submit a written affidavit affirming that the applicant has complied with the continuing dental education requirement of the state in which the applicant is currently licensed; and

4. Provide evidence regarding the clinical examination by complying with R4-11- 201(A)(1).
- C. A dentist applying under A.R.S. § 32-1240(A)(2) shall submit certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board that contains the name of applicant, date of examination or examinations and proof of a passing score.
- D. For any application submitted under A.R.S. § 32-1240(A), the Board may request additional clarifying evidence required under the applicable subsection in R4-11-201(A)(1).
- E. An applicant for dental licensure by credential shall pay the fee prescribed in A.R.S. § 32-1240, except the fee is reduced by 50% for applicants who will be employed or working under contract in:1. Commit to a three-year, exclusive service period,
 1. Underserved areas, such as declared or eligible Health Professional Shortage Areas (HPSAs); or
 2. Other facilities caring for underserved populations as recognized by the Arizona Department of Health Services and approved by the Board.
- F. An applicant for dental licensure by credential who works in areas or facilities described in subsection (E) shall:
 1. Commit to a three-year, exclusive service period,
 2. File a copy of a contract or employment verification statement with the Board, and
 3. As a licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.
- G. A licensee's failure to comply with the requirements in subsection (F) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

Historical Note

Former Rule 2b; Former Section R4-11-12 renumbered as Section R4-11-202 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-202 repealed, new Section R4-11-202 renumbered from R4-11-102 and the heading amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Labeling changes made to reflect current style requirements (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-203. Dental Hygienist Licensure by Credential; Application

- A. A dental hygienist applying under A.R.S. § 32-1292.01(A) shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.
- B. A dental hygienist applying under A.R.S. § 32-1292.01(A)(1) shall:
 1. Have a current dental hygienist license in another state, territory, or district of the United States;
 2. Submit a written affidavit affirming that the applicant has practiced as a dental hygienist for a minimum of 1000 hours during the two years immediately before applying for licensure by credential. For purposes of this subsection, dental hygienist practice includes experience as a dental hygienist educator at a dental program accredited by the American Dental Association Commission on Dental Accreditation or employment as a dental hygienist in a public health setting;
 3. Submit a written affidavit affirming that the applicant has complied with the continuing dental hygienist education requirement of the state in which the applicant is currently licensed; and
 4. Provide evidence regarding the clinical examination by complying with one of the subsections in R4-11- 201(A)(1).
- C. A dental hygienist applying under A.R.S. § 32-1292.01(A)(2) shall submit certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board that contains the name of applicant, date of examination or examinations and proof of a passing score.

D. For any application submitted under A.R.S. § 32-1292.01(A), the Board may request additional clarifying evidence as required under R4-11-201(A).

E. An applicant for dental hygienist licensure by credential shall pay the fee prescribed in A.R.S. § 32-1292.01, except the fee is reduced by 50% for applicants who will be employed or working under contract in:

1. Underserved areas such as declared or eligible Health Professional Shortage Areas (HPSAs); or
2. Other facilities caring for underserved populations, as recognized by the Arizona Department of Health Services and approved by the Board.

F. An applicant for dental hygienist licensure by credential who works in areas or facilities described in subsection (E) shall:

1. Commit to a three-year exclusive service period,
2. File a copy of a contract or employment verification statement with the Board, and
3. As a Licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

G. A licensee's failure to comply with the requirements in R4-11-203(F) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

Historical Note

Former Rule 2c; Former Section R4-11-13 repealed, new Section R4-11-13 adopted effective November 20, 1979 (Supp. 79-6). Amended effective October 30, 1980 (Supp. 80-5). Former Section R4-11-13 renumbered as Section R4-11-203 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-203 renumbered to R4-11-302, new Section R4-11-203 renumbered from R4-11-103 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-204. Dental Assistant Radiography Certification by Credential

Eligibility. To be eligible for dental assistant radiography certification by credential, an applicant shall have a current certificate or other form of approval for taking dental radiographs, issued by a professional licensing agency in another state, United States territory or the District of Columbia that required successful completion of a written dental radiography examination.

Historical Note

Former Rule 2d; Former Section R4-11-14 repealed, new Section R4-11-14 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-14 renumbered as Section R4-11-204, repealed, and new Section R4-11-204 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-204 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-205. Application for Dental Assistant Radiography Certification by Credential

A. An applicant for dental assistant radiography certification by credential shall provide to the Board a completed application, on a form furnished by the Board that contains the following information:

1. A sworn statement of the applicant's eligibility, and
2. A letter from the issuing institution that verifies compliance with R4-11-204.

B. Based upon review of information provided under subsection (A), the Board or its designee shall request that an applicant for dental assistant radiography certification by credential provide a copy of a certified document that indicates the reason for a name change if the applicant's documentation contains different names.

Historical Note

Former Rule 2e; Former Section R4-11-15 renumbered as Section R4-11-205 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-205 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-206. Repealed

Historical Note

Former Rule 2f; Amended as an emergency effective July 7, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-4). Former emergency adoption now adopted and amended effective September 7, 1979 (Supp. 79-5). Former Section R4-11-16 renumbered as Section R4-11-206 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-206 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-207. Repealed

Historical Note

Former Rule 2g; Former Section R4-11-17 renumbered as Section R4-11-207, repealed, and new Section R4-11-207 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-207 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-208. Repealed

Historical Note

Former Section R4-11-20 repealed, new Section R4-11-20 adopted effective May 12, 1977 (Supp. 77-3). Amended effective October 30, 1980 (Supp. 80-5). Former Section R4-11-20 renumbered as Section R4-11-208 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-208 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-209. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-19 renumbered as R4-11-209 and repealed. Former Section R4-11-21 renumbered as Section R4-11-209 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-209 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-210. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Amended effective June 7, 1978 (Supp. 78-3). Former Section R4-11-22 renumbered as Section R4-11-210 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-210 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-211. Repealed

Historical Note

Adopted effective August 26, 1977 (Supp. 77-4). Former Section R4-11-23 renumbered as Section R4-11-211 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-211 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-212. Repealed

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-24 renumbered as Section R4-11-212 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-212 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-213. Repealed

Historical Note

Adopted as an emergency effective July 7, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-4). Former emergency adoption now adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-25 renumbered as Section R4-11-213, repealed, and new Section R4-11-213 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-213 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-214. Repealed

Historical Note

Former Rule 2h; Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-18 renumbered as Section R4-11-214 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-214 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-215. Repealed

Historical Note

Adopted effective June 16, 1982 (Supp. 82-3). Former Section R4-11-215 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-216. Repealed

Historical Note

Adopted effective June 16, 1982 (Supp. 82-3). Former Section R4-11-216 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 3. EXAMINATION, LICENSING QUALIFICATIONS, APPLICATION AND RENEWAL, TIME-FRAMES

R4-11-301. Application

A. An applicant for licensure or certification shall provide the following information and documentation:

1. A sworn statement of the applicant's qualifications for the license or certificate on a form provided by the Board;
2. A photograph of the applicant that is no more than 6 months old;
3. An official, sealed transcript sent directly to the Board from either:
 - a. The applicant's dental, dental hygiene, or denturist school, or
 - b. A verified third-party transcript provider.
4. Except for a dental consultant license applicant, dental and dental hygiene license applicants provide proof of successfully completing a clinical examination by submitting:
 - a. If applying for dental licensure by examination, a copy of the certificate or score card from the Western Regional Examining Board, indicating that the applicant passed the Western Regional Examining Board examination within the five years immediately before the date the application is filed with the Board;
 - b. If applying for dental hygiene licensure by examination, a copy of the certificate or scorecard from the Western Regional Examining Board or an Arizona Board-approved clinical examination administered by a state, United States territory, District of Columbia or regional testing agency. The certificate or scorecard must indicate that the applicant passed the examination within the five years immediately before the date the application is filed with the Board; or
 - c. If applying for licensure by credential, certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board containing the name of the applicant, date of examination or examinations and proof of a passing score;

5. Except for a dental consultant license applicant as provided in A.R.S. § 32-1234(A)(7), dental and dental hygiene license applicants must have an official score card sent directly from the National Board examination to the Board;
 6. A copy showing the expiration date of the applicant's current cardiopulmonary resuscitation healthcare provider level certificate from the American Red Cross, the American Heart Association, or another certifying agency that follows the same procedures, standards, and techniques for CPR training and certification as the American Red Cross or American Heart Association;
 7. A license or certification verification from any other jurisdiction in which an applicant is licensed or certified, sent directly from that jurisdiction to the Board. If the license verification cannot be sent directly to the Board from the other jurisdiction, the applicant must submit a written affidavit affirming that the license verification submitted was issued by the other jurisdiction;
 8. If a dental or dental hygiene applicant has been licensed in another jurisdiction for more than six months, a copy of the self-inquiry from the National Practitioner Data Bank that is no more than 30 days old;
 9. If a denturist applicant has been certified in another jurisdiction for more than six months, a copy of the self-inquiry from the Health Integrity and Protection Data Bank that is no more than 30 days old;
 10. If the applicant is in the military or employed by the United States government, a letter of endorsement from the applicant's commanding officer or supervisor that confirms the applicant's military service or United States government employment record; and
 11. The jurisprudence examination fee.
- B. The Board may request that an applicant provide:
1. An official copy of the applicant's dental, dental hygiene, or denturist school diploma;
 2. A copy of a certified document that indicates the reason for a name change if the applicant's application contains different names,
 3. Written verification of the applicant's work history, and
 4. A copy of a high school diploma or equivalent certificate.
- C. An applicant shall pass the Arizona jurisprudence examination with a minimum score of 75%.

Historical Note

Former Rule 3A; Former Section R4-11-29 repealed, new Section R4-11-29 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-29 renumbered as Section R4-11-301 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-301 repealed, new Section R4-11-301 renumbered from R4-11-201 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-302. Repealed

Historical Note

Former Rule 3B; Former Section R4-11-30 repealed, new Section R4-11-30 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-30 renumbered as Section R4-11-302 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-302 repealed, new Section R4-11-302 renumbered from R4-11-203 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-303. Application Processing Procedures: Issuance, Denial, and Renewal of Dental Licenses, Dental Therapy Licenses, Restricted Permits, Dental Hygiene Licenses, Dental Consultant Licenses, Denturist Certificates, Drug or Device Dispensing Registrations, Business Entity Registration and Mobile Dental Facility and Portable Dental Unit Permits

A. The Board office shall complete an administrative completeness review within 30 calendar days of the date of receipt of an application for a license, certificate, permit, or registration.

1. Within 30 calendar days of receiving an initial or renewal application for a dental license, restricted permit, dental hygiene license, dental consultant license, denturist certificate, Business Entity registration, mobile dental facility or portable dental unit permit, the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.
 2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 30 calendar day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
 3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 30 calendar days after receipt by the Board office.
- B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.
- C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 30 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a license, certificate, permit, or registration shall apply again as required in R4-11-301.
- D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of A.A.C. Title 4, Chapter 11, Article 3.
- E. The Board shall complete a substantive review of the applicant's qualifications in no more than 90 calendar days from the date on which the administrative completeness review of an application package is complete.
1. If the Board finds an applicant to be eligible for a license, certificate, permit, or registration and grants the license, certificate, permit, or registration, the Board office shall notify the applicant in writing.
 2. If the Board finds an applicant to be ineligible for a license, certificate, permit, or registration, the Board office shall issue a written notice of denial to the applicant that includes:
 - a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
 - b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
 - c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
 - d. The name and telephone number of an agency contact person who can answer questions regarding the application process.
 3. If the Board finds deficiencies during the substantive review of an application package, the Board office may issue a comprehensive written request to the applicant for additional documentation. An additional supplemental written request for information may be issued upon mutual agreement between the Board or Board office and the applicant.
 4. The 90-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received. The applicant shall submit the additional documentation before the next regularly scheduled Board meeting.
 5. If the applicant and the Board office mutually agree in writing, the 90-day substantive review time-frame may be extended once for no more than 28 days.
- F. The following time-frames apply for an initial or renewal application governed by this Section:
1. Administrative completeness review time-frame: 30 calendar days.
 2. Substantive review time-frame: 90 calendar days.
 3. Overall time-frame: 120 calendar days.

G. An applicant whose license is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

Former Rule 3C; Former Section R4-11-31 renumbered as Section R4-11-303 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-303 repealed, new Section R4-11-303 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-304. Application Processing Procedures: Issuance and Denial of Dental Assistant Certificates Radiography Certification by Credential

A. Within 30 calendar days of receiving an application from an applicant for a dental assistant radiography certification by credential, the Board or its designee shall notify the applicant, in writing, that the application package is complete or incomplete. If the package is incomplete, the notice shall specify what information is missing.

B. An applicant with an incomplete application package shall supply the missing information within 60 calendar days from the date of the notice. If the applicant fails to do so, an applicant shall begin the application process anew.

C. Upon receipt of all missing information, within 10 calendar days, the Board or its designee shall notify the applicant, in writing, that the application is complete.

D. The Board or its designee shall not process an application until the applicant has fully complied with the requirements of this Article.

E. The Board or its designee shall notify an applicant, in writing, whether the certificate is granted or denied, no later than 90 calendar days after the date of the notice advising the applicant that the package is complete.

F. The notice of denial shall inform the applicant of the following:

1. The reason for the denial, with a citation to the statute or rule which requires the applicant to pass the examination;
2. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
3. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
4. The name and telephone number of an agency contact person or a designee who can answer questions regarding the application process.

G. The following time-frames apply for certificate applications governed by this Section:

1. Administrative completeness review time-frame: 24 calendar days.
2. Substantive review time-frame: 90 calendar days.
3. Overall time-frame: 114 calendar days.

H. An applicant whose certificate is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

Former Rule 3D; Former Section R4-11-32 renumbered as Section R4-11-304 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-304 repealed, new Section R4-11-304 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-305. Application Processing Procedures: Issuance, Denial, and Renewal of General Anesthesia and Deep Sedation Permits, Parenteral Sedation Permits, Oral Sedation Permits, and Permit to Employ a Physician Anesthesiologist or Certified Registered Nurse Anesthetist

A. The Board office shall complete an administrative completeness review within 24 days from the date of the receipt of an application for a permit.

1. Within 30 calendar days of receiving an initial or renewal application for a general anesthesia and deep sedation permit, parenteral sedation permit, oral sedation permit or permit to employ a physician anesthesiologist or CRNA the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.
2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 24-day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 24 days after receipt by the Board office.

B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.

C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 10 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a permit shall apply again as required in A.A.C. Title 4, Chapter 11, Article 13.

D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of this Section and A.A.C. Title 4, Chapter 11, Article 13.

E. The Board shall complete a substantive review of the applicant's qualifications in no more than 120 calendar days from the date on which the administrative completeness review of an application package is complete.

1. If the Board finds an applicant to be eligible for a permit and grants the permit, the Board office shall notify the applicant in writing.
2. If the Board finds an applicant to be ineligible for a permit, the Board office shall issue a written notice of denial to the applicant that includes:
 - a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
 - b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
 - c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
 - d. The name and telephone number of an agency contact person who can answer questions regarding the application process.
3. If the Board finds deficiencies during the substantive review of an application package, the Board office shall issue a comprehensive written request to the applicant for additional documentation.
4. The 120-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received.
5. If the applicant and the Board office mutually agree in writing, the 120-day substantive review time-frame may be extended once for no more than 36 days.

F. The following time-frames apply for an initial or renewal application governed by this Section:

1. Administrative completeness review time-frame: 24 calendar days.
2. Substantive review time-frame: 120 calendar days.
3. Overall time-frame: 144 calendar days.

Historical Note

New Section R4-11-305 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

ARTICLE 4. FEES

R4-11-401. Retired or Disabled Licensure Renewal Fee

As expressly authorized under A.R.S. § 32-1207(B)(3)(c), the licensure renewal fee for a retired or disabled dentist or dental hygienist is \$15.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-42 renumbered as Section R4-11-401 and repealed effective July 29, 1981 (Supp. 81-4). Adopted effective February 16, 1995 (Supp. 95-1). Former Section R4-11-401 repealed, new Section R4-11-401 renumbered from R4-11-901 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-402. Business Entity Fees

As expressly authorized under A.R.S. § 32-1213, the Board establishes and shall collect the following fees from a Business Entity offering dental services paid by credit card on the Board's website or by money order or cashier's check::

1. Initial triennial registration, \$300 per location;
2. Renewal of triennial registration, \$300 per location; and
3. Late triennial registration renewal, \$100 per location in addition to the fee under subsection (2).

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-43 renumbered as Section R4-11-402, repealed, and new Section R4-11-402 adopted effective July 29, 1981 (Supp. 81-4). Amended effective February 16, 1995 (Supp. 95-1). Former Section R4-11-402 renumbered to R4-11-601, new Section R4-11-402 renumbered from R4-11-902 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-403. Licensing Fees

A. As expressly authorized under A.R.S. §§ 32-1236, 32-1276.02, 32-1287, and 32-1297.06, the Board establishes and shall collect the following licensing fees:

1. Dentist triennial renewal fee: \$510;
2. Dentist prorated initial license fee: \$110;
3. Dental hygienist triennial renewal fee: \$255;
4. Dental hygienist prorated initial license fee: \$55;
5. Denturist triennial renewal fee: \$233; and
6. Denturist prorated initial license fee: \$46.

B. The following license-related fees are established in or expressly authorized by statute. The Board shall collect the fees:

1. Jurisprudence examination fee:
 - a. Dentists: \$300;
 - b. Dental Hygienists: \$100; and
 - c. Denturists: \$250.
2. Licensure by credential fee:
 - a. Dentists: \$2,000; and
 - b. Dental hygienists: \$1,000.
3. Penalty to reinstate an expired license or certificate: \$100 for a dentist, dental hygienist, or denturist in addition to renewal fee specified under subsection (A).
4. Penalty for a dentist, dental hygienist, or denturist who fails to notify Board of a change of mailing address:
 - a. Failure after 10 days: \$50; and
 - b. Failure after 30 days: \$100.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-44 renumbered as Section R4-11-403 and repealed effective July 29, 1981 (Supp. 81-4). Adopted effective February 16, 1995 (Supp. 95-1). Former Section R4-11-403 renumbered to R4-11-602, new Section R4-11-403 renumbered from R4-11-903 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1). New Section made by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-404. Repealed

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-45 renumbered as Section R4-11-404 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-404 renumbered from R4-11-904 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1).

R4-11-405. Charges for Board Services

The Board shall charge the following for the services provided paid by credit card on the Board's website or by money order or cashier's check:

1. Duplicate license: \$25;
2. Duplicate certificate: \$25;
3. License verification: \$25;
4. Copy of audio recording: \$10;
5. Photocopies (per page): \$.25;
6. Mailing lists of Licensees in digital format: \$100.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-46 repealed, new Section R4-11-46 adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-46 renumbered as Section R4-11-405 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-405 renumbered from R4-11-905 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 22 A.A.R.

3697, effective February 6, 2017 (Supp. 16-4). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-406. Anesthesia and Sedation Permit Fees

A. As expressly authorized under A.R.S. § 32-1207, the Board establishes and shall collect the following fees:

1. Section 1301 permit fee: \$300 plus \$25 for each additional location;
2. Section 1302 permit fee: \$300 plus \$25 for each additional location;
3. Section 1303 permit fee: \$300 plus \$25 for each additional location; and
4. Section 1304 permit fee: \$300 plus \$25 for each additional location.

B. Upon successful completion of an initial onsite evaluation and upon receipt of the required permit fee, the Board shall issue a separate Section 1301, 1302, 1303, or 1304 permit to a dentist for each location requested by the dentist. A permit expires on December 31 of every fifth year.

C. Permit renewal fees:

1. Section 1301 permit renewal fee: \$300 plus \$25 for each additional location;
2. Section 1302 permit renewal fee: \$300 plus \$25 for each additional location;
3. Section 1303 permit renewal fee: \$300 plus \$25 for each additional location; and
4. Section 1304 permit renewal fee: \$300 plus \$25 for each additional location.

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-47 renumbered as Section R4-11-406 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-406 renumbered from R4-11-906 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section R4-11-406 renumbered from R4-11-407 and amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 4130, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-407. Renumbered

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-48 renumbered as Section R4-11-407 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-407 renumbered from R4-11-909 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section R4-11-407 renumbered to R4-11-406 by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1).

R4-11-408. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-49 renumbered as Section R4-11-408 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1).

R4-11-409. Repealed

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 5. DENTISTS

R4-11-501. Dentist of Record

A. A dentist of record shall ensure that each patient record has the treatment records for a patient treated in any dental office, clinic, hospital dental clinic, or charitable organization that offers dental services, and the full name of a dentist who is responsible for all of the patient's treatment.

B. A dentist of record shall obtain a patient's consent to change the treatment plan before changing the treatment plan that the patient originally agreed to, including any additional costs the patient may incur because of the change.

C. When a dentist who is a dentist of record decides to leave the practice of dentistry or a particular place of practice in which the dentist is the dentist of record, the dentist shall ensure before leaving the practice that a new dentist of record is entered on each patient record.

D. A dentist of record is responsible for the care given to a patient while the dentist was the dentist of record even after being replaced as the dentist of record by another dentist.

E. A dentist of record shall:

1. Remain responsible for the care of a patient during the course of treatment; and
2. Be available to the patient through the dentist's office, an emergency number, an answering service, or a substituting dentist.

F. A dentist's failure to comply with subsection (E) constitutes patient abandonment, and the Board may impose discipline under A.R.S. Title 32, Chapter 11, Article 3.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-62 renumbered as Section R4-11-501 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-501 repealed, new Section R4-11-501 renumbered from R4-11-1102 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-502. Affiliated Practice

A. A dentist in a private for profit setting shall not enter into more than 15 affiliated practice relationships under A.R.S. § 32-1289 at one time.

B. There is no limit to the number of affiliated practice relationships a dentist may enter into when working in a government, public health, or non-profit organization under Section 501(C)(3) of the Internal Revenue Code.

C. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.

D. The affiliated practice agreement shall include a provision for a substitute dentist in addition to the requirements of A.R.S. § 32-1289(F), to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, or consultation with the affiliated practice dental hygienist.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-63 renumbered as Section R4-11-502 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-502 renumbered to R4-11-701 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1).

R4-11-503. Repealed

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-64 repealed, new Section R4-11-64 adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-64 renumbered as Section R4-11-503 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-503 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-504. Renumbered

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-65 repealed, new Section R4-11-65 adopted effective May 23, 1976 (Supp. 76-2). Former Section R4-11-65 renumbered as Section R4-11-504, repealed, and new Section R4-11-504 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-504 renumbered to R4-11-702 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-505. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-66 renumbered as Section R4-11-505 and repealed effective July 29, 1981 (Supp. 81-4).

R4-11-506. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-67 renumbered as Section R4-11-506 and repealed effective July 29, 1981 (Supp. 81-4).

ARTICLE 6. DENTAL HYGIENISTS

R4-11-601. Duties and Qualifications

A. A dental hygienist may apply Preventative and Therapeutic Agents under the general supervision of a licensed dentist.

B. A dental hygienist may perform a procedure not specifically authorized by A.R.S. § 32-1281 when all of the following conditions are satisfied:

1. The procedure is recommended or prescribed by the supervising dentist;
2. The dental hygienist has received instruction, training, or education to perform the procedure in a safe manner; and
3. The procedure is performed under the general supervision of a licensed dentist.

C. A dental hygienist shall not perform an Irreversible Procedure.

D. To qualify to use Emerging Scientific Technology as authorized by A.R.S. § 32-1281(C)(2), a dental hygienist shall successfully complete a course of study that meets the following criteria:

1. Is a course offered by a recognized dental school as defined in A.R.S. § 32-1201, a recognized dental hygiene school as defined in A.R.S. § 32-1201, or sponsored by a national or state dental or dental hygiene association or government agency;
2. Includes didactic instruction with a written examination;
3. Includes hands-on clinical instruction; and
4. Is technology that is scientifically based and supported by studies published in peer reviewed dental journals.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-82 renumbered as Section R4-11-601 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-601 repealed, new Section R4-11-601 renumbered from R4-11-402 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-602. Care of Homebound Patients

Dental hygienists treating homebound patients shall provide only treatment prescribed by the dentist of record in the diagnosis and treatment plan. The diagnosis and treatment plan shall be based on examination data obtained not more than 12 months before the treatment is administered.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-83 renumbered as Section R4-11-602 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-602 renumbered to R4-11-1001, new Section R4-11-602 renumbered from R4-11-403 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-603. Limitation on Number Supervised

A dentist shall not supervise more than three dental hygienists at a time.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-84 renumbered as Section R4-11-603 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-603 renumbered to R4-11-1002, new Section R4-11-603 renumbered from R4-11-408 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-604. Selection Committee and Process

A. The Board shall appoint a selection committee to screen candidates for the dental hygiene committee. The selection committee consists of three members. The Board shall appoint at least two members who are dental hygienists and one member who is a current Board member. The Board shall fill any vacancy for the unexpired portion of the term.

B. Each selection committee member's term is one year.

C. By majority vote, the selection committee shall nominate each candidate for the dental hygiene committee and transmit a list of names to the Board for approval, including at least one alternate.

Historical Note

New Section R4-11-604 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-605. Dental Hygiene Committee

A. The Board shall appoint seven members to the dental hygiene committee as follows:

1. One dentist appointed at the annual December Board meeting, currently serving as a Board member, for a one year term;
2. One dental hygienist appointed at the annual December Board meeting, currently serving as a Board member and possessing the qualifications required in Article 6, for a one-year term;
3. Four dental hygienists that possess the qualifications required in Article 6; and
4. One lay person.

B. Except for members appointed as prescribed in subsections (A)(1) and (2), the Board shall appoint dental hygiene committee members for staggered terms of three years, beginning January 1, 1999, and limit each member to two consecutive terms. The Board shall fill any vacancy for the unexpired portion of the term.

C. The dental hygiene committee shall annually elect a chairperson at the first meeting convened during the calendar year.

Historical Note

New Section R4-11-605 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-606. Candidate Qualifications and Submissions

A. A dental hygienist who seeks membership on the dental hygiene committee shall possess a license in good standing, issued by the Board.

B. A dental hygienist who is not a Board member and qualifies under subsection (A) shall submit a letter of intent and resume to the Board.

C. The selection committee shall consider all of the following criteria when nominating a candidate for the dental hygiene committee:

1. Geographic representation,
2. Experience in postsecondary curriculum analysis and course development,
3. Public health experience, and
4. Dental hygiene clinical experience.

Historical Note

New Section R4-11-606 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-607. Duties of the Dental Hygiene Committee

A. The committee shall advise the Board on all matters relating to the regulation of dental hygienists.

B. In performing the duty in subsection (A), the committee may:

1. Act as a liaison for the Board, promoting communication and providing a forum for discussion of dental hygiene regulatory issues;
2. Review applications, syllabi, and related materials and make recommendations to the Board regarding certification of courses in Local Anesthesia, Nitrous Oxide Analgesia, and suture placement under Article 6 and other procedures which may require certification under Article 6;
3. Review documentation submitted by dental hygienists to determine compliance with the continuing education requirement for license renewal under Article 12 and make recommendations to the Board regarding compliance;
4. Make recommendations to the Board concerning statute and rule development which affect dental hygienists' education, licensure, regulation, or practice;
5. Provide advice to the Board on standards and scope of practice which affect dental hygiene practice;
6. Provide ad hoc committees to the Board upon request;
7. Request that the Board consider recommendations of the committee at the next regularly scheduled Board meeting; and
8. Make recommendations to the Board for approval of dental hygiene consultants.

C. Committee members who are licensed dentists or dental hygienists may serve as dental hygiene examiners or Board consultants.

D. The committee shall meet at least two times per calendar year. The chairperson or the president of the Board, or their respective designees, may call a meeting of the committee.

E. The Board may assign additional duties to the committee.

Historical Note

New Section R4-11-607 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-608. Dental Hygiene Consultants

After submission of a current curriculum vitae or resume and approval by the Board, dental hygiene consultants may:

1. Act as dental hygiene examiners for the clinical portion of the dental hygiene examination;
2. Act as dental hygiene examiners for the Local Anesthesia portion of the dental hygiene examination;
3. Participate in Board-related procedures, including Clinical Evaluations, investigation of complaints concerning infection control, insurance fraud, or the practice of supervised personnel, and any other procedures not directly related to evaluating a dentist's quality of care; and
4. Participate in onsite office evaluations for infection control, as part of a team.

Historical Note

New Section R4-11-608 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-609. Affiliated Practice

A. To perform dental hygiene services under an affiliated practice relationship pursuant to A.R.S. § 32-1289.01, a dental hygienist shall:

1. Provide evidence to the Board of successfully completing a total of 12 hours of Recognized Continuing Dental Education that consists of the following subject areas:
 - a. A minimum of four hours in medical emergencies; and
 - b. A minimum of eight hours in at least two of the following areas:
 - i. Pediatric or other special health care needs,
 - ii. Preventative dentistry, or
 - iii. Public health community-based dentistry, and
2. Hold a current certificate in basic cardiopulmonary resuscitation (CPR).

B. A dental hygienist shall complete the required continuing dental education before entering an affiliated practice relationship. The dental hygienist shall complete the continuing dental education in subsection (A) before renewing the dental hygienist's license. The dental hygienist may take the continuing dental education online but shall not exceed the allowable hours indicated in R4-11-1209(B)(1).

C. To comply with A.R.S. § 32-1287(E) and this Section, a dental hygienist shall submit a completed affidavit on a form supplied by the Board office. Board staff shall review the affidavit to determine compliance with all requirements.

D. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.

E. The affiliated practice agreement shall include a provision for a substitute dentist, to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, and consultation with the affiliated practice dental hygienist.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

ARTICLE 7. DENTAL ASSISTANTS

R4-11-701. Procedures and Functions Performed by a Dental Assistant under Supervision

A. A dental assistant may perform the following procedures and functions under the direct supervision of a licensed dentist:

1. Place dental material into a patient's mouth in response to a licensed dentist's instruction;
2. Cleanse the supragingival surface of the tooth in preparation for:
 - a. The placement of bands, crowns, and restorations;
 - b. Dental dam application;
 - c. Acid etch procedures; and
 - d. Removal of dressings and packs;
3. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments;
4. Remove temporary cement, interim restorations, and periodontal dressings with hand instruments;
5. Remove sutures;
6. Place and remove dental dams and matrix bands;
7. Fabricate and place interim restorations with temporary cement;
8. Apply sealants;

9. Apply topical fluorides;
 10. Prepare a patient for nitrous oxide and oxygen analgesia administration upon the direct instruction and presence of a dentist; or
 11. Observe a patient during nitrous oxide analgesia as instructed by the dentist.
- B. A dental assistant may perform the following procedures and functions under the general supervision of a licensed dentist:
1. Train or instruct patients in oral hygiene techniques, preventive procedures, dietary counseling for caries and plaque control, and provide pre-and post-operative instructions relative to specific office treatment;
 2. Collect and record information pertaining to extraoral conditions; and
 3. Collect and record information pertaining to existing intraoral conditions.

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-100 renumbered as Section R4-11-701 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-701 renumbered to R4-11-1701, new Section R4-11-701 renumbered from R4-11-502 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-702. Limitations on Procedures or Functions Performed by a Dental Assistant under Supervision

A dental assistant shall not perform the following procedures or functions:

1. A procedure which by law only licensed dentists, licensed dental hygienists, or certified denturists can perform;
2. Intraoral carvings of dental restorations or prostheses;
3. Final jaw registrations;
4. Taking final impressions for any activating orthodontic appliance, fixed or removable prosthesis;
5. Activating orthodontic appliances; or
6. An irreversible procedure.

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-101 renumbered as Section R4-11-702 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-702 repealed, new Section R4-11-702 renumbered from R4-11-504 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-703. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-102 renumbered as Section R4-11-703 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-703 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-704. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-103 renumbered as Section R4-11-704 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-704 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-705. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-104 renumbered as Section R4-11-705 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-705 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-706. Repealed**Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-105 renumbered as Section R4-11-706 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-706 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-707. Repealed**Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-106 renumbered as Section R4-11-707 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-707 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-708. Repealed**Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-107 renumbered as Section R4-11-708 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-708 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-709. Repealed**Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-108 renumbered as Section R4-11-709 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-709 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-710. Repealed**Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-109 renumbered as Section R4-11-710 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-710 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 8. DENTURISTS**R4-11-801. Expired****Historical Note**

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-120 renumbered as Section R4-11-801 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-801 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-801 repealed, new Section R4-11-801 renumbered from R4-11-1201 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-802. Expired**Historical Note**

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-121 renumbered as Section R4-11-802 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-802 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-802 renumbered to R4-11-1301, new Section R4-11-802 renumbered from R4-11-1202 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-803. Renumbered

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-122 renumbered as Section R4-11-803 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-803 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4- 11-803 renumbered to R4-11-1302 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-804. Renumbered

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-123 renumbered as Section R4-11-804 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-804 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Former Section R4-11-804 renumbered to R4-11-1303 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-805. Renumbered

Historical Note

Adopted as filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-805 renumbered to R4-11-1304 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-806. Renumbered

Historical Note

Adopted effective May 17, 1995 (Supp. 95-2). Former Section R4-11-806 renumbered to R4-11-1305 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 9. RESTRICTED PERMITS

R4-11-901. Application for Restricted Permit

A. An applicant for a restricted permit shall provide the following information and documentation on a form provided by the Board:

1. A sworn statement of the applicant's qualifications for a restricted permit;
2. A photograph of the applicant that is no more than six months old;
3. A letter from any other jurisdiction in which an applicant is licensed or certified verifying that the applicant is licensed or certified in that jurisdiction, sent directly from that jurisdiction to the Board;
4. If the applicant is in the military or employed by the United States government, a letter from the applicant's commanding officer or supervisor verifying the applicant is licensed or certified by the military or United States government;
5. A copy of the applicant's current cardiopulmonary resuscitation certification that meets the requirements of R4-11-301(A)(6); and
6. A copy of the applicant's pending contract with a Charitable Dental Clinic or Organization offering dental or dental hygiene services.

B. The Board may request that an applicant provide a copy of a certified document that indicates the reason for a name change if the applicant's application contains different names.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-130 renumbered as Section R4-11-901, repealed, and new Section R4-11-901 adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-901 renumbered to R4-11-401, new Section R4-11-901 renumbered from R4-11-1001 and amended by final rulemaking at 5 A.A.R. 580,

effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 28 A.A.R.1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-902. Issuance of a Restricted Permit

Before issuing a restricted permit under A.R.S. §§ 32-1237 through 32-1239 or 32-1292, the Board shall investigate the statutory qualifications of the charitable dental clinic or organization. The Board shall not recognize a dental clinic or organization under A.R.S. §§ 32-1237 through 32-1239 or 32-1292 as a charitable dental clinic or organization permitted to employ dentists or dental hygienists not licensed in Arizona who hold restricted permits unless the Board makes the following findings of fact:

1. That the entity is a dental clinic or organization offering professional dental or dental hygiene services in a manner consistent with the public health;
2. That the dental clinic or organization offering dental or dental hygiene services is operated for charitable purposes only, offering dental or dental hygiene services either without compensation to the clinic or organization or with compensation at the minimum rate to provide only reimbursement for dental supplies and overhead costs;
3. That the persons performing dental or dental hygiene services for the dental clinic or organization do so without compensation; and
4. That the charitable dental clinic or organization operates in accordance with applicable provisions of law.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-131 renumbered as Section R4-11- 902, repealed, and new Section R4-11-902 adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-902 renumbered to R4-11-402, new Section R4-11-902 renumbered from R4-11-1002 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-903. Recognition of a Charitable Dental Clinic Organization

In order for the Board to make the findings required in R4-11-902, the charitable clinic or organization shall provide information to the Board, such as employment contracts with restricted permit holders, Articles and Bylaws, and financial records.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-132 renumbered as Section R4-11- 903, repealed, and new Section R4-11-903 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11- 903 renumbered to R4-11-403, new Section R4-11-903 renumbered from R4-11-1003 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-904. Determination of Minimum Rate

In determining whether professional services are provided at the minimum rate to provide reimbursement for dental supplies and overhead costs under A.R.S. §§ 32-1237(1) or 32-1292(A)(1), the Board shall obtain and review information relating to the actual cost of dental supplies to the dental clinic or organization, the actual overhead costs of the dental clinic or organization, the amount of charges for the dental or dental hygiene services offered, and any other information relevant to its inquiry.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-133 renumbered as Section R4-11- 904 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-904

renumbered to R4-11-404, new Section R4-11-904 renumbered from R4-11-1004 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-905. Expired

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-134 renumbered as Section R4-11- 905 without change effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Former Section R4-11-905 renumbered to R4-11-405, new Section R4-11-905 renumbered from R4-11-1005 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17- 3).

R4-11-906. Expired

Historical Note

Adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-4). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-906 renumbered to R4-11- 406, new Section R4-11-906 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-907. Repealed

Historical Note

Adopted effective April 4, 1986 (Supp. 86-2). Former Section R4-11-907 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-908. Repealed

Historical Note

Adopted effective April 4, 1986 (Supp. 86-2). Former Section R4-11-908 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-909. Renumbered

Historical Note

Adopted effective May 17, 1995 (Supp. 95-2). Former Section R4-11-909 renumbered to R4-11-407 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 10. DENTAL TECHNICIANS

R4-11-1001. Expired

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-140 renumbered as Section R4-11- 1001 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11- 1001 renumbered to R4-11- 901, new Section R4-11-1001 renumbered from R4-11- 602 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-1002. Expired

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-141 renumbered as Section R4-11- 1002 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11- 1002 renumbered to R4-11- 902, new Section R4-11-1002 renumbered from R4-11- 603 and amended

by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-1003. Renumbered

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-142 renumbered as Section R4-11- 1003 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1003 renumbered to R4-11-903 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1004. Renumbered

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-143 renumbered as Section R4-11- 1004 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1004 renumbered to R4-11-904 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1005. Renumbered

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-144 renumbered as Section R4-11- 1005 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1005 renumbered to R4-11-905 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1006. Repealed

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 11. ADVERTISING

R4-11-1101. Advertising

A dentist may advertise specific dental services or certification in a non-specialty area only if the advertisement includes the phrase “Services provided by an Arizona licensed general dentist.” A dental hygienist may advertise specific dental hygiene services only if the advertisement includes the phrase “Services provided by an Arizona licensed dental hygienist.” A denturist may advertise specific denture services only if the advertisement includes the phrase “Services provided by an Arizona certified denturist.”

Historical Note

Adopted effective July 29, 1981 (Supp. 81-4). Amended by repealing the former guideline on “Management of Craniomandibular Disorders” and adopting a new guideline effective June 16, 1982 (Supp. 82-3). Repealed effective November 20, 1992 (Supp. 92-4). Former Section R4-11-1101 repealed, new Section R4-11-1101 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05- 1).

R4-11-1102. Advertising as a Recognized Specialist

A. A dentist may advertise as a specialist or use the terms “specialty” or “specialist” to describe professional services only if the dentist limits the dentist’s practice exclusively to one or more specialty area that are:

1. Recognized by a board that certifies specialists for the area of specialty; and
2. Accredited by the Commission on Dental Accreditation of the American Dental Association.

B. The following specialty areas meet the requirements of subsection (A):

1. Endodontics,

2. Oral and maxillofacial surgery,
3. Orthodontics and dentofacial orthopedics,
4. Pediatric dentistry,
5. Periodontics,
6. Prosthodontics,
7. Dental Public Health,
8. Oral and Maxillofacial Pathology, and
9. Oral and Maxillofacial Radiology.

C. For purposes of this Article, a dentist who wishes to advertise as a specialist or a multiple-specialist in a recognized field under subsection (B) shall meet the criteria in one or more of the following categories:

1. Grandfathered: A dentist who declared a specialty area before December 31, 1964, according to requirements established by the American Dental Association, and has a practice limited to a dentistry area approved by the American Dental Association;
2. Educationally qualified: A dentist who has successfully completed an educational program of two or more years in a specialty area accredited by the Commission on Dental Accreditation of the American Dental Association, as specified by the Council on Dental Education of the American Dental Association;
3. Board eligible: A dentist who has met the guidelines of a specialty board that operates in accordance with the requirements established by the American Dental Association in a specialty area recognized by the Board, if the specialty board:
 - a. Has established examination requirements and standards,
 - b. Appraised an applicant's qualifications,
 - c. Administered comprehensive examinations, and
 - d. Upon completion issues a certificate to a dentist who has achieved diplomate status;
 or
4. Board certified: A dentist who has met the requirements of a specialty board referenced in subsection (C)(3), and who has received a certificate from the specialty board, indicating the dentist has achieved diplomate status.

D. A dentist, dental hygienist, or denturist whose advertising implies that services rendered in a dental office are of a specialty area other than those listed in subsection (B) and recognized by a specialty board that has been accredited by the Commission on Dental Accreditation of the American Dental Association violates this Article and A.R.S. § 32-1201(18)(u), and is subject to discipline under A.R.S. Title 32, Chapter 11.

Historical Note

Adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1102 renumbered to R4-11-501 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1103. Reserved

R4-11-1104. Repealed

Historical Note

Adopted effective November 25, 1985 (Supp. 85-6). Former Section R4-11-1104 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1105. Repealed

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 12. CONTINUING DENTAL EDUCATION AND RENEWAL REQUIREMENTS

R4-11-1201. Continuing Dental Education

A. A licensee or certificate holder shall:

1. Satisfy a continuing dental education requirement that is designed to provide an understanding of current developments, skills, procedures, or treatment related to the licensee's or certificate holder's practice; and
2. Complete the recognized continuing dental education required by this Article each renewal period.

B. A licensee or certificate holder receiving an initial license or certificate shall complete the prescribed credit hours of recognized continuing dental education by the end of the first full renewal period.

Historical Note

Adopted effective May 21, 1982 (Supp. 82-3). Former Section R4-11-1201 renumbered to R4-11-801, new Section R4-11-1201 renumbered from R4-11-1402 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1202. Continuing Dental Education Compliance and Renewal Requirements

A. When applying for a renewal license, certificate, or restricted permit, a Licensee, dentist, or Restricted Permit holder shall complete a renewal application provided by the Board.

B. Before receiving a renewal license or certificate, each Licensee or dentist shall possess a current form of one of the following:

1. A current cardiopulmonary resuscitation healthcare provider level certificate from the American Red Cross, the American Heart Association, or another certifying agency;
2. Advanced cardiac life support course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application; or
3. Pediatric advanced life support course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application.

C. A Licensee or dentist shall include an affidavit affirming the Licensee's or dentist's completion of the prescribed Credit Hours of Recognized Continuing Dental Education with a renewal application. A Licensee or dentist shall include on the affidavit the Licensee's or dentist's name, license or certificate number, the number of hours completed in each category, and the total number of hours completed for activities defined in R4-11-1209(A)(4).

D. A Licensee or dentist shall submit a written request for an extension before the renewal deadline prescribed in A.R.S. §§ 32-1236, 32-1276.02, 32-1287, and 32-1297.06. If a Licensee or dentist fails to meet the Credit Hours requirement because of military service, dental or religious missionary activity, residence in a foreign country, or other extenuating circumstances as determined by the Board, the Board, upon written request, may grant an extension of time to complete the Recognized Continuing Dental Education Credit Hour requirement.

E. The Board shall:

1. Only accept Recognized Continuing Dental Education credits accrued during the prescribed period immediately before license or certificate renewal, and
2. Not allow Recognized Continuing Dental Education credit accrued in a renewal period in excess of the amount required in this Article to be carried forward to the next renewal period.

F. A Licensee or dentist shall maintain Documentation of Attendance for each program for which credit is claimed that verifies the Recognized Continuing Dental Education Credit Hours the Licensee or dentist participated in during the most recently completed renewal period.

G. Each year, the Board shall audit continuing dental education requirement compliance on a random basis or when information is obtained which indicates a Licensee or dentist may not be in compliance with this Article. A Licensee or dentist selected for audit shall provide the Board with Documentation

of Attendance that shows compliance with the continuing dental education requirements within 35 calendar days from the date the Board issues notice of the audit by certified mail.

H. If a Licensee or dentist is found to not be in compliance with the continuing dental education requirements, the Board may take any disciplinary or non-disciplinary action authorized by A.R.S. Title 32, Chapter 11.

Historical Note

Adopted effective May 21, 1982 (Supp. 82-3). Former Section R4-11-1202 renumbered to R4-11-802, new Section R4-11-1202 renumbered from R4-11-1403 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 21 A.A.R. 921, effective August 3, 2015 (Supp. 15-2). Amended by final rulemaking at 28 A.A.R. 344 (February 4, 2022), effective March 14, 2022 (Supp. 22-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1203. Dentists and Dental Consultants

Dentists and dental consultants shall complete 63 hours of Recognized Continuing Dental Education in each renewal period as follows:

1. At least 36 Credit Hours in any one or more of the following areas: Dental and medical health, preventive services, dental diagnosis and treatment planning, dental recordkeeping, dental clinical procedures, managing medical emergencies, pain management, dental public health, and courses in corrective and restorative oral health and basic dental sciences, which may include current research, new concepts in dentistry, chemical dependency, tobacco cessation, and behavioral and biological sciences that are oriented to dentistry. A Licensee who holds a permit to administer General Anesthesia, Deep Sedation, Parenteral Sedation, or Oral Sedation who is required to obtain continuing education pursuant to Article 13 may apply those Credit Hours to the requirements of this Section;
2. No more than 15 Credit Hours in one or more of the following areas: Dental practice organization and management, patient management skills, and methods of health care delivery;
3. At least three Credit Hours in opioid education;
4. At least three Credit Hours in infectious diseases or infectious disease control;
5. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support or pediatric advanced life support. Coursework may be completed online if the course requires a physical demonstration of skills; and
6. At least three Credit Hours in ethics or Arizona dental jurisprudence.

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3). New Section R4-11-1203 renumbered from R4-11-1404 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1204. Dental Hygienists

A. A dental hygienist shall complete 45 Credit Hours of Recognized Continuing Dental Education in each renewal period as follows:

1. At least 25 Credit Hours in any one or more of the following areas: Dental and medical health, and dental hygiene services, periodontal disease, care of implants, maintenance of cosmetic restorations and sealants, radiology safety and techniques, managing medical emergencies,

pain management, dental recordkeeping, dental public health, and new concepts in dental hygiene;

2. No more than 11 Credit Hours in one or more of the following areas: Dental hygiene practice organization and management, patient management skills, and methods of health care delivery;
3. At least three Credit Hours in one or more of the following areas: chemical dependency, tobacco cessation, ethics, risk management, or Arizona dental jurisprudence;
4. At least three Credit Hours in infectious diseases or infectious disease control; and
5. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support and pediatric advanced life support. Coursework may be completed online if the course re-quires a physical demonstration of skills.

B. A Licensee who performs dental hygiene services under an affiliated practice relationship who is required to obtain continuing education under R4-11-609 may apply those Credit Hours to the requirements of this Section.

Historical Note

New Section R4-11-1204 renumbered from R4-11-1405 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1205. Denturists

Denturists shall complete 27 Credit Hours of Recognized Continuing Dental Education in each renewal period as follows:

1. At least 15 Credit Hours in any one or more of the following areas: Medical and dental health, laboratory procedures, clinical procedures, dental recordkeeping, removable prosthetics, pain management, dental public health, and new technology in dentistry;
2. No more than three Credit Hours in one or more of the following areas: Denturist practice organization and management, patient management skills, and methods of health care delivery;
3. At least one Credit Hour in chemical dependency, which may include tobacco cessation;
4. At least two Credit Hours in infectious diseases or infectious disease control;
5. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support and pediatric advanced life support. Coursework may be completed online if the course re-quires a physical demonstration of skills; and
6. At least three Credit Hours in ethics or Arizona dental jurisprudence.

Historical Note

New Section R4-11-1205 renumbered from R4-11-1406 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1206. Restricted Permit Holders - Dental

In addition to the requirements in R4-11-1202, a dental Restricted Permit Holder shall comply with the following requirements:

1. When applying for renewal under A.R.S. § 32-1238, the Restricted Permit Holder shall provide information to the Board that the Restricted Permit Holder has completed 15 Credit Hours of Recognized Continuing Dental Education yearly.

2. To determine whether to grant the renewal, the Board shall only consider Recognized Continuing Dental Education credits accrued during the 36 months immediately before the renewal deadline prescribed in A.R.S. § 32-1236.
3. A dental Restricted Permit Holder shall complete the 15 hours of Recognized Continuing Dental Education before renewal as follows:
 - a. At least six Credit Hours in one or more of the subjects enumerated in R4-11-1203(1);
 - b. No more than three Credit Hours in one or more of the subjects enumerated in R4-11-1203(2);
 - c. At least one Credit Hour in the subjects enumerated in R4-11-1203(3);
 - d. At least one Credit Hour in the subjects enumerated in R4-11-1203(4).
 - e. At least three Credit Hours in the subjects enumerated in R4-11-1203(5); and
 - f. At least one Credit Hour in the subjects enumerated in R4-11-1203(6).

Historical Note

New Section R4-11-1206 renumbered from R4-11-1407 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 344 (February 4, 2022), effective March 14, 2022 (Supp. 22-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1207. Restricted Permit Holders - Dental Hygiene

In addition to the requirements in R4-11-1202, a dental hygiene Restricted Permit Holder shall comply with the following:

1. When applying for renewal under A.R.S. § 32-1292, the Restricted Permit Holder shall provide information to the Board that the Restricted Permit Holder has completed nine Credit Hours of Recognized Continuing Dental Education yearly.
2. To determine whether to grant renewal, the Board shall only consider Recognized Continuing Dental Education credits accrued during the 36 months immediately before the renewal deadline prescribed in A.R.S. § 32-1287.
3. A dental hygiene Restricted Permit Holder shall complete the nine hours of Recognized Continuing Dental Education before renewal as follows:
 - a. At least three Credit Hours in one or more of the subjects enumerated in R4-11-1204(1);
 - b. No more than three Credit Hours in one or more of the subjects enumerated in R4-11-1204(2);
 - c. At least one Credit Hour in the subjects enumerated in R4-11-1204(3);
 - d. At least two Credit Hours in the subjects enumerated in R4-11-1204(4) and
 - e. At least three Credit Hours in the subjects enumerated in R4-11-1204(5).

Historical Note

New Section R4-11-1207 renumbered from R4-11-1408 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 344 (February 4, 2022), effective March 14, 2022 (Supp. 22-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1208. Retired Licensees or Retired Denturists

A Retired Licensee or Retired denturist shall:

1. Except for the number of Credit Hours required, comply with the requirements in R4-11-1202; and

2. When applying for renewal under A.R.S. § 32-1236 for a dentist, A.R.S. § 32-1276.02 for a dental therapist, A.R.S. § 32-1287 for a dental hygienist, and A.R.S. § 32-1297.06 for a denturist, provide information to the Board that the Retired Licensee or Retired denturist has completed the following Credit Hours of Recognized Continuing Dental Education per renewal period:
 - a. Dentist – 24 Credit Hours of which no less than three credit hours shall be for cardiopulmonary resuscitation-healthcare provider level;
 - b. Dental therapist - 21 Credit Hours of which no less than three Credit Hours shall be for cardiopulmonary resuscitation- healthcare provider level;
 - c. Dental hygienist - 18 Credit Hours of which no less than three credit hours shall be for cardiopulmonary resuscitation-healthcare provider level; and
 - d. Denturist – six Credit Hours of which no less than three credit hours shall be for cardiopulmonary resuscitation-healthcare provider level.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1209. Types of Courses

A. A Licensee or denturist shall obtain Recognized Continuing Dental Education from one or more of the following activities:

1. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry;
2. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry by means of audio-video technology in which the Licensee is provided all seminar, symposium, lecture or program materials and the technology permits attendees to fully participate; or
3. Curricula designed to prepare for specialty board certification as a specialist or recertification examinations or advanced training at an accredited institution as defined in A.R.S. Title 32, Chapter 11; and
4. Subject to the limitations in subsection (B), any of the following activities that provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry:
 - a. A correspondence course, video, internet or similar self-study course, if the course includes an examination and the Licensee or denturist passes the examination;
 - b. Participation on the Board, in Board complaint investigations including Clinical Evaluations or anesthesia and sedation permit evaluations;
 - c. Participation in peer review of a national or state dental, dental therapy, dental hygiene, or denturist association or participation in quality of care or utilization review in a hospital, institution, or governmental agency;
 - d. Providing dental-related instruction to dental, dental therapy, dental hygiene, or denturist students, or allied health professionals in a recognized dental school, recognized dental therapy school, recognized dental hygiene school, or recognized denturist school or providing dental-related instruction sponsored by a national, state, or local dental, dental therapy, dental hygiene, or denturist association;
 - e. Publication or presentation of a dental paper, report, or book authored by the Licensee or denturist that provides information on current developments, skills, procedures, or treatment related to the practice of dentistry. A Licensee or denturist may claim Credit Hours:
 - i. Only once for materials presented;
 - ii. Only if the date of publication or original presentation was during the applicable renewal period; and
 - iii. One Credit Hour for each hour of preparation, writing, and presentation; or

- f. Providing dental, dental therapy, dental hygiene, or denturist services in a Board-recognized Charitable Dental Clinic or Organization.
- B. The following limitations apply to the total number of Credit Hours earned per renewal period in any combination of the activities listed in subsection (A)(4):
- 1. Dentists no more than 21 hours;
 - 2. Dental therapists, no more than 18 hours;
 - 3. Dental hygienists, no more than 15 hours;
 - 4. Denturists, no more than nine hours;
 - 5. Retired or Restricted Permit Holder dentists, dental therapists, or dental hygienists, no more than two hours; and
 - 6. Retired denturists, no more than two hours.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R.1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

ARTICLE 13. GENERAL ANESTHESIA AND SEDATION

R4-11-1301. General Anesthesia and Deep Sedation

A. Before administering General Anesthesia, or Deep Sedation by any means, in a dental office or dental clinic, a dentist shall possess a Section 1301 Permit issued by the Board. The dentist may renew a Section 1301 Permit every five years by complying with R4-11-1307.

B. To obtain or renew a Section 1301 Permit, a dentist shall:

- 1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3), and R4-11-1307, includes:
 - a. General information about the applicant such as:
 - i. Name;
 - ii. Home and office addresses and telephone numbers;
 - iii. Limitations of practice;
 - iv. Hospital affiliations;
 - v. Denial, curtailment, revocation, or suspension of hospital privileges;
 - vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
 - vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
 - b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
- 2. On forms provided by the Board, provide a dated and signed affidavit attesting that any office or dental clinic where the dentist will administer General Anesthesia or Deep Sedation:
 - a. Contains the following properly operating equipment and supplies during the provision of General Anesthesia and Deep Sedation:
 - i. Emergency Drugs;
 - ii. Electrocardiograph monitor;
 - iii. Pulse oximeter;
 - iv. Cardiac defibrillator or automated external defibrillator;
 - v. Positive pressure oxygen and supplemental oxygen;
 - vi. Suction equipment, including endotracheal, tonsillar, or pharyngeal and emergency backup medical suction device;
 - vii. Laryngoscope, multiple blades, backup batteries, and backup bulbs;
 - viii. Endotracheal tubes and appropriate connectors;
 - ix. Magill forceps;
 - x. Oropharyngeal and nasopharyngeal airways;
 - xi. Auxiliary lighting;

- xii. Stethoscope; and
 - xiii. Blood pressure monitoring device; and
 - b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring General Anesthesia or Deep Sedation shall hold a current course completion confirmation in cardiopulmonary resuscitation healthcare provider level;
 - 3. Hold a valid license to practice dentistry in this state;
 - 4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration; and
 - 5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
 - a. Advanced cardiac life support from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
 - b. Pediatric advanced life support in a practice treating pediatric patients; or
 - c. A recognized continuing education course in advanced airway management.
- C. Initial applicants shall meet one or more of the following conditions by submitting to the Board verification of meeting the condition directly from the issuing institution:
- 1. Complete, within the three years before submitting the permit application, a full credit load, as defined by the training program, during one calendar year of training, in anesthesiology or related academic subjects, beyond the undergraduate dental school level in a training program described in R4-11-1306(A), offered by a hospital accredited by the Joint Commission on Accreditation of Hospitals Organization, or sponsored by a university accredited by the American Dental Association Commission on Dental Accreditation;
 - 2. Be, within the three years before submitting the permit application, a Diplomate of the American Board of Oral and Maxillofacial Surgeons or eligible for examination by the American Board of Oral and Maxillofacial surgeons, a Fellow of the American Association of Oral and Maxillofacial surgeons, a Fellow of the American Dental Society of Anesthesiology, a Diplomate of the National Dental Board of Anesthesiology, or a Diplomate of the American Dental Board of Anesthesiology; or
 - 3. For an applicant who completed the requirements of subsections (C)(1) or (C)(2) more than three years before submitting the permit application, provide the following documentation:
 - a. On a form provided by the Board, a written affidavit affirming that the applicant has administered General Anesthesia or Deep Sedation to a minimum of 25 patients within the year before submitting the permit application or 75 patients within the last five years before submitting the permit application;
 - b. A copy of the General Anesthesia or Deep Sedation permit in effect in another state or certification of military training in General Anesthesia or Deep Sedation from the applicant's commanding officer; and
 - c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(a) through (f).
- D. After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer General Anesthesia or Deep Sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, a Section 1301 Permit shall be issued to the applicant.
- 1. The onsite evaluation team shall consist of:
 - a. Two dentists who are Board members, or Board designees for initial applications; or
 - b. One dentist who is a Board member or Board designee for renewal applications.
 - 2. The onsite team shall evaluate the following:
 - a. The availability of equipment and personnel as specified in subsection (B)(2);

- b. Proper administration of General Anesthesia or Deep Sedation to a patient by the applicant in the presence of the evaluation team;
 - c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
 - d. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of Controlled Substances;
 - e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient specified in subsection (D)(2)(b); and
 - f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
3. The evaluation team shall recommend one of the following:
 - a. Pass. Successful completion of the onsite evaluation;
 - b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
 - c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
 - d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
 - e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing education with the subject matter outlined in R4-11- 1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.
 4. The onsite evaluation of an additional dental office or dental clinic in which General Anesthesia or Deep Sedation is administered by an existing Section 1301 Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
 5. A Section 1301 mobile permit may be issued if a Section 1301 Permit holder travels to dental offices or dental clinics to provide anesthesia or Deep Sedation. The applicant must submit a completed affidavit verifying:
 - a. That the equipment and supplies for the provision of anesthesia or Deep Sedation as required in subsection (B)(2)(a) either travel with the Section 1301 Permit holder or are in place and in appropriate condition at the dental office or dental clinic where anesthesia or Deep Sedation is provided, and
 - b. Compliance with subsection (B)(2)(b).
- E. A Section 1301 Permit holder shall keep an anesthesia or Deep Sedation record for each General Anesthesia and Deep Sedation procedure that includes the following entries:
1. Pre-operative and post-operative electrocardiograph documentation;
 2. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
 3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
 4. A list of all medications given, with dosage and time intervals, and route and site of administration;
 5. Type of catheter or portal with gauge;
 6. Indicate nothing by mouth or time of last intake of food or water;
 7. Consent form; and

8. Time of discharge and status, including name of escort.
- F. The Section 1301 Permit holder, for intravenous access, shall use a new infusion set, including a new infusion line and new bag of fluid, for each patient.
- G. The Section 1301 Permit holder shall utilize supplemental oxygen for patients receiving General Anesthesia or Deep Sedation for the duration of the procedure.
- H. The Section 1301 Permit holder shall continuously supervise the patient from the initiation of anesthesia or Deep Sedation until termination of the anesthesia or Deep Sedation procedure and oxygenation, ventilation, and circulation are stable. The Section 1301 Permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.
- I. A Section 1301 Permit holder may employ the following health care professionals to provide anesthesia or sedation services and shall ensure that the health care professional continuously supervises the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation, and circulation are stable:
1. An allopathic or osteopathic physician currently licensed in Arizona by the Arizona Medical Board or the Arizona Board of Osteopathic Examiners who has successfully completed a residency program in anesthesiology approved by the American Council on Graduate Medical Education or the American Osteopathic Association or who is certified by either the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology and is credentialed with anesthesia privileges through an Arizona licensed medical facility, or
 2. A Certified Registered Nurse Anesthetist currently licensed in Arizona who provides services under the Nurse Practice Act in A.R.S. Title 32, Chapter 15.
- J. A Section 1301 Permit holder may also administer parenteral sedation without obtaining a Section 1302 Permit.

Historical Note

New Section R4-11-1301 renumbered from R4-11-802 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1302. Parenteral Sedation

- A. Before administering parenteral sedation in a dental office or dental clinic, a dentist shall possess a Section 1302 Permit issued by the Board. The dentist may renew a Section 1302 permit every five years by complying with R4-11-1307.
1. A Section 1301 Permit holder may also administer parenteral sedation.
 2. A Section 1302 Permit holder shall not administer or employ any agents which have a narrow margin for maintaining consciousness including, but not limited to, ultrashort acting barbiturates, propofol, parenteral ketamine, or similarly acting Drugs, agents, or techniques, or any combination thereof that would likely render a patient deeply sedated, generally anesthetized or otherwise not meeting the conditions of Moderate Sedation.
- B. To obtain or renew a Section 1302 Permit, the dentist shall:
1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:
 - a. General information about the applicant such as:
 - i. Name;
 - ii. Home and office addresses and telephone numbers;
 - iii. Limitations of practice;
 - iv. Hospital affiliations;
 - v. Denial, curtailment, revocation, or suspension of hospital privileges;
 - vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and

- vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
 - b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
 - 2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer parenteral sedation by intravenous or intramuscular route:
 - a. Contains the following properly operating equipment and supplies during the provision of parenteral sedation by the permit holder or General Anesthesia or Deep Sedation by a physician anesthesiologist or Certified Registered Nurse Anesthetist:
 - i. Emergency Drugs;
 - ii. Positive pressure oxygen and supplemental oxygen;
 - iii. Stethoscope;
 - iv. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
 - v. Oropharyngeal and nasopharyngeal airways;
 - vi. Pulse oximeter;
 - vii. Auxiliary lighting;
 - viii. Blood pressure monitoring device; and
 - ix. Cardiac defibrillator or automated external defibrillator; and
 - b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
 - i. Holds a current course completion confirmation in cardiopulmonary resuscitation health care provider level;
 - ii. Is present during the parenteral sedation procedure; and
 - iii. After the procedure, monitors the patient until discharge;
 - 3. Hold a valid license to practice dentistry in this state;
 - 4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration;
 - 5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
 - a. Advanced cardiac life support from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
 - b. Pediatric advanced life support in a practice treating pediatric patients; or
 - c. A recognized continuing education course in advanced airway management.
- C. Initial applicants shall meet one of the following conditions:
- 1. Successfully complete Board-recognized undergraduate, graduate, or postgraduate education within the three years before submitting the permit application, that includes the following:
 - a. Sixty didactic hours of basic parenteral sedation to include:
 - i. Physical evaluation;
 - ii. Management of medical emergencies;
 - iii. The importance of and techniques for maintaining proper documentation; and
 - iv. Monitoring and the use of monitoring equipment; and
 - b. Hands-on administration of parenteral sedative medications to at least 20 patients in a manner consistent with this Section; or
 - 2. An applicant who completed training in parenteral sedation more than three years before submitting the permit application shall provide the following documentation:
 - a. On a form provided by the Board, a written affidavit affirming that the applicant has administered parenteral sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;

- b. A copy of the parenteral sedation permit in effect in another state or certification of military training in parenteral sedation from the applicant's commanding officer; and
 - c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(b) through (f).
- D. After submitting the application and written evidence of compliance with requirements outlined in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer parenteral sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1302 Permit to the applicant.
- 1. The onsite evaluation team shall consist of:
 - a. Two dentists who are Board members, or Board designees for initial applications, or
 - b. One dentist who is a Board member or Board designee for renewal applications.
 - 2. The onsite team shall evaluate the following:
 - a. The availability of equipment and personnel as specified in subsection (B)(2);
 - b. Proper administration of parenteral sedation to a patient by the applicant in the presence of the evaluation team;
 - c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
 - d. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of all Controlled Substances;
 - e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient receiving parenteral sedation as specified in subsection (D)(2)(b); and
 - f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
 - 3. The evaluation team shall recommend one of the following:
 - a. Pass. Successful completion of the onsite evaluation;
 - b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
 - c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
 - d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
 - e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing education with the subject matter outlined in R4-11-1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.
 - 4. The onsite evaluation of an additional dental office or dental clinic in which parenteral sedation is administered by an existing Section 1302 Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
 - 5. A Section 1302 mobile permit may be issued if a Section 1302 Permit holder travels to dental offices or dental clinics to provide parenteral sedation. The applicant must submit a completed affidavit verifying:

- a. That the equipment and supplies for the provision of parenteral sedation as required in R4-11- 1302(B)(2)(a) either travel with the Section 1302 Permit holder or are in place and in appropriate working condition at the dental office or dental clinic where parenteral sedation is provided, and
 - b. Compliance with R4-11-1302(B)(2)(b).
- E. A Section 1302 Permit holder shall keep a parenteral sedation record for each parenteral sedation procedure that:
 - 1. Includes the following entries:
 - a. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
 - b. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
 - c. A list of all medications given, with dosage and time intervals and route and site of administration;
 - d. Type of catheter or portal with gauge;
 - e. Indicate nothing by mouth or time of last intake of food or water;
 - f. Consent form; and
 - g. Time of discharge and status, including name of escort; and
 - 2. May include pre-operative and post-operative electrocardiograph report.
- F. The Section 1302 Permit holder shall establish intravenous access on each patient receiving parenteral sedation utilizing a new infusion set, including a new infusion line and new bag of fluid.
- G. The Section 1302 Permit holder shall utilize supplemental oxygen for patients receiving parenteral sedation for the duration of the procedure.
- H. The Section 1302 Permit holder shall continuously supervise the patient from the initiation of parenteral sedation until termination of the parenteral sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1302 Permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.
- I. A Section 1302 Permit holder may employ a health care professional as specified in R4-11-1301(I).

Historical Note

New Section R4-11-1302 renumbered from R4-11-803 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1303. Oral Sedation

- A. Before administering Oral Sedation in a dental office or dental clinic, a dentist shall possess a Section 1303 Permit issued by the Board. The dentist may renew a Section 1303 Permit every five years by complying with R4-11-1307.
 - 1. A Section 1301 Permit holder or Section 1302 Permit holder may also administer Oral Sedation without obtaining a Section 1303 Permit.
 - 2. The administration of a single Drug for Minimal Sedation does not require a Section 1303 Permit if:
 - a. The administered dose is within the Food and Drug Administration's maximum recommended dose as printed in the Food and Drug Administration's approved labeling for unmonitored home use;
 - i. Incremental multiple doses of the Drug may be administered until the desired effect is reached, but does not exceed the maximum recommended dose; and
 - ii. During Minimal Sedation, a single supplemental dose may be administered. The supplemental dose may not exceed one-half of the initial dose and the total aggregate dose may not exceed one and one-half times the Food and Drug Administration's maximum recommended dose on the date of treatment; and
 - b. Nitrous oxide/oxygen may be administered in addition to the oral Drug as long as the

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- combination does not exceed Minimal Sedation.
- B. To obtain or renew a Section 1303 Permit, a dentist shall:
1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:
 - a. General information about the applicant such as:
 - i. Name;
 - ii. Home and office addresses and telephone numbers;
 - iii. Limitations of practice;
 - iv. Hospital affiliations;
 - v. Denial, curtailment, revocation, or suspension of hospital privileges;
 - vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
 - vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
 - b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
 2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer Oral Sedation:
 - a. Contains the following properly operating equipment and supplies during the provision of sedation:
 - i. Emergency Drugs;
 - ii. Cardiac defibrillator or automated external defibrillator;
 - iii. Positive pressure oxygen and supplemental oxygen;
 - iv. Stethoscope;
 - v. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
 - vi. Pulse oximeter;
 - vii. Blood pressure monitoring device; and
 - viii. Auxiliary lighting; and
 - b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
 - i. Holds a current certificate in cardiopulmonary resuscitation healthcare provider level;
 - ii. Is present during the Oral Sedation procedure; and
 - iii. After the procedure, monitors the patient until discharge;
 3. Hold a valid license to practice dentistry in this state;
 4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration;
 5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
 - a. Cardiopulmonary resuscitation healthcare provider level from the American Heart Association, American Red Cross, or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
 - b. Pediatric advanced life support in a practice treating pediatric patients; or
 - c. A recognized continuing education course in advanced airway management.
- C. Initial applicants shall meet one of the following by submitting to the Board verification of meeting the condition directly from the issuing institution:
1. Complete a Board-recognized post-doctoral residency program that includes documented training in Oral Sedation within the last three years before submitting the permit application; or
 2. Complete a Board recognized post-doctoral residency program that includes documented training in Oral Sedation more than three years before submitting the permit application shall provide the following documentation:
 - a. On a form provided by the Board, a written affidavit affirming that the applicant has administered Oral Sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;

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- b. A copy of the Oral Sedation permit in effect in another state or certification of military training in Oral Sedation from the applicant's commanding officer; and
 - c. On a form provided by the Board, a written affidavit affirming the completion of 30 hours of continuing education taken within the last five years as outlined in R4-11-1306(C)(1)(a) through (f); or
 3. Provide proof of participation in 30 clock hours of Board- recognized undergraduate, graduate, or post-graduate education in Oral Sedation within the three years before submitting the permit application that includes:
 - a. Training in basic Oral Sedation,
 - b. Pharmacology,
 - c. Physical evaluation,
 - d. Management of medical emergencies,
 - e. The importance of and techniques for maintaining proper documentation, and
 - f. Monitoring and the use of monitoring equipment.
 - D. After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1303 Permit to the applicant.
 1. The onsite evaluation team shall consist of:
 - a. For initial applications, two dentists who are Board members, or Board designees.
 - b. For renewal applications, one dentist who is a Board member, or Board designee.
 2. The onsite team shall evaluate the following:
 - a. The availability of equipment and personnel as specified in subsection (B)(2);
 - b. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
 - c. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of Controlled Substances;
 - d. Proper recordkeeping as specified in subsection (E) by reviewing the forms that document the Oral Sedation record; and
 - e. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
 3. The evaluation team shall recommend one of the following:
 - a. Pass. Successful completion of the onsite evaluation;
 - b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substance, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before permit will be issued;
 - c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency; or
 - d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency.
 4. The onsite evaluation of an additional dental office or dental clinic in which Oral Sedation is administered by a Section 1303 Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
 5. A Section 1303 mobile permit may be issued if the Section 1303 Permit holder travels to dental offices or dental clinics to provide Oral Sedation. The applicant must submit a completed affidavit verifying:
 - a. That the equipment and supplies for the provision of Oral Sedation as required in R4-11-1303(B)(2)(a) either travel with the Section 1303 Permit holder or are in place and

- in appropriate condition at the dental office or dental clinic where Oral Sedation is provided, and
- b. Compliance with R4-11-1303(B)(2)(b).
- E. A Section 1303 Permit holder shall keep an Oral Sedation record for each Oral Sedation procedure that:
1. Includes the following entries:
 - a. Pre-operative, intra-operative, and post-operative, pulse oximeter oxygen saturation and pulse rate documentation;
 - b. Pre-operative and post-operative blood pressure;
 - c. Documented reasons for not taking vital signs if a patient's behavior or emotional state prevents monitoring personnel from taking vital signs;
 - d. List of all medications given, including dosage and time intervals;
 - e. Patient's weight;
 - f. Consent form;
 - g. Special notes, such as, nothing by mouth or last intake of food or water; and
 - h. Time of discharge and status, including name of escort; and
 2. May include the following entries:
 - a. Pre-operative and post-operative electrocardiograph report; and
 - b. Intra-operative blood pressures.
- F. The Section 1303 Permit holder shall utilize supplemental oxygen for patients receiving Oral Sedation for the duration of the procedure.
- G. The Section 1303 Permit holder shall ensure the continuous supervision of the patient from the administration of Oral Sedation until oxygenation, ventilation and circulation are stable and the patient is appropriately responsive for discharge from the dental office or dental clinic.
- H. A Section 1303 Permit holder may employ a health care professional to provide anesthesia services, if all of the following conditions are met:
1. The physician anesthesiologist or Certified Registered Nurse Anesthetist meets the requirements as specified in R4-11-1301(I);
 2. The Section 1303 Permit holder has completed course- work within the two years prior to submitting the permit application in one or more of the following:
 - a. Advanced cardiac life support from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
 - b. Pediatric advanced life support in a practice treating pediatric patients;
 - c. A recognized continuing education course in advanced airway management;
 3. The Section 1303 Permit holder ensures that:
 - a. The dental office or clinic contains the equipment and supplies listed in R4-11-1304(B)(2)(a) during the provision of anesthesia or sedation by the physician anesthesiologist or Certified Registered Nurse Anesthetist;
 - b. The anesthesia or sedation record contains all the entries listed in R4-11-1304(D);
 - c. For intravenous access, the physician anesthesiologist or Certified Registered Nurse Anesthetist uses a new infusion set, including a new infusion line and new bag of fluid for each patient; and
 - d. The patient is continuously supervised from the administration of anesthesia or sedation until the termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1303 Permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guide- lines for discharge.

Historical Note

New Section R4-11-1303 renumbered from R4-11-805 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4- 11-1303 renumbered to R4-11-1304; new Section R4-11- 1303 made by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1304. Permit to Employ or Work with a Physician Anesthesiologist or Certified Registered Nurse Anesthetist (CRNA)

- A. This Section does not apply to a Section 1301 permit holder or a Section 1302 permit holder practicing under the provisions of R4-11-1302(I) or a Section 1303 permit holder practicing under the provisions of R4-11-1303(H). A dentist may utilize a physician anesthesiologist or certified registered nurse anesthetist (CRNA) for anesthesia or sedation services while the dentist provides treatment in the dentist's office or dental clinic after obtaining a Section 1304 permit issued by the Board.
1. The physician anesthesiologist or CRNA meets the requirements as specified in R4-11-1301(I).
 2. The dentist permit holder shall provide all dental treatment and ensure that the physician anesthesiologist or CRNA remains on the dental office or dental clinic premises until any patient receiving anesthesia or sedation services is discharged.
 3. A dentist may renew a Section 1304 permit every five years by complying with R4-11-1307.
- B. To obtain or renew a Section 1304 permit, a dentist shall:
1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307 includes:
 - a. General information about the applicant such as:
 - i. Name;
 - ii. Home and office addresses and telephone numbers;
 - iii. Limitations of practice;
 - iv. Hospital affiliations;
 - v. Denial, curtailment, revocation, or suspension of hospital privileges;
 - vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
 - vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
 - b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
 2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist provides treatment during administration of general anesthesia or sedation by a physician anesthesiologist or CRNA:
 - a. Contains the following properly operating equipment and supplies during the provision of general anesthesia and sedation:
 - i. Emergency drugs;
 - ii. Electrocardiograph monitor;
 - iii. Pulse oximeter;
 - iv. Cardiac defibrillator or automated external defibrillator (AED);
 - v. Positive pressure oxygen and supplemental continuous flow oxygen;
 - vi. Suction equipment, including endotracheal, tonsillar or pharyngeal and emergency backup medical suction device;
 - vii. Laryngoscope, multiple blades, backup batteries and backup bulbs;
 - viii. Endotracheal tubes and appropriate connectors;
 - ix. Magill forceps;
 - x. Oropharyngeal and nasopharyngeal airways;
 - xi. Auxiliary lighting;
 - xii. Stethoscope; and
 - xiii. Blood pressure monitoring device; and
 - b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring general anesthesia or sedation shall hold a current completion confirmation in cardiopulmonary resuscitation (CPR) Health Care Provider level;
 3. Hold a valid license to practice dentistry in this state; and
 4. Provide confirmation of completing coursework within the last two years prior to submitting the permit application in one or more of the following:
 - a. Advanced cardiac life support (ACLS) from the American Heart Association or another

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- agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
 - b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
 - c. A recognized continuing education course in advanced airway management.
- C. After submitting the application and written evidence of compliance with requirements in subsection (B) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue the applicant a Section 1304 permit.
- 1. The onsite evaluation team shall consist of one dentist who is a Board member, or Board designee.
 - 2. The onsite team shall evaluate the following:
 - a. The availability of equipment and personnel as specified in subsection (B)(2);
 - b. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of controlled substances; and
 - c. Proper recordkeeping as specified in subsection (E) by reviewing previous anesthesia or sedation records.
 - 3. The evaluation team shall recommend one of the following:
 - a. Pass. Successful completion of the onsite evaluation; or
 - b. Conditional approval for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued.
 - 4. The evaluation of an additional dental office or dental clinic in which a Section 1304 permit holder provides treatment during the administration general anesthesia or sedation by a physician anesthesiologist or CRNA may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (B)(2).
- D. A Section 1304 permit holder shall keep an anesthesia or sedation record for each general anesthesia and sedation procedure that includes the following entries:
- 1. Pre-operative and post-operative electrocardiograph documentation;
 - 2. Pre-operative, intra-operative, and post-operative, pulse oximeter documentation;
 - 3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation; and
 - 4. A list of all medications given, with dosage and time intervals and route and site of administration;
 - 5. Type of catheter or portal with gauge;
 - 6. Indicate nothing by mouth or time of last intake of food or water;
 - 7. Consent form; and
 - 8. Time of discharge and status, including name of escort.
- E. For intravenous access, a Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA uses a new infusion set, including a new infusion line and new bag of fluid for each patient.
- F. A Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA utilizes supplemental continuous flow oxygen for patients receiving general anesthesia or sedation for the duration of the procedure.
- G. The Section 1304 permit holder shall continuously supervise the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1304 permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guidelines for discharge.

Historical Note

New Section R4-11-1304 renumbered from R4-11-805 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4- 11-1304 renumbered to R4-11-1305; new Section R4-11- 1304 renumbered from R4-11-1303 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section repealed; new Section made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1305. Reports of Adverse Occurrences

If a death, or incident requiring emergency medical response, occurs in a dental office or dental clinic during the administration of or recovery from general anesthesia, deep sedation, moderate sedation, or minimal sedation, the permit holder and the treating dentist involved shall submit a complete report of the incident to the Board within 10 days after the occurrence.

Historical Note

New Section R4-11-1305 renumbered from R4-11-806 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4- 11-1305 renumbered to R4-11-1306; new Section R4-11- 1305 renumbered from R4-11-1304 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section repealed; new Section made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1306. Education; Continued Competency

- A. To obtain a Section 1301, permit by satisfying the education requirement of R4-11-1301(B)(6), a dentist shall successfully complete an advanced graduate or post-graduate education program in pain control.
1. The program shall include instruction in the following subject areas:
 - a. Anatomy and physiology of the human body and its response to the various pharmacologic agents used in pain control;
 - b. Physiological and psychological risks for the use of various modalities of pain control;
 - c. Psychological and physiological need for various forms of pain control and the potential response to pain control procedures;
 - d. Techniques of local anesthesia, sedation, and general anesthesia, and psychological management and behavior modification, as they relate to pain control in dentistry; and
 - e. Handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway, and cardiopulmonary resuscitation.
 2. The program shall consist of didactic and clinical training. The didactic component of the program shall:
 - a. Be the same for all dentists, whether general practitioners or specialists; and
 - b. Include each subject area listed in subsection (A)(1).
 3. The program shall provide at least one calendar year of training as prescribed in R4-11-1301(B)(6)(a).
- B. To maintain a Section 1301 or 1302 permit under R4-11-1301 or R4-11-1302 a permit holder shall:
1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
 - a. General anesthesia,
 - b. Parenteral sedation,
 - c. Physical evaluation,
 - d. Medical emergencies,
 - e. Monitoring and use of monitoring equipment, or
 - f. Pharmacology of drugs and non-drug substances used in general anesthesia or parenteral sedation; and
 2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
 - a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
 - b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
 - c. A recognized continuing education course in advanced airway management;
 3. Complete at least 10 general anesthesia, deep sedation or parenteral sedation cases a calendar year; and
 4. Apply a maximum of six hours from subsection (B)(2) toward the continuing education requirements for subsection (B)(1).

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- C. To maintain a Section 1303 permit issued under R4-11-1303, a permit holder shall:
1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
 - a. Oral sedation,
 - b. Physical evaluation,
 - c. Medical emergencies,
 - d. Monitoring and use of monitoring equipment, or
 - e. Pharmacology of oral sedation drugs and non-drug substances; and
 2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
 - a. Cardiopulmonary resuscitation (CPR) Health Care Provider level from the American Heart Association, American Red Cross or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
 - b. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
 - c. Pediatric advanced life support (PALS);
 - d. A recognized continuing education course in advanced airway management; and
 3. Complete at least 10 oral sedation cases a calendar year.

Historical Note

Section R4-11-1306 renumbered from R4-11-1305 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1307. Renewal of Permit

- A. To renew a Section 1301, 1302, or 1303 permit, the permit holder shall:
1. Provide written documentation of compliance with the applicable continuing education requirements in R4-11-1306;
 2. Provide written documentation of compliance with the continued competency requirements in R4-11-1306;
 3. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1301, R4-11-1302, or R4-11-1303; and
 4. Not less than 90 days before the expiration of a permit holder's current permit, arrange for an onsite evaluation as described in R4-11-1301, R4-11-1302, or R4-11-1303.
- B. To renew a Section 1304 permit, the permit holder shall:
1. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1304; and
 2. Not less than 90 days before the expiration of a permit holder's current permit, arrange for an onsite evaluation as described in R4-11-1304.
- C. After the permit holder successfully completes the evaluation and submits the required affidavits, the Board shall renew a Section 1301, 1302, 1303, 1304 permit, as applicable.
- D. The Board may stagger due dates for renewal applications.

Historical Note

Made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

ARTICLE 14. DISPENSING DRUGS AND DEVICES

R4-11-1401. Prescribing

- A. In addition to the requirements of A.R.S. § 32-1298(C), a dentist shall ensure that a prescription order contains the following information:
1. Date of issuance;
 2. Name and address of the patient to whom the prescription is issued;
 3. Name, strength, dosage form, and quantity of the drug or name and quantity of the device prescribed;
 4. Name and address of the dentist prescribing the drug; and
 5. Drug Enforcement Administration registration number of the dentist, if prescribing a controlled substance.
- B. Before dispensing a drug or device, a dentist shall present to the patient a written prescription for the drug or device being dispensed that includes on the prescription the following statement in bold type: "This prescription may be filled by the prescribing dentist or by a pharmacy of your choice."

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1401 repealed, new Section R4-11-1401 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp.05-1).

R4-11-1402. Labeling and Dispensing

- A. A dentist shall include the following information on the label of all drugs and devices dispensed:
1. The dentist's name, address, and telephone number;
 2. The serial number;
 3. The date the drug or device is dispensed;
 4. The patient's name;
 5. Name, strength, and quantity of drug or name and quantity of device dispensed;
 6. The name of the drug or device manufacturer or distributor;
 7. Directions for use and cautionary statement necessary for safe and effective use of the drug or device; and
 8. If a controlled substance is prescribed, the cautionary statement "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed."
- B. Before delivery to the patient, the dentist shall prepare and package the drug or device to ensure compliance with the prescription and personally inform the patient of the name of the drug or device, directions for its use, precautions, and storage requirements.
- C. A dentist shall purchase all dispensed drugs and devices from a manufacturer, distributor, or pharmacy that is properly licensed in this state or one of the other 49 states, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States of America.
- D. When dispensing a prescription drug or device from a prescription order, a dentist shall perform the following professional practices:
1. Verify the legality and pharmaceutical feasibility of dispensing a drug based upon:
 - a. A patient's allergies,
 - b. Incompatibilities with a patient's currently taken medications,
 - c. A patient's use of unusual quantities of dangerous drugs or narcotics, and
 - d. The frequency of refills;
 2. Verify that the dosage is within proper limits;
 3. Interpret the prescription order;
 4. Prepare, package, and label, or assume responsibility for preparing, packaging, and labeling, the drug or device dispensed under each prescription order;
 5. Check the label to verify that the label precisely communicates the prescriber's directions and hand-initial each label;
 6. Record, or assume responsibility for recording, the serial number and date dispensed on the front of the original prescription order; and
 7. Record on the original prescription order the name or initials of the dentist who dispensed the order.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1402 renumbered to R4-11-1201, new Section R4-11-1402 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1403. Storage and Packaging

A dentist shall:

1. Keep all prescription-only drugs and devices in a secured area and control access to the secured area by written procedure. The dentist shall make the written procedure available to the Board or its authorized agents on demand for inspection or copying;
2. Keep all controlled substances secured in a locked cabinet or room, control access to the cabinet or room by written procedure, and maintain an ongoing inventory of the contents. The dentist shall make the written procedure available to the Board or its authorized agents on demand for inspection or copying;
3. Maintain drug storage areas so that the temperature in the drug storage areas does not exceed 85° F;
4. Not dispense a drug or device that has expired or is improperly labeled;
5. Not redispense a drug or device that has been returned;
6. Dispense a drug or device:
 - a. In a prepackaged container or light-resistant container with a consumer safety cap, unless the patient or patient's representative requests a non-safety cap; and
 - b. With a label that is mechanically or electronically printed;
7. Destroy an outdated, deteriorated, or defective controlled substance according to Drug Enforcement Administration regulations or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration; and
8. Destroy an outdated, deteriorated, or defective non-controlled substance drug or device by returning it to the supplier or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1403 renumbered to R4-11-1202, new Section R4-11-1403 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1404. Recordkeeping

A. A dentist shall:

1. Chronologically date and sequentially number prescription orders in the order that the drugs or devices are originally dispensed;
 2. Sequentially file orders separately from patient records, as follows:
 - a. File Schedule II drug orders separately from all other prescription orders;
 - b. File Schedule III, IV, and V drug orders separately from all other prescription orders; and
 - c. File all other prescription orders separately from orders specified in subsections (A)(2)(a) and (b);
 3. Record the name of the manufacturer or distributor of the drug or device dispensed on each prescription order and label;
 4. Record the name or initials of the dentist dispensing the drug or device on each prescription order and label; and
 5. Record the date the drug or device is dispensed on each prescription order and label.
- B. A dentist shall record in the patient's dental record the name, dosage form, and strength of the drug or device dispensed, the quantity or volume dispensed, the date the drug or device is dispensed, and the dental therapeutic reasons for dispensing the drug or device.
- C. A dentist shall maintain:

1. Purchase records of all drugs and devices for three years from the date purchased; and
 2. Dispensing records of all drugs and devices for three years from the date dispensed.
- D. A dentist who dispenses controlled substances:
1. Shall inventory Schedule II, III, IV, and V controlled substances as prescribed by A.R.S. § 36-2523;
 2. Shall perform a controlled substance inventory on March 1 annually, if directed by the Board, and at the opening or closing of a dental practice;
 3. Shall maintain the inventory for three years from the inventory date;
 4. May use one inventory book for all controlled substances;
 5. When conducting an inventory of Schedule II controlled substances, shall take an exact count;
 6. When conducting an inventory of Schedule III, IV, and V controlled substances, shall take an exact count or may take an estimated count if the stock container contains fewer than 1001 units.
- E. A dentist shall maintain invoices for drugs and devices dispensed for three years from the date of the invoices, filed as follows:
1. File Schedule II controlled substance invoices separately from records that are not Schedule II controlled substance invoices;
 2. File Schedule III, IV, and V controlled substance invoices separately from records that are not Schedule III, IV, and V controlled substance invoices; and
 3. File all non-controlled substance invoices separately from the invoices referenced in subsections (E)(1) and (2).
- F. A dentist shall file Drug Enforcement Administration order form (DEA Form 222) for a controlled substance sequentially and separately from every other record.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1404 renumbered to R4-11-1203, new Section R4-11-1404 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1405. Compliance

- A. A dentist who determines that there has been a theft or loss of Drugs or Controlled Substances from the dentist's office shall immediately notify a local law enforcement agency and the Board and provide written notice of the theft or loss in the following manner:
1. For non-Controlled Substance Drug theft or loss, provide the law enforcement agency and the Board with a written report explaining the theft or loss; or
 2. For Controlled Substance theft or loss, complete a Drug Enforcement Administration's 106 form; and
 3. Provide copies of the Drug Enforcement Administration's 106 form to the Drug Enforcement Administration and the Board within one day of the discovery.
- B. A dentist who dispenses Drugs or devices in a manner inconsistent with this Article is subject to discipline under A.R.S. Title 32, Chapter 11, Article 3.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1405 renumbered to R4-11-1204, new Section R4-11-1405 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1406. Dispensing for Profit Registration and Renewal

- A. A dentist who is currently licensed to practice dentistry in Arizona may dispense controlled substances, prescription-only drugs, and prescription-only devices for profit only after providing

the Board the following information:

1. A completed registration form that includes the following information:
 - a. The dentist's name and dental license number;
 - b. A list of the types of drugs and devices to be dispensed for profit, including controlled substances; and
 - c. Locations where the dentist desires to dispense the drugs and devices for profit; and
 2. A copy of the dentist's current Drug Enforcement Administration Certificate of Registration for each dispensing location from which the dentist desires to dispense the drugs and devices for profit.
- B. The Board shall issue a numbered certificate indicating the dentist is registered with the Board to dispense drugs and devices for profit.
- C. A dentist shall renew a registration to dispense drugs and devices for profit by complying with the requirements in subsection (A) before the dentist's license renewal date. When a dentist has made timely and complete application for the renewal of a registration, the dentist may continue to dispense until the Board approves or denies the application. Failure to renew a registration shall result in immediate loss of dispensing for profit privileges.

Historical Note

Adopted effective July 21, 1995; inadvertently not published with Supp. 95-3 (Supp. 95-4). Former Section R4- 11-1406 renumbered to R4-11-1205, new Section R4-11- 1406 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1407. Renumbered

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1407 renumbered to R4-11-1206 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1408. Renumbered

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1408 renumbered to R4-11-1207 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1409. Repealed

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1409 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 15. COMPLAINTS, INVESTIGATIONS, DISCIPLINARY ACTION

R4-11-1501. Ex-parte Communication

A complainant, licensee, certificate holder, business entity or mobile dental permit holder against whom a complaint is filed, shall not engage in ex-parte communication by means of a written or oral communication between a decision maker, fact finder, or Board member and only one party to the proceeding.

Historical Note

New Section R4-11-1501 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

R4-11-1502. Dental Consultant Qualifications

A dentist, dental hygienist, or denturist approved as a Board dental consultant shall:

1. Possess a valid license or certificate to practice in Arizona;
2. Have practiced at least five years in Arizona; and
3. Not have been disciplined by the Board within the past five years.

Historical Note

New Section R4-11-1502 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

R4-11-1503. Initial Complaint Review

A. The Board's procedures for complaint notification are:

1. Board personnel shall notify the complainant and licensee, certificate holder, business entity or mobile dental permit holder by certified U.S. Mail when the following occurs:
 - a. A formal interview is scheduled,
 - b. The complaint is tabled,
 - c. A postponement or continuance is granted, and
 - d. A subpoena, notice, or order is issued.
2. Board personnel shall provide the licensee, certificate holder, business entity, or mobile dental permit holder with a copy of the complaint.
3. If a complaint alleges a violation of the state or federal criminal code, the Board shall refer the complaint to the proper law enforcement agency.

B. The Board's procedures for complaints referred to clinical evaluation are:

1. Except as provided in subsection (B)(1)(a), the president's designee shall appoint one or more dental consultants to perform a clinical evaluation. If there is more than one dental consultant, the dental consultants do not need to be present at the same time.
 - a. If the complaint involves a dental hygienist, denturist, or dentist who is a recognized specialist in one of the areas listed in R4-11-1102(B), the president's designee shall appoint a dental consultant from that area of practice or specialty.
 - b. The Board shall not disclose the identity of the licensee to a dental consultant performing a clinical examination before the Board receives the dental consultant's report.
2. The dental consultant shall prepare and submit a clinical evaluation report. The president's designee shall provide a copy of the clinical evaluation report to the licensee or certificate holder. The licensee or certificate holder may submit a written response to the clinical evaluation report.

Historical Note

New Section R4-11-1503 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

R4-11-1504. Postponement of Interview

A. The licensee, certificate holder, business entity, or mobile dental permit holder may request a postponement of a formal interview. The Board or its designee shall grant a postponement until the next regularly scheduled Board meeting if the licensee, certificate holder, business entity, or mobile dental permit holder makes a postponement request and the request:

1. Is made in writing,
2. States the reason for the postponement, and
3. Is received by the Board within 15 calendar days after the date the respondent received the formal interview request.

B. Within 48 hours of receipt of a request for postponement of a formal interview, the Board or its designee shall:

1. Review and either deny or approve the request for postponement; and
2. Notify in writing the complainant and licensee, certificate holder, business entity, or mobile dental permit holder of the decision to either deny or approve the request for postponement.

Historical Note

New Section R4-11-1504 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 3669, effective April 30, 2003 (Supp. 03-3). New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

ARTICLE 16. EXPIRED

R4-11-1601. Expired

Historical Note

New Section R4-11-1601 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 14 A.A.R. 3183, effective April 30, 2008.

ARTICLE 17. REHEARING OR REVIEW

R4-11-1701. Procedure

- A. Except as provided in subsection (F), a licensee, certificate holder, or business entity who is aggrieved by an order issued by the Board may file a written motion for rehearing or review with the Board, pursuant to A.R.S. Title 41, Chapter 6, Article 10, specifying the grounds for rehearing or review.
- B. A licensee, certificate holder, or business entity filing a motion for rehearing or review under this rule may amend the motion at any time before it is ruled upon by the Board. The opposing party may file a response within 15 days after the date the motion for rehearing or review is filed. The Board may require that the parties file supplemental memoranda explaining the issues raised in the motion, and may permit oral argument.
- C. The Board may grant a rehearing or review of the order for any of the following causes materially affecting a licensee, certificate holder, or business entity's rights:
 - 1. Irregularity in the proceedings of the Board or any order or abuse of discretion, which deprived a licensee, certificate holder, or business entity of a fair hearing;
 - 2. Misconduct of the Board, its personnel, the administrative law judge, or the prevailing party;
 - 3. Accident or surprise which could not have been prevented by ordinary prudence;
 - 4. Excessive or insufficient penalties;
 - 5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding;
 - 6. That the findings of fact or decision is arbitrary, capricious, or an abuse of discretion;
 - 7. That the findings of fact or decision is not justified by the evidence or is contrary to law; or
 - 8. Newly discovered, material evidence which could not, with reasonable diligence, have been discovered and produced at the original hearing.
- D. The Board may affirm or modify the order or grant a rehearing or review to all or part of the issues for any of the reasons in subsection (C). The Board, within the time for filing a motion for rehearing or review, may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. An order granting a rehearing or review shall specify the grounds on which rehearing or review is granted, and any rehearing or review shall cover only those matters specified.
- E. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after such service, serve opposing affidavits.
- F. If the Board makes specific findings that the immediate effectiveness of the order is necessary for the preservation of public health and safety and that a rehearing or review is impracticable, unnecessary, or contrary to the public interest, the order may be issued as a final order without an opportunity for a rehearing or review. If an order is issued as a final order without an opportunity or rehearing or review, the aggrieved party shall make an application for judicial review of the order within the time limits permitted for application for judicial review of the Board's final order.
- G. The Board shall rule on the motion for rehearing or review within 15 days after the response has been filed, or at the Board's next meeting after the motion is received, whichever is later.

Historical Note

New Section R4-11-1701 renumbered from R4-11-701 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 21 A.A.R. 2971, effective January 2, 2016 (Supp. 15-4).

ARTICLE 18. BUSINESS ENTITIES

R4-11-1801. Application

Before offering dental services, a business entity required to be registered under A.R.S. § 32-1213 shall apply for registration on an application form supplied by the Board. In addition to the requirements of A.R.S. § 32-1213(B) and the fee under R4-11-402, the registration application shall include a sworn statement from the applicant that:

1. The information provided by the business entity is true and correct, and
2. No information is omitted from the application.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1802. Display of Registration

- A. A business entity shall ensure that the receipt for the current registration period is:
 1. Conspicuously displayed in the dental practice in a manner that is always readily observable by patients and visitors, and
 2. Exhibited to members of the Board or to duly authorized agents of the Board on request.
- B. A business entity's receipt for the licensure period immediately preceding shall be kept on display until replaced by the receipt for the current period.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

ARIZONA

STATE BOARD OF DENTAL EXAMINERS



Statutes & Rules

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ARIZONA REVISED STATUTES

Dentistry – Chapter 11

Article 1 – Dental Board

32-1201. Definitions

In this chapter, unless the context otherwise requires:

1. "Affiliated practice dental hygienist" means any licensed dental hygienist who is able, pursuant to section 32-1289.01, to initiate treatment based on the dental hygienist's assessment of a patient's needs according to the terms of a written affiliated practice agreement with a dentist, to treat the patient without the presence of a dentist and to maintain a provider-patient relationship.
2. "Auxiliary personnel" means all dental assistants, dental technicians, dental x-ray technicians and other persons employed by dentists or firms and businesses providing dental services to dentists.
3. "Board" means the state board of dental examiners.
4. "Business entity" means a business organization that has an ownership that includes any persons who are not licensed or certified to provide dental services in this state, that offers to the public professional services regulated by the board and that is established pursuant to the laws of any state or foreign country.
5. "Dental assistant" means any person who acts as an assistant to a dentist, dental therapist or dental hygienist by rendering personal services to a patient that involve close proximity to the patient while the patient is under treatment or observation or undergoing diagnostic procedures.
6. "Dental hygienist" means any person who is licensed and engaged in the general practice of dental hygiene and all related and associated duties, including educational, clinical and therapeutic dental hygiene procedures.
7. "Dental incompetence" means lacking in sufficient dentistry knowledge or skills, or both, in that field of dentistry in which the dentist, dental therapist, denturist or dental hygienist concerned engages, to a degree likely to endanger the health of that person's patients.
8. "Dental laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, fabricates artificial teeth, prosthetic appliances or other mechanical and artificial contrivances designed to correct or alleviate injuries or defects, both developmental and acquired, disorders or deficiencies of the human oral cavity, teeth, investing tissues, maxilla or mandible or adjacent associated structures.
9. "Dental therapist" means any person who is licensed and engaged in the general practice of dental therapy and all related and associated duties, including educational, clinical and therapeutic dental therapy procedures.
10. "Dental x-ray laboratory technician" means any person, other than a licensed dentist, who, pursuant to a written work order of a dentist, performs dental and maxillofacial radiography,

including cephalometrics, panoramic and maxillofacial tomography and other dental related nonfluoroscopic diagnostic imaging modalities.

11. "Dentistry", "dentist" and "dental" mean the general practice of dentistry and all specialties or restricted practices of dentistry.
12. "Denturist" means a person practicing denture technology pursuant to article 5 of this chapter.
13. "Disciplinary action" means regulatory sanctions that are imposed by the board in combination with, or as an alternative to, revocation or suspension of a license and that may include:
 - (a) Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted under this chapter.
 - (b) Imposition of restrictions on the scope of practice.
 - (c) Imposition of peer review and professional education requirements.
 - (d) Imposition of censure or probation requirements best adapted to protect the public welfare, which may include a requirement for restitution to the patient resulting from violations of this chapter or rules adopted under this chapter.
14. "Irregularities in billing" means submitting any claim, bill or government assistance claim to any patient, responsible party or third-party payor for dental services rendered that is materially false with the intent to receive unearned income as evidenced by any of the following:
 - (a) Charges for services not rendered.
 - (b) Any treatment date that does not accurately reflect the date when the service and procedures were actually completed.
 - (c) Any description of a dental service or procedure that does not accurately reflect the actual work completed.
 - (d) Any charge for a service or procedure that cannot be clinically justified or determined to be necessary.
 - (e) Any statement that is material to the claim and that the licensee knows is false or misleading.
 - (f) An abrogation of the copayment provisions of a dental insurance contract by a waiver of all or a part of the copayment from the patient if this results in an excessive or fraudulent charge to a third party or if the waiver is used as an enticement to receive dental services from that provider. This subdivision does not interfere with a contractual relationship between a third-party payor and a licensee or business entity registered with the board.
 - (g) Any other practice in billing that results in excessive or fraudulent charges to the patient.

15. "Letter of concern" means an advisory letter to notify a licensee or a registered business entity that, while the evidence does not warrant disciplinary action, the board believes that the licensee or registered business entity should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in board action against the practitioner's license or the business entity's registration. A letter of concern is not a disciplinary action. A letter of concern is a public document and may be used in a future disciplinary action.
16. "Licensed" means licensed pursuant to this chapter.
17. "Place of practice" means each physical location at which a person who is licensed pursuant to this chapter performs services subject to this chapter.
18. "Primary mailing address" means the address on file with the board and to which official board correspondence, notices or documents are delivered in a manner determined by the board.
19. "Recognized dental hygiene school" means a school that has a dental hygiene program with a minimum two academic year curriculum, or the equivalent of four semesters, and that is approved by the board and accredited by the American dental association commission on dental accreditation.
20. "Recognized dental school" means a dental school that is accredited by the American dental association commission on dental accreditation.
21. "Recognized dental therapy school" means a school that is accredited or that has received initial accreditation by the American dental association commission on dental accreditation.
22. "Recognized denturist school" means a denturist school that maintains standards of entrance, study and graduation and that is accredited by the United States department of education or the council on higher education accreditation.
23. "Supervised personnel" means all dental hygienists, dental assistants, dental laboratory technicians, dental therapists, denturists, dental x-ray laboratory technicians and other persons supervised by licensed dentists.
24. "Teledentistry" means the use of data transmitted through interactive audio, video or data communications for the purposes of examination, diagnosis, treatment planning, consultation and directing the delivery of treatment by dentists and dental providers in settings permissible under this chapter or specified in rules adopted by the board.

32-1201.01. Definition of unprofessional conduct

For the purposes of this chapter, "unprofessional conduct" means the following acts, whether occurring in this state or elsewhere:

1. Intentionally betraying a professional confidence or intentionally violating a privileged communication except as either of these may otherwise be required by law. This paragraph does not prevent members of the board from the full and free exchange of information with the licensing and disciplinary boards of other states, territories or districts of the United States or

foreign countries, with the Arizona state dental association or any of its component societies or with the dental societies of other states, counties, districts, territories or foreign countries.

2. Using controlled substances as defined in section 36-2501, narcotic drugs, dangerous drugs or marijuana as defined in section 13-3401, or hypnotic drugs, including acetylurea derivatives, barbituric acid derivatives, chloral, paraldehyde, phenylhydantoin derivatives, sulfonmethane derivatives or any compounds, mixtures or preparations that may be used for producing hypnotic effects, or alcohol to the extent that it affects the ability of the dentist, dental therapist, denturist or dental hygienist to practice that person's profession.
3. Prescribing, dispensing or using drugs for other than accepted dental therapeutic purposes or for other than medically indicated supportive therapy in conjunction with managing a patient's needs and in conjunction with the scope of practice prescribed in section 32-1202.
4. Committing gross malpractice or repeated acts constituting malpractice.
5. Acting or assuming to act as a member of the board if this is not true.
6. Procuring or attempting to procure a certificate of the national board of dental examiners or a license to practice dentistry or dental hygiene by fraud or misrepresentation or by knowingly taking advantage of the mistake of another.
7. Having professional connection with or lending one's name to an illegal practitioner of dentistry or any of the other healing arts.
8. Representing that a manifestly not correctable condition, disease, injury, ailment or infirmity can be permanently corrected, or that a correctable condition, disease, injury, ailment or infirmity can be corrected within a stated time, if this is not true.
9. Offering, undertaking or agreeing to correct, cure or treat a condition, disease, injury, ailment or infirmity by a secret means, method, device or instrumentality.
10. Refusing to divulge to the board, on reasonable notice and demand, the means, method, device or instrumentality used in treating a condition, disease, injury, ailment or infirmity.
11. Dividing a professional fee or offering, providing or receiving any consideration for patient referrals among or between dental care providers or dental care institutions or entities. This paragraph does not prohibit the division of fees among licensees who are engaged in a bona fide employment, partnership, corporate or contractual relationship for the delivery of professional services.
12. Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of dentistry.
13. Having a license refused, revoked or suspended or any other disciplinary action taken against a dentist by, or voluntarily surrendering a license in lieu of disciplinary action to, any other state, territory, district or country, unless the board finds that this action was not taken for reasons that relate to the person's ability to safely and skillfully practice dentistry or to any act of unprofessional conduct.

14. Committing any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public.
15. Obtaining a fee by fraud or misrepresentation, or wilfully or intentionally filing a fraudulent claim with a third party for services rendered or to be rendered to a patient.
16. Committing repeated irregularities in billing.
17. Employing unlicensed persons to perform or aiding and abetting unlicensed persons in performing work that can be done legally only by licensed persons.
18. Practicing dentistry under a false or assumed name in this state, other than as allowed by section 32-1262.
19. Wilfully or intentionally causing or allowing supervised personnel or auxiliary personnel operating under the licensee's supervision to commit illegal acts or perform an act or operation other than that allowed under article 4 of this chapter and rules adopted by the board pursuant to section 32-1282.
20. Committing the following advertising practices:
 - (a) Publishing or circulating, directly or indirectly, any false, fraudulent or misleading statements concerning the skill, methods or practices of the licensee or of any other person.
 - (b) Advertising in any manner that tends to deceive or defraud the public.
21. Failing to dispense drugs and devices in compliance with article 6 of this chapter.
22. Failing to comply with a board order, including an order of censure or probation.
23. Failing to comply with a board subpoena in a timely manner.
24. Failing or refusing to maintain adequate patient records.
25. Failing to allow properly authorized board personnel, on demand, to inspect the place of practice and examine and have access to documents, books, reports and records maintained by the licensee or certificate holder that relate to the dental practice or dental-related activity.
26. Refusing to submit to a body fluid examination as required through a monitored treatment program or pursuant to a board investigation into a licensee's or certificate holder's alleged substance abuse.
27. Failing to inform a patient of the type of material the dentist will use in the patient's dental filling and the reason why the dentist is using that particular filling.
28. Failing to report in writing to the board any evidence that a dentist, dental therapist, denturist or dental hygienist is or may be:

- (a) Professionally incompetent.
- (b) Engaging in unprofessional conduct.
- (c) Impaired by drugs or alcohol.
- (d) Mentally or physically unable to safely engage in the activities of a dentist, dental therapist, denturist or dental hygienist pursuant to this chapter.

29. Filing a false report pursuant to paragraph 28 of this section.

30. Practicing dentistry, dental therapy, dental hygiene or denturism in a business entity that is not registered with the board as required by section 32-1213.

31. Dispensing a schedule II controlled substance that is an opioid.

32. Providing services or procedures as a dental therapist that exceed the scope of practice or exceed the services or procedures authorized in the written collaborative practice agreement.

32-1202. Scope of practice; practice of dentistry

For the purposes of this chapter, the practice of dentistry is the diagnosis, surgical or nonsurgical treatment and performance of related adjunctive procedures for any disease, pain, deformity, deficiency, injury or physical condition of the human tooth or teeth, alveolar process, gums, lips, cheek, jaws, oral cavity and associated tissues of the oral maxillofacial facial complex, including removing stains, discolorations and concretions and administering botulinum toxin type A and dermal fillers to the oral maxillofacial complex for therapeutic or cosmetic purposes.

32-1203. State board of dental examiners; qualifications of members; terms

- A. The state board of dental examiners is established consisting of six licensed dentists, two licensed dental hygienists, two public members and one business entity member appointed by the governor for a term of four years, to begin and end on January 1.
- B. Before appointment by the governor, a prospective member of the board shall submit a full set of fingerprints to the governor for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.
- C. The business entity member and the public members may participate in all board proceedings and determinations, except in the preparing, giving or grading of examinations for licensure. Dental hygienist board members may participate in all board proceedings and determinations, except in the preparing, giving and grading of examinations that do not relate to dental hygiene procedures.
- D. A board member shall not serve more than two consecutive terms.
- E. For the purposes of this section, business entity member does not include a person who is licensed pursuant to this chapter.

32-1204. Removal from office

The governor may remove a member of the board for persistent neglect of duty, incompetency, unfair, biased, partial or dishonorable conduct, or gross immorality. Conviction of a felony or revocation of the dental license of a member of the board shall ipso facto terminate his membership.

32-1205. Organization; meetings; quorum; staff

A. The board shall elect from its membership a president and a vice-president who shall act also as secretary-treasurer.

B. Board meetings shall be conducted pursuant to title 38, chapter 3, article 3.1. A majority of the board constitutes a quorum. Beginning September 1, 2015, meetings held pursuant to this subsection shall be audio recorded and the audio recording shall be posted to the board's website within five business days after the meeting.

C. The board may employ an executive director, subject to title 41, chapter 4, article 4 and legislative appropriation.

D. The board or the executive director may employ personnel, as necessary, subject to title 41, chapter 4, article 4 and legislative appropriation.

32-1206. Compensation of board members; investigation committee members

A. Members of the board are entitled to receive compensation in the amount of \$250 for each day actually spent in performing necessary work authorized by the board and all expenses necessarily and properly incurred while performing this work.

B. Members of an investigation committee established by the board may receive compensation in the amount of \$100 for each committee meeting.

32-1207. Powers and duties; executive director; immunity; fees; definition

A. The board shall:

1. Adopt rules that are not inconsistent with this chapter for regulating its own conduct, for holding examinations and for regulating the practice of dentists and supervised personnel and registered business entities, provided that:

(a) Regulation of supervised personnel is based on the degree of education and training of the supervised personnel, the state of scientific technology available and the necessary degree of supervision of the supervised personnel by dentists.

(b) Except as provided pursuant to sections 32-1276.03 and 32-1281, only licensed dentists may perform diagnosis and treatment planning, prescribe medication and perform surgical procedures on hard and soft tissues.

(c) Only a licensed dentist, a dental therapist either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement or a dental hygienist in consultation with a dentist may perform examinations, oral health assessments and treatment sequencing for dental hygiene procedures.

2. Adopt a seal.

3. Maintain a record that is available to the board at all times of its acts and proceedings, including the issuance, denial, renewal, suspension or revocation of licenses and the disposition of complaints. The

existence of a pending complaint or investigation shall not be disclosed to the public. Records of complaints shall be available to the public, except only as follows:

(a) If the board dismisses or terminates a complaint, the record of the complaint shall not be available to the public.

(b) If the board has issued a nondisciplinary letter of concern, the record of the complaint shall be available to the public only for a period of five years after the date the board issued the letter of concern.

(c) If the board has required additional nondisciplinary continuing education pursuant to section 32-1263.01 but has not taken further action, the record of the complaint shall be available to the public only for a period of five years after the licensee satisfies this requirement.

(d) If the board has assessed a nondisciplinary civil penalty pursuant to section 32-1208 but has not taken further action, the record of the complaint shall be available to the public only for a period of five years after the licensee satisfies this requirement.

4. Establish a uniform and reasonable standard of minimum educational requirements consistent with the accreditation standards of the American dental association commission on dental accreditation to be observed by dental schools, dental therapy schools and dental hygiene schools in order to be classified as recognized dental schools, dental therapy schools or dental hygiene schools.

5. Establish a uniform and reasonable standard of minimum educational requirements that are consistent with the accreditation standards of the United States department of education or the council on higher education accreditation and that must be observed by denture technology schools in order to be classified as recognized denture technology schools.

6. Determine the reputability and classification of dental schools, dental therapy schools, dental hygiene schools and denture technology schools in accordance with their compliance with the standard set forth in paragraph 4 or 5 of this subsection, whichever is applicable.

7. Issue licenses to persons who the board determines are eligible for licensure pursuant to this chapter.

8. Determine the eligibility of applicants for restricted permits and issue restricted permits to those found eligible.

9. Pursuant to section 32-1263.02, investigate charges of misconduct on the part of licensees and persons to whom restricted permits have been issued.

10. Issue a letter of concern, which is not a disciplinary action but refers to practices that may lead to a violation and to disciplinary action.

11. Issue decrees of censure, fix periods and terms of probation, suspend or revoke licenses, certificates and restricted permits, as the facts may warrant, and reinstate licenses, certificates and restricted permits in proper cases.

12. Collect and disburse monies.

13. Perform all other duties that are necessary to enforce this chapter and that are not specifically or by necessary implication delegated to another person.

14. Establish criteria for the renewal of permits issued pursuant to board rules relating to general anesthesia and sedation.

B. The board may:

1. Sue and be sued.

2. Issue subpoenas, including subpoenas to the custodian of patient records, compel attendance of witnesses, administer oaths and take testimony concerning all matters within the board's jurisdiction. If a person refuses to obey a subpoena issued by the board, the refusal shall be certified to the superior court and proceedings shall be instituted for contempt of court.

3. Adopt rules:

(a) Prescribing requirements for continuing education for renewal of all licenses issued pursuant to this chapter.

(b) Prescribing educational and experience prerequisites for administering intravenous or intramuscular drugs for the purpose of sedation or for using general anesthetics in conjunction with a dental treatment procedure.

(c) Prescribing requirements for obtaining licenses for retired licensees or licensees who have a disability, including the triennial license renewal fee.

4. Hire consultants to assist the board in the performance of its duties and employ persons to provide investigative, professional and clerical assistance as the board deems necessary.

5. Contract with other state or federal agencies as required to carry out the purposes of this chapter.

6. If determined by the board, order physical, psychological, psychiatric and competency evaluations of licensed dentists, dental therapists and dental hygienists, certified denturists and applicants for licensure and certification at the expense of those individuals.

7. Establish an investigation committee consisting of not more than eleven licensees who are in good standing, who are appointed by the board and who serve at the pleasure of the board to investigate any complaint submitted to the board, initiated by the board or delegated by the board to the investigation committee pursuant to this chapter.

C. The executive director or the executive director's designee may:

1. Issue and renew licenses, certificates and permits to applicants who meet the requirements of this chapter.

2. Initiate an investigation if evidence appears to demonstrate that a dentist, dental therapist, dental hygienist, denturist or restricted permit holder may be engaged in unprofessional conduct or may be unable to safely practice dentistry.

3. Initiate an investigation if evidence appears to demonstrate that a business entity may be engaged in unethical conduct.

4. Subject to board approval, enter into a consent agreement with a dentist, dental therapist, denturist, dental hygienist or restricted permit holder if there is evidence of unprofessional conduct.

5. Subject to board approval, enter into a consent agreement with a business entity if there is evidence of unethical conduct.

6. Refer cases to the board for a formal interview.

7. If delegated by the board, enter into a stipulation agreement with a person under the board's jurisdiction for the treatment, rehabilitation and monitoring of chemical substance abuse or misuse.

D. Members of the board are personally immune from liability with respect to all acts done and actions taken in good faith and within the scope of their authority.

E. The board by rule shall require that a licensee obtain a permit for applying general anesthesia, semiconscious sedation or conscious sedation, shall establish and collect a fee of not more than \$300 to cover administrative costs connected with issuing the permit and shall conduct inspections to ensure compliance.

F. The board by rule may establish and collect fees for license verification, board meeting agendas and minutes, published lists and mailing labels.

G. This section does not prohibit the board from conducting its authorized duties in a public meeting.

H. For the purposes of this section:

1. "Good standing" means that a person holds an unrestricted and unencumbered license that has not been suspended or revoked pursuant to this chapter.

2. "Record of complaint" means the document reflecting the final disposition of a complaint or investigation.

32-1208. Failure to respond to subpoena; civil penalty

In addition to any disciplinary action authorized by statute, the board may assess a nondisciplinary civil penalty in an amount not to exceed five hundred dollars for a licensee who fails to respond to a subpoena issued by the board pursuant to this chapter.

32-1209. Admissibility of records in evidence

A copy of any part of the recorded proceedings of the board certified by the executive director, or a certificate by the executive director that any asserted or purported record, name, license number, restricted permit number or action is not entered in the recorded proceedings of the board, may be admitted as evidence in any court in this state. A person making application and paying a fee set by the board may procure from the executive director a certified copy of any portion of the records of the board unless these records are classified as confidential as provided by law. Unless otherwise provided by law, all records concerning an investigation, examination materials, records of

examination grading and applicants' performance and transcripts of educational institutions concerning applicants are confidential and are not public records. "Records of applicants' performance" does not include records of whether an applicant passed or failed an examination.

32-1210. Annual report

A. Not later than October 1 of each year, the board shall make an annual written report to the governor for the preceding year that includes the following information:

1. The number of licensed dentists in the state.
2. The number of licenses issued during the preceding year and to whom issued.
3. The number of examinations held and the dates of the examinations.
4. The facts with respect to accusations filed with the board, of hearings held in connection with those accusations and the results of those hearings.
5. The facts with respect to prosecution of persons charged with violations of this chapter.
6. A full and complete statement of financial transactions of the board.
7. Any other matters that the board wishes to include in the report or that the governor requires.

B. On request of the governor the board shall submit a supplemental report.

32-1212. Dental board fund

A. Except as provided in subsection C of this section, pursuant to sections 35-146 and 35-147, the executive director of the board shall each month deposit ten per cent of all fees, fines and other revenue received by the board, in the state general fund and deposit the remaining ninety per cent in the dental board fund.

B. Monies deposited in the dental board fund shall be subject to the provisions of section 35-143.01.

C. Monies from administrative penalties received pursuant to section 32-1263.01 shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

32-1213. Business entities; registration; renewal; civil penalty; exceptions

A. A business entity may not offer dental services pursuant to this chapter unless:

1. The entity is registered with the board pursuant to this section.
2. The services are conducted by a licensee pursuant to this chapter.

B. The business entity must file a registration application on a form provided by the board. The application must include:

1. A description of the entity's services offered to the public.
 2. The name of any dentist who is authorized to provide and who is responsible for providing the dental services offered at each office.
 3. The names and addresses of the officers and directors of the business entity.
 4. A registration fee prescribed by the board in rule.
- C. A business entity must file a separate registration application and pay a fee for each branch office in this state.
- D. A registration expires three years after the date the board issues the registration. A business entity that wishes to renew a registration must submit an application for renewal as prescribed by the board on a triennial basis on a form provided by the board before the expiration date. An entity that fails to renew the registration before the expiration date is subject to a late fee as prescribed by the board by rule. The board may stagger the dates for renewal applications.
- E. The business entity must notify the board in writing within thirty days after any change:
1. In the entity's name, address or telephone number.
 2. In the officers or directors of the business entity.
 3. In the name of any dentist who is authorized to provide and who is responsible for providing the dental services in any facility.
- F. The business entity shall establish a written protocol for the secure storage, transfer and access of the dental records of the business entity's patients. This protocol must include, at a minimum, procedures for:
1. Notifying patients of the future locations of their records if the business entity terminates or sells the practice.
 2. Disposing of unclaimed dental records.
 3. The timely response to requests by patients for copies of their records.
- G. The business entity must notify the board within thirty days after the dissolution of any registered business entity or the closing or relocation of any facility and must disclose to the board the entity's procedure by which its patients may obtain their records.
- H. The board may do any of the following pursuant to its disciplinary procedures if an entity violates the board's statutes or rules:
1. Refuse to issue a registration.
 2. Suspend or revoke a registration.

3. Impose a civil penalty of not more than \$2,000 for each violation.
 4. Enter a decree of censure.
 5. Issue an order prescribing a period and terms of probation that are best adapted to protect the public welfare and that may include a requirement for restitution to a patient for a violation of this chapter or rules adopted pursuant to this chapter.
 6. Issue a letter of concern if a business entity's actions may cause the board to take disciplinary action.
- I. The board shall deposit, pursuant to sections 35-146 and 35-147, civil penalties collected pursuant to this section in the state general fund.
- J. This section does not apply to:
1. A sole proprietorship or partnership that consists exclusively of dentists who are licensed pursuant to this chapter.
 2. Any of the following entities licensed under title 20:
 - (a) A service corporation.
 - (b) An insurer authorized to transact disability insurance.
 - (c) A prepaid dental plan organization that does not provide directly for prepaid dental services.
 - (d) A health care services organization that does not provide directly for dental services.
 3. A professional corporation or professional limited liability company, the shares of which are exclusively owned by dentists who are licensed pursuant to this chapter and that is formed to engage in the practice of dentistry pursuant to title 10, chapter 20 or title 29 relating to professional limited liability companies.
 4. A facility regulated by the federal government or a state, district or territory of the United States.
 5. An administrator or executor of the estate of a deceased dentist or a person who is legally authorized to act for a dentist who has been adjudicated to be mentally incompetent for not more than one year after the date the board receives notice of the dentist's death or incapacitation pursuant to section 32-1270.
- K. A facility that offers dental services to the public by persons licensed under this chapter shall be registered by the board unless the facility is any of the following:
1. Owned by a dentist who is licensed pursuant to this chapter.
 2. Regulated by the federal government or a state, district or territory of the United States.

L. Except for issues relating to insurance coding and billing that require the name, signature and license number of the dentist providing treatment, this section does not:

1. Authorize a licensee in the course of providing dental services for an entity registered pursuant to this section to disregard or interfere with a policy or practice established by the entity for the operation and management of the business.

2. Authorize an entity registered pursuant to this section to establish or enforce a business policy or practice that may interfere with the clinical judgment of the licensee in providing dental services for the entity or may compromise a licensee's ability to comply with this chapter.

M. The board shall adopt rules that provide a method for the board to receive the assistance and advice of business entities licensed pursuant to this chapter in all matters relating to the regulation of business entities.

N. An individual currently holding a surrendered or revoked license to practice dentistry or dental hygiene in any state or jurisdiction in the United States may not have a majority ownership interest in the business entity registered pursuant to this section. Revocation and surrender of licensure shall be limited to disciplinary actions resulting in loss of license or surrender of license instead of disciplinary action. Dentists or dental hygienists affected by this subsection shall have one year after the surrender or revocation to divest themselves of their ownership interest. This subsection does not apply to publicly held companies. For the purposes of this subsection, "majority ownership interest" means an ownership interest greater than fifty percent.

Article 2 – Licensure

32-1231. Persons not required to be licensed

This chapter does not prohibit:

1. A dentist, dental therapist or dental hygienist who is officially employed in the service of the United States from practicing dentistry in the dentist's, dental therapist's or dental hygienist's official capacity, within the scope of that person's authority, on persons who are enlisted in, directly connected with or under the immediate control of some branch of service of the United States.

2. A person, whether or not licensed by this state, from practicing dental therapy either:

- (a) In the discharge of official duties on behalf of the United States government, including the United States department of veterans affairs, the United States public health service and the Indian health service.

- (b) While employed by tribal health programs authorized pursuant to Public Law 93-638 or urban Indian health programs.

3. An intern or student of dentistry, dental therapy or dental hygiene from operating in the clinical departments or laboratories of a recognized dental school, dental therapy school, dental hygiene school or hospital under the supervision of a dentist.

4. An unlicensed person from performing for a licensed dentist merely mechanical work on inert matter not within the oral cavity in the construction, making, alteration or repairing of any artificial dental substitute or any dental restorative or corrective appliance, if the casts or impressions for that work

have been furnished by a licensed dentist and the work is directly supervised by the dentist for whom done or under a written authorization signed by the dentist, but the burden of proving that written authorization or direct supervision is on the person charged with having violated this provision.

5. A clinician who is not licensed in this state from giving demonstrations, before bona fide dental societies, study clubs and groups of professional students, that are free to the persons on whom made.

6. The state director of dental public health from performing the director's administrative duties as prescribed by law.

7. A dentist or dental hygienist to whom a restricted permit has been issued from practicing dentistry or dental hygiene in this state as provided in sections 32-1237 and 32-1292.

8. A dentist, dental therapist or dental hygienist from practicing for educational purposes on behalf of a recognized dental school, recognized dental therapy school or recognized dental hygiene school.

32-1232. Qualifications of applicant; application; fee; fingerprint clearance card

A. An applicant for licensure shall meet the requirements of section 32-1233 and shall hold a diploma conferring a degree of doctor of dental medicine or doctor of dental surgery from a recognized dental school.

B. Each candidate shall submit a written application to the board accompanied by a nonrefundable Arizona dental jurisprudence examination fee of \$300. The board shall waive this fee for candidates who are holders of valid restricted permits. Each candidate shall also obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

C. The board may deny an application for a license, for license renewal or for a restricted permit if the applicant:

1. Has committed any act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of any act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for a license, for license renewal or for a restricted permit if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a license to the applicant until the investigation is resolved.

32-1233. Applicants for licensure; examination requirements

An applicant for licensure shall have passed all of the following:

1. The written national dental board examinations.
2. A clinical examination administered by a state or regional testing agency in the United States within five years preceding filing the application.
3. The Arizona dental jurisprudence examination.

32-1234. Dental consultant license

A. A person may apply for a dental consultant license if the applicant demonstrates to the board's satisfaction that the applicant:

1. Has continuously held a license to practice dentistry for at least twenty-five years issued by one or more states or territories of the United States or the District of Columbia but is not currently licensed to practice dentistry in Arizona.
2. Has not had a license to practice dentistry revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
3. Is not currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
4. Has not surrendered, relinquished or given up a license to practice dentistry in lieu of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.
5. Meets the applicable requirements of section 32-1232.
6. Meets the requirements of section 32-1233, paragraph 1. If an applicant has taken a state written theory examination instead of the written national dental board examinations, the applicant must provide the board with official documentation of passing the written theory examinations in the state where the applicant holds a current license. The board shall then determine the applicant's eligibility for a license pursuant to this section.
7. Meets the application requirements as prescribed in rule by the board.

B. The board shall suspend an application for a dental consultant license if the applicant is currently under investigation by a dental regulatory board in another jurisdiction in the United States. The board shall not issue or deny a license to the applicant until the investigation is resolved.

C. A person to whom a dental consultant license is issued shall practice dentistry only in the course of the person's employment or on behalf of an entity licensed under title 20 with the practice limited to supervising or conducting utilization review or other claims or case management activity on behalf of the entity licensed pursuant to title 20. A person who holds a dental consultant license is prohibited from providing direct patient care.

D. This section does not require a person to apply for or hold a dental consultant license in order for that person to serve as a consultant to or engage in claims review activity for an entity licensed pursuant to title 20.

E. Except as provided in subsection B of this section, a dental consultant licensee is subject to all of the provisions of this chapter that are applicable to licensed dentists.

32-1235. Reinstatement of license or certificate; application for previously denied license or certificate

A. On written application the board may issue a new license or certificate to a dentist, dental therapist, dental hygienist or denturist whose license or certificate was previously suspended or revoked by the board or surrendered by the applicant if the applicant demonstrates to the board's satisfaction that the applicant is completely rehabilitated with respect to the conduct that was the basis for the suspension, revocation or surrender. In making its decision, the board shall determine:

1. That the applicant has not engaged in any conduct during the suspension, revocation or surrender period that would have constituted a basis for revocation pursuant to section 32-1263.

2. If a criminal conviction was a basis for the suspension, revocation or surrender, that the applicant's civil rights have been fully restored pursuant to statute or any other applicable recognized judicial or gubernatorial order.

3. That the applicant has made restitution to any aggrieved person as ordered by a court of competent jurisdiction.

4. That the applicant demonstrates any other standard of rehabilitation the board determines is appropriate.

B. Except as provided in subsection C of this section, a person may not submit an application for reinstatement less than five years after the date of suspension, revocation or surrender.

C. The board shall vacate its previous order to suspend or revoke a license or certificate if that suspension or revocation was based on a conviction of a felony or an offense involving moral turpitude and that conviction has been reversed on appeal. The person may submit an application for reinstatement as soon as the court enters the reversal.

D. An applicant for reinstatement must comply with all initial licensing or certification requirements prescribed by this chapter.

E. A person whose application for a license or certificate has been denied for failure to meet academic requirements may apply for licensure or certification not less than two years after the denial.

F. A person whose application for a license has been denied pursuant to section 32-1232, subsection C may apply for licensure not less than five years after the denial.

32-1236. Dentist triennial licensure; continuing education; license reinstatement; license for each place of practice; notice of change of address or place of practice; retired and disabled license status; penalties

A. Except as provided in section 32-4301, a license expires thirty days after the licensee's birth month every third year. On or before the last day of the licensee's birth month every third year, every licensed dentist shall submit to the board a complete renewal application and pay a license renewal fee of not more than \$650, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this subsection does not apply to a retired dentist or to a dentist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the licensee's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birth month.

C. A person applying for licensure for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birth month. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent licensure renewal shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a \$100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this chapter.

E. Each licensee must provide to the board in writing both of the following:

1. A primary mailing address.
2. The address for each place of practice.

F. A licensee maintaining more than one place of practice shall obtain from the board a duplicate license for each office. A fee set by the board shall be charged for each duplicate license. The licensee shall notify the board in writing within ten days after opening the additional place or places of practice. The board shall impose a penalty of \$50 for failure to notify the board.

G. A licensee who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes on payment of a reduced renewal fee as prescribed by the board by rule.

H. A licensee applying for retired or disabled status shall:

1. Relinquish any prescribing privileges and shall attest by affidavit that the licensee has surrendered to the United States drug enforcement administration any registration issued pursuant to the federal controlled substances act and has surrendered to the board any registration issued pursuant to section 36-2606.

2. If the licensee holds a permit to dispense drugs and devices pursuant to section 32-1298, surrender that permit to the board.

3. Attest by affidavit that the licensee is not currently engaged in the practice of dentistry.

I. A licensee who changes the licensee's primary mailing address or place of practice address shall notify the board of that change in writing within ten days. The board shall impose a penalty of \$50 if a licensee fails to notify the board of the change within that time. The board shall increase the penalty imposed to \$100 if a licensee fails to notify it of the change within thirty days.

32-1237. Restricted permit

A person may apply for a restricted permit if the applicant demonstrates to the board's satisfaction that the applicant:

1. Has a pending contract with a recognized charitable dental clinic or organization that offers dental services without compensation or at a rate that only reimburses the clinic for dental supplies and overhead costs and the applicant will receive no compensation for dental services provided at the clinic or organization.

2. Has a license to practice dentistry issued by another state or territory of the United States or the District of Columbia.

3. Has been actively engaged in one or more of the following for three years immediately preceding the application:

(a) The practice of dentistry.

(b) An approved dental residency training program.

(c) Postgraduate training deemed by the board equivalent to an approved dental residency training program.

4. Is competent and proficient to practice dentistry.

5. Meets the requirements of section 32-1232, subsection A, other than the requirement to meet section 32-1233.

32-1238. Issuance of restricted permit

A restricted permit may be issued by the board without examination or payment of fee for a period not to exceed one year or until June 30th, whichever is lesser, and shall automatically expire at that time. The board may, in its discretion and pursuant to rules or regulations not inconsistent with this chapter, renew such restricted permit for periods not to exceed one year.

32-1239. Practice under restricted permit

A person to whom a restricted permit is issued shall be entitled to practice dentistry only in the course of his employment by a recognized charitable dental clinic or organization as approved by the board, on the following conditions:

1. He shall file a copy of his employment contract with the board and such contract shall contain the following provisions:

(a) That applicant understands and acknowledges that if his employment by the charitable dental clinic or organization is terminated prior to the expiration of his restricted permit, his restricted permit will be automatically revoked and he will voluntarily surrender the permit to the board and will no longer be eligible to practice unless or until he has satisfied the requirements of section 32-1237 or has successfully passed the examination as provided in this article.

(b) He shall be employed by a dental clinic or organization organized and operated for charitable purposes offering dental services without compensation. The term "employed" as used in this subdivision shall include the performance of dental services without compensation.

(c) He shall be subject to all the provisions of this chapter applicable to licensed dentists.

32-1240. Licensure by credential; examinations; waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting an application for licensure pursuant to this chapter and the other state or testing agency maintains a standard of licensure that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall define what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed.

B. The applicant shall pay a licensure by credential fee of not more than two thousand dollars as prescribed by the board.

32-1241. Training permits; qualified military health professionals

A. The board shall issue a training permit to a qualified military health professional who is practicing dentistry in the United States armed forces and who is discharging the health professional's official duties by participating in a clinical training program based at a civilian hospital affiliated with the United States department of defense.

B. Before the board issues the training permit, the qualified military health professional must submit a written statement from the United States department of defense that the applicant:

1. Is a member of the United States armed forces who is performing duties for and at the direction of the United States department of defense at a location in this state approved by the United States department of defense.

2. Has a current license or is credentialed to practice dentistry in a jurisdiction of the United States.

3. Meets all required qualification standards prescribed pursuant to 10 United States Code section 1094(d) relating to the licensure requirements for health professionals.

4. Has not had a license to practice revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

5. Is not currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter.

6. Has not surrendered, relinquished or given up a license in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that constitutes unprofessional conduct pursuant to this chapter. This paragraph does not prevent the board from considering the request for a training permit of a qualified military health professional who surrendered, relinquished or gave up a license in lieu of disciplinary action by a regulatory board in another jurisdiction if that regulatory board subsequently reinstated the qualified military health professional's license.

C. The qualified military health professional may not open an office or designate a place to meet patients or receive calls relating to the practice of dentistry in this state outside of the facilities and programs of the approved civilian hospital.

D. The qualified military health professional may not practice outside of the professional's scope of practice.

E. A training permit issued pursuant to this section is valid for one year. The qualified military health professional may apply annually to the board to renew the permit. With each application to renew the qualified military health professional must submit a written statement from the United States department of defense asking the board for continuation of the training permit.

F. The board may not impose a fee to issue or renew a training permit to a qualified military health professional pursuant to this section.

Article 3 – Regulation

32-1261. Practicing without license; classification

Except as otherwise provided a person is guilty of a class 6 felony who, without a valid license or business entity registration as prescribed by this chapter:

1. Practices dentistry or any branch of dentistry as described in section 32-1202.

2. In any manner or by any means, direct or indirect, advertises, represents or claims to be engaged or ready and willing to engage in that practice as described in section 32-1202.

3. Manages, maintains or carries on, in any capacity or by any arrangement, a practice, business, office or institution for the practice of dentistry, or that is advertised, represented or held out to the public for that purpose.

32-1262. Corporate practice; display of name and license receipt or license; duplicate licenses; fee

A. It is lawful to practice dentistry as a professional corporation or professional limited liability company.

B. It is lawful to practice dentistry as a business organization if the business organization is registered as a business entity pursuant to this chapter.

C. It is lawful to practice dentistry under a name other than that of the licensed practitioners if the name is not deceptive or misleading.

D. If practicing as a professional corporation or professional limited liability company, the name and address of record of the dentist owners of the practice shall be conspicuously displayed at the entrance to each owned location.

E. If practicing as a business organization that is registered as a business entity pursuant to section 32-1213, the receipt for the current registration period must be conspicuously displayed at the entrance to each place of practice.

F. A licensee's receipt for the current licensure period shall be displayed in the licensee's place of practice in a manner that is always readily observable by patients or visitors and shall be exhibited to members of the board or to duly authorized agents of the board on request. The receipt for the licensure period immediately preceding shall be kept on display until replaced by the receipt for the current period. During the year in which the licensee is first licensed and until the receipt for the following period is received, the license shall be displayed in lieu of the receipt.

G. If a dentist maintains more than one place of practice, the board may issue one or more duplicate licenses or receipts on payment of a fee fixed by the board not exceeding twenty-five dollars for each duplicate.

H. If a licensee legally changes the licensee's name from that in which the license was originally issued, the board, on satisfactory proof of the change and surrender of the original license, if obtainable, may issue a new license in the new name and shall charge the established fee for duplicate licenses.

32-1263. Grounds for disciplinary action; definition

A. The board may invoke disciplinary action against any person who is licensed under this chapter for any of the following reasons:

1. Unprofessional conduct as defined in section 32-1201.01.

2. Conviction of a felony or of a misdemeanor involving moral turpitude, in which case the record of conviction or a certified copy is conclusive evidence.

3. Physical or mental incompetence to practice pursuant to this chapter.

4. Committing or aiding, directly or indirectly, a violation of or noncompliance with any provision of this chapter or of any rules adopted by the board pursuant to this chapter.

5. Dental incompetence as defined in section 32-1201.

B. This section does not establish a cause of action against a licensee or a registered business entity that makes a report of unprofessional conduct or unethical conduct in good faith.

C. The board may take disciplinary action against a business entity that is registered pursuant to this chapter for unethical conduct.

D. For the purposes of this section, "unethical conduct" means the following acts occurring in this state or elsewhere:

1. Failing to report in writing to the board any evidence that a dentist, dental therapist, denturist or dental hygienist is or may be professionally incompetent, is or may be guilty of unprofessional conduct, is or may be impaired by drugs or alcohol or is or may be mentally or physically unable to safely engage in the permissible activities of a dentist, dental therapist, denturist or dental hygienist.

2. Falsely reporting to the board that a dentist, dental therapist, denturist or dental hygienist is or may be guilty of unprofessional conduct, is or may be impaired by drugs or alcohol or is or may be mentally or physically unable to safely engage in the permissible activities of a dentist, dental therapist, denturist or dental hygienist.

3. Obtaining or attempting to obtain a registration or registration renewal by fraud or by misrepresentation.

4. Knowingly filing with the board any application, renewal or other document that contains false information.

5. Failing to register or failing to submit a renewal registration with the board pursuant to section 32-1213.

6. Failing to provide the following persons with access to any place for which a registration has been issued or for which an application for a registration has been submitted in order to conduct a site investigation, inspection or audit:

(a) The board or its employees or agents.

(b) An authorized federal or state official.

7. Failing to notify the board of a change in officers and directors, a change of address or a change in the dentists providing services pursuant to section 32-1213, subsection E.

8. Failing to provide patient records pursuant to section 32-1264.

9. Obtaining a fee by fraud or misrepresentation or wilfully or intentionally filing a fraudulent claim with a third party for services rendered or to be rendered to a patient.

10. Engaging in repeated irregularities in billing.

11. Engaging in the following advertising practices:

(a) Publishing or circulating, directly or indirectly, any false or fraudulent or misleading statements concerning the skill, methods or practices of a registered business entity, a licensee or any other person.

(b) Advertising in any manner that tends to deceive or defraud the public.

12. Failing to comply with a board subpoena in a timely manner.

13. Failing to comply with a final board order, including a decree of censure, a period or term of probation, a consent agreement or a stipulation.

14. Employing or aiding and abetting unlicensed persons to perform work that must be done by a person licensed pursuant to this chapter.

15. Engaging in any conduct or practice that constitutes a danger to the health, welfare or safety of the patient or the public.

16. Engaging in a policy or practice that interferes with the clinical judgment of a licensee providing dental services for a business entity or compromising a licensee's ability to comply with this chapter.

17. Engaging in a practice by which a dental hygienist, dental therapist or dental assistant exceeds the scope of practice or restrictions included in a written collaborative practice agreement.

32-1263.01. Types of disciplinary action; letter of concern; judicial review; notice; removal of notice; violation; classification

A. The board may take any one or a combination of the following disciplinary actions against any person licensed under this chapter:

1. Revocation of license to practice.

2. Suspension of license to practice.

3. Entering a decree of censure, which may require that restitution be made to an aggrieved party.

4. Issuance of an order fixing a period and terms of probation best adapted to protect the public health and safety and to rehabilitate the licensed person. The order fixing a period and terms of probation may require that restitution be made to the aggrieved party.

5. Imposition of an administrative penalty in an amount not to exceed two thousand dollars for each violation of this chapter or rules adopted under this chapter.

6. Imposition of a requirement for restitution of fees to the aggrieved party.

7. Imposition of restrictions on the scope of practice.

8. Imposition of peer review and professional education requirements.

9. Imposition of community service.

B. The board may issue a letter of concern if a licensee's continuing practices may cause the board to take disciplinary action. The board may also issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

C. Failure to comply with any order of the board, including an order of censure or probation, is cause for suspension or revocation of a license.

D. All disciplinary and final nondisciplinary actions or orders, not including letters of concern or advisory letters, issued by the board against a licensee or certificate holder shall be posted to that licensee's or certificate holder's profile on the board's website. For the purposes of this subsection, only final nondisciplinary actions and orders that are issued after January 1, 2018 shall be posted.

E. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

F. If the state board of dental examiners acts to modify any dentist's prescription-writing privileges, it shall immediately notify the Arizona state board of pharmacy of the modification.

G. The board may post a notice of its suspension or revocation of a license at the licensee's place of business. This notice shall remain posted for sixty days. A person who removes this notice without board or court authority before that time is guilty of a class 3 misdemeanor.

H. A licensee or certificate holder shall respond in writing to the board within twenty days after a notice of hearing is served. A licensee who fails to answer the charges in a complaint and notice of hearing issued pursuant to this article and title 41, chapter 6, article 10 is deemed to admit the acts charged in the complaint, and the board may revoke or suspend the license without a hearing.

32-1263.02. Investigation and adjudication of complaints; disciplinary action; civil penalty; immunity; subpoena authority; definitions

A. The board on its own motion, or the investigation committee if established by the board, may investigate any evidence that appears to show the existence of any of the causes or grounds for disciplinary action as provided in section 32-1263. The board or investigation committee may investigate any complaint that alleges the existence of any of the causes or grounds for disciplinary action as provided in section 32-1263. The board shall not act on its own motion or on a complaint received by the board if the allegation of unprofessional conduct, unethical conduct or any other violation of this chapter against a licensee occurred more than four years before the complaint is received by the board. The four-year time limitation does not apply to:

1. Medical malpractice settlements or judgments, allegations of sexual misconduct or an incident or occurrence that involved a felony, diversion of a controlled substance or impairment while practicing by the licensee.

2. The board's consideration of the specific unprofessional conduct related to the licensee's failure to disclose conduct or a violation as required by law.

B. At the request of the complainant, the board or investigation committee shall not disclose to the respondent the complainant name unless the information is essential to proceedings conducted pursuant to this article.

C. The board or investigation committee shall conduct necessary investigations, including interviews between representatives of the board or investigation committee and the licensee with respect to any information obtained by or filed with the board under subsection A of this section or obtained by the board or investigation committee during the course of an investigation. The results of the investigation conducted by the investigation committee, including any recommendations from the investigation committee for disciplinary action against any licensee, shall be forwarded to the board for its review.

D. The board or investigation committee may designate one or more persons of appropriate competence to assist the board or investigation committee with any aspect of an investigation.

E. If, based on the information the board receives under subsection A or C of this section, the board finds that the public health, safety or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, the board may order a summary suspension of a licensee's license pursuant to section 41-1092.11 pending proceedings for revocation or other action.

F. If a complaint refers to quality of care, the patient may be referred for a clinical evaluation at the discretion of the board or the investigation committee.

G. If, after completing its investigation or review pursuant to this section, the board finds that the information provided pursuant to subsection A or C of this section is insufficient to merit disciplinary action against a licensee, the board may take any of the following actions:

1. Dismiss the complaint.

2. Issue a nondisciplinary letter of concern to the licensee.

3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.

4. Assess a nondisciplinary civil penalty in an amount not to exceed \$500 if the complaint involves the licensee's failure to respond to a board subpoena.

H. If, after completing its investigation or review pursuant to this section, the board finds that the information provided pursuant to subsection A or C of this section is sufficient to merit disciplinary action against a licensee, the board may request that the licensee participate in a formal interview before the board. If the licensee refuses or accepts the invitation for a formal interview and the results indicate that grounds may exist for revocation or suspension, the board shall issue a formal complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. If, after completing a formal interview, the board finds that the protection of the public requires emergency action, it may order a summary suspension of the license pursuant to section 41-1092.11 pending formal revocation proceedings or other action authorized by this section.

I. If, after completing a formal interview, the board finds that the information provided under subsection A or C of this section is insufficient to merit suspension or revocation of the license, it may take any of the following actions:

1. Dismiss the complaint.
2. Order disciplinary action pursuant to section 32-1263.01, subsection A.
3. Enter into a consent agreement with the licensee for disciplinary action.
4. Order nondisciplinary continuing education pursuant to section 32-1263.01, subsection B.
5. Issue a nondisciplinary letter of concern to the licensee.

J. A copy of the board's order issued pursuant to this section shall be given to the complainant and to the licensee. Pursuant to title 41, chapter 6, article 10, the licensee may petition for rehearing or review.

K. Any person who in good faith makes a report or complaint as provided in this section to the board or to any person or committee acting on behalf of the board is not subject to liability for civil damages as a result of the report.

L. The board, through its president or the president's designee, may issue subpoenas to compel the attendance of witnesses and the production of documents and may administer oaths, take testimony and receive exhibits in evidence in connection with an investigation initiated by the board or a complaint filed with the board. In case of disobedience to a subpoena, the board may invoke the aid of any court of this state in requiring the attendance and testimony of witnesses and the production of documentary evidence.

M. Patient records, including clinical records, medical reports, laboratory statements and reports, files, films, reports or oral statements relating to diagnostic findings or treatment of patients, any information from which a patient or a patient's family may be identified or information received and records kept by the board as a result of the investigation procedures taken pursuant to this chapter, are not available to the public.

N. The board may charge the costs of formal hearings conducted pursuant to title 41, chapter 6, article 10 to a licensee it finds to be in violation of this chapter.

O. The board may accept the surrender of an active license from a licensee who is subject to a board investigation and who admits in writing to any of the following:

1. Being unable to safely engage in the practice of dentistry.
2. Having committed an act of unprofessional conduct.
3. Having violated this chapter or a board rule.

P. In determining the appropriate disciplinary action under this section, the board may consider any previous nondisciplinary and disciplinary actions against a licensee.

Q. If a licensee who is currently providing dental services for a registered business entity believes that the registered business entity has engaged in unethical conduct as defined pursuant to section 32-1263, subsection D, paragraph 16, the licensee must do both of the following before filing a complaint with the board:

1. Notify the registered business entity in writing that the licensee believes that the registered business entity has engaged in a policy or practice that interferes with the clinical judgment of the licensee or that compromises the licensee's ability to comply with the requirements of this chapter. The licensee shall specify in the notice the reasons for this belief.

2. Provide the registered business entity with at least ten calendar days to respond in writing to the assertions made pursuant to paragraph 1 of this subsection.

R. A licensee who files a complaint pursuant to subsection Q of this section shall provide the board with a copy of the licensee's notification and the registered business entity's response, if any.

S. A registered business entity may not take any adverse employment action against a licensee because the licensee complies with the requirements of subsection Q of this section.

T. For the purposes of this section:

1. "License" includes a certificate issued pursuant to this chapter.

2. "Licensee" means a dentist, dental therapist, dental hygienist, denturist, dental consultant, restricted permit holder or business entity regulated pursuant to this chapter.

32-1263.03. Investigation committee; complaints; termination; review

A. If established by the board, the investigation committee may terminate a complaint if the investigation committee's review indicates that the complaint is without merit and that termination is appropriate.

B. The investigation committee may not terminate a complaint if a court has entered a medical malpractice judgment against a licensee.

C. At each regularly scheduled board meeting, the investigation committee shall provide to the board a list of each complaint the investigation committee terminated pursuant to subsection A of this section since the preceding board meeting. On review, the board shall approve, modify or reject the investigation committee's action.

D. A person who is aggrieved by an action taken by the investigation committee pursuant to subsection A of this section may file a written request that the board review that action. The request must be filed within thirty days after that person is notified of the investigation committee's action by personal delivery or, if the notification is mailed to that person's last known residence or place of business, within thirty-five days after the date on the notification. At the next regular board meeting, the board shall review the investigation committee's action. On review, the board shall approve, modify or reject the investigation committee's action.

32-1264. Maintenance of records

A. A person who is licensed or certified pursuant to this chapter shall make and maintain legible written records concerning all diagnoses, evaluations and treatments of each patient of record. A licensee or certificate holder shall maintain records that are stored or produced electronically in retrievable paper form. These records shall include:

1. All treatment notes, including current health history and clinical examinations.
2. Prescription and dispensing information, including all drugs, medicaments and dental materials used for patient care.
3. Diagnosis and treatment planning.
4. Dental and periodontal charting. Specialist charting must include areas of requested care and notation of visual oral examination describing any areas of potential pathology or radiographic irregularities.
5. All radiographs.

B. Records are available for review and for treatment purposes to the dentist, dental therapist, dental hygienist or denturist providing care.

C. On request, the licensee or certificate holder shall allow properly authorized board personnel to have access to the licensee's or certificate holder's place of practice to conduct an inspection and must make the licensee's or certificate holder's records, books and documents available to the board free of charge as part of an investigation process.

D. Within fifteen business days after a patient's written request, that patient's dentist, dental therapist, dental hygienist or denturist or a registered business entity shall transfer legible and diagnostic quality copies of that patient's records to another licensee or certificate holder or that patient. The patient may be charged for the reasonable costs of copying and forwarding these records. A dentist, dental therapist, dental hygienist, denturist or registered business entity may require that payment of reproduction costs be made in advance, unless the records are necessary for continuity of care, in which case the records shall not be withheld. Copies of records shall not be withheld because of an unpaid balance for dental services.

E. Unless otherwise required by law, a person who is licensed or certified pursuant to this chapter or a business entity that is registered pursuant to this chapter must retain the original or a copy of a patient's dental records as follows:

1. If the patient is an adult, for at least six years after the last date the adult patient received dental services from that provider.
2. If the patient is a child, for at least three years after the child's eighteenth birthday or for at least six years after the last date the child received dental services from the provider, whichever occurs later.

32-1265. Interpretation of chapter

Nothing in this chapter shall be construed to abridge a license issued under laws of this state relating to medicine or surgery.

32-1266. Prosecution of violations

The attorney general shall act for the board in all matters requiring legal assistance, but the board may employ other or additional counsel in its own behalf. The board shall assist prosecuting officers in enforcement of this chapter, and in so doing may engage suitable persons to assist in investigations and in the procurement and presentation of evidence. Subpoenas or other orders issued by the board may be served by any officer empowered to serve processes, who shall receive the fees prescribed by law. Expenditures made in carrying out provisions of this section shall be paid from the dental board fund.

32-1267. Use of fraudulent instruments; classification

A person is guilty of a class 5 felony who:

1. Knowingly presents to or files with the board as his own a diploma, degree, license, certificate or identification belonging to another, or which is forged or fraudulent.
2. Exhibits or displays any instrument described in paragraph 1 with intent that it be used as evidence of the right of such person to practice dentistry in this state.
3. With fraudulent intent alters any instrument described in paragraph 1 or uses or attempts to use it when so altered.
4. Sells, transfers or offers to sell or transfer, or who purchases, procures or offers to purchase or procure a diploma, license, certificate or identification, with intent that it be used as evidence of the right to practice dentistry in this state by a person other than the one to whom it belongs or is issued.

32-1268. Violations; classification; required proof

A. A person is guilty of a class 2 misdemeanor who:

1. Employs, contracts with, or by any means procures the assistance of, or association with, for the purpose of practicing dentistry, a person not having a valid license therefor.
2. Fails to obey a summons or other order regularly and properly issued by the board.
3. Violates any provision of this chapter for which the penalty is not specifically prescribed.

B. In a prosecution or hearing under this chapter, it is necessary to prove only a single act of violation and not a general course of conduct, and where the violation is continued over a period of one or more days each day constitutes a separate violation subject to the penalties prescribed in this chapter.

32-1269. Violation; classification; injunctive relief

A. A person convicted under this chapter is guilty of a class 2 misdemeanor unless another classification is specifically prescribed in this chapter. Violations shall be prosecuted by the county attorney and tried before the superior court in the county in which the violation occurs.

B. In addition to penalties provided in this chapter, the courts of the state are vested with jurisdiction to prevent and restrain violations of this chapter as nuisances per se, and the county attorneys shall, and the board may, institute proceedings in equity to prevent and restrain violations. A person damaged, or threatened with loss or injury, by reason of a violation of this chapter is entitled to obtain injunctive relief in any court of competent jurisdiction against any damage or threatened loss or injury by reason of a violation of this chapter.

32-1270. Deceased or incapacitated dentists; notification

A. An administrator or executor of the estate of a deceased dentist, or a person who is legally authorized to act for a dentist who has been adjudicated to be mentally incompetent, must notify the board within sixty days after the dentist's death or incapacitation. The administrator or executor may employ a licensed dentist for a period of not more than one year to:

1. Continue the deceased or incapacitated dentist's practice.
2. Conclude the affairs of the deceased or incapacitated dentist, including the sale of any assets.

B. An administrator or executor operating a practice pursuant to this section for more than one year must register as a business entity pursuant to section 32-1213.

32-1271. Marking of dentures for identification; retention and release of information

A. Every complete upper or lower denture fabricated by a licensed dentist, or fabricated pursuant to the dentist's work order, must be marked with the patient's name unless the patient objects. The marking must be done during fabrication and must be permanent, legible and cosmetically acceptable. The dentist or the dental laboratory shall determine the location of the marking and the methods used to implant or apply it. The dentist must inform the patient that the marking is used only to identify the patient, and the patient may choose which marking is to appear on the dentures.

B. The dentist must retain the records of marked dentures and may not release the records to any person except to law enforcement officers in any emergency that requires personal identification by means of dental records or to anyone authorized by the patient to receive this information.

Article 3.1 – Licensing and Regulation of Dental Therapists

32-1276. Definitions

In this article, unless the context otherwise requires:

1. "Applicant" means a person who is applying for licensure to practice dental therapy in this state.
2. "Direct supervision" means that a licensed dentist is present in the office and available to provide treatment or care to a patient and observe a dental therapist's work.
3. "Licensee" means a person who holds a license to practice dental therapy in this state.

32-1276.01. Application for licensure; requirements; fingerprint clearance card; denial or suspension of application

A. An applicant for licensure as a dental therapist in this state shall do all of the following:

1. Apply to the board on a form prescribed by the board.
2. Verify under oath that all statements in the application are true to the applicant's knowledge.
3. Enclose with the application:
 - (a) A recent photograph of the applicant.
 - (b) The application fee established by the board by rule.

B. The board may grant a license to practice dental therapy to an applicant who meets all of the following requirements:

1. Is licensed as a dental hygienist pursuant to article 4 of this chapter.
2. Graduates from a dental therapy education program that is accredited by or holds an initial accreditation from the American dental association commission on dental accreditation and that is offered through an accredited higher education institution recognized by the United States department of education.
3. Successfully passes, both of the following:
 - (a) Within five years before filing the application, a clinical examination in dental therapy administered by a state or testing agency in the United States.
 - (b) The Arizona dental jurisprudence examination.
4. Is not subject to any grounds for denial of the application under this chapter.
5. Obtains a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1.
6. Meets all requirements for licensure established by the board by rule.

C. The board may deny an application for licensure or license renewal if the applicant:

1. Has committed an act that would be cause for censure, probation or suspension or revocation of a license under this chapter.
2. While unlicensed, committed or aided and abetted the commission of an act for which a license is required by this chapter.
3. Knowingly made any false statement in the application.

4. Has had a license to practice dental therapy revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently suspended or restricted by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental therapy instead of having disciplinary action taken against the applicant by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for licensure if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue a license or deny an application for licensure until the investigation is completed.

32-1276.02. Dental therapist triennial licensure; continuing education; license renewal and reinstatement; fees; civil penalties; retired and disabled license status

A. Except as provided in section 32-4301, a license issued under this article expires thirty days after the licensee's birth month every third year. On or before the last day of the licensee's birth month every third year, each licensed dental therapist shall submit to the board a complete renewal application and pay a license renewal fee established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this subsection does not apply to a retired dental therapist or to a dental therapist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the licensee's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birth month of the expiration year.

C. An applicant for a dental therapy license for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birthday. This fee may not exceed one-third of the fee prescribed pursuant to subsection A of this section. Subsequent applications shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a \$100 penalty. When the license is issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this article.

E. A licensee shall notify the board in writing within ten days after the licensee changes the primary mailing address listed with the board. The board shall impose a civil penalty of \$50 if a licensee fails to notify the board of the change within that time. The board shall increase the civil penalty to \$100 if a licensee fails to notify the board of the change within thirty days.

F. A licensee who is at least sixty-five years of age and who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes by paying a reduced renewal fee as prescribed by the board by rule.

G. A licensee is not required to maintain a dental hygienist license.

32-1276.03. Practice of dental therapy; authorized procedures; supervision requirements; restrictions

A. A person is deemed to be a practicing dental therapist if the person does any of the acts or performs any operations included in the general practice of dental therapists or dental therapy or any related and associated duties.

B. Either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement, a licensed dental therapist may do any of the following:

1. Perform oral evaluations and assessments of dental disease and formulate individualized treatment plans.
2. Perform comprehensive charting of the oral cavity.
3. Provide oral health instruction and disease prevention education, including motivational interviewing, nutritional counseling and dietary analysis.
4. Expose and process dental radiographic images.
5. Perform dental prophylaxis, scaling, root planing and polishing procedures.
6. Dispense and administer oral and topical nonnarcotic analgesics and anti-inflammatory and antibiotic medications as prescribed by a licensed health care provider.
7. Apply topical preventive and prophylactic agents, including fluoride varnishes, antimicrobial agents, silver diamine fluoride and pit and fissure sealants.
8. Perform pulp vitality testing.
9. Apply desensitizing medicaments or resins.
10. Fabricate athletic mouth guards and soft occlusal guards.
11. Change periodontal dressings.
12. Administer nitrous oxide analgesics and local anesthetics.

13. Perform simple extraction of erupted primary teeth.
14. Perform nonsurgical extractions of periodontally diseased permanent teeth that exhibit plus three or grade three mobility and that are not impacted, fractured, unerupted or in need of sectioning for removal.
15. Perform emergency palliative treatments of dental pain that is related to care or a service described in this section.
16. Prepare and place direct restorations in primary and permanent teeth.
17. Fabricate and place single-tooth temporary crowns.
18. Prepare and place preformed crowns on primary teeth.
19. Perform indirect and direct pulp capping on permanent teeth.
20. Perform indirect pulp capping on primary teeth.
21. Perform suturing and suture removal.
22. Provide minor adjustments and repairs on removable prostheses.
23. Place and remove space maintainers.
24. Perform all functions of a dental assistant and expanded function dental assistant.
25. Perform other related services and functions that are authorized by the supervising dentist within the dental therapist's scope of practice and for which the dental therapist is trained.
26. Provide referrals.
27. Perform any other duties of a dental therapist that are authorized by the board by rule.

C. A dental therapist may not:

1. Dispense or administer a narcotic drug.
2. Independently bill for services to any individual or third-party payor.

D. A person may not claim to be a dental therapist unless that person is licensed as a dental therapist under this article.

32-1276.04. Dental therapists; clinical practice; supervising dentists; written collaborative practice agreements

A. A dental therapist may practice only in the following practice settings or locations, including mobile dental units, that are operated or served by any of the following:

1. A federally qualified community health center.
2. A health center program that has received a federal look-alike designation.
3. A community health center.
4. A nonprofit dental practice or a nonprofit organization that provides dental care to low-income and underserved individuals.
5. A private dental practice that provides dental care for community health center patients of record who are referred by the community health center.

B. A dental therapist may practice in this state either under the direct supervision of a dentist or pursuant to a written collaborative practice agreement. Before a dental therapist may enter into a written collaborative practice agreement, the dental therapist shall complete one thousand hours of dental therapy clinical practice under the direct supervision of a dentist who is licensed in this state and shall provide documentation satisfactory to the board of having completed this requirement.

C. A practicing dentist who holds an active license pursuant to this chapter and a licensed dental therapist who holds an active license pursuant to this article may enter into a written collaborative practice agreement for the delivery of dental therapy services. The supervising dentist shall provide or arrange for another dentist or specialist to provide any service needed by the dental therapist's patient that exceeds the dental therapist's authorized scope of practice.

D. A dentist may not enter into more than four separate written collaborative practice agreements for the delivery of dental therapy services.

E. A written collaborative practice agreement between a dentist and a dental therapist shall do all of the following:

1. Address any limit on services and procedures to be performed by the dental therapist, including types of populations and any age-specific or procedure-specific practice protocol, including case selection criteria, assessment guidelines and imaging frequency.
2. Address any limit on practice settings established by the supervising dentist and the level of supervision required for various services or treatment settings.
3. Establish practice protocols, including protocols for informed consent, recordkeeping, managing medical emergencies and providing care to patients with complex medical conditions, including requirements for consultation before initiating care.
4. Establish protocols for quality assurance, administering and dispensing medications and supervising dental assistants.
5. Include specific protocols to govern situations in which the dental therapist encounters a patient requiring treatment that exceeds the dental therapist's authorized scope of practice or the limits imposed by the collaborative practice agreement.
6. Specify that the extraction of permanent teeth may be performed only under the direct supervision of a dentist and consistent with section 32-1276.03, subsection B, paragraph 14.

F. Except as provided in section 32-1276.03, subsection B, paragraph 14, to the extent authorized by the supervising dentist in the written collaborative practice agreement, a dental therapist may practice dental therapy procedures authorized under this article in a practice setting in which the supervising dentist is not on-site and has not previously examined the patient or rendered a diagnosis.

G. The written collaborative practice agreement must be signed and maintained by both the supervising dentist and the dental therapist and may be updated and amended as necessary by both the supervising dentist and dental therapist. The supervising dentist and dental therapist shall submit a copy of the agreement and any amendment to the agreement to the board.

32-1276.05. Dental therapists; supervising dentists; collaborative practice relationships

A. A dentist who holds an active license pursuant to this chapter and a dental therapist who holds an active license pursuant to this article may enter into a collaborative practice relationship through a written collaborative practice agreement for the delivery of dental therapy services.

B. Each dental practice shall disclose to a patient whether the patient is scheduled to see the dentist or dental therapist.

C. Each dentist in a collaborative practice relationship shall:

1. Be available to provide appropriate contact, communication and consultation with the dental therapist.
2. Adopt procedures to provide timely referral of patients whom the dental therapist refers to a licensed dentist for examination. The dentist to whom the patient is referred shall be geographically available to see the patient.

D. Each dental therapist in a collaborative practice relationship shall:

1. Perform only those duties within the terms of the written collaborative practice agreement.
2. Maintain an appropriate level of contact with the supervising dentist.

E. The dental therapist and the supervising dentist shall notify the board of the beginning of the collaborative practice relationship and provide the board with a copy of the written collaborative practice agreement and any amendments to the agreement within thirty days after the effective date of the agreement or amendment. The dental therapist and supervising dentist shall also notify the board within thirty days after the termination date of the written collaborative practice agreement if the date is different than the termination date provided in the agreement.

F. Subject to the terms of the written collaborative practice agreement, a dental therapist may perform all dental therapy procedures authorized in section 32-1276.03. The dentist's presence, examination, diagnosis and treatment plan are not required unless specified by the written collaborative practice agreement.

32-1276.06. Practicing without a license; violation; classification

It is a class 6 felony for a person to practice dental therapy in this state unless the person has obtained a license from the board as provided in this article.

32-1276.07. Licensure by credential; examination waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting the application for licensure pursuant to this article and the other state or testing agency maintains a standard of licensure or certification that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall prescribe what constitutes active practice.
2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed or certified.

B. The applicant shall pay a licensure by credential fee as established by the board in rule.

C. An applicant under this section is not required to obtain a dental hygienist license in this state if the board determines that the applicant otherwise meets the requirements for dental therapist licensure.

32-1276.08. Dental therapy schools; credit for prior experience or coursework

Notwithstanding any other law, a recognized dental therapy school may grant advanced standing or credit for prior learning to a student who has prior experience or has completed coursework that the school determines is equivalent to didactic and clinical education in its accredited program.

Article 4 – Licensing and Regulation of Dental Hygienists

32-1281. Practicing as dental hygienist; supervision requirements; definitions

A. A person is deemed to be practicing as a dental hygienist if the person does any of the acts or performs any of the operations included in the general practice of dental hygienists, dental hygiene and all related and associated duties.

B. A licensed dental hygienist may perform the following:

1. Prophylaxis.
2. Scaling.
3. Closed subgingival curettage.
4. Root planing.
5. Administering local anesthetics and nitrous oxide.
6. Inspecting the oral cavity and surrounding structures for the purposes of gathering clinical data to facilitate a diagnosis.
7. Periodontal screening or assessment.

8. Recording clinical findings.

9. Compiling case histories.

10. Exposing and processing dental radiographs.

11. All functions authorized and deemed appropriate for dental assistants.

12. Except as provided in paragraph 13 of this subsection, those restorative functions permissible for an expanded function dental assistant if qualified pursuant to section 32-1291.01.

13. Placing interim therapeutic restorations after successfully completing a course at an institution accredited by the commission on dental accreditation of the American dental association.

C. The board by rule shall prescribe the circumstances under which a licensed dental hygienist may:

1. Apply preventive and therapeutic agents to the hard and soft tissues.

2. Use emerging scientific technology and prescribe the necessary training, experience and supervision to operate newly developed scientific technology. A dentist who supervises a dental hygienist whose duties include the use of emerging scientific technology must have training on using the emerging technology that is equal to or greater than the training the dental hygienist is required to obtain.

3. Perform other procedures not specifically authorized by this section.

D. Except as provided in subsections E, F and I of this section, a dental hygienist shall practice under the general supervision of a dentist who is licensed pursuant to this chapter.

E. A dental hygienist may practice under the general supervision of a physician who is licensed pursuant to chapter 13 or 17 of this title in an inpatient hospital setting.

F. A dental hygienist may perform the following procedures on meeting the following criteria and under the following conditions:

1. Administering local anesthetics under the direct supervision of a dentist who is licensed pursuant to this chapter after:

(a) The dental hygienist successfully completes a course in administering local anesthetics that includes didactic and clinical components in both block and infiltration techniques offered by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association.

(b) The dental hygienist successfully completes an examination in local anesthesia given by the western regional examining board or a written and clinical examination of another state or regional examination that is substantially equivalent to the requirements of this state, as determined by the board.

(c) The board issues to the dental hygienist a local anesthesia certificate on receipt of proof that the requirements of subdivisions (a) and (b) of this paragraph have been met.

2. Administering local anesthetics under general supervision to a patient of record if all of the following are true:

(a) The dental hygienist holds a local anesthesia certificate issued by the board.

(b) The patient is at least eighteen years of age.

(c) The patient has been examined by a dentist who is licensed pursuant to this chapter within the previous twelve months.

(d) There has been no change in the patient's medical history since the last examination. If there has been a change in the patient's medical history within that time, the dental hygienist must consult with the dentist before administering local anesthetics.

(e) The supervising dentist who performed the examination has approved the patient for being administered local anesthetics by the dental hygienist under general supervision and has documented this approval in the patient's record.

3. Administering nitrous oxide analgesia under the direct supervision of a dentist who is licensed pursuant to this chapter after:

(a) The dental hygienist successfully completes a course in administering nitrous oxide analgesia that includes didactic and clinical components offered by a dental or dental hygiene program accredited by the commission on dental accreditation of the American dental association.

(b) The board issues to the dental hygienist a nitrous oxide analgesia certificate on receipt of proof that the requirements of subdivision (a) of this paragraph have been met.

G. The board may issue local anesthesia and nitrous oxide analgesia certificates to a licensed dental hygienist on receipt of evidence satisfactory to the board that the dental hygienist holds a valid certificate or credential in good standing in the respective procedure issued by a licensing board of another jurisdiction of the United States.

H. A dental hygienist may perform dental hygiene procedures in the following settings:

1. On a patient of record of a dentist within that dentist's office.

2. Except as prescribed in section 32-1289.01, in a health care facility, long-term care facility, public health agency or institution, public or private school or homebound setting on patients who have been examined by a dentist within the previous year.

3. In an inpatient hospital setting pursuant to subsection E of this section.

I. A dental hygienist may provide dental hygiene services under an affiliated practice relationship with a dentist as prescribed in section 32-1289.01.

J. For the purposes of this article:

1. "Assessment" means a limited, clinical inspection that is performed to identify possible signs of oral or systemic disease, malformation or injury and the potential need for referral for diagnosis and treatment, and may include collecting clinical information to facilitate an examination, diagnosis and treatment plan by a dentist.

2. "Direct supervision" means that the dentist is present in the office while the dental hygienist is treating a patient and is available for consultation regarding procedures that the dentist authorizes and for which the dentist is responsible.

3. "General supervision" means:

(a) That the dentist is available for consultation, whether or not the dentist is in the dentist's office, over procedures that the dentist has authorized and for which the dentist remains responsible.

(b) With respect to an inpatient hospital setting, that a physician who is licensed pursuant to chapter 13 or 17 of this title is available for consultation, whether or not the physician is physically present at the hospital.

4. "Interim therapeutic restoration" means a provisional restoration that is placed to stabilize a primary or permanent tooth and that consists of removing soft material from the tooth using only hand instrumentation, without using rotary instrumentation, and subsequently placing an adhesive restorative material.

5. "Screening" means determining an individual's need to be seen by a dentist for diagnosis and does not include an examination, diagnosis or treatment planning.

32-1282. Administration and enforcement

A. So far as applicable, the board shall have the same powers and duties in administering and enforcing this article that it has under section 32-1207 in administering and enforcing articles 1, 2 and 3 of this chapter.

B. The board shall adopt rules that provide a method for the board to receive the assistance and advice of dental hygienists licensed pursuant to this chapter in all matters relating to the regulation of dental hygienists.

32-1283. Disposition of revenues

The provisions of section 32-1212 shall apply to all fees, fines and other revenues received by the board under this article.

32-1284. Qualifications of applicant; application; fee; fingerprint clearance card; rules; denial or suspension of application

A. An applicant for licensure as a dental hygienist shall be at least eighteen years of age, shall meet the requirements of section 32-1285 and shall present to the board evidence of graduation or a certificate of satisfactory completion in a course or curriculum in dental hygiene from a recognized dental hygiene school. A candidate shall make written application to the board accompanied by a

nonrefundable Arizona dental jurisprudence examination fee of \$100. The board shall waive this fee for candidates who are holders of valid restricted permits. Each candidate shall also obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

B. The board shall adopt rules that govern the practice of dental hygienists and that are not inconsistent with this chapter.

C. The board may deny an application for licensure or an application for license renewal if the applicant:

1. Has committed an act that would be cause for censure, probation or suspension or revocation of a license under this chapter.

2. While unlicensed, committed or aided and abetted the commission of an act for which a license is required by this chapter.

3. Knowingly made any false statement in the application.

4. Has had a license to practice dental hygiene revoked by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental hygiene instead of disciplinary action by a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

D. The board shall suspend an application for a license if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a license to the applicant until the investigation is resolved.

32-1285. Applicants for licensure; examination requirements

An applicant for licensure shall have passed all of the following:

1. The national dental hygiene board examination.

2. A clinical examination administered by a state or regional testing agency in the United States within five years preceding filing the application.

3. The Arizona dental jurisprudence examination.

32-1286. Recognized dental hygiene schools; credit for prior learning

Notwithstanding any law to the contrary, a recognized dental hygiene school may grant advanced standing or credit for prior learning to a student who has prior experience or course work that the school determines is equivalent to didactic and clinical education in its accredited program.

32-1287. Dental hygienist triennial licensure; continuing education; license reinstatement; notice of change of address; penalties; retired and disabled license status

A. Except as provided in section 32-4301, a license expires thirty days after the licensee's birth month every third year. On or before the last day of the licensee's birth month every third year, every licensed dental hygienist shall submit to the board a complete renewal application and pay a license renewal fee of not more than \$325, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a licensee at the time of licensure renewal. The fee prescribed by this section does not apply to a retired hygienist or a hygienist with a disability.

B. A licensee shall include a written affidavit with the renewal application that affirms that the licensee complies with board rules relating to continuing education requirements. A licensee is not required to complete the written affidavit if the licensee received an initial license within the year immediately preceding the expiration date of the license or the licensee is in disabled status. If the licensee is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the licensee includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the licensee's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the license expires thirty days after the licensee's birth month of the expiration year.

C. A person applying for a license for the first time in this state shall pay a prorated fee for the period remaining until the licensee's next birth month. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent registrations shall be conducted pursuant to this section.

D. An expired license may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the license with payment of the renewal fee and a \$100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to licensure only for the remainder of the applicable three-year period. If a person does not reinstate a license pursuant to this subsection, the person must reapply for licensure pursuant to this chapter.

E. A licensee shall notify the board in writing within ten days after the licensee changes the primary mailing address listed with the board. The board shall impose a penalty of \$50 if a licensee fails to notify the board of the change within that time. The board shall increase the penalty imposed to \$100 if a licensee fails to notify it of the change within thirty days.

F. A licensee who is over sixty-five years of age and who is fully retired and a licensee who has a permanent disability may contribute services to a recognized charitable institution and still retain that classification for triennial registration purposes on payment of a reduced renewal fee as prescribed by the board by rule.

32-1288. Practicing without license; classification

It is a class 1 misdemeanor for a person to practice dental hygiene in this state unless the person has obtained a license from the board as provided in this article.

32-1289. Employment of dental hygienist by public agency, institution or school

A. A public health agency or institution or a public or private school authority may employ dental hygienists to perform necessary dental hygiene procedures under either direct or general supervision pursuant to section 32-1281.

B. A dental hygienist employed by or working under contract or as a volunteer for a public health agency or institution or a public or private school authority before an examination by a dentist may perform a screening or assessment and apply sealants and topical fluoride.

32-1289.01. Dental hygienists; affiliated practice relationships; rules; definition

A. A dentist who holds an active license pursuant to this chapter and a dental hygienist who holds an active license pursuant to this article may enter into an affiliated practice relationship to deliver dental hygiene services.

B. A dental hygienist shall satisfy all of the following to be eligible to enter into an affiliated practice relationship with a dentist pursuant to this section to deliver dental hygiene services in an affiliated practice relationship:

1. Hold an active license in good standing pursuant to this article.
2. Enter into an affiliated practice relationship with a dentist who holds an active license pursuant to this chapter.
3. Be actively engaged in dental hygiene practice for at least five hundred hours in each of the two years immediately preceding the affiliated practice relationship.

C. An affiliated practice agreement between a dental hygienist and a dentist shall be in writing and:

1. Shall identify at least the following:

(a) The affiliated practice settings in which the dental hygienist may deliver services pursuant to the affiliated practice relationship.

(b) The services to be provided and any procedures and standing orders the dental hygienist must follow. The standing orders shall include the circumstances in which a patient may be seen by the dental hygienist.

(c) The conditions under which the dental hygienist may administer local anesthesia and provide root planing.

(d) Circumstances under which the affiliated practice dental hygienist must consult with the affiliated practice dentist before initiating further treatment on patients who have not been seen by a dentist within twelve months after the initial treatment by the affiliated practice dental hygienist.

2. May include protocols for supervising dental assistants.

D. The following requirements apply to all dental hygiene services provided through an affiliated practice relationship:

1. Patients who have been assessed by the affiliated practice dental hygienist shall be directed to the affiliated practice dentist for diagnosis, treatment or planning that is outside the dental hygienist's scope of practice, and the affiliated practice dentist may make any necessary referrals to other dentists.

2. The affiliated practice dental hygienist shall consult with the affiliated practice dentist if the proposed treatment is outside the scope of the agreement.

3. The affiliated practice dental hygienist shall consult with the affiliated practice dentist before initiating treatment on patients presenting with a complex medical history or medication regimen.

4. The patient shall be informed in writing that the dental hygienist providing the care is a licensed dental hygienist and that the care does not take the place of a diagnosis or treatment plan by a dentist.

E. A contract for dental hygiene services with licensees who have entered into an affiliated practice relationship pursuant to this section may be entered into only by:

1. A health care organization or facility.

2. A long-term care facility.

3. A public health agency or institution.

4. A public or private school authority.

5. A government-sponsored program.

6. A private nonprofit or charitable organization.

7. A social service organization or program.

F. An affiliated practice dental hygienist may not provide dental hygiene services in a setting that is not listed in subsection E of this section.

G. Each dentist in an affiliated practice relationship shall:

1. Be available to provide an appropriate level of contact, communication and consultation with the affiliated practice dental hygienist during the business hours of the affiliated practice dental hygienist.

2. Adopt standing orders applicable to dental hygiene procedures that may be performed and populations that may be treated by the affiliated practice dental hygienist under the terms of the applicable affiliated practice agreement and to be followed by the affiliated practice dental hygienist in each affiliated practice setting in which the affiliated practice dental hygienist performs dental hygiene services under the affiliated practice relationship.

3. Adopt procedures to provide timely referral of patients referred by the affiliated practice dental hygienist to a licensed dentist for examination and treatment planning. If the examination and treatment planning is to be provided by the dentist, that treatment shall be scheduled in an appropriate time frame. The affiliated practice dentist or the dentist to whom the patient is referred shall be geographically available to see the patient.

4. Not permit the provision of dental hygiene services by more than six affiliated practice dental hygienists at any one time.

H. Each affiliated practice dental hygienist, when practicing under an affiliated practice relationship:

1. May perform only those duties within the terms of the affiliated practice relationship.

2. Shall maintain an appropriate level of contact, communication and consultation with the affiliated practice dentist.

3. Is responsible and liable for all services rendered by the affiliated practice dental hygienist under the affiliated practice relationship.

I. The affiliated practice dental hygienist and the affiliated practice dentist shall notify the board of the beginning of the affiliated practice relationship and provide the board with a copy of the agreement and any amendments to the agreement within thirty days after the effective date of the agreement or amendment. The affiliated practice dental hygienist and the affiliated practice dentist shall also notify the board within thirty days after the termination date of the affiliated practice relationship if this date is different than the agreement termination date.

J. Subject to the terms of the written affiliated practice agreement entered into between a dentist and a dental hygienist, a dental hygienist may:

1. Perform all dental hygiene procedures authorized by this chapter, except for performing any diagnostic procedures that are required to be performed by a dentist and administering nitrous oxide. The dentist's presence and an examination, diagnosis and treatment plan are not required unless specified by the affiliated practice agreement.

2. Supervise dental assistants, including dental assistants who are certified to perform functions pursuant to section 32-1291.

K. The board shall adopt rules regarding participation in affiliated practice relationships by dentists and dental hygienists that specify the following:

1. Additional continuing education requirements that must be satisfied by a dental hygienist.

2. Additional standards and conditions that may apply to affiliated practice relationships.

3. Compliance with the dental practice act and rules adopted by the board.

L. For the purposes of this section, "affiliated practice relationship" means the delivery of dental hygiene services, pursuant to an agreement, by a dental hygienist who is licensed pursuant to this article and who refers the patient to a dentist who is licensed pursuant to this chapter for any necessary further diagnosis, treatment and restorative care.

32-1290. Grounds for censure, probation, suspension or revocation of license; procedure

After a hearing pursuant to title 41, chapter 6, article 10, the board may suspend or revoke the license issued to a person under this article or censure or place on probation any such person for any of the causes set forth as grounds for censure, probation, suspension or revocation in section 32-1263.

32-1291. Dental assistants; regulation; duties

A. A dental assistant may expose radiographs for dental diagnostic purposes under either the general supervision of a dentist or the direct supervision of an affiliated practice dental hygienist licensed pursuant to this chapter if the assistant has passed an examination approved by the board.

B. A dental assistant may polish the natural and restored surfaces of the teeth under either the general supervision of a dentist or the direct supervision of an affiliated practice dental hygienist licensed pursuant to this chapter if the assistant has passed an examination approved by the board.

32-1291.01. Expanded function dental assistants; training and examination requirements; duties

A. A dental assistant may perform expanded functions after meeting one of the following:

1. Successfully completing a board-approved expanded function dental assistant training program at an institution accredited by the American dental association commission on dental accreditation and on successfully completing examinations in dental assistant expanded functions approved by the board.

2. Providing both:

(a) Evidence of currently holding or having held within the preceding ten years a license, registration, permit or certificate in expanded functions in restorative procedures issued by another state or jurisdiction in the United States.

(b) Proof acceptable to the board of clinical experience in the expanded functions listed in subsection B of this section.

B. Expanded functions include the placement, contouring and finishing of direct restorations or the placement and cementation of prefabricated crowns following the preparation of the tooth by a licensed dentist. The restorative materials used shall be determined by the dentist.

C. An expanded function dental assistant may place interim therapeutic restorations under the general supervision and direction of a licensed dentist following a consultation conducted through teledentistry.

D. An expanded function dental assistant may apply sealants and fluoride varnish under the general supervision and direction of a licensed dentist.

E. A licensed dental hygienist may engage in expanded functions pursuant to section 32-1281, subsection B, paragraph 12 following a course of study and examination equivalent to that required for an expanded function dental assistant as specified by the board.

32-1292. Restricted permits; suspension; expiration; renewal

A. The board may issue a restricted permit to practice dental hygiene to an applicant who:

1. Has a pending contract with a recognized charitable dental clinic or organization that offers dental hygiene services without compensation or at a rate that reimburses the clinic only for dental supplies and overhead costs and the applicant will not receive compensation for dental hygiene services provided at the clinic or organization.
2. Has a license to practice dental hygiene issued by a regulatory jurisdiction in the United States.
3. Has been actively engaged in the practice of dental hygiene for three years immediately preceding the application.
4. Is, to the board's satisfaction, competent to practice dental hygiene.
5. Meets the requirements of section 32-1284, subsection A that do not relate to examination.

B. A person who holds a restricted permit issued by the board may practice dental hygiene only in the course of the person's employment by a recognized charitable dental clinic or organization approved by the board.

C. The applicant for a restricted permit must file a copy of the person's employment contract with the board that includes a statement signed by the applicant that the applicant:

1. Understands that if that person's employment is terminated before the restricted permit expires, the permit is automatically revoked and that person must voluntarily surrender the permit to the board and is no longer eligible to practice unless that person meets the requirements of sections 32-1284 and 32-1285 or passes the examination required in this article.
2. Must be employed without compensation by a dental clinic or organization that is operated for a charitable purpose.
3. Is subject to the provisions of this chapter that apply to the regulation of dental hygienists.

D. The board may deny an application for a restricted permit if the applicant:

1. Has committed an act that is a cause for disciplinary action pursuant to this chapter.
2. While unlicensed, committed or aided and abetted the commission of any act for which a license is required pursuant to this chapter.
3. Knowingly made a false statement in the application.
4. Has had a license to practice dental hygiene revoked by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under suspension or restriction by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a license to practice dental hygiene instead of disciplinary action by a dental regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

E. The board shall suspend an application for a restricted permit or an application for restricted permit renewal if the applicant is currently under investigation by a dental regulatory board in another jurisdiction. The board shall not issue or deny a restricted permit to the applicant until the investigation is resolved.

F. A restricted permit expires either one year after the date of issue or June 30, whichever date first occurs. The board may renew a restricted permit for terms that do not exceed one year.

32-1292.01. Licensure by credential; examinations; waiver; fee

A. The board by rule may waive the examination requirements of this article on receipt of evidence satisfactory to the board that the applicant has passed the clinical examination of another state or testing agency more than five years before submitting an application for licensure pursuant to this chapter and the other state or testing agency maintains a standard of licensure that is substantially equivalent to that of this state as determined by the board. The board by rule shall require:

1. A minimum number of active practice hours within a specific time period before the applicant submits the application. The board shall define what constitutes active practice.

2. An affirmation that the applicant has completed the continuing education requirements of the jurisdiction where the applicant is licensed.

B. The applicant shall pay a licensure by credential fee of not more than one thousand dollars as prescribed by the board.

Article 5 – Certification and Regulation of Denturists

32-1293. Practicing as denturist; denture technology; dental laboratory technician

A. Notwithstanding the provisions of section 32-1202, nothing in this chapter shall be construed to prohibit a denturist certified pursuant to the provisions of this article from practicing denture technology.

B. A person is deemed to be practicing denture technology who:

1. Takes impressions and bite registrations for the purpose of or with a view to the making, producing, reproducing, construction, finishing, supplying, altering or repairing of complete upper or lower prosthetic dentures, or both, or removable partial dentures for the replacement of missing teeth.

2. Fits or advertises, offers, agrees, or attempts to fit any complete upper or lower prosthetic denture, or both, or adjusts or alters the fit of any full prosthetic denture, or fits or adjusts or alters the fit of removable partial dentures for the replacement of missing teeth.

C. In addition to the practices described in subsection B of this section, a person certified to practice denture technology may also construct, repair, reline, reproduce or duplicate full or partial prosthetic dentures or otherwise engage in the activities of a dental laboratory technician.

D. No person may perform an act described in subsection B of this section except a licensed dentist, a holder of a restricted permit pursuant to section 32-1238, a certified denturist or auxiliary personnel authorized to perform any such act by rule or regulation of the board pursuant to section 32-1207, subsection A, paragraph 1.

32-1294. Supervision by dentist; definitions; mouth preparation by dentist; liability; business association

A. A denturist may practice only in the office of a licensed dentist, denominated as such.

B. All work by a denturist shall be performed under the general supervision of a licensed dentist. For the purposes of this section, "general supervision" means the dentist is available for consultation in person or by phone during the performance of the procedures by a denturist pursuant to section 32-1293, subsection B. The dentist shall examine the patient initially, check the completed denture as to fit, form and function and perform such other procedures as the board may specify by rule or regulation. For the purposes of this section "completed denture" means a relined, rebased, duplicated or repaired denture or a new denture. Both the dentist and the denturist shall certify that the dentist has performed the initial examination and the final fitting as required in this subsection, and retain the certification in the patient's file.

C. When taking impressions or bite registrations for the purpose of constructing removable partial dentures or when checking the fit of a partial denture, all mouth preparation must be done by the dentist. The denturist is specifically prohibited from performing any cutting or surgery on hard or soft tissue in the mouth. By rule and regulation the board may further regulate the practice of the denturist in regard to removable partial dentures.

D. No more than two denturists may perform their professional duties under a dentist's general supervision at any one time.

E. A licensed dentist supervising a denturist shall be personally liable for any consequences arising from the performance of the denturist's duties.

F. A certified denturist and the dentist supervising his work may make any lawful agreement between themselves regarding fees, compensation and business association.

G. Any sign, advertisement or other notice displaying the name of the office must include the name of the responsible dentist.

32-1295. Board of dental examiners; additional powers and duties

A. In addition to other powers and duties prescribed by this chapter, the board shall:

1. As far as applicable, exercise the same powers and duties in administering and enforcing this article as it exercises under section 32-1207 in administering and enforcing other articles of this chapter.

2. Determine the eligibility of applicants for certification and issue certificates to applicants who it determines are qualified for certification.

3. Investigate charges of misconduct on the part of certified denturists.

4. Issue decrees of censure, fix periods and terms of probation, suspend or revoke certificates as the facts may warrant and reinstate certificates in proper cases.

B. The board may:

1. Adopt rules prescribing requirements for continuing education for renewal of all certificates issued pursuant to this article.

2. Hire consultants to assist the board in the performance of its duties.

C. In all matters relating to discipline and certifying of denturists and the approval of examinations, the board, by rule, shall provide for receiving the assistance and advice of denturists who have been previously certified pursuant to this chapter.

32-1296. Qualifications of applicant

A. To be eligible for certification to practice denture technology an applicant shall:

1. Hold a high school diploma or its equivalent.

2. Present to the board evidence of graduation from a recognized denturist school or a certificate of satisfactory completion of a course or curriculum in denture technology from a recognized denturist school.

3. Pass a board-approved examination.

B. A candidate for certification shall submit a written application to the board that includes a nonrefundable Arizona dental jurisprudence examination fee as prescribed by the board.

32-1297.01. Application for certification; fingerprint clearance card; denial; suspension

A. Each applicant for certification shall submit a written application to the board accompanied by a nonrefundable jurisprudence examination fee and obtain a valid fingerprint clearance card issued pursuant to section 41-1758.03.

B. The board may deny an application for certification or for certification renewal if the applicant:

1. Has committed any act that would be cause for censure, probation, suspension or revocation of a certificate under this chapter.

2. Has knowingly made any false statement in the application.

3. While uncertified, has committed or aided and abetted the commission of any act for which a certificate is required under this chapter.

4. Has had a certificate to practice denture technology revoked by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

5. Is currently under investigation, suspension or restriction by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

6. Has surrendered, relinquished or given up a certificate to practice denture technology in lieu of disciplinary action by a regulatory board in another jurisdiction in the United States or Canada for an act that occurred in that jurisdiction and that constitutes unprofessional conduct pursuant to this chapter.

C. The board shall suspend an application for certification if the applicant is currently under investigation by a denturist regulatory board in another jurisdiction. The board shall not issue or deny certification to the applicant until the investigation is resolved.

32-1297.03. Qualification for reexamination

An applicant for examination who has previously failed two or more examinations, as a condition of eligibility to take any further examination, shall furnish to the board satisfactory evidence of having successfully completed additional training in a recognized denturist school or refresher courses approved by the board or the board's testing agency.

32-1297.04. Fees

The board shall establish and collect fees, not to exceed the following amounts:

1. For an examination in jurisprudence, two hundred fifty dollars.
2. For each replacement or duplicate certificate, twenty-five dollars.

32-1297.05. Disposition of revenues

The provisions of section 32-1212 shall apply to all fees, penalties and other revenues received by the board under this article.

32-1297.06. Denturist certification; continuing education; certificate reinstatement; certificate for each place of practice; notice of change of address or place of practice; penalties

A. Except as provided in section 32-4301, a certification expires thirty days after the certificate holder's birth month every third year. On or before the last day of the certificate holder's birth month every third year, every certified denturist shall submit to the board a complete renewal application and shall pay a certificate renewal fee of not more than \$300, established by a formal vote of the board. At least once every three years, before establishing the fee, the board shall review the amount of the fee in a public meeting. Any change in the amount of the fee shall be applied prospectively to a certificate holder at the time of certification renewal. This requirement does not apply to a retired denturist or to a denturist with a disability.

B. A certificate holder shall include a written affidavit with the renewal application that affirms that the certificate holder complies with board rules relating to continuing education requirements. A certificate holder is not required to complete the written affidavit if the certificate holder received an initial certification within the year immediately preceding the expiration date of the certificate or the certificate holder is in disabled status. If the certificate holder is not in compliance with board rules relating to continuing education, the board may grant an extension of time to complete these requirements if the certificate holder includes a written request for an extension with the renewal application instead of the written affidavit and the renewal application is received on or before the last day of the certificate holder's birth month of the expiration year. The board shall consider the extension request based on criteria prescribed by the board by rule. If the board denies an extension request, the certificate expires thirty days after the certificate holder's birth month of the expiration year.

C. A person applying for a certificate for the first time in this state shall pay a prorated fee for the period remaining until the certificate holder's next birth month. This fee shall not exceed one-third of the fee established pursuant to subsection A of this section. Subsequent certifications shall be conducted pursuant to this section.

D. An expired certificate may be reinstated by submitting a complete renewal application within the twenty-four-month period immediately following the expiration of the certificate with payment of the renewal fee and a \$100 penalty. Whenever issued, reinstatement is as of the date of application and entitles the applicant to certification only for the remainder of the applicable three-year period. If a person does not reinstate a certificate pursuant to this subsection, the person must reapply for certification pursuant to this chapter.

E. Each certificate holder must provide to the board in writing both of the following:

1. A primary mailing address.
2. The address for each place of practice.

F. A certificate holder maintaining more than one place of practice shall obtain from the board a duplicate certificate for each office. The board shall set and charge a fee for each duplicate certificate. A certificate holder shall notify the board in writing within ten days after opening an additional place of practice.

G. A certificate holder shall notify the board in writing within ten days after changing a primary mailing address or place of practice address listed with the board. The board shall impose a \$50 penalty if a certificate holder fails to notify the board of the change within that time. The board shall increase the penalty imposed to \$100 if a certificate holder fails to notify it of the change within thirty days.

32-1297.07. Discipline; procedure

A. After a hearing pursuant to title 41, chapter 6, article 10, the board may suspend or revoke the license issued to a person under this article or censure or place on probation any person for any of the causes set forth as grounds for censure, probation, suspension or revocation in section 32-1263.

B. The board on its own motion may investigate any evidence which appears to show the existence of any of the causes set forth in section 32-1263. The board shall investigate the report under oath of any person which appears to show the existence of any of the causes set forth in section 32-1263. Any person reporting pursuant to this section who provides the information in good faith shall not be subject to liability for civil damages as a result.

C. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

32-1297.08. Injunction

A. An injunction shall issue to enjoin the practice of denture technology by any of the following:

1. One neither certified to practice as a denturist nor licensed to practice as a dentist.
2. One certified as a denturist from practicing without proper supervision by a dentist as required by this article.
3. A denturist whose continued practice will or might cause irreparable damage to the public health and safety prior to the time proceedings pursuant to section 32-1297.07 could be instituted and completed.

B. A petition for injunction shall be filed by the board in the superior court for Maricopa county or in the county where the defendant resides or is found. Any citizen is also entitled to obtain injunctive relief in any court of competent jurisdiction because of the threat of injury to the public health and welfare.

C. Issuance of an injunction shall not relieve the respondent from being subject to any other proceedings provided for by law.

32-1297.09. Violations; classification

A person is guilty of a class 2 misdemeanor who:

1. Not licensed as a dentist, practices denture technology without certification as provided by this article.
2. Exhibits or displays a certificate, diploma, degree or identification of another or a forged or fraudulent certificate, diploma, degree or identification with the intent that it be used as evidence of the right of such person to practice as a denturist in this state.
3. Fails to obey a summons or other order regularly and properly issued by the board.
4. Is a licensed dentist responsible for a denturist under this article who fails to personally supervise the work of the denturist.

Article 6 – Dispensing of Drugs and Devices

32-1298. Dispensing of drugs and devices; conditions; civil penalty; definition

A. A dentist may dispense drugs, except schedule II controlled substances that are opioids, and devices kept by the dentist if:

1. All drugs are dispensed in packages labeled with the following information:
 - (a) The dispensing dentist's name, address and telephone number.

(b) The date the drug is dispensed.

(c) The patient's name.

(d) The name and strength of the drug, directions for its use and any cautionary statements.

2. The dispensing dentist enters into the patient's dental record the name and strength of the drug dispensed, the date the drug is dispensed and the therapeutic reason.

3. The dispensing dentist keeps all drugs in a locked cabinet or room, controls access to the cabinet or room by a written procedure and maintains an ongoing inventory of its contents.

B. Except in an emergency situation, a dentist who dispenses drugs for a profit without being registered by the board to do so is subject to a civil penalty by the board of not less than three hundred dollars and not more than one thousand dollars for each transaction and is prohibited from further dispensing for a period of time as prescribed by the board.

C. Before dispensing a drug pursuant to this section, the patient shall be given a written prescription on which appears the following statement in bold type: "This prescription may be filled by the prescribing dentist or by a pharmacy of your choice."

D. A dentist shall dispense for profit only to the dentist's own patient and only for conditions being treated by that dentist. The dentist shall provide direct supervision of an attendant involved in the dispensing process. For the purposes of this subsection, "direct supervision" means that a dentist is present and makes the determination as to the legitimacy or advisability of the drugs or devices to be dispensed.

E. This section shall be enforced by the board, which shall establish rules regarding labeling, recordkeeping, storage and packaging of drugs that are consistent with the requirements of chapter 18 of this title. The board may conduct periodic inspections of dispensing practices to ensure compliance with this section and applicable rules.

F. For the purposes of this section, "dispense" means the delivery by a dentist of a prescription drug or device to a patient, except for samples packaged for individual use by licensed manufacturers or repackagers of drugs, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the drug or device for delivery.

Article 7 – Rehabilitation

32-1299. Substance abuse treatment and rehabilitation program; private contract; funding; confidential stipulation agreement

A. The board may establish a confidential program for the treatment and rehabilitation of dentists, dental therapists, denturists and dental hygienists who are impaired by alcohol or drug abuse. This program shall include education, intervention, therapeutic treatment and posttreatment monitoring and support.

B. The board may contract with other organizations to operate the program established pursuant to this section. A contract with a private organization shall include the following requirements:

1. Periodic reports to the board regarding treatment program activity.

2. Release to the board on demand of all treatment records.
 3. Periodic reports to the board regarding each dentist's, dental therapist's, denturist's or dental hygienist's diagnosis and prognosis and recommendations for continuing care, treatment and supervision.
 4. Immediate reporting to the board of the name of an impaired practitioner whom the treating organization believes to be a danger to self or others.
 5. Immediate reporting to the board of the name of a practitioner who refuses to submit to treatment or whose impairment is not substantially alleviated through treatment.
- C. The board may allocate an amount of not more than twenty dollars annually or sixty dollars triennially from each fee it collects from the renewal of active licenses for the operation of the program established by this section.
- D. A dentist, dental therapist, denturist or hygienist who, in the opinion of the board, is impaired by alcohol or drug abuse shall agree to enter into a confidential nondisciplinary stipulation agreement with the board. The board shall place a licensee or certificate holder on probation if the licensee or certificate holder refuses to enter into a stipulation agreement with the board and may take other action as provided by law. The board may also refuse to issue a license or certificate to an applicant if the applicant refuses to enter into a stipulation agreement with the board.
- E. In the case of a licensee or certificate holder who is impaired by alcohol or drug abuse after completing a second monitoring program pursuant to a stipulation agreement under subsection D of this section, the board shall determine whether:
1. To refer the matter for a formal hearing for the purpose of suspending or revoking the license or certificate.
 2. The licensee or certificate holder should be placed on probation for a minimum of one year with restrictions necessary to ensure public safety.
 3. To enter into another stipulation agreement under subsection D of this section with the licensee or certificate holder.

Article 8 – Mobile Dental Facilities and Portable Dental Units

32-1299.21. Definitions

In this article, unless the context otherwise requires:

1. "Mobile dental facility" means a facility in which dentistry is practiced and that is routinely towed, moved or transported from one location to another.
2. "Permit holder" means a dentist, dental hygienist, denturist or registered business entity that is authorized by this chapter to offer dental services in this state or a nonprofit organization, school district or school or institution of higher education that may employ a licensee to provide dental services and that is authorized by this article to operate a mobile dental facility or portable dental unit.
3. "Portable dental unit" means a nonfacility in which dental equipment used in the practice of dentistry is transported to and used on a temporary basis at an out-of-office location.

32-1299.22. Mobile dental facilities; portable dental units; permits; exceptions

A. Beginning January 1, 2012, every mobile dental facility and, except as provided in subsection B, every provider, program or entity using portable dental units in this state must obtain a permit pursuant to this article.

B. A licensee who does not hold a permit for a mobile dental facility or portable dental unit may provide dental services if:

1. Occasional services are provided to a patient of record of a fixed dental office who is treated outside of the dental office.
2. Services are provided by a federal, state or local government agency.
3. Occasional services are performed outside of the licensee's office without charge to a patient or a third party.
4. Services are provided to a patient by an accredited dental or dental hygiene school.
5. The licensee holds a valid permit to provide mobile dental anesthesia services.
6. The licensee is an affiliated practice dental hygienist.

32-1299.23. Permit application; fees; renewal; notification of changes

A. An individual or entity that seeks a permit to operate a mobile dental facility or portable dental unit must submit an application on a form provided by the board and pay an annual registration fee prescribed by the board by rule. The permit must be renewed annually not later than the last day of the month in which the permit was issued. Permits not renewed by the expiration date are subject to a late fee as prescribed by the board by rule.

B. A permit holder shall notify the board of any change in address or contact person within ten days after that change. The board shall impose a penalty as prescribed by the board by rule if the permit holder fails to notify the board of that change within that time.

C. If ownership of the mobile dental facility or portable dental unit changes, the prior permit is invalid and a new permit application must be submitted.

32-1299.24. Standards of operation and practice

A. A permit holder must:

1. Comply with all applicable federal, state and local laws, regulations and ordinances dealing with radiographic equipment, flammability, sanitation, zoning and construction standards, including construction standards relating to required access for persons with disabilities.
2. Establish written protocols for follow-up care for patients who are treated in a mobile dental facility or through a portable dental unit. The protocols must include referrals for treatment in a dental office that is permanently established within a reasonable geographic area and may include follow-up care by the mobile dental facility or portable dental unit.
3. Ensure that each mobile dental facility or portable dental unit has access to communication equipment that will enable dental personnel to contact appropriate assistance in an emergency.
4. Identify a person who is licensed pursuant to this chapter, who is responsible to supervise treatment and who, if required by law, will be present when dental services are rendered. This paragraph does

not prevent supervision by a dentist providing services or supervision pursuant to the exceptions prescribed in section 32-1231.

5. Display in or on the mobile dental facility or portable dental unit a current valid permit issued pursuant to this article in a manner that is readily observable by patients or visitors.

6. Provide a means of communication during and after business hours to enable the patient or the parent or guardian of a patient to contact the permit holder of the mobile dental facility or portable dental unit for emergency care, follow-up care or information about treatment received.

7. Comply with all requirements for maintenance of records pursuant to section 32-1264 and all other statutory requirements applicable to health care providers and patient records. All records, whether in paper or electronic form, if not in transit, must be maintained in a permanent, secure facility. Records of prior treatment must be readily available during subsequent treatment visits whenever practicable.

8. Ensure that all dentists, dental hygienists and denturists working in the mobile dental facility or portable dental unit hold a valid, current license issued by the board and that all delegated duties are within their respective scopes of practice as prescribed by the applicable laws of this state.

9. Maintain a written or electronic record detailing each location where services are provided, including:

(a) The street address of the service location.

(b) The dates of each session.

(c) The number of patients served.

(d) The types of dental services provided and the quantity of each service provided.

10. Provide to the board or its representative within ten days after a request for a record the written or electronic record required pursuant to paragraph 9 of this subsection.

11. Comply with current recommended infection control practices for dentistry as published by the national centers for disease control and prevention and as adopted by the board.

B. A mobile dental facility or portable dental unit must:

1. Contain equipment and supplies that are appropriate to the scope and level of treatment provided.

2. Have ready access to an adequate supply of potable water.

C. A permit holder or licensee who fails to comply with applicable statutes and rules governing the practice of dentistry, dental hygiene and denturism, the requirements for registered business entities or the requirements of this article is subject to disciplinary action for unethical or unprofessional conduct, as applicable.

32-1299.25. Informed consent; information for patients

A. The permit holder of a mobile dental facility or portable dental unit must obtain appropriate informed consent, in writing or by verbal communication, that is recorded by an electronic or digital device from the patient or the parent or guardian of the patient authorizing specific treatment before it is performed. The signed consent form or verbal communication shall be maintained as part of the patient's record as required in section 32-1264.

B. If services are provided to a minor, the signed consent form or verbal communication must inform the parent or guardian that the treatment of the minor by the mobile dental facility or portable dental unit may affect future benefits the minor may receive under private insurance, the Arizona health care cost containment system or the children's health insurance program.

C. At the conclusion of each patient's visit, the permit holder of a mobile dental facility or portable dental unit shall provide each patient with an information sheet that must contain:

1. Pertinent contact information as required by this section.
2. The name of the dentist or dental hygienist, or both, who provided services.
3. A description of the treatment rendered, including billed service codes, fees associated with treatment and tooth numbers if appropriate.
4. If necessary, referral information to another dentist as required by this article.

D. If the patient or the minor patient's parent or guardian has provided written consent to an institutional facility to access the patient's dental health records, the permit holder shall provide the institution with a copy of the information sheet provided in subsection C.

32-1299.26. Disciplinary actions; cessation of operation

A. A permit holder for a mobile dental facility or portable dental unit that provides dental services to a patient shall refer the patient for follow-up treatment with a licensed dentist or the permit holder if treatment is clinically indicated. A permit holder or licensee who fails to comply with this subsection commits an act of unprofessional conduct or unethical conduct and is subject to disciplinary action pursuant to section 32-1263, subsection A, paragraph 1 or subsection C.

B. The board may do any of the following pursuant to its disciplinary procedures if a mobile dental facility or portable dental unit violates any statute or board rule:

1. Refuse to issue a permit.
2. Suspend or revoke a permit.
3. Impose a civil penalty of not more than two thousand dollars for each violation.

C. If a mobile dental facility or portable dental unit ceases operations, the permit holder must notify the board within thirty days after the last day of operation and must report on the disposition of patient records and charts. In accordance with applicable laws and rules, the permit holder must also notify all active patients of the disposition of records and make reasonable arrangements for the transfer of patient records, including copies of radiographs, to a succeeding practitioner or, if requested, to the patient. For the purposes of this subsection, "active patient" means any person whom the permit holder has examined, treated, cared for or consulted with during the two year period before the discontinuation of practice.

ARIZONA ADMINISTRATIVE CODE (Rules)

Title 4. Professions and Occupations

Chapter 11. State Board of Dental Examiners

ARTICLE 1. DEFINITIONS

R4-11-101. Definitions

The following definitions, and definitions in A.R.S. § 32-1201, apply to this Chapter:

“Analgesia” means a state of decreased sensibility to pain produced by using nitrous oxide (N₂O) and oxygen (O₂) with or without local anesthesia.

“Application” means, for purposes of Article 3 only, forms designated as applications and all documents an additional information the Board requires to be submitted with an application.

“Business Entity” means a business organization that offers to the public professional services regulated by the Board and is established under the laws of any state or foreign country, including a sole practitioner, partnership, limited liability partnership, corporation, and limited liability company, unless specifically exempted by A.R.S. § 32-1213(J).

“Calculus” means a hard mineralized deposit attached to the teeth.

“Certificate holder” means a denturist who practices denture technology under A.R.S. Title 32, Chapter 11, Article 5.

“Charitable Dental Clinic or Organization” means a non-profit organization meeting the requirements of 26 U.S.C. 501(c)(3) and providing dental or dental hygiene services.

“Clinical evaluation” means a dental examination of a patient named in a complaint regarding the patient’s dental condition as it exists at the time the examination is performed.

“Closed subgingival curettage” means the removal of the inner surface of the soft tissue wall of a periodontal pocket in a situation where a flap of tissue has not been intentionally or surgically opened.

“Controlled substance” has the meaning prescribed in A.R.S. § 36-2501(A)(3).

“Credit hour” means one clock hour of participation in a recognized continuing dental education program.

“Deep sedation” is a drug-induced depression of consciousness during which a patient cannot be easily aroused but responds purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. The patient may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is maintained.

“Dental laboratory technician” or “dental technician” has the meaning prescribed in A.R.S. § 32-1201(7).

“Dentist of record” means a dentist who examines, diagnoses, and formulates treatment plans for a patient and may provide treatment to the patient.

“Designee” means a person to whom the Board delegates authority to act on the Board’s behalf regarding a particular task specified by this Chapter.

“Direct supervision” means, for purposes of Article 7 only, that a licensed dentist is present in the office and available to provide immediate treatment or care to a patient and observe a dental assistant’s work.

“Disabled” means a dentist, dental hygienist, or denturist has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism due to a permanent medical disability and based on a physician’s order.

“Dispense for profit” means selling a drug or device for any amount above the administrative overhead costs to inventory.

“Documentation of attendance” means documents that contain the following information:

Name of sponsoring entity;

Course title;

Number of credit hours;

Name of speaker; and

Date, time, and location of the course.

“Drug” means:

Articles recognized, or for which standards or specifications are prescribed, in the official compendium;

Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in the human body;

Articles other than food intended to affect the structure of any function of the human body; or

Articles intended for use as a component of any articles specified in this definition but does not include devices or components, parts, or accessories of devices.

“Emerging scientific technology” means any technology used in the treatment of oral disease that is not currently generally accepted or taught in a recognized dental or dental hygiene school and use of the technology poses material risks.

“Epithelial attachment” means the layer of cells that extends apically from the depth of the gingival (gum) sulcus (crevice) along the tooth, forming an organic attachment.

“Ex-parte communication” means a written or oral communication between a decision maker, fact finder, or Board member and one party to the proceeding, in the absence of other parties.

“General anesthesia” is a drug-induced loss of consciousness during which the patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. The patient often requires assistance in maintaining a patent airway, and positive-pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

“General supervision” means, for purposes of Article 7 only, a licensed dentist is available for consultation, whether or not the dentist is in the office, regarding procedures or treatment that the dentist authorizes and for which the dentist remains responsible.

“Homebound patient” means a person who is unable to receive dental care in a dental office as a result of a medically diagnosed disabling physical or mental condition.

“Irreversible procedure” means a single treatment, or a step in a series of treatments, that causes change in the affected hard or soft tissues and is permanent or may require reconstructive or corrective procedures to correct the changes.

“Jurisdiction” means the Board’s power to investigate and rule on complaints that allege grounds for disciplinary action under A.R.S. Title 32, Chapter 11 or this Chapter.

“Licensee” means a dentist, dental hygienist, dental consultant, retired licensee, or person who holds a restricted permit under A.R.S. §§ 32-1237 or 32-1292.

“Local anesthesia” is the elimination of sensations, such as pain, in one part of the body by the injection of an anesthetic drug.

“Minimal sedation” is a minimally depressed level of consciousness that retains a patient’s ability to independently and continuously maintain an airway and respond appropriately to light tactile stimulation, not limited to reflex withdrawal from a painful stimulus, or verbal command and that is produced by a pharmacological or non-pharmacological method or a combination thereof. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected. In accord with this particular definition, the drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely.

“Moderate sedation” is a drug-induced depression of consciousness during which a patient responds purposefully to verbal commands either alone or accompanied by light tactile stimulation, not limited to reflex withdrawal from a painful stimulus. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is maintained. The drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Repeated dosing of a drug before the effects of previous dosing can be fully recognized may result in a greater alteration of the state of consciousness than intended by the permit holder.

“Nitrous oxide analgesia” means nitrous oxide (N₂O/O₂) as an inhalation analgesic.

“Nonsurgical periodontal treatment” means plaque removal, plaque control, supragingival and subgingival scaling, root planing, and the adjunctive use of chemical agents.

“Official compendium” means the latest revision of the United States Pharmacopeia and the National Formulary and any current supplement.

“Oral sedation” is the enteral administration of a drug or non-drug substance or combination inhalation and enterally administered drug or non-drug substance in a dental office or dental clinic to achieve minimal or moderate sedation.

“Parenteral sedation” is a minimally depressed level of consciousness that allows the patient to retain the ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and is induced by a pharmacological or non-pharmacological method or a combination of both methods of administration in which the drug bypasses the gastrointestinal tract.

“Patient of record” means a patient who has undergone a complete dental evaluation performed by a licensed dentist.

“Periodontal examination and assessment” means to collect and correlate clinical signs and patient symptoms that point to either the presence of or the potential for periodontal disease.

“Periodontal pocket” means a pathologic fissure bordered on one side by the tooth and on the opposite side by crevicular epithelium and limited in its depth by the epithelial attachment.

“Plaque” means a film-like sticky substance composed of mucoid secretions containing bacteria and toxic products, dead tissue cells, and debris.

“Polish” means, for the purposes of A.R.S. § 32-1291(B) only, a procedure limited to the removal of plaque and extrinsic stain from exposed natural and restored tooth surfaces that utilizes an appropriate rotary instrument with rubber cup or brush and polishing agent. A licensee or dental assistant shall not represent that this procedure alone constitutes an oral prophylaxis.

“Prescription-only device” means:

- Any device that is restricted by the federal act, as defined in A.R.S. § 32-1901, to use only under the supervision of a medical practitioner; or
- Any device required by the federal act, as defined in A.R.S. § 32-1901, to bear on its label the legend “Rx Only.”

“Prescription-only drug” does not include a controlled substance but does include:

- Any drug that, because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner;
- Any drug that is limited by an approved new drug application under the federal act or A.R.S. § 32-1962 to use under the supervision of a medical practitioner;
- Every potentially harmful drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer; or
- Any drug required by the federal act to bear on its label the legend “RX Only.”

“President’s designee” means the Board’s executive director, an investigator, or a Board member acting on behalf of the Board president.

“Preventative and therapeutic agents” means substances used in relation to dental hygiene procedures that affect the hard or soft oral tissues to aid in preventing or treating oral disease.

“Prophylaxis” means a scaling and polishing procedure performed on patients with healthy tissues to remove coronal plaque, calculus, and stains.

“Public member” means a person who is not a dentist, dental hygienist, dental assistant, denturist, or dental technician.

“Recognized continuing dental education” means a program whose content directly relates to the art and science of oral health and treatment, provided by a recognized dental school as defined in A.R.S. § 32-1201(18), recognized dental hygiene school as defined in A.R.S. § 32-1201(17), or recognized denturist school as defined in A.R.S. § 32-1201(19), or sponsored by a national or state dental, dental hygiene, or denturist association, American Dental Association, Continuing Education Recognition Program (ADA CERP) or Academy of General Dentistry, Program Approval

for Continuing Education (AGDPACE) approved provider, dental, dental hygiene, or denturist study club, governmental agency, commercial dental supplier, non-profit organization, accredited hospital, or programs or courses approved by other state, district, or territorial dental licensing boards.

“Restricted permit holder” means a dentist who meets the requirements of A.R.S. § 32-1237 or a dental hygienist who meets the requirements of A.R.S. § 32-1292 and is issued a restricted permit by the Board.

“Retired” means a dentist, dental hygienist, or denturist is at least 65 years old and has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism.

“Root planing” means a definitive treatment procedure designed to remove cementum or surface dentin that is rough, impregnated with calculus, or contaminated with toxins or microorganisms.

“Scaling” means use of instruments on the crown and root surfaces of the teeth to remove plaque, calculus, and stains from these surfaces.

“Section 1301 permit” means a permit to administer general anesthesia and deep sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Section 1302 permit” means a permit to administer parenteral sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Section 1303 permit” means a permit to administer oral sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Section 1304 permit” means a permit to employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Study club” means a group of at least five Arizona licensed dentists, dental hygienists, or denturists who provide written course materials or a written outline for a continuing education presentation that meets the requirements of Article 12.

“Treatment records” means all documentation related directly or indirectly to the dental treatment of a patient.

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-02 renumbered as Section R4-11-102 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-101 renumbered to R4-11-201, new Section R4-11-101 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 334 and at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4).

R4-11-102. Renumbered

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-02 renumbered as Section R4-11-102 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-102 renumbered to R4-11-202 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-103. Renumbered

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-03 renumbered as Section R4-11-103 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-103 renumbered to R4-11-203 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-104. Repealed

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-04 renumbered as Section R4-11-104 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-104 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-105. Repealed

Historical Note

Adopted effective May 12, 1977 (Supp. 77-3). Former Section R4-11-05 renumbered as Section R4-11-105 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-105 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 2. LICENSURE BY CREDENTIAL

R4-11-201. Clinical Examination; Requirements

A. If an applicant is applying under A.R.S. §§ 32-1240(A) or 32-1292.01(A), the Board shall ensure that the applicant has passed the clinical examination of another state, United States territory, District of Columbia or a regional testing agency. Satisfactory completion of the clinical examination may be demonstrated by one of the following:

1. Certified documentation, sent directly from another state, United States territory, District of Columbia or a regional testing agency, that confirms successful completion of the clinical examination or multiple examinations administered by the state, United States territory, District of Columbia or regional testing agency. The certified documentation shall contain the name of the applicant, date of examination or examinations and proof of a passing score; or
2. Certified documentation sent directly from another state, United States territory or District of Columbia dental board that shows the applicant passed that state's, United States territory's or District of Columbia's clinical examination before that state's, United States territory's or District of Columbia's participation in a regional examination. The certified documentation shall contain the name of applicant, date of examination or examinations and proof of a passing score.

B. An applicant shall meet the licensure requirements in R4-11-301 and R4-11-303.

Historical Note

Former Rule 2a; Amended effective November 20, 1979 (Supp. 79-6). Amended effective November 28, 1980 (Supp. 80-6). Former Section R4-11-11 renumbered as Section R4-11-201 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-201 renumbered to R4-11-301, new Section R4-11-201 renumbered from R4-11-101 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-202. Dental Licensure by Credential; Application

A. A dentist applying under A.R.S. § 32-1240(A) shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.

B. A dentist applying under A.R.S. § 32-1240(A)(1) shall:

1. Have a current dental license in another state, territory or district of the United States;
2. Submit a written affidavit affirming that the dentist has practiced dentistry for a minimum of 5000 hours during the five years immediately before applying for licensure by credential. For purposes of this subsection, dental practice includes experience as a dental educator at a dental program accredited by the American Dental Association Commission on Dental Accreditation or employment as a dentist in a public health setting;
3. Submit a written affidavit affirming that the applicant has complied with the continuing dental education requirement of the state in which the applicant is currently licensed; and

4. Provide evidence regarding the clinical examination by complying with R4-11- 201(A)(1).
- C. A dentist applying under A.R.S. § 32-1240(A)(2) shall submit certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board that contains the name of applicant, date of examination or examinations and proof of a passing score.
- D. For any application submitted under A.R.S. § 32-1240(A), the Board may request additional clarifying evidence required under the applicable subsection in R4-11-201(A)(1).
- E. An applicant for dental licensure by credential shall pay the fee prescribed in A.R.S. § 32-1240, except the fee is reduced by 50% for applicants who will be employed or working under contract in:1. Commit to a three-year, exclusive service period,
1. Underserved areas, such as declared or eligible Health Professional Shortage Areas (HPSAs); or
 2. Other facilities caring for underserved populations as recognized by the Arizona Department of Health Services and approved by the Board.
- F. An applicant for dental licensure by credential who works in areas or facilities described in subsection (E) shall:
1. Commit to a three-year, exclusive service period,
 2. File a copy of a contract or employment verification statement with the Board, and
 3. As a licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.
- G. A licensee's failure to comply with the requirements in subsection (F) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

Historical Note

Former Rule 2b; Former Section R4-11-12 renumbered as Section R4-11-202 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-202 repealed, new Section R4-11-202 renumbered from R4-11-102 and the heading amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Labeling changes made to reflect current style requirements (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-203. Dental Hygienist Licensure by Credential; Application

- A. A dental hygienist applying under A.R.S. § 32-1292.01(A) shall comply with all other applicable requirements in A.R.S. Title 32, Chapter 11 and this Article.
- B. A dental hygienist applying under A.R.S. § 32-1292.01(A)(1) shall:
1. Have a current dental hygienist license in another state, territory, or district of the United States;
 2. Submit a written affidavit affirming that the applicant has practiced as a dental hygienist for a minimum of 1000 hours during the two years immediately before applying for licensure by credential. For purposes of this subsection, dental hygienist practice includes experience as a dental hygienist educator at a dental program accredited by the American Dental Association Commission on Dental Accreditation or employment as a dental hygienist in a public health setting;
 3. Submit a written affidavit affirming that the applicant has complied with the continuing dental hygienist education requirement of the state in which the applicant is currently licensed; and
 4. Provide evidence regarding the clinical examination by complying with one of the subsections in R4-11- 201(A)(1).
- C. A dental hygienist applying under A.R.S. § 32-1292.01(A)(2) shall submit certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board that contains the name of applicant, date of examination or examinations and proof of a passing score.

D. For any application submitted under A.R.S. § 32-1292.01(A), the Board may request additional clarifying evidence as required under R4-11-201(A).

E. An applicant for dental hygienist licensure by credential shall pay the fee prescribed in A.R.S. § 32-1292.01, except the fee is reduced by 50% for applicants who will be employed or working under contract in:

1. Underserved areas such as declared or eligible Health Professional Shortage Areas (HPSAs); or
2. Other facilities caring for underserved populations, as recognized by the Arizona Department of Health Services and approved by the Board.

F. An applicant for dental hygienist licensure by credential who works in areas or facilities described in subsection (E) shall:

1. Commit to a three-year exclusive service period,
2. File a copy of a contract or employment verification statement with the Board, and
3. As a Licensee, submit an annual contract or employment verification statement to the Board by December 31 of each year.

G. A licensee's failure to comply with the requirements in R4-11-203(F) is considered unprofessional conduct and may result in disciplinary action based on the circumstances of the case.

Historical Note

Former Rule 2c; Former Section R4-11-13 repealed, new Section R4-11-13 adopted effective November 20, 1979 (Supp. 79-6). Amended effective October 30, 1980 (Supp. 80-5). Former Section R4-11-13 renumbered as Section R4-11-203 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-203 renumbered to R4-11-302, new Section R4-11-203 renumbered from R4-11-103 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E), effective April 30, 2001 (Supp. 01-2). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-204. Dental Assistant Radiography Certification by Credential

Eligibility. To be eligible for dental assistant radiography certification by credential, an applicant shall have a current certificate or other form of approval for taking dental radiographs, issued by a professional licensing agency in another state, United States territory or the District of Columbia that required successful completion of a written dental radiography examination.

Historical Note

Former Rule 2d; Former Section R4-11-14 repealed, new Section R4-11-14 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-14 renumbered as Section R4-11-204, repealed, and new Section R4-11-204 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-204 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-205. Application for Dental Assistant Radiography Certification by Credential

A. An applicant for dental assistant radiography certification by credential shall provide to the Board a completed application, on a form furnished by the Board that contains the following information:

1. A sworn statement of the applicant's eligibility, and
2. A letter from the issuing institution that verifies compliance with R4-11-204.

B. Based upon review of information provided under subsection (A), the Board or its designee shall request that an applicant for dental assistant radiography certification by credential provide a copy of a certified document that indicates the reason for a name change if the applicant's documentation contains different names.

Historical Note

Former Rule 2e; Former Section R4-11-15 renumbered as Section R4-11-205 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-205 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 9 A.A.R. 4126, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-206. Repealed

Historical Note

Former Rule 2f; Amended as an emergency effective July 7, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-4). Former emergency adoption now adopted and amended effective September 7, 1979 (Supp. 79-5). Former Section R4-11-16 renumbered as Section R4-11-206 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-206 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-207. Repealed

Historical Note

Former Rule 2g; Former Section R4-11-17 renumbered as Section R4-11-207, repealed, and new Section R4-11-207 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-207 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-208. Repealed

Historical Note

Former Section R4-11-20 repealed, new Section R4-11-20 adopted effective May 12, 1977 (Supp. 77-3). Amended effective October 30, 1980 (Supp. 80-5). Former Section R4-11-20 renumbered as Section R4-11-208 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-208 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-209. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-19 renumbered as R4-11-209 and repealed. Former Section R4-11-21 renumbered as Section R4-11-209 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-209 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-210. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Amended effective June 7, 1978 (Supp. 78-3). Former Section R4-11-22 renumbered as Section R4-11-210 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-210 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-211. Repealed

Historical Note

Adopted effective August 26, 1977 (Supp. 77-4). Former Section R4-11-23 renumbered as Section R4-11-211 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-211 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-212. Repealed

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-24 renumbered as Section R4-11-212 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-212 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-213. Repealed

Historical Note

Adopted as an emergency effective July 7, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-4). Former emergency adoption now adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-25 renumbered as Section R4-11-213, repealed, and new Section R4-11-213 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-213 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-214. Repealed

Historical Note

Former Rule 2h; Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-18 renumbered as Section R4-11-214 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-214 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-215. Repealed

Historical Note

Adopted effective June 16, 1982 (Supp. 82-3). Former Section R4-11-215 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-216. Repealed

Historical Note

Adopted effective June 16, 1982 (Supp. 82-3). Former Section R4-11-216 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 3. EXAMINATION, LICENSING QUALIFICATIONS, APPLICATION AND RENEWAL, TIME-FRAMES

R4-11-301. Application

A. An applicant for licensure or certification shall provide the following information and documentation:

1. A sworn statement of the applicant's qualifications for the license or certificate on a form provided by the Board;
2. A photograph of the applicant that is no more than 6 months old;
3. An official, sealed transcript sent directly to the Board from either:
 - a. The applicant's dental, dental hygiene, or denturist school, or
 - b. A verified third-party transcript provider.
4. Except for a dental consultant license applicant, dental and dental hygiene license applicants provide proof of successfully completing a clinical examination by submitting:
 - a. If applying for dental licensure by examination, a copy of the certificate or score card from the Western Regional Examining Board, indicating that the applicant passed the Western Regional Examining Board examination within the five years immediately before the date the application is filed with the Board;
 - b. If applying for dental hygiene licensure by examination, a copy of the certificate or scorecard from the Western Regional Examining Board or an Arizona Board-approved clinical examination administered by a state, United States territory, District of Columbia or regional testing agency. The certificate or scorecard must indicate that the applicant passed the examination within the five years immediately before the date the application is filed with the Board; or
 - c. If applying for licensure by credential, certified documentation sent directly from the applicable state, United States territory, District of Columbia or regional testing agency to the Board containing the name of the applicant, date of examination or examinations and proof of a passing score;

5. Except for a dental consultant license applicant as provided in A.R.S. § 32-1234(A)(7), dental and dental hygiene license applicants must have an official score card sent directly from the National Board examination to the Board;
 6. A copy showing the expiration date of the applicant's current cardiopulmonary resuscitation healthcare provider level certificate from the American Red Cross, the American Heart Association, or another certifying agency that follows the same procedures, standards, and techniques for CPR training and certification as the American Red Cross or American Heart Association;
 7. A license or certification verification from any other jurisdiction in which an applicant is licensed or certified, sent directly from that jurisdiction to the Board. If the license verification cannot be sent directly to the Board from the other jurisdiction, the applicant must submit a written affidavit affirming that the license verification submitted was issued by the other jurisdiction;
 8. If a dental or dental hygiene applicant has been licensed in another jurisdiction for more than six months, a copy of the self-inquiry from the National Practitioner Data Bank that is no more than 30 days old;
 9. If a denturist applicant has been certified in another jurisdiction for more than six months, a copy of the self-inquiry from the Health Integrity and Protection Data Bank that is no more than 30 days old;
 10. If the applicant is in the military or employed by the United States government, a letter of endorsement from the applicant's commanding officer or supervisor that confirms the applicant's military service or United States government employment record; and
 11. The jurisprudence examination fee.
- B. The Board may request that an applicant provide:
1. An official copy of the applicant's dental, dental hygiene, or denturist school diploma;
 2. A copy of a certified document that indicates the reason for a name change if the applicant's application contains different names,
 3. Written verification of the applicant's work history, and
 4. A copy of a high school diploma or equivalent certificate.
- C. An applicant shall pass the Arizona jurisprudence examination with a minimum score of 75%.

Historical Note

Former Rule 3A; Former Section R4-11-29 repealed, new Section R4-11-29 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-29 renumbered as Section R4-11-301 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-301 repealed, new Section R4-11-301 renumbered from R4-11-201 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-302. Repealed

Historical Note

Former Rule 3B; Former Section R4-11-30 repealed, new Section R4-11-30 adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-30 renumbered as Section R4-11-302 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-302 repealed, new Section R4-11-302 renumbered from R4-11-203 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1).

R4-11-303. Application Processing Procedures: Issuance, Denial, and Renewal of Dental Licenses, Dental Therapy Licenses, Restricted Permits, Dental Hygiene Licenses, Dental Consultant Licenses, Denturist Certificates, Drug or Device Dispensing Registrations, Business Entity Registration and Mobile Dental Facility and Portable Dental Unit Permits

A. The Board office shall complete an administrative completeness review within 30 calendar days of the date of receipt of an application for a license, certificate, permit, or registration.

1. Within 30 calendar days of receiving an initial or renewal application for a dental license, restricted permit, dental hygiene license, dental consultant license, denturist certificate, Business Entity registration, mobile dental facility or portable dental unit permit, the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.
 2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 30 calendar day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
 3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 30 calendar days after receipt by the Board office.
- B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.
- C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 30 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a license, certificate, permit, or registration shall apply again as required in R4-11-301.
- D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of A.A.C. Title 4, Chapter 11, Article 3.
- E. The Board shall complete a substantive review of the applicant's qualifications in no more than 90 calendar days from the date on which the administrative completeness review of an application package is complete.
1. If the Board finds an applicant to be eligible for a license, certificate, permit, or registration and grants the license, certificate, permit, or registration, the Board office shall notify the applicant in writing.
 2. If the Board finds an applicant to be ineligible for a license, certificate, permit, or registration, the Board office shall issue a written notice of denial to the applicant that includes:
 - a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
 - b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
 - c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
 - d. The name and telephone number of an agency contact person who can answer questions regarding the application process.
 3. If the Board finds deficiencies during the substantive review of an application package, the Board office may issue a comprehensive written request to the applicant for additional documentation. An additional supplemental written request for information may be issued upon mutual agreement between the Board or Board office and the applicant.
 4. The 90-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received. The applicant shall submit the additional documentation before the next regularly scheduled Board meeting.
 5. If the applicant and the Board office mutually agree in writing, the 90-day substantive review time-frame may be extended once for no more than 28 days.
- F. The following time-frames apply for an initial or renewal application governed by this Section:
1. Administrative completeness review time-frame: 30 calendar days.
 2. Substantive review time-frame: 90 calendar days.
 3. Overall time-frame: 120 calendar days.

G. An applicant whose license is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

Former Rule 3C; Former Section R4-11-31 renumbered as Section R4-11-303 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-303 repealed, new Section R4-11-303 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-304. Application Processing Procedures: Issuance and Denial of Dental Assistant Certificates Radiography Certification by Credential

A. Within 30 calendar days of receiving an application from an applicant for a dental assistant radiography certification by credential, the Board or its designee shall notify the applicant, in writing, that the application package is complete or incomplete. If the package is incomplete, the notice shall specify what information is missing.

B. An applicant with an incomplete application package shall supply the missing information within 60 calendar days from the date of the notice. If the applicant fails to do so, an applicant shall begin the application process anew.

C. Upon receipt of all missing information, within 10 calendar days, the Board or its designee shall notify the applicant, in writing, that the application is complete.

D. The Board or its designee shall not process an application until the applicant has fully complied with the requirements of this Article.

E. The Board or its designee shall notify an applicant, in writing, whether the certificate is granted or denied, no later than 90 calendar days after the date of the notice advising the applicant that the package is complete.

F. The notice of denial shall inform the applicant of the following:

1. The reason for the denial, with a citation to the statute or rule which requires the applicant to pass the examination;
2. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
3. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
4. The name and telephone number of an agency contact person or a designee who can answer questions regarding the application process.

G. The following time-frames apply for certificate applications governed by this Section:

1. Administrative completeness review time-frame: 24 calendar days.
2. Substantive review time-frame: 90 calendar days.
3. Overall time-frame: 114 calendar days.

H. An applicant whose certificate is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, may seek judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

Former Rule 3D; Former Section R4-11-32 renumbered as Section R4-11-304 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-304 repealed, new Section R4-11-304 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-305. Application Processing Procedures: Issuance, Denial, and Renewal of General Anesthesia and Deep Sedation Permits, Parenteral Sedation Permits, Oral Sedation Permits, and Permit to Employ a Physician Anesthesiologist or Certified Registered Nurse Anesthetist

A. The Board office shall complete an administrative completeness review within 24 days from the date of the receipt of an application for a permit.

1. Within 30 calendar days of receiving an initial or renewal application for a general anesthesia and deep sedation permit, parenteral sedation permit, oral sedation permit or permit to employ a physician anesthesiologist or CRNA the Board office shall notify the applicant, in writing, whether the application package is complete or incomplete.
2. If the application package is incomplete, the Board office shall provide the applicant with a written notice that includes a comprehensive list of the missing information. The 24-day time-frame for the Board office to finish the administrative completeness review is suspended from the date the notice of incompleteness is served until the applicant provides the Board office with all missing information.
3. If the Board office does not provide the applicant with notice regarding administrative completeness, the application package shall be deemed complete 24 days after receipt by the Board office.

B. An applicant with an incomplete application package shall submit all missing information within 60 calendar days of service of the notice of incompleteness.

C. Upon receipt of all missing information, the Board office shall notify the applicant, in writing, within 10 calendar days, that the application package is complete. If an applicant fails to submit a complete application package within the time allowed in subsection (B), the Board office shall close the applicant's file. An applicant whose file is closed and who later wishes to obtain a permit shall apply again as required in A.A.C. Title 4, Chapter 11, Article 13.

D. The Board shall not approve or deny an application until the applicant has fully complied with the requirements of this Section and A.A.C. Title 4, Chapter 11, Article 13.

E. The Board shall complete a substantive review of the applicant's qualifications in no more than 120 calendar days from the date on which the administrative completeness review of an application package is complete.

1. If the Board finds an applicant to be eligible for a permit and grants the permit, the Board office shall notify the applicant in writing.
2. If the Board finds an applicant to be ineligible for a permit, the Board office shall issue a written notice of denial to the applicant that includes:
 - a. Each reason for the denial, with citations to the statutes or rules on which the denial is based;
 - b. The applicant's right to request a hearing on the denial, including the number of days the applicant has to file the request;
 - c. The applicant's right to request an informal settlement conference under A.R.S. § 41-1092.06; and
 - d. The name and telephone number of an agency contact person who can answer questions regarding the application process.
3. If the Board finds deficiencies during the substantive review of an application package, the Board office shall issue a comprehensive written request to the applicant for additional documentation.
4. The 120-day time-frame for a substantive review of an applicant's qualifications is suspended from the date of a written request for additional documentation until the date that all documentation is received.
5. If the applicant and the Board office mutually agree in writing, the 120-day substantive review time-frame may be extended once for no more than 36 days.

F. The following time-frames apply for an initial or renewal application governed by this Section:

1. Administrative completeness review time-frame: 24 calendar days.
2. Substantive review time-frame: 120 calendar days.
3. Overall time-frame: 144 calendar days.

Historical Note

New Section R4-11-305 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 371, effective April 3, 2016 (Supp. 16-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

ARTICLE 4. FEES

R4-11-401. Retired or Disabled Licensure Renewal Fee

As expressly authorized under A.R.S. § 32-1207(B)(3)(c), the licensure renewal fee for a retired or disabled dentist or dental hygienist is \$15.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-42 renumbered as Section R4-11-401 and repealed effective July 29, 1981 (Supp. 81-4). Adopted effective February 16, 1995 (Supp. 95-1). Former Section R4-11-401 repealed, new Section R4-11-401 renumbered from R4-11-901 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-402. Business Entity Fees

As expressly authorized under A.R.S. § 32-1213, the Board establishes and shall collect the following fees from a Business Entity offering dental services paid by credit card on the Board's website or by money order or cashier's check::

1. Initial triennial registration, \$300 per location;
2. Renewal of triennial registration, \$300 per location; and
3. Late triennial registration renewal, \$100 per location in addition to the fee under subsection (2).

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-43 renumbered as Section R4-11-402, repealed, and new Section R4-11-402 adopted effective July 29, 1981 (Supp. 81-4). Amended effective February 16, 1995 (Supp. 95-1). Former Section R4-11-402 renumbered to R4-11-601, new Section R4-11-402 renumbered from R4-11-902 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-403. Licensing Fees

A. As expressly authorized under A.R.S. §§ 32-1236, 32-1276.02, 32-1287, and 32-1297.06, the Board establishes and shall collect the following licensing fees:

1. Dentist triennial renewal fee: \$510;
2. Dentist prorated initial license fee: \$110;
3. Dental hygienist triennial renewal fee: \$255;
4. Dental hygienist prorated initial license fee: \$55;
5. Denturist triennial renewal fee: \$233; and
6. Denturist prorated initial license fee: \$46.

B. The following license-related fees are established in or expressly authorized by statute. The Board shall collect the fees:

1. Jurisprudence examination fee:
 - a. Dentists: \$300;
 - b. Dental Hygienists: \$100; and
 - c. Denturists: \$250.
2. Licensure by credential fee:
 - a. Dentists: \$2,000; and
 - b. Dental hygienists: \$1,000.
3. Penalty to reinstate an expired license or certificate: \$100 for a dentist, dental hygienist, or denturist in addition to renewal fee specified under subsection (A).
4. Penalty for a dentist, dental hygienist, or denturist who fails to notify Board of a change of mailing address:
 - a. Failure after 10 days: \$50; and
 - b. Failure after 30 days: \$100.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-44 renumbered as Section R4-11-403 and repealed effective July 29, 1981 (Supp. 81-4). Adopted effective February 16, 1995 (Supp. 95-1). Former Section R4-11-403 renumbered to R4-11-602, new Section R4-11-403 renumbered from R4-11-903 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1). New Section made by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-404. Repealed

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-45 renumbered as Section R4-11-404 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-404 renumbered from R4-11-904 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (05-1).

R4-11-405. Charges for Board Services

The Board shall charge the following for the services provided paid by credit card on the Board's website or by money order or cashier's check:

1. Duplicate license: \$25;
2. Duplicate certificate: \$25;
3. License verification: \$25;
4. Copy of audio recording: \$10;
5. Photocopies (per page): \$.25;
6. Mailing lists of Licensees in digital format: \$100.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-46 repealed, new Section R4-11-46 adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-46 renumbered as Section R4-11-405 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-405 renumbered from R4-11-905 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 22 A.A.R.

3697, effective February 6, 2017 (Supp. 16-4). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-406. Anesthesia and Sedation Permit Fees

A. As expressly authorized under A.R.S. § 32-1207, the Board establishes and shall collect the following fees:

1. Section 1301 permit fee: \$300 plus \$25 for each additional location;
2. Section 1302 permit fee: \$300 plus \$25 for each additional location;
3. Section 1303 permit fee: \$300 plus \$25 for each additional location; and
4. Section 1304 permit fee: \$300 plus \$25 for each additional location.

B. Upon successful completion of an initial onsite evaluation and upon receipt of the required permit fee, the Board shall issue a separate Section 1301, 1302, 1303, or 1304 permit to a dentist for each location requested by the dentist. A permit expires on December 31 of every fifth year.

C. Permit renewal fees:

1. Section 1301 permit renewal fee: \$300 plus \$25 for each additional location;
2. Section 1302 permit renewal fee: \$300 plus \$25 for each additional location;
3. Section 1303 permit renewal fee: \$300 plus \$25 for each additional location; and
4. Section 1304 permit renewal fee: \$300 plus \$25 for each additional location.

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-47 renumbered as Section R4-11-406 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-406 renumbered from R4-11-906 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section R4-11-406 renumbered from R4-11-407 and amended by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 4130, effective November 8, 2003 (Supp. 03-3). Amended by final rulemaking at 22 A.A.R. 3697, effective February 6, 2017 (Supp. 16-4).

R4-11-407. Renumbered

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-48 renumbered as Section R4-11-407 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1). New Section R4-11-407 renumbered from R4-11-909 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section R4-11-407 renumbered to R4-11-406 by final rulemaking at 6 A.A.R. 748, effective February 2, 2000 (Supp. 00-1).

R4-11-408. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-49 renumbered as Section R4-11-408 without change effective July 29, 1981 (Supp. 81-4). Repealed effective February 16, 1995 (Supp. 95-1).

R4-11-409. Repealed

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 5. DENTISTS

R4-11-501. Dentist of Record

A. A dentist of record shall ensure that each patient record has the treatment records for a patient treated in any dental office, clinic, hospital dental clinic, or charitable organization that offers dental services, and the full name of a dentist who is responsible for all of the patient's treatment.

B. A dentist of record shall obtain a patient's consent to change the treatment plan before changing the treatment plan that the patient originally agreed to, including any additional costs the patient may incur because of the change.

C. When a dentist who is a dentist of record decides to leave the practice of dentistry or a particular place of practice in which the dentist is the dentist of record, the dentist shall ensure before leaving the practice that a new dentist of record is entered on each patient record.

D. A dentist of record is responsible for the care given to a patient while the dentist was the dentist of record even after being replaced as the dentist of record by another dentist.

E. A dentist of record shall:

1. Remain responsible for the care of a patient during the course of treatment; and
2. Be available to the patient through the dentist's office, an emergency number, an answering service, or a substituting dentist.

F. A dentist's failure to comply with subsection (E) constitutes patient abandonment, and the Board may impose discipline under A.R.S. Title 32, Chapter 11, Article 3.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-62 renumbered as Section R4-11-501 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-501 repealed, new Section R4-11-501 renumbered from R4-11-1102 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-502. Affiliated Practice

A. A dentist in a private for profit setting shall not enter into more than 15 affiliated practice relationships under A.R.S. § 32-1289 at one time.

B. There is no limit to the number of affiliated practice relationships a dentist may enter into when working in a government, public health, or non-profit organization under Section 501(C)(3) of the Internal Revenue Code.

C. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.

D. The affiliated practice agreement shall include a provision for a substitute dentist in addition to the requirements of A.R.S. § 32-1289(F), to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, or consultation with the affiliated practice dental hygienist.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Amended effective March 23, 1976 (Supp. 76-2). Former Section R4-11-63 renumbered as Section R4-11-502 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-502 renumbered to R4-11-701 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1).

R4-11-503. Repealed

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-64 repealed, new Section R4-11-64 adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-64 renumbered as Section R4-11-503 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-503 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-504. Renumbered

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-65 repealed, new Section R4-11-65 adopted effective May 23, 1976 (Supp. 76-2). Former Section R4-11-65 renumbered as Section R4-11-504, repealed, and new Section R4-11-504 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-504 renumbered to R4-11-702 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-505. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-66 renumbered as Section R4-11-505 and repealed effective July 29, 1981 (Supp. 81-4).

R4-11-506. Repealed

Historical Note

Adopted effective March 23, 1976 (Supp. 76-2). Former Section R4-11-67 renumbered as Section R4-11-506 and repealed effective July 29, 1981 (Supp. 81-4).

ARTICLE 6. DENTAL HYGIENISTS

R4-11-601. Duties and Qualifications

A. A dental hygienist may apply Preventative and Therapeutic Agents under the general supervision of a licensed dentist.

B. A dental hygienist may perform a procedure not specifically authorized by A.R.S. § 32-1281 when all of the following conditions are satisfied:

1. The procedure is recommended or prescribed by the supervising dentist;
2. The dental hygienist has received instruction, training, or education to perform the procedure in a safe manner; and
3. The procedure is performed under the general supervision of a licensed dentist.

C. A dental hygienist shall not perform an Irreversible Procedure.

D. To qualify to use Emerging Scientific Technology as authorized by A.R.S. § 32-1281(C)(2), a dental hygienist shall successfully complete a course of study that meets the following criteria:

1. Is a course offered by a recognized dental school as defined in A.R.S. § 32-1201, a recognized dental hygiene school as defined in A.R.S. § 32-1201, or sponsored by a national or state dental or dental hygiene association or government agency;
2. Includes didactic instruction with a written examination;
3. Includes hands-on clinical instruction; and
4. Is technology that is scientifically based and supported by studies published in peer reviewed dental journals.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-82 renumbered as Section R4-11-601 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-601 repealed, new Section R4-11-601 renumbered from R4-11-402 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-602. Care of Homebound Patients

Dental hygienists treating homebound patients shall provide only treatment prescribed by the dentist of record in the diagnosis and treatment plan. The diagnosis and treatment plan shall be based on examination data obtained not more than 12 months before the treatment is administered.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-83 renumbered as Section R4-11-602 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-602 renumbered to R4-11-1001, new Section R4-11-602 renumbered from R4-11-403 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-603. Limitation on Number Supervised

A dentist shall not supervise more than three dental hygienists at a time.

Historical Note

Adopted effective December 6, 1974 (Supp. 75-1). Former Section R4-11-84 renumbered as Section R4-11-603 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-603 renumbered to R4-11-1002, new Section R4-11-603 renumbered from R4-11-408 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-604. Selection Committee and Process

A. The Board shall appoint a selection committee to screen candidates for the dental hygiene committee. The selection committee consists of three members. The Board shall appoint at least two members who are dental hygienists and one member who is a current Board member. The Board shall fill any vacancy for the unexpired portion of the term.

B. Each selection committee member's term is one year.

C. By majority vote, the selection committee shall nominate each candidate for the dental hygiene committee and transmit a list of names to the Board for approval, including at least one alternate.

Historical Note

New Section R4-11-604 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-605. Dental Hygiene Committee

A. The Board shall appoint seven members to the dental hygiene committee as follows:

1. One dentist appointed at the annual December Board meeting, currently serving as a Board member, for a one year term;
2. One dental hygienist appointed at the annual December Board meeting, currently serving as a Board member and possessing the qualifications required in Article 6, for a one-year term;
3. Four dental hygienists that possess the qualifications required in Article 6; and
4. One lay person.

B. Except for members appointed as prescribed in subsections (A)(1) and (2), the Board shall appoint dental hygiene committee members for staggered terms of three years, beginning January 1, 1999, and limit each member to two consecutive terms. The Board shall fill any vacancy for the unexpired portion of the term.

C. The dental hygiene committee shall annually elect a chairperson at the first meeting convened during the calendar year.

Historical Note

New Section R4-11-605 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-606. Candidate Qualifications and Submissions

A. A dental hygienist who seeks membership on the dental hygiene committee shall possess a license in good standing, issued by the Board.

B. A dental hygienist who is not a Board member and qualifies under subsection (A) shall submit a letter of intent and resume to the Board.

C. The selection committee shall consider all of the following criteria when nominating a candidate for the dental hygiene committee:

1. Geographic representation,
2. Experience in postsecondary curriculum analysis and course development,
3. Public health experience, and
4. Dental hygiene clinical experience.

Historical Note

New Section R4-11-606 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-607. Duties of the Dental Hygiene Committee

A. The committee shall advise the Board on all matters relating to the regulation of dental hygienists.

B. In performing the duty in subsection (A), the committee may:

1. Act as a liaison for the Board, promoting communication and providing a forum for discussion of dental hygiene regulatory issues;
2. Review applications, syllabi, and related materials and make recommendations to the Board regarding certification of courses in Local Anesthesia, Nitrous Oxide Analgesia, and suture placement under Article 6 and other procedures which may require certification under Article 6;
3. Review documentation submitted by dental hygienists to determine compliance with the continuing education requirement for license renewal under Article 12 and make recommendations to the Board regarding compliance;
4. Make recommendations to the Board concerning statute and rule development which affect dental hygienists' education, licensure, regulation, or practice;
5. Provide advice to the Board on standards and scope of practice which affect dental hygiene practice;
6. Provide ad hoc committees to the Board upon request;
7. Request that the Board consider recommendations of the committee at the next regularly scheduled Board meeting; and
8. Make recommendations to the Board for approval of dental hygiene consultants.

C. Committee members who are licensed dentists or dental hygienists may serve as dental hygiene examiners or Board consultants.

D. The committee shall meet at least two times per calendar year. The chairperson or the president of the Board, or their respective designees, may call a meeting of the committee.

E. The Board may assign additional duties to the committee.

Historical Note

New Section R4-11-607 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-608. Dental Hygiene Consultants

After submission of a current curriculum vitae or resume and approval by the Board, dental hygiene consultants may:

1. Act as dental hygiene examiners for the clinical portion of the dental hygiene examination;
2. Act as dental hygiene examiners for the Local Anesthesia portion of the dental hygiene examination;
3. Participate in Board-related procedures, including Clinical Evaluations, investigation of complaints concerning infection control, insurance fraud, or the practice of supervised personnel, and any other procedures not directly related to evaluating a dentist's quality of care; and
4. Participate in onsite office evaluations for infection control, as part of a team.

Historical Note

New Section R4-11-608 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-609. Affiliated Practice

A. To perform dental hygiene services under an affiliated practice relationship pursuant to A.R.S. § 32-1289.01, a dental hygienist shall:

1. Provide evidence to the Board of successfully completing a total of 12 hours of Recognized Continuing Dental Education that consists of the following subject areas:
 - a. A minimum of four hours in medical emergencies; and
 - b. A minimum of eight hours in at least two of the following areas:
 - i. Pediatric or other special health care needs,
 - ii. Preventative dentistry, or
 - iii. Public health community-based dentistry, and
2. Hold a current certificate in basic cardiopulmonary resuscitation (CPR).

B. A dental hygienist shall complete the required continuing dental education before entering an affiliated practice relationship. The dental hygienist shall complete the continuing dental education in subsection (A) before renewing the dental hygienist's license. The dental hygienist may take the continuing dental education online but shall not exceed the allowable hours indicated in R4-11-1209(B)(1).

C. To comply with A.R.S. § 32-1287(E) and this Section, a dental hygienist shall submit a completed affidavit on a form supplied by the Board office. Board staff shall review the affidavit to determine compliance with all requirements.

D. Each affiliated practice dentist shall be available telephonically or electronically during the business hours of the affiliated practice dental hygienist to provide an appropriate level of contact, communication, and consultation.

E. The affiliated practice agreement shall include a provision for a substitute dentist, to cover an extenuating circumstance that renders the affiliated practice dentist unavailable for contact, communication, and consultation with the affiliated practice dental hygienist.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 28 A.A.R. 1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

ARTICLE 7. DENTAL ASSISTANTS

R4-11-701. Procedures and Functions Performed by a Dental Assistant under Supervision

A. A dental assistant may perform the following procedures and functions under the direct supervision of a licensed dentist:

1. Place dental material into a patient's mouth in response to a licensed dentist's instruction;
2. Cleanse the supragingival surface of the tooth in preparation for:
 - a. The placement of bands, crowns, and restorations;
 - b. Dental dam application;
 - c. Acid etch procedures; and
 - d. Removal of dressings and packs;
3. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments;
4. Remove temporary cement, interim restorations, and periodontal dressings with hand instruments;
5. Remove sutures;
6. Place and remove dental dams and matrix bands;
7. Fabricate and place interim restorations with temporary cement;
8. Apply sealants;

9. Apply topical fluorides;
 10. Prepare a patient for nitrous oxide and oxygen analgesia administration upon the direct instruction and presence of a dentist; or
 11. Observe a patient during nitrous oxide analgesia as instructed by the dentist.
- B. A dental assistant may perform the following procedures and functions under the general supervision of a licensed dentist:
1. Train or instruct patients in oral hygiene techniques, preventive procedures, dietary counseling for caries and plaque control, and provide pre-and post-operative instructions relative to specific office treatment;
 2. Collect and record information pertaining to extraoral conditions; and
 3. Collect and record information pertaining to existing intraoral conditions.

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-100 renumbered as Section R4-11-701 and amended effective July 29, 1981 (Supp. 81-4). Former Section R4-11-701 renumbered to R4-11-1701, new Section R4-11-701 renumbered from R4-11-502 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-702. Limitations on Procedures or Functions Performed by a Dental Assistant under Supervision

A dental assistant shall not perform the following procedures or functions:

1. A procedure which by law only licensed dentists, licensed dental hygienists, or certified denturists can perform;
2. Intraoral carvings of dental restorations or prostheses;
3. Final jaw registrations;
4. Taking final impressions for any activating orthodontic appliance, fixed or removable prosthesis;
5. Activating orthodontic appliances; or
6. An irreversible procedure.

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-101 renumbered as Section R4-11-702 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-702 repealed, new Section R4-11-702 renumbered from R4-11-504 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-703. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-102 renumbered as Section R4-11-703 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-703 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-704. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-103 renumbered as Section R4-11-704 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-704 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-705. Repealed

Historical Note

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-104 renumbered as Section R4-11-705 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-705 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-706. Repealed**Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-105 renumbered as Section R4-11-706 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-706 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-707. Repealed**Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-106 renumbered as Section R4-11-707 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-707 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-708. Repealed**Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-107 renumbered as Section R4-11-708 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-708 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-709. Repealed**Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-108 renumbered as Section R4-11-709 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-709 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-710. Repealed**Historical Note**

Adopted effective April 27, 1977 (Supp. 77-2). Former Section R4-11-109 renumbered as Section R4-11-710 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-710 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 8. DENTURISTS**R4-11-801. Expired****Historical Note**

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-120 renumbered as Section R4-11-801 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-801 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-801 repealed, new Section R4-11-801 renumbered from R4-11-1201 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-802. Expired**Historical Note**

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-121 renumbered as Section R4-11-802 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-802 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-802 renumbered to R4-11-1301, new Section R4-11-802 renumbered from R4-11-1202 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-803. Renumbered

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-122 renumbered as Section R4-11-803 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-803 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4- 11-803 renumbered to R4-11-1302 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-804. Renumbered

Historical Note

Adopted effective March 28, 1978 (Supp. 78-2). Former Section R4-11-123 renumbered as Section R4-11-804 without change effective July 29, 1981 (Supp. 81-4). Section R4-11-804 repealed, new Section filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Former Section R4-11-804 renumbered to R4-11-1303 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-805. Renumbered

Historical Note

Adopted as filed April 4, 1986, adopted effective January 1, 1988 (Supp. 86-2). Amended effective May 17, 1995 (Supp. 95-2). Former Section R4-11-805 renumbered to R4-11-1304 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-806. Renumbered

Historical Note

Adopted effective May 17, 1995 (Supp. 95-2). Former Section R4-11-806 renumbered to R4-11-1305 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 9. RESTRICTED PERMITS

R4-11-901. Application for Restricted Permit

A. An applicant for a restricted permit shall provide the following information and documentation on a form provided by the Board:

1. A sworn statement of the applicant's qualifications for a restricted permit;
2. A photograph of the applicant that is no more than six months old;
3. A letter from any other jurisdiction in which an applicant is licensed or certified verifying that the applicant is licensed or certified in that jurisdiction, sent directly from that jurisdiction to the Board;
4. If the applicant is in the military or employed by the United States government, a letter from the applicant's commanding officer or supervisor verifying the applicant is licensed or certified by the military or United States government;
5. A copy of the applicant's current cardiopulmonary resuscitation certification that meets the requirements of R4-11-301(A)(6); and
6. A copy of the applicant's pending contract with a Charitable Dental Clinic or Organization offering dental or dental hygiene services.

B. The Board may request that an applicant provide a copy of a certified document that indicates the reason for a name change if the applicant's application contains different names.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-130 renumbered as Section R4-11-901, repealed, and new Section R4-11-901 adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-901 renumbered to R4-11-401, new Section R4-11-901 renumbered from R4-11-1001 and amended by final rulemaking at 5 A.A.R. 580,

effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 28 A.A.R.1885 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-902. Issuance of a Restricted Permit

Before issuing a restricted permit under A.R.S. §§ 32-1237 through 32-1239 or 32-1292, the Board shall investigate the statutory qualifications of the charitable dental clinic or organization. The Board shall not recognize a dental clinic or organization under A.R.S. §§ 32-1237 through 32-1239 or 32-1292 as a charitable dental clinic or organization permitted to employ dentists or dental hygienists not licensed in Arizona who hold restricted permits unless the Board makes the following findings of fact:

1. That the entity is a dental clinic or organization offering professional dental or dental hygiene services in a manner consistent with the public health;
2. That the dental clinic or organization offering dental or dental hygiene services is operated for charitable purposes only, offering dental or dental hygiene services either without compensation to the clinic or organization or with compensation at the minimum rate to provide only reimbursement for dental supplies and overhead costs;
3. That the persons performing dental or dental hygiene services for the dental clinic or organization do so without compensation; and
4. That the charitable dental clinic or organization operates in accordance with applicable provisions of law.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-131 renumbered as Section R4-11- 902, repealed, and new Section R4-11-902 adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-902 renumbered to R4-11-402, new Section R4-11-902 renumbered from R4-11-1002 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-903. Recognition of a Charitable Dental Clinic Organization

In order for the Board to make the findings required in R4-11-902, the charitable clinic or organization shall provide information to the Board, such as employment contracts with restricted permit holders, Articles and Bylaws, and financial records.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-132 renumbered as Section R4-11- 903, repealed, and new Section R4-11-903 adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11- 903 renumbered to R4-11-403, new Section R4-11-903 renumbered from R4-11-1003 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-904. Determination of Minimum Rate

In determining whether professional services are provided at the minimum rate to provide reimbursement for dental supplies and overhead costs under A.R.S. §§ 32-1237(1) or 32-1292(A)(1), the Board shall obtain and review information relating to the actual cost of dental supplies to the dental clinic or organization, the actual overhead costs of the dental clinic or organization, the amount of charges for the dental or dental hygiene services offered, and any other information relevant to its inquiry.

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-133 renumbered as Section R4-11- 904 without change effective July 29, 1981 (Supp. 81-4). Former Section R4-11-904

renumbered to R4-11-404, new Section R4-11-904 renumbered from R4-11-1004 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-905. Expired

Historical Note

Adopted effective September 7, 1979 (Supp. 79-5). Former Section R4-11-134 renumbered as Section R4-11- 905 without change effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-2). Former Section R4-11-905 renumbered to R4-11-405, new Section R4-11-905 renumbered from R4-11-1005 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17- 3).

R4-11-906. Expired

Historical Note

Adopted effective July 29, 1981 (Supp. 81-4). Amended effective April 4, 1986 (Supp. 86-4). Emergency amendment adopted effective June 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Adopted effective July 13, 1992 (Supp. 92-3). Former Section R4-11-906 renumbered to R4-11- 406, new Section R4-11-906 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-907. Repealed

Historical Note

Adopted effective April 4, 1986 (Supp. 86-2). Former Section R4-11-907 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-908. Repealed

Historical Note

Adopted effective April 4, 1986 (Supp. 86-2). Former Section R4-11-908 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-909. Renumbered

Historical Note

Adopted effective May 17, 1995 (Supp. 95-2). Former Section R4-11-909 renumbered to R4-11-407 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 10. DENTAL TECHNICIANS

R4-11-1001. Expired

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-140 renumbered as Section R4-11- 1001 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11- 1001 renumbered to R4-11- 901, new Section R4-11-1001 renumbered from R4-11- 602 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-1002. Expired

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-141 renumbered as Section R4-11- 1002 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11- 1002 renumbered to R4-11- 902, new Section R4-11-1002 renumbered from R4-11- 603 and amended

by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 2575, effective August 25, 2017 (Supp. 17-3).

R4-11-1003. Renumbered

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-142 renumbered as Section R4-11- 1003 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1003 renumbered to R4-11-903 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1004. Renumbered

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-143 renumbered as Section R4-11- 1004 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1004 renumbered to R4-11-904 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1005. Renumbered

Historical Note

Adopted effective November 28, 1980 (Supp. 80-6). Former Section R4-11-144 renumbered as Section R4-11- 1005 without change effective July 29, 1981 (Supp. 81- 4). Former Section R4-11-1005 renumbered to R4-11-905 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1006. Repealed

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 11. ADVERTISING

R4-11-1101. Advertising

A dentist may advertise specific dental services or certification in a non-specialty area only if the advertisement includes the phrase “Services provided by an Arizona licensed general dentist.” A dental hygienist may advertise specific dental hygiene services only if the advertisement includes the phrase “Services provided by an Arizona licensed dental hygienist.” A denturist may advertise specific denture services only if the advertisement includes the phrase “Services provided by an Arizona certified denturist.”

Historical Note

Adopted effective July 29, 1981 (Supp. 81-4). Amended by repealing the former guideline on “Management of Craniomandibular Disorders” and adopting a new guideline effective June 16, 1982 (Supp. 82-3). Repealed effective November 20, 1992 (Supp. 92-4). Former Section R4-11-1101 repealed, new Section R4-11-1101 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05- 1).

R4-11-1102. Advertising as a Recognized Specialist

A. A dentist may advertise as a specialist or use the terms “specialty” or “specialist” to describe professional services only if the dentist limits the dentist’s practice exclusively to one or more specialty area that are:

1. Recognized by a board that certifies specialists for the area of specialty; and
2. Accredited by the Commission on Dental Accreditation of the American Dental Association.

B. The following specialty areas meet the requirements of subsection (A):

1. Endodontics,

2. Oral and maxillofacial surgery,
3. Orthodontics and dentofacial orthopedics,
4. Pediatric dentistry,
5. Periodontics,
6. Prosthodontics,
7. Dental Public Health,
8. Oral and Maxillofacial Pathology, and
9. Oral and Maxillofacial Radiology.

C. For purposes of this Article, a dentist who wishes to advertise as a specialist or a multiple-specialist in a recognized field under subsection (B) shall meet the criteria in one or more of the following categories:

1. Grandfathered: A dentist who declared a specialty area before December 31, 1964, according to requirements established by the American Dental Association, and has a practice limited to a dentistry area approved by the American Dental Association;
2. Educationally qualified: A dentist who has successfully completed an educational program of two or more years in a specialty area accredited by the Commission on Dental Accreditation of the American Dental Association, as specified by the Council on Dental Education of the American Dental Association;
3. Board eligible: A dentist who has met the guidelines of a specialty board that operates in accordance with the requirements established by the American Dental Association in a specialty area recognized by the Board, if the specialty board:
 - a. Has established examination requirements and standards,
 - b. Appraised an applicant's qualifications,
 - c. Administered comprehensive examinations, and
 - d. Upon completion issues a certificate to a dentist who has achieved diplomate status;
 or
4. Board certified: A dentist who has met the requirements of a specialty board referenced in subsection (C)(3), and who has received a certificate from the specialty board, indicating the dentist has achieved diplomate status.

D. A dentist, dental hygienist, or denturist whose advertising implies that services rendered in a dental office are of a specialty area other than those listed in subsection (B) and recognized by a specialty board that has been accredited by the Commission on Dental Accreditation of the American Dental Association violates this Article and A.R.S. § 32-1201(18)(u), and is subject to discipline under A.R.S. Title 32, Chapter 11.

Historical Note

Adopted effective July 29, 1981 (Supp. 81-4). Former Section R4-11-1102 renumbered to R4-11-501 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1103. Reserved

R4-11-1104. Repealed

Historical Note

Adopted effective November 25, 1985 (Supp. 85-6). Former Section R4-11-1104 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1105. Repealed

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3).

ARTICLE 12. CONTINUING DENTAL EDUCATION AND RENEWAL REQUIREMENTS

R4-11-1201. Continuing Dental Education

A. A licensee or certificate holder shall:

1. Satisfy a continuing dental education requirement that is designed to provide an understanding of current developments, skills, procedures, or treatment related to the licensee's or certificate holder's practice; and
2. Complete the recognized continuing dental education required by this Article each renewal period.

B. A licensee or certificate holder receiving an initial license or certificate shall complete the prescribed credit hours of recognized continuing dental education by the end of the first full renewal period.

Historical Note

Adopted effective May 21, 1982 (Supp. 82-3). Former Section R4-11-1201 renumbered to R4-11-801, new Section R4-11-1201 renumbered from R4-11-1402 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1202. Continuing Dental Education Compliance and Renewal Requirements

A. When applying for a renewal license, certificate, or restricted permit, a Licensee, dentist, or Restricted Permit holder shall complete a renewal application provided by the Board.

B. Before receiving a renewal license or certificate, each Licensee or dentist shall possess a current form of one of the following:

1. A current cardiopulmonary resuscitation healthcare provider level certificate from the American Red Cross, the American Heart Association, or another certifying agency;
2. Advanced cardiac life support course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application; or
3. Pediatric advanced life support course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application.

C. A Licensee or dentist shall include an affidavit affirming the Licensee's or dentist's completion of the prescribed Credit Hours of Recognized Continuing Dental Education with a renewal application. A Licensee or dentist shall include on the affidavit the Licensee's or dentist's name, license or certificate number, the number of hours completed in each category, and the total number of hours completed for activities defined in R4-11-1209(A)(4).

D. A Licensee or dentist shall submit a written request for an extension before the renewal deadline prescribed in A.R.S. §§ 32-1236, 32-1276.02, 32-1287, and 32-1297.06. If a Licensee or dentist fails to meet the Credit Hours requirement because of military service, dental or religious missionary activity, residence in a foreign country, or other extenuating circumstances as determined by the Board, the Board, upon written request, may grant an extension of time to complete the Recognized Continuing Dental Education Credit Hour requirement.

E. The Board shall:

1. Only accept Recognized Continuing Dental Education credits accrued during the prescribed period immediately before license or certificate renewal, and
2. Not allow Recognized Continuing Dental Education credit accrued in a renewal period in excess of the amount required in this Article to be carried forward to the next renewal period.

F. A Licensee or dentist shall maintain Documentation of Attendance for each program for which credit is claimed that verifies the Recognized Continuing Dental Education Credit Hours the Licensee or dentist participated in during the most recently completed renewal period.

G. Each year, the Board shall audit continuing dental education requirement compliance on a random basis or when information is obtained which indicates a Licensee or dentist may not be in compliance with this Article. A Licensee or dentist selected for audit shall provide the Board with Documentation

of Attendance that shows compliance with the continuing dental education requirements within 35 calendar days from the date the Board issues notice of the audit by certified mail.

H. If a Licensee or dentist is found to not be in compliance with the continuing dental education requirements, the Board may take any disciplinary or non-disciplinary action authorized by A.R.S. Title 32, Chapter 11.

Historical Note

Adopted effective May 21, 1982 (Supp. 82-3). Former Section R4-11-1202 renumbered to R4-11-802, new Section R4-11-1202 renumbered from R4-11-1403 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 21 A.A.R. 921, effective August 3, 2015 (Supp. 15-2). Amended by final rulemaking at 28 A.A.R. 344 (February 4, 2022), effective March 14, 2022 (Supp. 22-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1203. Dentists and Dental Consultants

Dentists and dental consultants shall complete 63 hours of Recognized Continuing Dental Education in each renewal period as follows:

1. At least 36 Credit Hours in any one or more of the following areas: Dental and medical health, preventive services, dental diagnosis and treatment planning, dental recordkeeping, dental clinical procedures, managing medical emergencies, pain management, dental public health, and courses in corrective and restorative oral health and basic dental sciences, which may include current research, new concepts in dentistry, chemical dependency, tobacco cessation, and behavioral and biological sciences that are oriented to dentistry. A Licensee who holds a permit to administer General Anesthesia, Deep Sedation, Parenteral Sedation, or Oral Sedation who is required to obtain continuing education pursuant to Article 13 may apply those Credit Hours to the requirements of this Section;
2. No more than 15 Credit Hours in one or more of the following areas: Dental practice organization and management, patient management skills, and methods of health care delivery;
3. At least three Credit Hours in opioid education;
4. At least three Credit Hours in infectious diseases or infectious disease control;
5. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support or pediatric advanced life support. Coursework may be completed online if the course requires a physical demonstration of skills; and
6. At least three Credit Hours in ethics or Arizona dental jurisprudence.

Historical Note

Adopted effective September 12, 1985 (Supp. 85-5). Repealed effective July 21, 1995 (Supp. 95-3). New Section R4-11-1203 renumbered from R4-11-1404 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1204. Dental Hygienists

A. A dental hygienist shall complete 45 Credit Hours of Recognized Continuing Dental Education in each renewal period as follows:

1. At least 25 Credit Hours in any one or more of the following areas: Dental and medical health, and dental hygiene services, periodontal disease, care of implants, maintenance of cosmetic restorations and sealants, radiology safety and techniques, managing medical emergencies,

pain management, dental recordkeeping, dental public health, and new concepts in dental hygiene;

2. No more than 11 Credit Hours in one or more of the following areas: Dental hygiene practice organization and management, patient management skills, and methods of health care delivery;
3. At least three Credit Hours in one or more of the following areas: chemical dependency, tobacco cessation, ethics, risk management, or Arizona dental jurisprudence;
4. At least three Credit Hours in infectious diseases or infectious disease control; and
5. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support and pediatric advanced life support. Coursework may be completed online if the course requires a physical demonstration of skills.

B. A Licensee who performs dental hygiene services under an affiliated practice relationship who is required to obtain continuing education under R4-11-609 may apply those Credit Hours to the requirements of this Section.

Historical Note

New Section R4-11-1204 renumbered from R4-11-1405 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 962, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1205. Denturists

Denturists shall complete 27 Credit Hours of Recognized Continuing Dental Education in each renewal period as follows:

1. At least 15 Credit Hours in any one or more of the following areas: Medical and dental health, laboratory procedures, clinical procedures, dental recordkeeping, removable prosthetics, pain management, dental public health, and new technology in dentistry;
2. No more than three Credit Hours in one or more of the following areas: Denturist practice organization and management, patient management skills, and methods of health care delivery;
3. At least one Credit Hour in chemical dependency, which may include tobacco cessation;
4. At least two Credit Hours in infectious diseases or infectious disease control;
5. At least three Credit Hours in cardiopulmonary resuscitation healthcare provider level, advanced cardiac life support and pediatric advanced life support. Coursework may be completed online if the course requires a physical demonstration of skills; and
6. At least three Credit Hours in ethics or Arizona dental jurisprudence.

Historical Note

New Section R4-11-1205 renumbered from R4-11-1406 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1206. Restricted Permit Holders - Dental

In addition to the requirements in R4-11-1202, a dental Restricted Permit Holder shall comply with the following requirements:

1. When applying for renewal under A.R.S. § 32-1238, the Restricted Permit Holder shall provide information to the Board that the Restricted Permit Holder has completed 15 Credit Hours of Recognized Continuing Dental Education yearly.

2. To determine whether to grant the renewal, the Board shall only consider Recognized Continuing Dental Education credits accrued during the 36 months immediately before the renewal deadline prescribed in A.R.S. § 32-1236.
3. A dental Restricted Permit Holder shall complete the 15 hours of Recognized Continuing Dental Education before renewal as follows:
 - a. At least six Credit Hours in one or more of the subjects enumerated in R4-11-1203(1);
 - b. No more than three Credit Hours in one or more of the subjects enumerated in R4-11-1203(2);
 - c. At least one Credit Hour in the subjects enumerated in R4-11-1203(3);
 - d. At least one Credit Hour in the subjects enumerated in R4-11-1203(4).
 - e. At least three Credit Hours in the subjects enumerated in R4-11-1203(5); and
 - f. At least one Credit Hour in the subjects enumerated in R4-11-1203(6).

Historical Note

New Section R4-11-1206 renumbered from R4-11-1407 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 344 (February 4, 2022), effective March 14, 2022 (Supp. 22-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1207. Restricted Permit Holders - Dental Hygiene

In addition to the requirements in R4-11-1202, a dental hygiene Restricted Permit Holder shall comply with the following:

1. When applying for renewal under A.R.S. § 32-1292, the Restricted Permit Holder shall provide information to the Board that the Restricted Permit Holder has completed nine Credit Hours of Recognized Continuing Dental Education yearly.
2. To determine whether to grant renewal, the Board shall only consider Recognized Continuing Dental Education credits accrued during the 36 months immediately before the renewal deadline prescribed in A.R.S. § 32-1287.
3. A dental hygiene Restricted Permit Holder shall complete the nine hours of Recognized Continuing Dental Education before renewal as follows:
 - a. At least three Credit Hours in one or more of the subjects enumerated in R4-11-1204(1);
 - b. No more than three Credit Hours in one or more of the subjects enumerated in R4-11-1204(2);
 - c. At least one Credit Hour in the subjects enumerated in R4-11-1204(3);
 - d. At least two Credit Hours in the subjects enumerated in R4-11-1204(4) and
 - e. At least three Credit Hours in the subjects enumerated in R4-11-1204(5).

Historical Note

New Section R4-11-1207 renumbered from R4-11-1408 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R. 344 (February 4, 2022), effective March 14, 2022 (Supp. 22-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1208. Retired Licensees or Retired Denturists

A Retired Licensee or Retired denturist shall:

1. Except for the number of Credit Hours required, comply with the requirements in R4-11-1202; and

2. When applying for renewal under A.R.S. § 32-1236 for a dentist, A.R.S. § 32-1276.02 for a dental therapist, A.R.S. § 32-1287 for a dental hygienist, and A.R.S. § 32-1297.06 for a denturist, provide information to the Board that the Retired Licensee or Retired denturist has completed the following Credit Hours of Recognized Continuing Dental Education per renewal period:
 - a. Dentist – 24 Credit Hours of which no less than three credit hours shall be for cardiopulmonary resuscitation-healthcare provider level;
 - b. Dental therapist - 21 Credit Hours of which no less than three Credit Hours shall be for cardiopulmonary resuscitation- healthcare provider level;
 - c. Dental hygienist - 18 Credit Hours of which no less than three credit hours shall be for cardiopulmonary resuscitation-healthcare provider level; and
 - d. Denturist – six Credit Hours of which no less than three credit hours shall be for cardiopulmonary resuscitation-healthcare provider level.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1209. Types of Courses

A. A Licensee or denturist shall obtain Recognized Continuing Dental Education from one or more of the following activities:

1. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry;
2. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry by means of audio-video technology in which the Licensee is provided all seminar, symposium, lecture or program materials and the technology permits attendees to fully participate; or
3. Curricula designed to prepare for specialty board certification as a specialist or recertification examinations or advanced training at an accredited institution as defined in A.R.S. Title 32, Chapter 11; and
4. Subject to the limitations in subsection (B), any of the following activities that provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry:
 - a. A correspondence course, video, internet or similar self-study course, if the course includes an examination and the Licensee or denturist passes the examination;
 - b. Participation on the Board, in Board complaint investigations including Clinical Evaluations or anesthesia and sedation permit evaluations;
 - c. Participation in peer review of a national or state dental, dental therapy, dental hygiene, or denturist association or participation in quality of care or utilization review in a hospital, institution, or governmental agency;
 - d. Providing dental-related instruction to dental, dental therapy, dental hygiene, or denturist students, or allied health professionals in a recognized dental school, recognized dental therapy school, recognized dental hygiene school, or recognized denturist school or providing dental-related instruction sponsored by a national, state, or local dental, dental therapy, dental hygiene, or denturist association;
 - e. Publication or presentation of a dental paper, report, or book authored by the Licensee or denturist that provides information on current developments, skills, procedures, or treatment related to the practice of dentistry. A Licensee or denturist may claim Credit Hours:
 - i. Only once for materials presented;
 - ii. Only if the date of publication or original presentation was during the applicable renewal period; and
 - iii. One Credit Hour for each hour of preparation, writing, and presentation; or

- f. Providing dental, dental therapy, dental hygiene, or denturist services in a Board-recognized Charitable Dental Clinic or Organization.
- B. The following limitations apply to the total number of Credit Hours earned per renewal period in any combination of the activities listed in subsection (A)(4):
- 1. Dentists no more than 21 hours;
 - 2. Dental therapists, no more than 18 hours;
 - 3. Dental hygienists, no more than 15 hours;
 - 4. Denturists, no more than nine hours;
 - 5. Retired or Restricted Permit Holder dentists, dental therapists, or dental hygienists, no more than two hours; and
 - 6. Retired denturists, no more than two hours.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 3873, effective January 5, 2014 (Supp. 13-4). Amended by final rulemaking at 28 A.A.R.1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

ARTICLE 13. GENERAL ANESTHESIA AND SEDATION

R4-11-1301. General Anesthesia and Deep Sedation

A. Before administering General Anesthesia, or Deep Sedation by any means, in a dental office or dental clinic, a dentist shall possess a Section 1301 Permit issued by the Board. The dentist may renew a Section 1301 Permit every five years by complying with R4-11-1307.

B. To obtain or renew a Section 1301 Permit, a dentist shall:

- 1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3), and R4-11-1307, includes:
 - a. General information about the applicant such as:
 - i. Name;
 - ii. Home and office addresses and telephone numbers;
 - iii. Limitations of practice;
 - iv. Hospital affiliations;
 - v. Denial, curtailment, revocation, or suspension of hospital privileges;
 - vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
 - vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
 - b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
- 2. On forms provided by the Board, provide a dated and signed affidavit attesting that any office or dental clinic where the dentist will administer General Anesthesia or Deep Sedation:
 - a. Contains the following properly operating equipment and supplies during the provision of General Anesthesia and Deep Sedation:
 - i. Emergency Drugs;
 - ii. Electrocardiograph monitor;
 - iii. Pulse oximeter;
 - iv. Cardiac defibrillator or automated external defibrillator;
 - v. Positive pressure oxygen and supplemental oxygen;
 - vi. Suction equipment, including endotracheal, tonsillar, or pharyngeal and emergency backup medical suction device;
 - vii. Laryngoscope, multiple blades, backup batteries, and backup bulbs;
 - viii. Endotracheal tubes and appropriate connectors;
 - ix. Magill forceps;
 - x. Oropharyngeal and nasopharyngeal airways;
 - xi. Auxiliary lighting;

- xii. Stethoscope; and
 - xiii. Blood pressure monitoring device; and
 - b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring General Anesthesia or Deep Sedation shall hold a current course completion confirmation in cardiopulmonary resuscitation healthcare provider level;
 - 3. Hold a valid license to practice dentistry in this state;
 - 4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration; and
 - 5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
 - a. Advanced cardiac life support from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
 - b. Pediatric advanced life support in a practice treating pediatric patients; or
 - c. A recognized continuing education course in advanced airway management.
- C. Initial applicants shall meet one or more of the following conditions by submitting to the Board verification of meeting the condition directly from the issuing institution:
- 1. Complete, within the three years before submitting the permit application, a full credit load, as defined by the training program, during one calendar year of training, in anesthesiology or related academic subjects, beyond the undergraduate dental school level in a training program described in R4-11-1306(A), offered by a hospital accredited by the Joint Commission on Accreditation of Hospitals Organization, or sponsored by a university accredited by the American Dental Association Commission on Dental Accreditation;
 - 2. Be, within the three years before submitting the permit application, a Diplomate of the American Board of Oral and Maxillofacial Surgeons or eligible for examination by the American Board of Oral and Maxillofacial surgeons, a Fellow of the American Association of Oral and Maxillofacial surgeons, a Fellow of the American Dental Society of Anesthesiology, a Diplomate of the National Dental Board of Anesthesiology, or a Diplomate of the American Dental Board of Anesthesiology; or
 - 3. For an applicant who completed the requirements of subsections (C)(1) or (C)(2) more than three years before submitting the permit application, provide the following documentation:
 - a. On a form provided by the Board, a written affidavit affirming that the applicant has administered General Anesthesia or Deep Sedation to a minimum of 25 patients within the year before submitting the permit application or 75 patients within the last five years before submitting the permit application;
 - b. A copy of the General Anesthesia or Deep Sedation permit in effect in another state or certification of military training in General Anesthesia or Deep Sedation from the applicant's commanding officer; and
 - c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(a) through (f).
- D. After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer General Anesthesia or Deep Sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, a Section 1301 Permit shall be issued to the applicant.
- 1. The onsite evaluation team shall consist of:
 - a. Two dentists who are Board members, or Board designees for initial applications; or
 - b. One dentist who is a Board member or Board designee for renewal applications.
 - 2. The onsite team shall evaluate the following:
 - a. The availability of equipment and personnel as specified in subsection (B)(2);

- b. Proper administration of General Anesthesia or Deep Sedation to a patient by the applicant in the presence of the evaluation team;
 - c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
 - d. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of Controlled Substances;
 - e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient specified in subsection (D)(2)(b); and
 - f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
3. The evaluation team shall recommend one of the following:
 - a. Pass. Successful completion of the onsite evaluation;
 - b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
 - c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
 - d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
 - e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing education with the subject matter outlined in R4-11- 1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.
 4. The onsite evaluation of an additional dental office or dental clinic in which General Anesthesia or Deep Sedation is administered by an existing Section 1301 Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
 5. A Section 1301 mobile permit may be issued if a Section 1301 Permit holder travels to dental offices or dental clinics to provide anesthesia or Deep Sedation. The applicant must submit a completed affidavit verifying:
 - a. That the equipment and supplies for the provision of anesthesia or Deep Sedation as required in subsection (B)(2)(a) either travel with the Section 1301 Permit holder or are in place and in appropriate condition at the dental office or dental clinic where anesthesia or Deep Sedation is provided, and
 - b. Compliance with subsection (B)(2)(b).
- E. A Section 1301 Permit holder shall keep an anesthesia or Deep Sedation record for each General Anesthesia and Deep Sedation procedure that includes the following entries:
1. Pre-operative and post-operative electrocardiograph documentation;
 2. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
 3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
 4. A list of all medications given, with dosage and time intervals, and route and site of administration;
 5. Type of catheter or portal with gauge;
 6. Indicate nothing by mouth or time of last intake of food or water;
 7. Consent form; and

8. Time of discharge and status, including name of escort.
- F. The Section 1301 Permit holder, for intravenous access, shall use a new infusion set, including a new infusion line and new bag of fluid, for each patient.
- G. The Section 1301 Permit holder shall utilize supplemental oxygen for patients receiving General Anesthesia or Deep Sedation for the duration of the procedure.
- H. The Section 1301 Permit holder shall continuously supervise the patient from the initiation of anesthesia or Deep Sedation until termination of the anesthesia or Deep Sedation procedure and oxygenation, ventilation, and circulation are stable. The Section 1301 Permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.
- I. A Section 1301 Permit holder may employ the following health care professionals to provide anesthesia or sedation services and shall ensure that the health care professional continuously supervises the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation, and circulation are stable:
1. An allopathic or osteopathic physician currently licensed in Arizona by the Arizona Medical Board or the Arizona Board of Osteopathic Examiners who has successfully completed a residency program in anesthesiology approved by the American Council on Graduate Medical Education or the American Osteopathic Association or who is certified by either the American Board of Anesthesiology or the American Osteopathic Board of Anesthesiology and is credentialed with anesthesia privileges through an Arizona licensed medical facility, or
 2. A Certified Registered Nurse Anesthetist currently licensed in Arizona who provides services under the Nurse Practice Act in A.R.S. Title 32, Chapter 15.
- J. A Section 1301 Permit holder may also administer parenteral sedation without obtaining a Section 1302 Permit.

Historical Note

New Section R4-11-1301 renumbered from R4-11-802 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1302. Parenteral Sedation

- A. Before administering parenteral sedation in a dental office or dental clinic, a dentist shall possess a Section 1302 Permit issued by the Board. The dentist may renew a Section 1302 permit every five years by complying with R4-11-1307.
1. A Section 1301 Permit holder may also administer parenteral sedation.
 2. A Section 1302 Permit holder shall not administer or employ any agents which have a narrow margin for maintaining consciousness including, but not limited to, ultrashort acting barbiturates, propofol, parenteral ketamine, or similarly acting Drugs, agents, or techniques, or any combination thereof that would likely render a patient deeply sedated, generally anesthetized or otherwise not meeting the conditions of Moderate Sedation.
- B. To obtain or renew a Section 1302 Permit, the dentist shall:
1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:
 - a. General information about the applicant such as:
 - i. Name;
 - ii. Home and office addresses and telephone numbers;
 - iii. Limitations of practice;
 - iv. Hospital affiliations;
 - v. Denial, curtailment, revocation, or suspension of hospital privileges;
 - vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and

- vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
 - b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
 - 2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer parenteral sedation by intravenous or intramuscular route:
 - a. Contains the following properly operating equipment and supplies during the provision of parenteral sedation by the permit holder or General Anesthesia or Deep Sedation by a physician anesthesiologist or Certified Registered Nurse Anesthetist:
 - i. Emergency Drugs;
 - ii. Positive pressure oxygen and supplemental oxygen;
 - iii. Stethoscope;
 - iv. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
 - v. Oropharyngeal and nasopharyngeal airways;
 - vi. Pulse oximeter;
 - vii. Auxiliary lighting;
 - viii. Blood pressure monitoring device; and
 - ix. Cardiac defibrillator or automated external defibrillator; and
 - b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
 - i. Holds a current course completion confirmation in cardiopulmonary resuscitation health care provider level;
 - ii. Is present during the parenteral sedation procedure; and
 - iii. After the procedure, monitors the patient until discharge;
 - 3. Hold a valid license to practice dentistry in this state;
 - 4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration;
 - 5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
 - a. Advanced cardiac life support from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
 - b. Pediatric advanced life support in a practice treating pediatric patients; or
 - c. A recognized continuing education course in advanced airway management.
- C. Initial applicants shall meet one of the following conditions:
- 1. Successfully complete Board-recognized undergraduate, graduate, or postgraduate education within the three years before submitting the permit application, that includes the following:
 - a. Sixty didactic hours of basic parenteral sedation to include:
 - i. Physical evaluation;
 - ii. Management of medical emergencies;
 - iii. The importance of and techniques for maintaining proper documentation; and
 - iv. Monitoring and the use of monitoring equipment; and
 - b. Hands-on administration of parenteral sedative medications to at least 20 patients in a manner consistent with this Section; or
 - 2. An applicant who completed training in parenteral sedation more than three years before submitting the permit application shall provide the following documentation:
 - a. On a form provided by the Board, a written affidavit affirming that the applicant has administered parenteral sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;

- b. A copy of the parenteral sedation permit in effect in another state or certification of military training in parenteral sedation from the applicant's commanding officer; and
 - c. On a form provided by the Board, a written affidavit affirming the completion of 30 clock hours of continuing education taken within the last five years as outlined in R4-11-1306(B)(1)(b) through (f).
- D. After submitting the application and written evidence of compliance with requirements outlined in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board during which the applicant shall administer parenteral sedation. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1302 Permit to the applicant.
- 1. The onsite evaluation team shall consist of:
 - a. Two dentists who are Board members, or Board designees for initial applications, or
 - b. One dentist who is a Board member or Board designee for renewal applications.
 - 2. The onsite team shall evaluate the following:
 - a. The availability of equipment and personnel as specified in subsection (B)(2);
 - b. Proper administration of parenteral sedation to a patient by the applicant in the presence of the evaluation team;
 - c. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
 - d. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of all Controlled Substances;
 - e. Proper recordkeeping as specified in subsection (E) by reviewing the records generated for the patient receiving parenteral sedation as specified in subsection (D)(2)(b); and
 - f. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
 - 3. The evaluation team shall recommend one of the following:
 - a. Pass. Successful completion of the onsite evaluation;
 - b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued;
 - c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency;
 - d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency; or
 - e. Category 3 Evaluation Failure. The applicant must complete Board approved remedial continuing education with the subject matter outlined in R4-11- 1306 as identified by the evaluators and reapply not less than 90 days from the failed evaluation. An example is failure to recognize and manage an anesthetic urgency.
 - 4. The onsite evaluation of an additional dental office or dental clinic in which parenteral sedation is administered by an existing Section 1302 Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
 - 5. A Section 1302 mobile permit may be issued if a Section 1302 Permit holder travels to dental offices or dental clinics to provide parenteral sedation. The applicant must submit a completed affidavit verifying:

- a. That the equipment and supplies for the provision of parenteral sedation as required in R4-11- 1302(B)(2)(a) either travel with the Section 1302 Permit holder or are in place and in appropriate working condition at the dental office or dental clinic where parenteral sedation is provided, and
 - b. Compliance with R4-11-1302(B)(2)(b).
- E. A Section 1302 Permit holder shall keep a parenteral sedation record for each parenteral sedation procedure that:
 - 1. Includes the following entries:
 - a. Pre-operative, intra-operative, and post-operative pulse oximeter documentation;
 - b. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation;
 - c. A list of all medications given, with dosage and time intervals and route and site of administration;
 - d. Type of catheter or portal with gauge;
 - e. Indicate nothing by mouth or time of last intake of food or water;
 - f. Consent form; and
 - g. Time of discharge and status, including name of escort; and
 - 2. May include pre-operative and post-operative electrocardiograph report.
- F. The Section 1302 Permit holder shall establish intravenous access on each patient receiving parenteral sedation utilizing a new infusion set, including a new infusion line and new bag of fluid.
- G. The Section 1302 Permit holder shall utilize supplemental oxygen for patients receiving parenteral sedation for the duration of the procedure.
- H. The Section 1302 Permit holder shall continuously supervise the patient from the initiation of parenteral sedation until termination of the parenteral sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1302 Permit holder shall not commence with the administration of a subsequent anesthetic case until the patient is in monitored recovery or meets the guidelines for discharge.
- I. A Section 1302 Permit holder may employ a health care professional as specified in R4-11-1301(I).

Historical Note

New Section R4-11-1302 renumbered from R4-11-803 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1303. Oral Sedation

- A. Before administering Oral Sedation in a dental office or dental clinic, a dentist shall possess a Section 1303 Permit issued by the Board. The dentist may renew a Section 1303 Permit every five years by complying with R4-11-1307.
 - 1. A Section 1301 Permit holder or Section 1302 Permit holder may also administer Oral Sedation without obtaining a Section 1303 Permit.
 - 2. The administration of a single Drug for Minimal Sedation does not require a Section 1303 Permit if:
 - a. The administered dose is within the Food and Drug Administration's maximum recommended dose as printed in the Food and Drug Administration's approved labeling for unmonitored home use;
 - i. Incremental multiple doses of the Drug may be administered until the desired effect is reached, but does not exceed the maximum recommended dose; and
 - ii. During Minimal Sedation, a single supplemental dose may be administered. The supplemental dose may not exceed one-half of the initial dose and the total aggregate dose may not exceed one and one-half times the Food and Drug Administration's maximum recommended dose on the date of treatment; and
 - b. Nitrous oxide/oxygen may be administered in addition to the oral Drug as long as the

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- combination does not exceed Minimal Sedation.
- B. To obtain or renew a Section 1303 Permit, a dentist shall:
1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307, includes:
 - a. General information about the applicant such as:
 - i. Name;
 - ii. Home and office addresses and telephone numbers;
 - iii. Limitations of practice;
 - iv. Hospital affiliations;
 - v. Denial, curtailment, revocation, or suspension of hospital privileges;
 - vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
 - vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
 - b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
 2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist will administer Oral Sedation:
 - a. Contains the following properly operating equipment and supplies during the provision of sedation:
 - i. Emergency Drugs;
 - ii. Cardiac defibrillator or automated external defibrillator;
 - iii. Positive pressure oxygen and supplemental oxygen;
 - iv. Stethoscope;
 - v. Suction equipment, including tonsillar or pharyngeal and emergency backup medical suction device;
 - vi. Pulse oximeter;
 - vii. Blood pressure monitoring device; and
 - viii. Auxiliary lighting; and
 - b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, including at least one staff member who:
 - i. Holds a current certificate in cardiopulmonary resuscitation healthcare provider level;
 - ii. Is present during the Oral Sedation procedure; and
 - iii. After the procedure, monitors the patient until discharge;
 3. Hold a valid license to practice dentistry in this state;
 4. Maintain a current permit to prescribe and administer Controlled Substances in this state issued by the United States Drug Enforcement Administration;
 5. Provide confirmation of completing coursework within the two years prior to submitting the permit application in one or more of the following:
 - a. Cardiopulmonary resuscitation healthcare provider level from the American Heart Association, American Red Cross, or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
 - b. Pediatric advanced life support in a practice treating pediatric patients; or
 - c. A recognized continuing education course in advanced airway management.
- C. Initial applicants shall meet one of the following by submitting to the Board verification of meeting the condition directly from the issuing institution:
1. Complete a Board-recognized post-doctoral residency program that includes documented training in Oral Sedation within the last three years before submitting the permit application; or
 2. Complete a Board recognized post-doctoral residency program that includes documented training in Oral Sedation more than three years before submitting the permit application shall provide the following documentation:
 - a. On a form provided by the Board, a written affidavit affirming that the applicant has administered Oral Sedation to a minimum of 25 patients within the year or 75 patients within the last five years before submitting the permit application;

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- b. A copy of the Oral Sedation permit in effect in another state or certification of military training in Oral Sedation from the applicant's commanding officer; and
 - c. On a form provided by the Board, a written affidavit affirming the completion of 30 hours of continuing education taken within the last five years as outlined in R4-11-1306(C)(1)(a) through (f); or
 3. Provide proof of participation in 30 clock hours of Board- recognized undergraduate, graduate, or post-graduate education in Oral Sedation within the three years before submitting the permit application that includes:
 - a. Training in basic Oral Sedation,
 - b. Pharmacology,
 - c. Physical evaluation,
 - d. Management of medical emergencies,
 - e. The importance of and techniques for maintaining proper documentation, and
 - f. Monitoring and the use of monitoring equipment.
 - D. After submitting the application and written evidence of compliance with requirements in subsection (B) and, if applicable, subsection (C) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue a Section 1303 Permit to the applicant.
 1. The onsite evaluation team shall consist of:
 - a. For initial applications, two dentists who are Board members, or Board designees.
 - b. For renewal applications, one dentist who is a Board member, or Board designee.
 2. The onsite team shall evaluate the following:
 - a. The availability of equipment and personnel as specified in subsection (B)(2);
 - b. Successful responses by the applicant to oral examination questions from the evaluation team about patient management, medical emergencies, and emergency medications;
 - c. Proper documentation of Controlled Substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of Controlled Substances;
 - d. Proper recordkeeping as specified in subsection (E) by reviewing the forms that document the Oral Sedation record; and
 - e. For renewal applicants, records supporting continued competency as specified in R4-11-1306.
 3. The evaluation team shall recommend one of the following:
 - a. Pass. Successful completion of the onsite evaluation;
 - b. Conditional Approval for failing to have appropriate equipment, proper documentation of Controlled Substance, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before permit will be issued;
 - c. Category 1 Evaluation Failure. The applicant must review the appropriate subject matter and schedule a subsequent evaluation by two Board Members or Board designees not less than 30 days from the failed evaluation. An example is failure to recognize and manage one emergency; or
 - d. Category 2 Evaluation Failure. The applicant must complete Board approved continuing education in subject matter within the scope of the onsite evaluation as identified by the evaluators and schedule a subsequent evaluation by two Board Members or Board designees not less than 60 days from the failed evaluation. An example is failure to recognize and manage more than one emergency.
 4. The onsite evaluation of an additional dental office or dental clinic in which Oral Sedation is administered by a Section 1303 Permit holder may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (D)(2)(a).
 5. A Section 1303 mobile permit may be issued if the Section 1303 Permit holder travels to dental offices or dental clinics to provide Oral Sedation. The applicant must submit a completed affidavit verifying:
 - a. That the equipment and supplies for the provision of Oral Sedation as required in R4-11-1303(B)(2)(a) either travel with the Section 1303 Permit holder or are in place and

- in appropriate condition at the dental office or dental clinic where Oral Sedation is provided, and
- b. Compliance with R4-11-1303(B)(2)(b).
- E. A Section 1303 Permit holder shall keep an Oral Sedation record for each Oral Sedation procedure that:
1. Includes the following entries:
 - a. Pre-operative, intra-operative, and post-operative, pulse oximeter oxygen saturation and pulse rate documentation;
 - b. Pre-operative and post-operative blood pressure;
 - c. Documented reasons for not taking vital signs if a patient's behavior or emotional state prevents monitoring personnel from taking vital signs;
 - d. List of all medications given, including dosage and time intervals;
 - e. Patient's weight;
 - f. Consent form;
 - g. Special notes, such as, nothing by mouth or last intake of food or water; and
 - h. Time of discharge and status, including name of escort; and
 2. May include the following entries:
 - a. Pre-operative and post-operative electrocardiograph report; and
 - b. Intra-operative blood pressures.
- F. The Section 1303 Permit holder shall utilize supplemental oxygen for patients receiving Oral Sedation for the duration of the procedure.
- G. The Section 1303 Permit holder shall ensure the continuous supervision of the patient from the administration of Oral Sedation until oxygenation, ventilation and circulation are stable and the patient is appropriately responsive for discharge from the dental office or dental clinic.
- H. A Section 1303 Permit holder may employ a health care professional to provide anesthesia services, if all of the following conditions are met:
1. The physician anesthesiologist or Certified Registered Nurse Anesthetist meets the requirements as specified in R4-11-1301(I);
 2. The Section 1303 Permit holder has completed course- work within the two years prior to submitting the permit application in one or more of the following:
 - a. Advanced cardiac life support from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
 - b. Pediatric advanced life support in a practice treating pediatric patients;
 - c. A recognized continuing education course in advanced airway management;
 3. The Section 1303 Permit holder ensures that:
 - a. The dental office or clinic contains the equipment and supplies listed in R4-11-1304(B)(2)(a) during the provision of anesthesia or sedation by the physician anesthesiologist or Certified Registered Nurse Anesthetist;
 - b. The anesthesia or sedation record contains all the entries listed in R4-11-1304(D);
 - c. For intravenous access, the physician anesthesiologist or Certified Registered Nurse Anesthetist uses a new infusion set, including a new infusion line and new bag of fluid for each patient; and
 - d. The patient is continuously supervised from the administration of anesthesia or sedation until the termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1303 Permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guide- lines for discharge.

Historical Note

New Section R4-11-1303 renumbered from R4-11-805 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4- 11-1303 renumbered to R4-11-1304; new Section R4-11- 1303 made by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1304. Permit to Employ or Work with a Physician Anesthesiologist or Certified Registered Nurse Anesthetist (CRNA)

- A. This Section does not apply to a Section 1301 permit holder or a Section 1302 permit holder practicing under the provisions of R4-11-1302(I) or a Section 1303 permit holder practicing under the provisions of R4-11-1303(H). A dentist may utilize a physician anesthesiologist or certified registered nurse anesthetist (CRNA) for anesthesia or sedation services while the dentist provides treatment in the dentist's office or dental clinic after obtaining a Section 1304 permit issued by the Board.
1. The physician anesthesiologist or CRNA meets the requirements as specified in R4-11-1301(I).
 2. The dentist permit holder shall provide all dental treatment and ensure that the physician anesthesiologist or CRNA remains on the dental office or dental clinic premises until any patient receiving anesthesia or sedation services is discharged.
 3. A dentist may renew a Section 1304 permit every five years by complying with R4-11-1307.
- B. To obtain or renew a Section 1304 permit, a dentist shall:
1. Submit a completed application on a form provided by the Board office that, in addition to the requirements of subsections (B)(2) and (3) and R4-11-1307 includes:
 - a. General information about the applicant such as:
 - i. Name;
 - ii. Home and office addresses and telephone numbers;
 - iii. Limitations of practice;
 - iv. Hospital affiliations;
 - v. Denial, curtailment, revocation, or suspension of hospital privileges;
 - vi. Denial of membership in, denial of renewal of membership in, or disciplinary action by a dental organization; and
 - vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; and
 - b. The dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules;
 2. On forms provided by the Board, provide a dated and signed affidavit attesting that any dental office or dental clinic where the dentist provides treatment during administration of general anesthesia or sedation by a physician anesthesiologist or CRNA:
 - a. Contains the following properly operating equipment and supplies during the provision of general anesthesia and sedation:
 - i. Emergency drugs;
 - ii. Electrocardiograph monitor;
 - iii. Pulse oximeter;
 - iv. Cardiac defibrillator or automated external defibrillator (AED);
 - v. Positive pressure oxygen and supplemental continuous flow oxygen;
 - vi. Suction equipment, including endotracheal, tonsillar or pharyngeal and emergency backup medical suction device;
 - vii. Laryngoscope, multiple blades, backup batteries and backup bulbs;
 - viii. Endotracheal tubes and appropriate connectors;
 - ix. Magill forceps;
 - x. Oropharyngeal and nasopharyngeal airways;
 - xi. Auxiliary lighting;
 - xii. Stethoscope; and
 - xiii. Blood pressure monitoring device; and
 - b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring general anesthesia or sedation shall hold a current completion confirmation in cardiopulmonary resuscitation (CPR) Health Care Provider level;
 3. Hold a valid license to practice dentistry in this state; and
 4. Provide confirmation of completing coursework within the last two years prior to submitting the permit application in one or more of the following:
 - a. Advanced cardiac life support (ACLS) from the American Heart Association or another

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- agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
 - b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
 - c. A recognized continuing education course in advanced airway management.
- C. After submitting the application and written evidence of compliance with requirements in subsection (B) to the Board, the applicant shall schedule an onsite evaluation by the Board. After the applicant completes the application requirements and successfully completes the onsite evaluation, the Board shall issue the applicant a Section 1304 permit.
- 1. The onsite evaluation team shall consist of one dentist who is a Board member, or Board designee.
 - 2. The onsite team shall evaluate the following:
 - a. The availability of equipment and personnel as specified in subsection (B)(2);
 - b. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receipt, administration, dispensing, and destruction of controlled substances; and
 - c. Proper recordkeeping as specified in subsection (E) by reviewing previous anesthesia or sedation records.
 - 3. The evaluation team shall recommend one of the following:
 - a. Pass. Successful completion of the onsite evaluation; or
 - b. Conditional approval for failing to have appropriate equipment, proper documentation of controlled substances, or proper recordkeeping. The applicant must submit proof of correcting the deficiencies before a permit is issued.
 - 4. The evaluation of an additional dental office or dental clinic in which a Section 1304 permit holder provides treatment during the administration general anesthesia or sedation by a physician anesthesiologist or CRNA may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (B)(2).
- D. A Section 1304 permit holder shall keep an anesthesia or sedation record for each general anesthesia and sedation procedure that includes the following entries:
- 1. Pre-operative and post-operative electrocardiograph documentation;
 - 2. Pre-operative, intra-operative, and post-operative, pulse oximeter documentation;
 - 3. Pre-operative, intra-operative, and post-operative blood pressure and vital sign documentation; and
 - 4. A list of all medications given, with dosage and time intervals and route and site of administration;
 - 5. Type of catheter or portal with gauge;
 - 6. Indicate nothing by mouth or time of last intake of food or water;
 - 7. Consent form; and
 - 8. Time of discharge and status, including name of escort.
- E. For intravenous access, a Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA uses a new infusion set, including a new infusion line and new bag of fluid for each patient.
- F. A Section 1304 permit holder shall ensure that the physician anesthesiologist or CRNA utilizes supplemental continuous flow oxygen for patients receiving general anesthesia or sedation for the duration of the procedure.
- G. The Section 1304 permit holder shall continuously supervise the patient from the administration of anesthesia or sedation until termination of the anesthesia or sedation procedure and oxygenation, ventilation and circulation are stable. The Section 1304 permit holder shall not commence with a subsequent procedure or treatment until the patient is in monitored recovery or meets the guidelines for discharge.

Historical Note

New Section R4-11-1304 renumbered from R4-11-805 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4- 11-1304 renumbered to R4-11-1305; new Section R4-11- 1304 renumbered from R4-11-1303 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section repealed; new Section made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1305. Reports of Adverse Occurrences

If a death, or incident requiring emergency medical response, occurs in a dental office or dental clinic during the administration of or recovery from general anesthesia, deep sedation, moderate sedation, or minimal sedation, the permit holder and the treating dentist involved shall submit a complete report of the incident to the Board within 10 days after the occurrence.

Historical Note

New Section R4-11-1305 renumbered from R4-11-806 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Former Section R4- 11-1305 renumbered to R4-11-1306; new Section R4-11- 1305 renumbered from R4-11-1304 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Section repealed; new Section made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1306. Education; Continued Competency

- A. To obtain a Section 1301, permit by satisfying the education requirement of R4-11-1301(B)(6), a dentist shall successfully complete an advanced graduate or post-graduate education program in pain control.
1. The program shall include instruction in the following subject areas:
 - a. Anatomy and physiology of the human body and its response to the various pharmacologic agents used in pain control;
 - b. Physiological and psychological risks for the use of various modalities of pain control;
 - c. Psychological and physiological need for various forms of pain control and the potential response to pain control procedures;
 - d. Techniques of local anesthesia, sedation, and general anesthesia, and psychological management and behavior modification, as they relate to pain control in dentistry; and
 - e. Handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway, and cardiopulmonary resuscitation.
 2. The program shall consist of didactic and clinical training. The didactic component of the program shall:
 - a. Be the same for all dentists, whether general practitioners or specialists; and
 - b. Include each subject area listed in subsection (A)(1).
 3. The program shall provide at least one calendar year of training as prescribed in R4-11-1301(B)(6)(a).
- B. To maintain a Section 1301 or 1302 permit under R4-11-1301 or R4-11-1302 a permit holder shall:
1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
 - a. General anesthesia,
 - b. Parenteral sedation,
 - c. Physical evaluation,
 - d. Medical emergencies,
 - e. Monitoring and use of monitoring equipment, or
 - f. Pharmacology of drugs and non-drug substances used in general anesthesia or parenteral sedation; and
 2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
 - a. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
 - b. Pediatric advanced life support (PALS) in a practice treating pediatric patients; or
 - c. A recognized continuing education course in advanced airway management;
 3. Complete at least 10 general anesthesia, deep sedation or parenteral sedation cases a calendar year; and
 4. Apply a maximum of six hours from subsection (B)(2) toward the continuing education requirements for subsection (B)(1).

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- C. To maintain a Section 1303 permit issued under R4-11-1303, a permit holder shall:
1. Participate in 30 clock hours of continuing education every five years in one or more of the following areas:
 - a. Oral sedation,
 - b. Physical evaluation,
 - c. Medical emergencies,
 - d. Monitoring and use of monitoring equipment, or
 - e. Pharmacology of oral sedation drugs and non-drug substances; and
 2. Provide confirmation of completing coursework within the two years prior to submitting the renewal application from one or more of the following:
 - a. Cardiopulmonary resuscitation (CPR) Health Care Provider level from the American Heart Association, American Red Cross or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association or American Red Cross;
 - b. Advanced cardiac life support (ACLS) from the American Heart Association or another agency that follows the same procedures, standards, and techniques for training as the American Heart Association;
 - c. Pediatric advanced life support (PALS);
 - d. A recognized continuing education course in advanced airway management; and
 3. Complete at least 10 oral sedation cases a calendar year.

Historical Note

Section R4-11-1306 renumbered from R4-11-1305 and amended by final rulemaking at 9 A.A.R. 1054, effective May 6, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

R4-11-1307. Renewal of Permit

- A. To renew a Section 1301, 1302, or 1303 permit, the permit holder shall:
1. Provide written documentation of compliance with the applicable continuing education requirements in R4-11-1306;
 2. Provide written documentation of compliance with the continued competency requirements in R4-11-1306;
 3. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1301, R4-11-1302, or R4-11-1303; and
 4. Not less than 90 days before the expiration of a permit holder's current permit, arrange for an onsite evaluation as described in R4-11-1301, R4-11-1302, or R4-11-1303.
- B. To renew a Section 1304 permit, the permit holder shall:
1. Before December 31 of the year the permit expires, submit a completed application on a form provided by the Board office as described in R4-11-1304; and
 2. Not less than 90 days before the expiration of a permit holder's current permit, arrange for an onsite evaluation as described in R4-11-1304.
- C. After the permit holder successfully completes the evaluation and submits the required affidavits, the Board shall renew a Section 1301, 1302, 1303, 1304 permit, as applicable.
- D. The Board may stagger due dates for renewal applications.

Historical Note

Made by final rulemaking at 19 A.A.R. 341, effective April 6, 2013 (Supp. 13-1).

ARTICLE 14. DISPENSING DRUGS AND DEVICES

R4-11-1401. Prescribing

- A. In addition to the requirements of A.R.S. § 32-1298(C), a dentist shall ensure that a prescription order contains the following information:
1. Date of issuance;
 2. Name and address of the patient to whom the prescription is issued;
 3. Name, strength, dosage form, and quantity of the drug or name and quantity of the device prescribed;
 4. Name and address of the dentist prescribing the drug; and
 5. Drug Enforcement Administration registration number of the dentist, if prescribing a controlled substance.
- B. Before dispensing a drug or device, a dentist shall present to the patient a written prescription for the drug or device being dispensed that includes on the prescription the following statement in bold type: "This prescription may be filled by the prescribing dentist or by a pharmacy of your choice."

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1401 repealed, new Section R4-11-1401 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp.05-1).

R4-11-1402. Labeling and Dispensing

- A. A dentist shall include the following information on the label of all drugs and devices dispensed:
1. The dentist's name, address, and telephone number;
 2. The serial number;
 3. The date the drug or device is dispensed;
 4. The patient's name;
 5. Name, strength, and quantity of drug or name and quantity of device dispensed;
 6. The name of the drug or device manufacturer or distributor;
 7. Directions for use and cautionary statement necessary for safe and effective use of the drug or device; and
 8. If a controlled substance is prescribed, the cautionary statement "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed."
- B. Before delivery to the patient, the dentist shall prepare and package the drug or device to ensure compliance with the prescription and personally inform the patient of the name of the drug or device, directions for its use, precautions, and storage requirements.
- C. A dentist shall purchase all dispensed drugs and devices from a manufacturer, distributor, or pharmacy that is properly licensed in this state or one of the other 49 states, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States of America.
- D. When dispensing a prescription drug or device from a prescription order, a dentist shall perform the following professional practices:
1. Verify the legality and pharmaceutical feasibility of dispensing a drug based upon:
 - a. A patient's allergies,
 - b. Incompatibilities with a patient's currently taken medications,
 - c. A patient's use of unusual quantities of dangerous drugs or narcotics, and
 - d. The frequency of refills;
 2. Verify that the dosage is within proper limits;
 3. Interpret the prescription order;
 4. Prepare, package, and label, or assume responsibility for preparing, packaging, and labeling, the drug or device dispensed under each prescription order;
 5. Check the label to verify that the label precisely communicates the prescriber's directions and hand-initial each label;
 6. Record, or assume responsibility for recording, the serial number and date dispensed on the front of the original prescription order; and
 7. Record on the original prescription order the name or initials of the dentist who dispensed the order.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1402 renumbered to R4-11-1201, new Section R4-11-1402 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1403. Storage and Packaging

A dentist shall:

1. Keep all prescription-only drugs and devices in a secured area and control access to the secured area by written procedure. The dentist shall make the written procedure available to the Board or its authorized agents on demand for inspection or copying;
2. Keep all controlled substances secured in a locked cabinet or room, control access to the cabinet or room by written procedure, and maintain an ongoing inventory of the contents. The dentist shall make the written procedure available to the Board or its authorized agents on demand for inspection or copying;
3. Maintain drug storage areas so that the temperature in the drug storage areas does not exceed 85° F;
4. Not dispense a drug or device that has expired or is improperly labeled;
5. Not redispense a drug or device that has been returned;
6. Dispense a drug or device:
 - a. In a prepackaged container or light-resistant container with a consumer safety cap, unless the patient or patient's representative requests a non-safety cap; and
 - b. With a label that is mechanically or electronically printed;
7. Destroy an outdated, deteriorated, or defective controlled substance according to Drug Enforcement Administration regulations or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration; and
8. Destroy an outdated, deteriorated, or defective non-controlled substance drug or device by returning it to the supplier or by using a reverse distributor. A list of reverse distributors may be obtained from the Drug Enforcement Administration.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1403 renumbered to R4-11-1202, new Section R4-11-1403 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1404. Recordkeeping

A. A dentist shall:

1. Chronologically date and sequentially number prescription orders in the order that the drugs or devices are originally dispensed;
 2. Sequentially file orders separately from patient records, as follows:
 - a. File Schedule II drug orders separately from all other prescription orders;
 - b. File Schedule III, IV, and V drug orders separately from all other prescription orders; and
 - c. File all other prescription orders separately from orders specified in subsections (A)(2)(a) and (b);
 3. Record the name of the manufacturer or distributor of the drug or device dispensed on each prescription order and label;
 4. Record the name or initials of the dentist dispensing the drug or device on each prescription order and label; and
 5. Record the date the drug or device is dispensed on each prescription order and label.
- B. A dentist shall record in the patient's dental record the name, dosage form, and strength of the drug or device dispensed, the quantity or volume dispensed, the date the drug or device is dispensed, and the dental therapeutic reasons for dispensing the drug or device.
- C. A dentist shall maintain:

1. Purchase records of all drugs and devices for three years from the date purchased; and
 2. Dispensing records of all drugs and devices for three years from the date dispensed.
- D. A dentist who dispenses controlled substances:
1. Shall inventory Schedule II, III, IV, and V controlled substances as prescribed by A.R.S. § 36-2523;
 2. Shall perform a controlled substance inventory on March 1 annually, if directed by the Board, and at the opening or closing of a dental practice;
 3. Shall maintain the inventory for three years from the inventory date;
 4. May use one inventory book for all controlled substances;
 5. When conducting an inventory of Schedule II controlled substances, shall take an exact count;
 6. When conducting an inventory of Schedule III, IV, and V controlled substances, shall take an exact count or may take an estimated count if the stock container contains fewer than 1001 units.
- E. A dentist shall maintain invoices for drugs and devices dispensed for three years from the date of the invoices, filed as follows:
1. File Schedule II controlled substance invoices separately from records that are not Schedule II controlled substance invoices;
 2. File Schedule III, IV, and V controlled substance invoices separately from records that are not Schedule III, IV, and V controlled substance invoices; and
 3. File all non-controlled substance invoices separately from the invoices referenced in subsections (E)(1) and (2).
- F. A dentist shall file Drug Enforcement Administration order form (DEA Form 222) for a controlled substance sequentially and separately from every other record.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1404 renumbered to R4-11-1203, new Section R4-11-1404 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1405. Compliance

- A. A dentist who determines that there has been a theft or loss of Drugs or Controlled Substances from the dentist's office shall immediately notify a local law enforcement agency and the Board and provide written notice of the theft or loss in the following manner:
1. For non-Controlled Substance Drug theft or loss, provide the law enforcement agency and the Board with a written report explaining the theft or loss; or
 2. For Controlled Substance theft or loss, complete a Drug Enforcement Administration's 106 form; and
 3. Provide copies of the Drug Enforcement Administration's 106 form to the Drug Enforcement Administration and the Board within one day of the discovery.
- B. A dentist who dispenses Drugs or devices in a manner inconsistent with this Article is subject to discipline under A.R.S. Title 32, Chapter 11, Article 3.

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1405 renumbered to R4-11-1204, new Section R4-11-1405 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 28 A.A.R. 1898 (August 5, 2022), effective September 12, 2022 (Supp. 22-3).

R4-11-1406. Dispensing for Profit Registration and Renewal

- A. A dentist who is currently licensed to practice dentistry in Arizona may dispense controlled substances, prescription-only drugs, and prescription-only devices for profit only after providing

the Board the following information:

1. A completed registration form that includes the following information:
 - a. The dentist's name and dental license number;
 - b. A list of the types of drugs and devices to be dispensed for profit, including controlled substances; and
 - c. Locations where the dentist desires to dispense the drugs and devices for profit; and
 2. A copy of the dentist's current Drug Enforcement Administration Certificate of Registration for each dispensing location from which the dentist desires to dispense the drugs and devices for profit.
- B. The Board shall issue a numbered certificate indicating the dentist is registered with the Board to dispense drugs and devices for profit.
- C. A dentist shall renew a registration to dispense drugs and devices for profit by complying with the requirements in subsection (A) before the dentist's license renewal date. When a dentist has made timely and complete application for the renewal of a registration, the dentist may continue to dispense until the Board approves or denies the application. Failure to renew a registration shall result in immediate loss of dispensing for profit privileges.

Historical Note

Adopted effective July 21, 1995; inadvertently not published with Supp. 95-3 (Supp. 95-4). Former Section R4- 11-1406 renumbered to R4-11-1205, new Section R4-11- 1406 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1407. Renumbered

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1407 renumbered to R4-11-1206 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1408. Renumbered

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1408 renumbered to R4-11-1207 by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

R4-11-1409. Repealed

Historical Note

Adopted effective July 21, 1995 (Supp. 95-3). Former Section R4-11-1409 repealed by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1).

ARTICLE 15. COMPLAINTS, INVESTIGATIONS, DISCIPLINARY ACTION

R4-11-1501. Ex-parte Communication

A complainant, licensee, certificate holder, business entity or mobile dental permit holder against whom a complaint is filed, shall not engage in ex-parte communication by means of a written or oral communication between a decision maker, fact finder, or Board member and only one party to the proceeding.

Historical Note

New Section R4-11-1501 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

R4-11-1502. Dental Consultant Qualifications

A dentist, dental hygienist, or denturist approved as a Board dental consultant shall:

1. Possess a valid license or certificate to practice in Arizona;
2. Have practiced at least five years in Arizona; and
3. Not have been disciplined by the Board within the past five years.

Historical Note

New Section R4-11-1502 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

R4-11-1503. Initial Complaint Review

A. The Board's procedures for complaint notification are:

1. Board personnel shall notify the complainant and licensee, certificate holder, business entity or mobile dental permit holder by certified U.S. Mail when the following occurs:
 - a. A formal interview is scheduled,
 - b. The complaint is tabled,
 - c. A postponement or continuance is granted, and
 - d. A subpoena, notice, or order is issued.
2. Board personnel shall provide the licensee, certificate holder, business entity, or mobile dental permit holder with a copy of the complaint.
3. If a complaint alleges a violation of the state or federal criminal code, the Board shall refer the complaint to the proper law enforcement agency.

B. The Board's procedures for complaints referred to clinical evaluation are:

1. Except as provided in subsection (B)(1)(a), the president's designee shall appoint one or more dental consultants to perform a clinical evaluation. If there is more than one dental consultant, the dental consultants do not need to be present at the same time.
 - a. If the complaint involves a dental hygienist, denturist, or dentist who is a recognized specialist in one of the areas listed in R4-11-1102(B), the president's designee shall appoint a dental consultant from that area of practice or specialty.
 - b. The Board shall not disclose the identity of the licensee to a dental consultant performing a clinical examination before the Board receives the dental consultant's report.
2. The dental consultant shall prepare and submit a clinical evaluation report. The president's designee shall provide a copy of the clinical evaluation report to the licensee or certificate holder. The licensee or certificate holder may submit a written response to the clinical evaluation report.

Historical Note

New Section R4-11-1503 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

R4-11-1504. Postponement of Interview

A. The licensee, certificate holder, business entity, or mobile dental permit holder may request a postponement of a formal interview. The Board or its designee shall grant a postponement until the next regularly scheduled Board meeting if the licensee, certificate holder, business entity, or mobile dental permit holder makes a postponement request and the request:

1. Is made in writing,
2. States the reason for the postponement, and
3. Is received by the Board within 15 calendar days after the date the respondent received the formal interview request.

B. Within 48 hours of receipt of a request for postponement of a formal interview, the Board or its designee shall:

1. Review and either deny or approve the request for postponement; and
2. Notify in writing the complainant and licensee, certificate holder, business entity, or mobile dental permit holder of the decision to either deny or approve the request for postponement.

Historical Note

New Section R4-11-1504 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 3669, effective April 30, 2003 (Supp. 03-3). New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 19 A.A.R. 334, effective April 6, 2013 (Supp. 13-1).

ARTICLE 16. EXPIRED

R4-11-1601. Expired

Historical Note

New Section R4-11-1601 adopted by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Section expired under A.R.S. § 41-1056(E) at 14 A.A.R. 3183, effective April 30, 2008.

ARTICLE 17. REHEARING OR REVIEW

R4-11-1701. Procedure

- A. Except as provided in subsection (F), a licensee, certificate holder, or business entity who is aggrieved by an order issued by the Board may file a written motion for rehearing or review with the Board, pursuant to A.R.S. Title 41, Chapter 6, Article 10, specifying the grounds for rehearing or review.
- B. A licensee, certificate holder, or business entity filing a motion for rehearing or review under this rule may amend the motion at any time before it is ruled upon by the Board. The opposing party may file a response within 15 days after the date the motion for rehearing or review is filed. The Board may require that the parties file supplemental memoranda explaining the issues raised in the motion, and may permit oral argument.
- C. The Board may grant a rehearing or review of the order for any of the following causes materially affecting a licensee, certificate holder, or business entity's rights:
 - 1. Irregularity in the proceedings of the Board or any order or abuse of discretion, which deprived a licensee, certificate holder, or business entity of a fair hearing;
 - 2. Misconduct of the Board, its personnel, the administrative law judge, or the prevailing party;
 - 3. Accident or surprise which could not have been prevented by ordinary prudence;
 - 4. Excessive or insufficient penalties;
 - 5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding;
 - 6. That the findings of fact or decision is arbitrary, capricious, or an abuse of discretion;
 - 7. That the findings of fact or decision is not justified by the evidence or is contrary to law; or
 - 8. Newly discovered, material evidence which could not, with reasonable diligence, have been discovered and produced at the original hearing.
- D. The Board may affirm or modify the order or grant a rehearing or review to all or part of the issues for any of the reasons in subsection (C). The Board, within the time for filing a motion for rehearing or review, may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. An order granting a rehearing or review shall specify the grounds on which rehearing or review is granted, and any rehearing or review shall cover only those matters specified.
- E. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after such service, serve opposing affidavits.
- F. If the Board makes specific findings that the immediate effectiveness of the order is necessary for the preservation of public health and safety and that a rehearing or review is impracticable, unnecessary, or contrary to the public interest, the order may be issued as a final order without an opportunity for a rehearing or review. If an order is issued as a final order without an opportunity or rehearing or review, the aggrieved party shall make an application for judicial review of the order within the time limits permitted for application for judicial review of the Board's final order.
- G. The Board shall rule on the motion for rehearing or review within 15 days after the response has been filed, or at the Board's next meeting after the motion is received, whichever is later.

Historical Note

New Section R4-11-1701 renumbered from R4-11-701 and amended by final rulemaking at 5 A.A.R. 580, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 21 A.A.R. 2971, effective January 2, 2016 (Supp. 15-4).

ARTICLE 18. BUSINESS ENTITIES

R4-11-1801. Application

Before offering dental services, a business entity required to be registered under A.R.S. § 32-1213 shall apply for registration on an application form supplied by the Board. In addition to the requirements of A.R.S. § 32-1213(B) and the fee under R4-11-402, the registration application shall include a sworn statement from the applicant that:

1. The information provided by the business entity is true and correct, and
2. No information is omitted from the application.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

R4-11-1802. Display of Registration

- A. A business entity shall ensure that the receipt for the current registration period is:
 1. Conspicuously displayed in the dental practice in a manner that is always readily observable by patients and visitors, and
 2. Exhibited to members of the Board or to duly authorized agents of the Board on request.
- B. A business entity's receipt for the licensure period immediately preceding shall be kept on display until replaced by the receipt for the current period.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 793, effective April 2, 2005 (Supp. 05-1).

ARIZONA POWER AUTHORITY
Title 12, Chapter 14



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 6, 2023

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 15, 2023

SUBJECT: ARIZONA POWER AUTHORITY
Title 12, Chapter 14

Summary

This Five-Year Review Report from the Arizona Power Authority (Authority) relates to rules in Title 12, Chapter 14, Articles 1 through 6. Those articles relate to the following:

- Article 1 - General
- Article 2 - Availability of Long-term Power; Application for Electric Service; Power Purchase Certificates
- Article 3 - Service to Purchasers
- Article 4 - Administration of Power
- Article 5 - Records
- Article 6 - Conferences; Appeal of Agency Action

The Authority's rules establish the parameters for the Authority to allocate and manage power supplies that become available to the Authority. The primary source of power supply is federal hydropower from the Hoover Dam on the Colorado River. Specifically, the Authority has the authority to fix and prescribe the terms and conditions of its electric sales contracts and services and may adopt such rules and regulations it finds necessary or convenient respecting electric services and disposition of electric power. Its power customers include cities, towns, irrigation and electrical districts, and also water conservation districts as required by federal and

state law. Authority has authority over the output of power projects included in the Title 45 State Water and Power Plan.

In its last 5YRR for these rules, which was approved by the Council in April 2018, the Authority noted that it intended to “stay the course” and manage and deliver Hoover power to its customers under its current regulatory structure.

Proposed Action

In the current report, the Authority has not identified any issues with its rules and again intends to maintain its current set of rules. The Authority indicates that no new rules are perceived to be necessary now or in the near future.

1. Has the agency analyzed whether the rules are authorized by statute?

The Authority cites both general and specific statutory authority for these rules.

2. Summary of the agency’s economic impact comparison and identification of stakeholders:

The Authority indicates that some revisions to its rules were finalized in early 2015. It was estimated that no economic, small business, or consumer impact would occur from the revisions. The Authority indicates the rest of the rules deal primarily with the process for the allocation of power to customers. The Authority anticipates no economic, small business, or consumer impact due to the rules for the next five-year review period or through March 2028.

Stakeholders include the Authority and power customers.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Authority states that it is selling Hoover power in Year 2023 at an average cost of 1.74 cents/kilowatt hour, without transmission. The Authority states this is a significant savings compared to the market retail rate, which continues to rise. The Authority indicates that Hoover power is projected to be the cheapest available power into the future, assuming no drastic drought impacts the lake elevations.

The Authority indicates that approximately 93% of the total costs of obtaining and delivering Hoover power to their customers represents the cost of paying the federal government for the power and debt services themselves. The Authority states that this suggests that the Authority’s regulations represent a light footprint upon the Authority’s effort to obtain and deliver federal hydropower on its Arizona customer base

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Authority indicates it received no written criticisms of the rules in the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Authority indicates the rules are clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Authority indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Authority indicates the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

The Department indicates the rules are currently enforced as written.

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

The Authority indicates the rules implement and/or comply with the requirements contained in its 2016 federal power contract as well as federal regulatory requirements applicable to the sale of Hoover hydropower. As such, the Authority indicates its regulations are consistent with, and not more stringent than, federal laws and regulations applicable to the sale of Hoover hydropower.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The Authority indicates that it has not adopted any rules after July 29, 2010 that require a regulatory permit, license, or agency authorization.

11. **Conclusion**

This 5YRR from the Authority relates to rules in Title 12, Chapter 14, Articles 1 through 6, which establish the parameters for the Authority to allocate and manage power supplies that become available to the Authority. The Authority indicates the rules are clear, concise, understandable, consistent, effective, and enforced as written. As such, the Authority does not propose to take any action regarding these rules.

Council staff recommends approval of this report.

COMMISSION

PHILIP C. BASHAW – CHAIRMAN
JIM SWEENEY – VICE CHAIRMAN
RUSSELL L. JONES – COMMISSIONER
KIM OWENS – COMMISSIONER
JOHN F. SULLIVAN – COMMISSIONER

STAFF

JORDY FUENTES – EXECUTIVE DIRECTOR
HEATHER COLE – EXECUTIVE SECRETARY



ARIZONA POWER AUTHORITY

1810 W. ADAMS STREET
PHOENIX, AZ 85007-2697
(602) 368-4265

WWW.POWERAUTHORITY.ORG

March 28, 2023

Governor's Regulatory Review Council
100 N. 15th Avenue
Suite 305
Phoenix, AZ 85007

Dear Council Members:

Re: Arizona Power Authority Five-Year Regulatory Review

Enclosed herein for placement on the Governor's Five-Year Regulatory Review Council's (Council) agenda and for your review is:

- 1) The Authority's Five-Year Regulatory Review Report; and
- 2) The Authority's rules which appear at R12-14-101 et seq.

The Authority notes that there have been no revisions since our submission on March 18, 2018 and has not adopted any rules after 2018 that require regulatory permit, license, or authorization.

If you have any questions on any of the materials enclosed herein or need additional materials, then please feel free to give me a call or email me, and I will endeavor to obtain them for the Council.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jordy Fuentes", is written over a light blue circular background.

Jordy Fuentes
Executive Director

COMMISSION

PHILIP C. BASHAW – CHAIRMAN
JIM SWEENEY – VICE CHAIRMAN
RUSSELL L. JONES – COMMISSIONER
KIM OWENS – COMMISSIONER
JOHN F. SULLIVAN – COMMISSIONER

STAFF

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State of Arizona
Governor's Regulatory Review Council
Five-Year Regulatory Review
Arizona Power Authority
December 8, 2022

Pursuant to A.R.S. §41-1056 the Arizona Power Authority (“APA” or “Authority”) submits the following five-year report. A.R.S. § 41-1056 requires that “[a]t least once every five years, each agency shall review all of its rules to determine whether any rule should be amended or repealed. The agency shall prepare... a written report summarizing its findings, its supporting reasons, and any proposed course of action”. *Id.*

The Authority has published a single short set of rules which appear in the Arizona Administrative Code at R12-14-101 *et seq.* (APA Rules). The APA Rules establish parameters for the Authority to allocate and manage power supplies which become available to the Authority. The Authority’s primary source of power supply per A.R.S. §30-101 *et seq.*, is federal hydropower from the Hoover Dam on the Colorado River.

1. General and Specific Statutes Authorizing Rules. The general enabling statute for the APA Rules appears at A.R.S. §30-101, *et seq.* The Authority enjoys some additional powers related to the State Water and Power Plan which appear at A.R.S. §45-1701, *et seq.*

A.R.S. §30-103(A) states that “[t]he authority shall determine its organizational structure and methods of procedure in accordance with the provisions of this chapter, and may adopt, amend or rescind the routine and general rules, regulations, and forms, and prescribe a system of accounts.”

Next, A.R.S. §30-124(D) states in part that “[t]he authority may fix and prescribe the terms and conditions of its electric sales contracts and services and adopt such rules and regulations it finds necessary or convenient respecting electric services and disposition of electric power.”

A.R.S. §45- 1708 (B) gives the Authority similar power over the output of power projects included in the Title 45 State Water and Power Plan.

2. Objective of the APA Rules. The purpose of the APA Rules, R12-14-101 *et seq.*, is to allocate, contract for, and oversee the administration of primarily long-term federal hydropower supplies

which have been contracted by the federal government to the Authority as agent on behalf of the State of Arizona. The objective of each rule is set forth below.

- Article 1. General
 - R12-14-101 – Definitions
 - *Definitions are important to aid in understanding the business nomenclature used by the Authority in the established rules and existing power contracts for Hoover power.*
- Article 2. Availability of Long-Term Power; Application for Electric Service, Power Purchase Certificates
 - R12-14-201 – Availability of Long-term Power; Contract Negotiations
 - *This rule outlines the process for the Authority to notice, allocate and negotiate for Power Sales Contracts.*
 - R12-12-202 – Application for Purchase of Electric Service
 - *This section outlines the specific requirements that should be included when applying for a power allocation.*
 - R12-12-203 Power Purchase Certificates, Application
 - *This section outlines the requirements for a Purchase Power Certificate, which is required for those who were allocated Hoover A power pursuant to A.R.S. §30-151, et. seq.*
- Article 3. Service to Purchasers
 - R12-14-301 – Authority's Service to Purchasers
 - *This section establishes a process to ensure that allottees are able to receive the power through transmission wires, the role the Authority may play in that process and how the Authority will monitor the existing power market(s).*
 - R12-14-302 – Systems and Operation Plans
 - *This section allows the Authority to understand and monitor embedded allottees inside larger systems (e.g. municipalities inside Salt River Project of Arizona Public Service).*
- Article 4. Administration of Power
 - R12-14-401 – Sale, Use, Transfer, and Administration of Long-term Power
 - *Due to the long-term nature of these power contracts, this section deals with ongoing administration of these contracts in the event of pooling (sharing), relinquishment, lay-off, recapture, transfer or assignment and the Authority's role in this administration.*
 - R12-14-402 – Changing Points of Delivery; Switching of Electric Service among Points of Delivery
 - *Due to the nature of hydropower, and the Authority's role in managing it, the Authority must know the end point for the power allocated to ensure it is being used under the terms of the contract(s).*
 - R12-14-403 – Wheeling and Operating Agreements
 - *Due to the nature of hydropower, and the Authority's role in managing it, the Authority must know the end point for the power allocated, any pooling or sharing agreements and the transmission path to ensure it is being transmitted or wheeled properly.*
 - R12-14-404 – Disposition of Short-term Power
 - *This section allows the Authority to obtain short-term power for the benefit of its customers in addition to the long-term Hoover power.*
 - R12-14-405 – Petition for Information, Advice or Assistance

- *This section outlines the Authority's requirements for compliance with A.R.S. §30-129 and Title 45, Chapter 10, which permit petitions to the Authority requesting assistance in matters within its jurisdiction.*
- Article 5. Records
 - R12-14-501 – Purchaser's Records
 - *This section defines the process for the Authority to obtain purchaser's contracts and records for market research to aid in monitoring and administering Hoover power.*
- Article 6. Conferences; Appeal of Agency Action
 - R12-14-601 – Conferences.
 - *This section establishes the process for conducting conferences to receive information on subjects within the Authority's jurisdiction, including the timing of the notice and public comment period.*
 - R12-14-603 – General
 - *This section outlines the actions that are appealable, provides that the Commission shall act as the Administrative Law Judge pursuant to A.R.S. § 41-1092.01 and discusses relevant state statutes and rules applicable to the hearing.*
 - R12-14-604 – Definitions
 - *This section defines important terms relevant to R12-14 Article 6 including "Appealable Agency Action."*
 - R12-14-605 – Applicability; Authority
 - *This section establishes the applicability of these rules to Appealable Agency Actions, and addresses scheduling and location of administrative hearings. This section allows the Commission to waive any of these rules with consent from parties to the appeal or if the waiver does not conflict with law or cause undue prejudice. This section permits the Commission to look to the Arizona Rules of Civil Procedures for guidance, if a procedure is not provided by statute or these rules.*
 - R12-14-606 – Notice of Appealable Agency Action
 - *This section establishes the notice provision requirements and posting requirements for an Appealable Agency Action.*
 - R12-14-607 – Request for Hearing; Setting the Hearing
 - *This section establishes the process for initiating an appeal, the requirements of such an appeal, and the Commission's requirements for scheduling a hearing.*
 - R12-14-608 – Summary Dismissal
 - *This section establishes the conditions that allow for a summary dismissal of the appeal by the Commission.*
 - R12-14-609 – Waiver Rights
 - *This section establishes the waiver of rights provision.*
 - R12-14-610 – Intervention; Amicus Curiae
 - *This section establishes the process, timing and basis for intervening in the appeal and/or filing a brief as amicus curiae. It outlines the decisions available to the Commission in responding to a request to intervene or file an amicus brief, and clarifies that intervenors will be considered parties to the appeal while amicus curiae will not.*
 - R12-14-611 – Informal Settlement Conference.
 - *This section establishes the process for an informal settlement conference, including providing for participation of a Commission representative and its effect in the final administrative decision.*

- R12-14-612 – Ex Parte Communications
 - *This section restricts communications with the Commission or individual commissioners during a pending appeal, except as outlined in the rule.*
- R12-14-613 – Motions
 - *This section outlines the type, form, timing, response and process for ruling on motions.*
- R12-14-614 – Computing Times
 - *This section establishes the process for calculating time periods with regards to these rules.*
- R12-14-615 – Filing and Service of Documents
 - *This section establishes procedures for the handling of documents, including opening a docket, the required form, signature requirements, distribution of documents, as well as the timing and method for the service of documents.*
- R12-14-616 – Consolidation of Severance of Appeals
 - *This section establishes the ability of the Commission to consolidate or severe appeals.*
- R12-14-617 – Continuing of Expediting a Hearing; Reconvening a Hearing
 - *This section establishes the ability of the Commission to continue, expedite and/or reconvene a hearing.*
- R12-14-618 – Vacating a Hearing
 - *This section establishes the process for vacating a hearing.*
- R12-14-619 – Prehearing Conference
 - *This section outlines the procedure and reason(s) for holding a prehearing conference.*
- R12-14-620 – Subpoenas
 - *This section outlines the ability of parties to request a subpoena from the Commission, sets out requirements for the form and service of subpoenas, and provides procedures to object, quash and/or modify a subpoena.*
- R12-14-621 – Telephonic Testimony
 - *This section establishes the ability to testify telephonically.*
- R12-14-622 – Rights and Responsibilities of Parties
 - *This section outlines the rights and responsibilities of parties pertaining to testimony and documentary exhibits.*
- R12-14-623 – Hearings; Depositions
 - *This section establishes the process for holding hearings. This includes establishment of a quorum, right to legal counsel, right to issue subpoenas, presentation of evidence and recording the hearing(s). This section allows the Commission to consider deposition testimony of witnesses unable to appear at hearing. It also includes requirements for the final administrative decision.*
- R12-14-624 – Conduct of Hearing
 - *This section establishes the conduct of the hearings. This includes provisions for public access, opening statements, stipulations, order of presentation, witness examination, closing arguments, and for concluding the hearing.*
- R12-14-625 – Failure of Party to Appear for Hearing
 - *This section establishes the ability of the Commission to proceed, vacate or dismiss the appeal if the appealing party fails to appear for the hearing.*
- R12-14-626 – Witnesses; Exclusions from Hearing
 - *This section establishes the ability to the Commission to exclude witnesses who are not parties from the hearing room.*

- R12-14-627 – Proof
 - *This section establishes the standard and burden of proof.*
- R12-14-628 – Disruptions
 - *This section prohibits interference with the hearing, and allows the Commission to remove disrupters.*
- R12-14-629 – Hearing Record
 - *This section outlines the handling of the hearing record.*
- R12-14-630 – Final Administrative Decisions; Review
 - *This section provides that the Commission's decision is the final administrative decision and allows for judicial appeal, except as specified.*
- R12-14-631 - Rehearing or Review
 - *This section establishes the process and requirements for requesting rehearing or review.*
- R12-14-632 – Notice of Judicial Appeal; Transmitting the Transcript
 - *This section outlines the notice requirements of a judicial appeal and procedures for requesting and receiving a transcript of the hearing.*

3. Effectiveness of APA Rules in Achieving Objectives. As noted above the purpose of the APA Rules, R12-14-101 et seq., is to allocate, contract for, and oversee the administration of primarily long-term federal hydropower supplies allocated by the federal government to Arizona.

The Authority presently has a 50-year Electric Service Contract dated September, 2016 with the U.S. Department of Energy, Western Area Power Administration (Western) whereby the Authority receives Arizona's allocation of power and energy from Hoover Dam. The Authority marketed and scheduled this entitlement in 2016 to 63 power customers in the State of Arizona. Those customers consist of cities and towns, irrigation and electrical districts, and also water conservation districts as required by federal and state law.

The Authority has worked effectively since 1954 with both publicly-owned and privately-owned utilities in making Hoover Power Plant hydropower and other power supplies available to all major load centers throughout Arizona at the lowest possible cost. It has also provided leadership in meeting the many challenges brought about by the constant changes in the electric utility industry.

The effectiveness of each article is outlined below.

- Article 1. General (R12-14-101)
 - *This rule consists of definitions that clarify industry terms, which allows the Authority to operate more efficiently and effectively.*
- Article 2. Availability of Long-Term Power; Application for Electric Service, Power Purchase Certificates (R12-14-201 – R12-14-203)
 - *The rules in this article outline the process for the allocation of power and are effective in achieving the objectives for which they were designed. They ensure potential allottees understand the timing and process for applying for an allocation of power, including requirements for obtaining a Purchase Power Certificate (PPC) where applicable. These rules were very helpful during the re-allocation process in 2015, and allowed the Authority to fulfill its statutory duty to allocate hydroelectric power.*

- Article 3. Service to Purchasers (R12-14-301 – R12-14-302)
 - *R12-14-301 and R12-14-302 effectively ensure that allottees can receive the power they have applied for and that the Authority can assist in obtaining transmission service for allottees. By allowing the Authority to request system and operation plans, the rules ensure that the allottee is able to fully utilize this state resource.*
- Article 4. Administration of Power (R12-14-401 - R12-14-405)
 - *These rules effectively guide the Authority and its customers on the contract terms and use of the power. They provide safeguards against mishandling of the power and help ensure proper utilization of the power. R12-14-404 provides for short-term disposition of power by allottees. Since demand changes seasonally, this allows for full utilization and benefits of the allottees. R12-14-405, which allows the filing of Petitions for Information, Advice or Assistance, supports the Authority's objective of providing good customer service interwoven with public meetings and transparency.*
- Article 5. Records (R12-14-501)
 - *This rule helps in ensuring proper utilization of the power.*
- Article 6. Conferences; Appeal of Agency Action (R12-14-601 – R12-14-632)
 - *These rules effectively meet their intended objective of establishing an administrative hearing process for potential power allocation disputes.*

4. Consistency of Rules with Other Rules and Statutes. The Authority only has a single set of rules, the APA Rules as noted above. Therefore, the Authority has no intra-agency consistency types of issues with its regulations.

The APA Rules are written primarily with the general enabling statute in mind. A.R.S. §30-101 *et seq.* The Authority also considered relevant terms of the State Water and Power Plan which appear at A.R.S. §45-1701, *et seq.*

In 2016, the Western Area Power Administration let the federal hydropower contract to the Authority pursuant to the Boulder Canyon Project Act of 1928, 43 USC §617 *et seq.*, and the Hoover Power Plant Act of 1984. 43 U.S.C. §619 *et seq.*, as amended by the Hoover Power Allocation Act of 2011. The APA Rules are properly consistent with all of the above relevant statutory authorities. Article 6 of the rules, primarily concerning the Authority's administrative appeals process, is consistent with the Uniform Administrative Hearing Procedures Act, A.R.S. §41-1092, *et seq.* In summation, the rules are consistent with other rules and statutes and are internally consistent.

5. Agency Enforcement Policy. The Authority enforces the rules as written.
6. The Clarity, Conciseness, and Understandability of the APA Rules. The APA Rules are concise and to the point in terms of use in leasing available power and then administering the subsequent power contracts. The APA Rules employ topical headings, logical organization, and also define key technical terms. Collectively that helps the reader understand relevant contract terms as well as the regulatory concepts contained in the regulations. Both the APA and its stakeholders are able to understand and follow the rules.
7. Summary of Written Criticisms of the APA Rules Received During the Previous Five Years. None received.

8. 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. The Authority last made some revisions to the APA Rules which were finalized in early 2015. These rules pertained to administration of appealable agency actions. It was estimated no economic, small business, or consumer impact would result from these revisions to the APA Rules.

The rest of APA's rules deal primarily with the process for the allocation of power to customers. That allocation occurred in 2016, and the customer contracts based thereon will remain in effect through September 30, 2067. For that reason, the Authority anticipates no economic, small business, or consumer impact due to the rules for the next five-year review period or through March 2028.

9. Any Analysis Submitted to the Agency by Another Person That Compares the Rule's Impact on This State's Business Competitiveness to the Impact on Businesses in Other States. No such analysis has been submitted by any party to the Authority.
10. If Applicable, Whether the Agency Completed the Course of Action Indicated in the Agency's Previous Five-Year Review Report. As noted in its last Five-Year Regulatory review, the Authority intended to "stay the course" for the five years following the March 2018 Review and manage and deliver Hoover power to its customers under its current regulatory structure. The Authority has achieved that goal, and indeed will continue on the same course of action to the benefit of the Authority's customers.
11. A Determination That the Rules Impose the Least Burden and Costs to Persons Regulated by the Rule Including Paperwork and Other Compliance Costs Necessary to Achieve the Underlying Regulatory Objective. The Authority is selling Hoover power in Year 2023 at an average of 1.74 cents/kilowatt hour, without transmission. This is a significant savings compared to the market retail rate, which continues to rise. Hoover power is projected to be the cheapest available power into the future, assuming no drastic drought impacts to lake elevations.

With the new power contracts taking effect in 2017, the customers requested, and the Authority granted, the ability for customers to coordinate their own Dynamic Signal and transmission. This is believed to be a financial benefit, but reduces our overall budget, making our Administrative & General percentage higher than the last review.

Approximately, 93% of the total costs of obtaining and delivering Hoover power to our customers represents the cost of paying the federal government for the power and debt services themselves. The A&G percentage of cost allocation is less than both the previous review years, 2013 and 2018. This suggests that the Authority's regulations represent a light footprint upon the Authority's efforts to obtain and deliver federal hydropower to its Arizona customer base.

12. 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. The Authority's rules implement and/or comply with the requirements contained in its 2016 federal power contract as well as federal regulatory requirements applicable to the sale of Hoover hydropower. For that reason, the Authority's regulations are consistent with, and not more stringent than, federal laws and regulations applicable to the sale of Hoover hydropower.

13. For Rules Adopted After July 29, 2010 That Require the Issuance of a Regulatory Permit, License or Agency Authorization, Indicate Whether the Rule Complies with A.R.S. § 41-1037 (Related to Issuing General Permits). The Authority has not adopted any rules after July 29, 2010 that require a regulatory permit, license of Authority authorization.
14. Course of Action Regarding APA Rules. The Authority intends to maintain its current set of rules at least through March 2028. No new rules are perceived to be necessary now or in the near future.

The contact person for additional information on this topic is Jordy Fuentes, Executive Director who can be reached at: Arizona Power Authority, 1810 W. Adams, Phoenix, AZ. 85007-2697; (602) 368-4265.

TITLE 12. NATURAL RESOURCES**CHAPTER 14. ARIZONA POWER AUTHORITY**

(Authority: A.R.S. § 30-101 et seq.)

ARTICLE 1. GENERAL

Article 1, consisting of Section R12-14-101, adopted effective November 1, 1993 (Supp. 93-4).

Article 1, consisting of Sections R12-14-101 and R12-14-102, repealed effective November 1, 1993 (Supp. 93-4).

Section

R12-14-101. Definitions

R12-14-102. Repealed

ARTICLE 2. AVAILABILITY OF LONG-TERM POWER; APPLICATION FOR ELECTRIC SERVICE; POWER PURCHASE CERTIFICATES

Article 2, consisting of Sections R12-14-201 through R12-14-203, adopted effective November 1, 1993 (Supp. 93-4).

Article 2, consisting of Sections R12-14-201 and R12-14-202, repealed effective November 1, 1993 (Supp. 93-4).

Section

R12-14-201. Availability of Long-term Power; Contract Negotiations

R12-14-202. Application for Purchase of Electric Service

R12-14-203. Power Purchase Certificates; Application

ARTICLE 3. SERVICE TO PURCHASERS

Article 3, consisting of Sections R12-14-301 and R12-14-302, adopted effective November 1, 1993 (Supp. 93-4).

Article 3, consisting of Sections R12-14-301 thru R12-14-303, repealed effective November 1, 1993 (Supp. 93-4).

Section

R12-14-301. Authority's Service to Purchasers

R12-14-302. Systems and Operation Plans

R12-14-303. Repealed

ARTICLE 4. ADMINISTRATION OF POWER

Article 4, consisting of Sections R12-14-401 through R12-14-405, adopted effective November 1, 1993 (Supp. 93-4).

Article 4, consisting of Sections R12-14-401 thru R12-14-403, repealed effective November 1, 1993 (Supp. 93-4).

Section

R12-14-401. Sale, Use, Transfer, and Administration of Long-term Power

R12-14-402. Changing Points of Delivery; Switching of Electric Service among Points of Delivery

R12-14-403. Wheeling and Operating Agreements

R12-14-404. Disposition of Short-term Power

R12-14-405. Petition for Information, Advice, or Assistance

ARTICLE 5. RECORDS

Article 5, consisting of Section R12-14-501, adopted effective November 1, 1993 (Supp. 93-4).

Article 5, consisting of Sections R12-14-501 and R12-14-502, repealed effective November 1, 1993 (Supp. 93-4).

Section

R12-14-501. Purchaser's Records

R12-14-502. Repealed

ARTICLE 6. CONFERENCES; APPEAL OF AGENCY ACTION

Article 6, consisting of Sections R12-14-601 through R12-14-

607, adopted effective November 1, 1993 (Supp. 93-4).

Article 6, consisting of Sections R12-14-601 thru R12-14-613, repealed effective November 1, 1993 (Supp. 93-4).

Section

R12-14-601. Conferences

R12-14-602. Repeal

R12-14-603. General

R12-14-604. Definitions

R12-14-605. Applicability; Authority

R12-14-606. Notice of Appealable Agency Action

R12-14-607. Request for Hearing; Setting the Hearing

R12-14-608. Summary Dismissal

R12-14-609. Waiver Rights

R12-14-610. Intervention; Amicus Curiae

R12-14-611. Informal Settlement Conference

R12-14-612. Ex Parte Communications

R12-14-613. Motions

R12-14-614. Computing Time

R12-14-615. Filing and Service of Documents

R12-14-616. Consolidation or Severance of Appeals

R12-14-617. Continuing or Expediting a Hearing; Reconvening a Hearing

R12-14-618. Vacating a Hearing

R12-14-619. Prehearing Conference

R12-14-620. Subpoenas

R12-14-621. Telephonic Testimony

R12-14-622. Rights and Responsibilities of Parties

R12-14-623. Hearings; Depositions

R12-14-624. Conduct of Hearing

R12-14-625. Failure of Party to Appear for Hearing

R12-14-626. Witnesses; Exclusion from Hearing

R12-14-627. Proof

R12-14-628. Disruptions

R12-14-629. Hearing Record

R12-14-630. Final Administrative Decisions; Review

R12-14-631. Reharing or Review

R12-14-632. Notice of Judicial Appeal; Transmitting the Transcript

ARTICLE 1. GENERAL**R12-14-101. Definitions**

In this Chapter, the definitions in A.R.S. Title 30, Chapter 1 and in A.R.S. Title 45, Chapter 10 apply and, unless the context otherwise requires, the following definitions also apply:

1. "Banked energy" means the electric energy held under an agreement for later delivery.
2. "Banking" means an agreement under which an Entity agrees to retain a portion of the Purchaser's electric energy for later delivery.
3. "Capacity" means the electric capability of an Electric Power System.
4. "Conference" means an informal proceeding before the Commission at which formal action will not be taken by the Commission.
5. "District" means any Power or water organization governed by A.R.S. Title 30, Chapter 1 or A.R.S. Title 48.
6. "Electric Power System" means the electric facilities and equipment by which:
 - a. Power is made available to a Purchaser; and
 - b. Power is delivered to a Purchaser's customer.

7. "Energy" means electric energy made available to a Purchaser.
8. "Entity" means any District, governmental agency, Operating Unit, or Person.
9. "Exchange" means a transfer of electric Power by a Purchaser to another Purchaser that is obligated to return a similar amount of Power upon terms and conditions and at the time or times approved by the Authority under R12-14-401(K).
10. "Load" means the electric Power required to meet a Purchaser's demand for electric service.
11. "Long-term Power" means any supply of Power that is available to the Authority for a period more than 366 consecutive days and that is subject to the jurisdiction of, and disposition by, the Authority, including any Power recaptured by the Authority and any Power tendered or relinquished by a Purchaser.
12. "Point of Delivery" means the point or points on a transmission system where the Authority makes Power available for delivery to a Purchaser.
13. "Power pooling" means an agreement for aggregating or commingling the Long-term Power supplies of two or more Purchasers.
14. "Power Purchase Certificate" means the certificate required before a Purchaser enters into a Power Sales Contract under A.R.S. § 30-151 et seq.
15. "Power Sales Contract" means a contract under which the Authority sells Long-term Power to a Purchaser.
16. "Preference" means the priority of entitlement to Power according to A.R.S. § 30-125 or A.R.S. § 45-1708.
17. "Purchaser" means any Qualified Entity that contracts to purchase Power from the Authority under A.R.S. Title 30, Chapter 1 or under A.R.S. Title 45, Chapter 10.
18. "Qualified Entity" means any Entity that is eligible to purchase Power from the Authority under A.R.S. Title 30, Chapter 1 or A.R.S. Title 45, Chapter 10.
19. "Recapture" means the recovery or retaking by the Authority from a Purchaser of Long-term Power that exceeds the Purchaser's needs, for reallocation among other Qualified Entities.
20. "Relinquish" means a Purchaser's return of unneeded Power to the Authority.
21. "Secretary" means the person designated by the Commission to act as the official Secretary or as the Assistant Secretary of the Authority.
22. "Service Territory" means the geographic area in which Power is sold or used by a Purchaser and is described in a Power Purchase Certificate or an amendment to a Power Purchase Certificate.
23. "Short-term Power" means any supply of Power made available by or through the Authority for a period of no more than 366 consecutive days.
24. "Tender" means a Purchaser's offer to return unneeded Power to the Authority.
25. "Wheeling" means delivery of Power over the transmission system of another Entity.

Historical Note

Former Rule Article I. Not in original publication, correction, paragraph (5) (Supp. 75-1). Former Section R12-14-01 renumbered as Section R12-14-101 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-102. Repealed

Historical Note

Former Rule Article II. Former Section R12-14-02 renumbered as Section R12-14-102 (Supp. 85-6). Section repealed effective November 1, 1993 (Supp. 93-4).

ARTICLE 2. AVAILABILITY OF LONG-TERM POWER; APPLICATION FOR ELECTRIC SERVICE; POWER PURCHASE CERTIFICATES

R12-14-201. Availability of Long-term Power; Contract Negotiations

- A. Except as provided in R12-14-401(B), if the Authority decides that a supply of Long-term Power is available, the Authority shall give public notice that it will receive applications for electric service from prospective Purchasers. The public notice shall include the date, time, and place for the public information Conference at which the Authority shall provide a preliminary proposal for the allocation and marketing of available Long-term Power.
- B. The Authority shall give public notice of the date, time, and place for a public comment Conference to be held not more than 60 days after the date of the public information Conference held under subsection (A). An interested party may appear at the public comment Conference and present oral and written comments on the Authority's Long-term Power proposal provided at the public information Conference held under subsection (A).
- C. Public notice required by subsections (A) and (B) shall be mailed to:
 1. Existing Purchasers;
 2. Prospective Purchasers that notify the Authority of their interest in applying for Long-term Power; and
 3. Other Qualified Entities on the Authority's mailing list.
- D. Public notice required by subsections (A) and (B) shall be published in a newspaper of statewide circulation once each week for two consecutive weeks.
- E. A Qualified Entity wanting to enter into a Power Sales Contract shall file an application for electric service under R12-14-202. The application shall be filed on or before the due date specified in the Authority's notice of intent to receive applications for electric service.
- F. Not later than 60 days after the due date for filing an application for electric service, the Authority shall notify all interested parties of the names and addresses of the prospective Purchasers that are eligible to enter into a Power Sales Contract. The Authority shall include in the notice a proposed allocation of Long-term Power to the eligible prospective Purchasers.
- G. Not later than 90 days after notification of eligibility and of the proposed allocation, the Authority shall present a draft form of contract to each eligible prospective Purchaser and begin contract negotiations.
- H. After contract negotiations are completed, the Authority shall prepare Power Sales Contracts and fix a date for contract signing.
- I. In allocating Long-term Power, the Authority shall consider:
 1. The financial interest and obligation of the Authority; and
 2. The needs and interests of the Purchaser, customers of the Purchaser, and prospective Purchasers.
- J. Within each class of preference priorities established by A.R.S. § 30-125(A), the Authority shall allocate Long-term Power equitably among Qualified Entities in the same preference class based upon the needs of the Entities and the type of use of Long-term Power.

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- K. In deciding whether to allocate or reallocate Long-term Power, the Authority shall consider other sources of Power available to the prospective Purchaser from the federal government.

Historical Note

Former Rule Article III. Not in original publication, correction, paragraph (5) (Supp. 75-1). Former Section R12-14-11 renumbered as Section R12-14-201 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-202. Application for Purchase of Electric Service

- A. A Qualified Entity that desires to purchase Long-term Power shall file a written application for electric service with the Authority. The application shall include the following:
1. The Entity's proposed use of Long-term Power;
 2. The Point or Points of Delivery where the Entity will receive electric service;
 3. The annual energy requirement stated in kilowatt-hours, for each Point of Delivery;
 4. The maximum capacity requirement stated in kilowatts, for each Point of Delivery during a continuous 12-month period; and
 5. A statement of the Entity's kilowatt and kilowatt-hour sales or usage during each of the 24 months immediately preceding the date of the application, divided into reference classifications, such as residential, commercial, irrigation pumping, industrial, public use, or other classification used by the Entity or recognized in the electric utility industry.
- B. An application form for electric service is available at the Authority's business office.
- C. If the Authority determines that an applicant is eligible to enter into a Power Sales Contract for Long-term Power offered under A.R.S. Title 30, Chapter 1, the applicant, within 30 days after receipt of notice of eligibility, shall file an application for a Power Purchase Certificate under R12-14-203.
- D. The holder of an existing Power Purchase Certificate is required to re-apply for a Power Purchase Certificate only if the holder wants to use the Long-term Power acquired under A.R.S. Title 30, Chapter 1, in a Service Territory that differs from the Service Territory described in the holder's existing Power Purchase Certificate.

Historical Note

Former Rule Article IV. Not in original publication, correction, Paragraph (6) (Supp. 75-1). Former Section R12-14-12 renumbered as Section R12-14-202 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-203. Power Purchase Certificates; Application

- A. An application for a Power Purchase Certificate, or an application to amend an existing Power Purchase Certificate, shall be dated, signed, and verified by the applicant or the applicant's authorized representative. An original and five copies of the application and any documents, maps, or other written material to which reference is made in the application shall be filed with the Authority.
- B. An application form for a Power Purchase Certificate is available at the Authority's business office.
- C. The application shall include the information required by A.R.S. § 30-152 and the following:
1. A statement of the nature of the applicant's business, and applicant's legal status (for example, a corporation, a partnership, or other business type);

2. The applicant's mailing address;
 3. A detailed description of the proposed Service Territory;
 4. The name and mailing address of the principal executive officer or secretary of each Entity engaged in the distribution of Power within the proposed Service Territory or contiguous to the Proposed Service Territory;
 5. The estimated amount of Long-term Power for each use proposed by the applicant;
 6. Whether the applicant intends to sell Long-term Power on a profit or a non-profit basis;
 7. Whether the applicant intends to use Long-term Power for its own use, resell Long-term Power, or use and resell the Long-term Power;
 8. A detailed description of the applicant's Electric Power System for the use of Long-term Power;
 9. A copy of any agreement under which the applicant intends to use an Electric Power System owned by another Entity;
 10. The details of any plan under which the applicant proposes to construct, purchase, lease, or obtain the use of an Electric Power System for sale or distribution of Long-term Power; and
 11. An explanation of any arrangements with other Entities for the use of electrical equipment or facilities that the applicant needs in order to use Long-term Power. If any other Entity claims ownership of, or transmission rights on, any electric facilities to be used or if the applicant will duplicate another Entity's electric facilities, the applicant shall disclose that information. If the applicant's arrangements appear to conflict with the rights of another Entity, the applicant may file an affidavit signed by an authorized officer of the affected Entity, describing the affected Entity's agreement to the arrangements for the applicant's use.
- D. When the application is filed, the Authority shall immediately set a date for a hearing under A.R.S. § 30-152.
- E. A Power Purchase Certificate is in effect only during the time the holder of the Power Purchase Certificate has an existing Power Sales Contract with the Authority.
- F. The holder of a Power Sales Contract shall use Power acquired under A.R.S. Title 30, Chapter 1 only in the Service Territory established by the legal description in the Power Purchase Certificate.
- G. The holder of a Power Purchase Certificate shall not assign the Power Purchase Certificate without the prior written approval of the Authority.

Historical Note

Adopted effective November 1, 1993 (Supp. 93-4).
Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

ARTICLE 3. SERVICE TO PURCHASERS**R12-14-301. Authority's Service to Purchasers**

- A. The Authority shall contract with a Purchaser to deliver Long-term Power only if transmission capability is available to ensure delivery of Long-term Power to the Purchaser at the Point or Points of Delivery to be designated in the Power Sales Contract. The Authority may also contract with a Purchaser to provide opportunities for connection between the Purchaser's Electric Power System and the Electric Power System of other Entities.
- B. Before Long-term Power is made available to a Purchaser, the Purchaser shall provide evidence to the Authority that a transmission system is available to enable the Purchaser to take and receive Long-term Power at the locations and voltages designated by the Authority.

- C. Unless the Authority agrees to provide facilities or enter into agreements for the transmission of electric Power, the facilities or agreements must be provided by the Purchaser.
- D. The Authority may obtain an alternative or an additional source of transmission service to serve the needs of a Purchaser.
- E. The Purchaser shall pay any costs or expenses necessary to provide transmission service to the Purchaser.
- F. By agreement with one or more Purchasers, the Authority may construct electric lines and related facilities of the voltage and capacity needed to serve the Purchaser. The agreement must assure full payment by the users of the operating costs, depreciation and interest, and any other costs or expenses associated with the project, during a 40-year amortization period or other period established by law or contract. If the Authority constructs the facilities, the Authority shall determine the incremental costs to be paid by the Purchaser or other user benefitting from the facilities constructed by the Authority.
- G. With the aid of Purchasers, the Authority shall work to maintain a system of load scheduling and records so that the Authority may reasonably predict:
 - 1. A Purchaser's current and future Power needs;
 - 2. Whether a Purchaser should be allowed or required to relinquish Long-term Power that is surplus to the Purchaser's needs; and
 - 3. Whether a Purchaser will have Long-term Power that is temporarily or permanently surplus to the Purchaser's needs.
- H. The Authority shall periodically perform surveys to:
 - 1. Identify sources of Power or transmission service that may be temporarily or permanently available to the Authority;
 - 2. Identify possible markets for available Power resources; and
 - 3. Identify possible markets for recaptured, relinquished, tendered, or temporarily available surplus Long-term Power.

Historical Note

Former Rule Article V. Former Section R12-14-21 renumbered as Section R12-14-301 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-302. Systems and Operation Plans

For the Authority's information and assistance in the administration of its Power Sales Contracts, a Purchaser that does not manage and operate its own Electric Power System shall, at the Authority's request, submit a plan for the use and administration of Long-term Power. The Purchaser shall attach to the plan, maps, specifications, and agreements necessary to disclose the nature and extent of the plan.

Historical Note

Former Rule Article VI. Not in original publication, correction, subsections (C) and (D) (Supp. 75-1). Former Section R12-14-22 renumbered as Section R12-14-302 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-303. Repealed

Historical Note

Former Rule Article VII. Former Section R12-14-23 renumbered as Section R12-14-303 (Supp. 85-6). Section repealed effective November 1, 1993 (Supp. 93-4).

ARTICLE 4. ADMINISTRATION OF POWER

R12-14-401. Sale, Use, Transfer, and Administration of Long-term Power

- A. A Purchaser shall not enter into an agreement for power pooling affecting Power under the Authority's jurisdiction without the prior written approval of the Authority. The Authority shall not unreasonably withhold approval.
- B. Subject to the terms of a Purchaser's Power Sales Contract, a Purchaser may tender or relinquish surplus Long-term Power to the Authority for resale by the Authority.
- C. The Authority shall use its best efforts to sell a Purchaser's tendered or relinquished Long-term Power and shall apply the net proceeds from the sale toward the Purchaser's payment obligations under the Purchaser's Power Sales Contract.
- D. Long-term Power tendered or relinquished to the Authority shall be returned to the Purchaser not more than 60 days after the Authority's receipt of the Purchaser's written notice that the Purchaser requires a return of the tendered or relinquished Long-term Power to meet the Purchaser's loads.
- E. The tender or relinquishment of Long-term Power shall not relieve the Purchaser of its obligations under its Power Sales Contract. The tender or relinquishment of Long-term Power shall not be deemed to be a recapture by the Authority unless:
 - 1. The tender or relinquishment is for the unexpired term of the Purchaser's Power Sales Contract; and
 - 2. The Authority has contracted to sell the tendered or relinquished Long-term Power to another Qualified Entity under the same terms and conditions as those contained in the Purchaser's Power Sales Contract.
- F. Subject to the terms of a Purchaser's Power Sales Contract, if the Long-term Power purchased from the Authority exceeds the Purchaser's electric load for three consecutive contract years, the Authority may recapture the excess Long-term Power as follows:
 - 1. The Authority shall give the Purchaser at least 30 days' written notice of a conference concerning the Authority's consideration of the possible recapture of Long-term Power;
 - 2. The Authority shall determine whether any portion of the Purchaser's Long-term Power allocation can reasonably be expected to exceed the Purchaser's future needs, and the Authority may recapture the excess portion;
 - 3. Subject to Article 6 of this Chapter, any recapture of Long-term Power is effective 60 days after the Purchaser receives a Notice of Recapture from the Authority, or at a later date specified in the Notice of Recapture; and
 - 4. Any recapture of Long-term Power reduces the Purchaser's allocation of Long-term Power by the amount of Long-term Power recaptured by the Authority.
- G. A Purchaser shall not transfer or assign a Power Sales Contract or any interest in a Power Sales Contract without prior written approval by the Authority. The transfer or assignment of a Power Sales Contract or any interest in a Power Sales Contract does not relieve the Purchaser from any obligation under the Purchaser's Power Sales Contract.
- H. The Authority shall not approve an assignment of a Power Sales Contract, or any interest in a Power Sales Contract that:
 - 1. Conflicts with any provision of law;
 - 2. Conflicts with the Authority's regulations;
 - 3. Conflicts with any provision of a Purchaser's Power Sales Contract;
 - 4. Disrupts established Power practices, an Electric Power System, or electric facilities;
 - 5. Results in an increased cost of service to other Purchasers; or
 - 6. Confers a preference upon an Entity not entitled to prefer-

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ence.

- I. The Authority shall not approve an assignment of a Power Sales Contract or an interest in a Power Sales Contract if the Authority determines that the assignment is discriminatory or that the Long-term Power or rights to Long-term Power should be recaptured by the Authority for reallocation, sale, or other disposition to other Qualified Entities.
- J. A Power Sales Contract may restrict or prohibit the wholesale sale or resale of Long-term Power by the Purchaser.
- K. The holder of a Power Purchase Certificate shall use Long-term Power only for the purposes and uses for which it is allocated and sold. Long-term Power allocated and sold under A.R.S. Title 30, Chapter 1 shall be used only within the Service Territory established in the Purchaser's Power Purchase Certificate, unless otherwise authorized in writing by the Authority. The Authority may authorize banking of electric energy and exchange of banked energy between Purchasers under terms and conditions approved by the Authority.

Historical Note

Former Rule Article VIII. Not in original publication, correction, subsection (G) (Supp. 75-1). Former Section R12-14-31 renumbered as Section R12-14-401 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-402. Changing Points of Delivery; Switching of Electric Service Among Points of Delivery

The Authority may allow a Purchaser to change its electric service from a Point of Delivery to another Point or Points of Delivery. Each Point of Delivery shall be a separate Point of Delivery for the Authority's billing purposes unless a new Point of Delivery replaces an existing Point of Delivery. A Purchaser cannot change or switch its electric service between the Purchaser's Points of Delivery and the Points of Delivery of other Purchasers without the prior written approval of the Authority.

Historical Note

Former Rule Article IX. Former Section R12-14-32 renumbered as Section R12-14-402 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-403. Wheeling and Operating Agreements

- A. A Purchaser who wants to enter into an agreement for power pooling or an agreement with another Entity with regard to power operations, transmission, or wheeling involving Long-term Power shall:
 - 1. Petition the Authority for permission to enter into an agreement;
 - 2. State in the petition all relevant facts and the reasons for the proposed agreement; and
 - 3. Give the Authority a copy of any proposed agreement and other information, data, and documents requested by the Authority.
- B. A Purchaser shall not enter into an agreement for the transmission or wheeling of Long-term Power over the facilities of another Entity without the prior written approval of the Authority.
- C. An operating agreement, transmission agreement, power pooling agreement, or wheeling agreement shall not be approved by the Authority if the agreement:
 - 1. Conflicts with the provisions of any Power Sales Contract;
 - 2. Results in disruption of established electric service, oper-

ations, practices, systems, or facilities; or

- 3. Endangers electric service to other Purchasers, to third parties, or to the general public.

Historical Note

Former Rule Article X. Former Section R12-14-33 renumbered as Section R12-14-403 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-404. Disposition of Short-term Power

The Authority may negotiate and enter into contracts with Qualified Entities for the sale, purchase, exchange, or other disposition of Short-term Power.

Historical Note

Adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-405. Petition For Information, Advice, or Assistance

- A. Under A.R.S. § 30-129 and A.R.S. Title 45, Chapter 10, any Entity may petition the Authority for information, advice, or assistance regarding any matter within the jurisdiction of the Authority. The petition shall be in writing and shall include:
 - 1. The names of all interested or affected Entities;
 - 2. The basis for the requested information, advice, or assistance;
 - 3. The location of any Project involved;
 - 4. The action requested of the Commission; and
 - 5. Other information or relevant matter that may assist the Commission in acting upon the petition.
- B. The Commission may direct the Authority staff or an Authority consultant to conduct preliminary studies, surveys, or investigations with respect to any requested action.
- C. If appropriate, the Commission shall schedule a Conference. The Authority shall notify all interested Entities that they may make an oral or written presentation and file documents, reports, or other material relevant to the requested action.

Historical Note

Adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

ARTICLE 5. RECORDS**R12-14-501. Purchaser's Records**

At the request of the Authority, a Purchaser shall file copies of agreements for the purchase, sale, exchange, transmission, banking, power pooling, or wheeling of Long-term Power between the Purchaser and any Entity other than the Authority, together with all current rate schedules and amendments.

Historical Note

Former Rule Article XI. Former Section R12-14-41 renumbered as Section R12-14-501 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-502. Repealed**Historical Note**

Former Rule Article XII. Not in original publication, correction subsections (A) and (B) (Supp. 75-1). Former Section R12-14-42 renumbered as Section R12-14-502 (Supp. 85-6). Section repealed effective November 1, 1993 (Supp. 93-4).

ARTICLE 6. CONFERENCES; APPEAL OF AGENCY ACTION**R12-14-601. Conferences**

- A.** After first giving not less than 10 days' public notice and an opportunity to comment, the Commission may hold a Conference concerning any subject matter within the jurisdiction of the Authority. The Commission shall determine the Conference agenda. A Conference is intended to provide information and receive comments regarding any pending or proposed course of action by the Commission. A formal or binding action shall not be taken by the Commission at a Conference.
- B.** Except as otherwise provided in these rules, the Commission shall establish the date, time, and place of any Conference and may continue, adjourn, or reschedule any Conference.

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article I, adopted effective November 14, 1952, renumbered as Section R12-14-601 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Former Section R12-14-601 repealed; new Section R12-14-601 renumbered from R12-14-607 and amended by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1).

R12-14-602. Repealed**Historical Note**

Correction, not in original publication; former Rules of Practice and Procedure, Article II, adopted effective November 14, 1952, renumbered as Section R12-14-602 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Section repealed; new Section made by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1). Section repealed by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-603. General

- A.** This article applies to any Appealable Agency Action arising from a decision or action of the Commission.
- B.** The Commission shall conduct any administrative hearing, pursuant to the requirements of this article, acting as the Administrative Law Judge pursuant to A.R.S. § 41-1092.01.
- C.** Because state statutes provide many of the procedural requirements for the conduct of administrative hearings, these rules will cross reference such statutes where appropriate. Copies of the statutes and these rules may be obtained from the Arizona Power Authority at its office at 1810 W. Adams Street, Phoenix, Arizona, during normal business hours.

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article III, adopted effective November 14, 1952, renumbered as Section R12-14-603 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Section repealed by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-604. Definitions

For purposes of this article, the following definitions apply unless otherwise stated:

1. As used in this article, the terms "Commission" and "Administrative Law Judge" have the same meaning as in the relevant statutes and are used interchangeably.

2. "Appealable Agency Action" means any decision or action by the Commission determining matters related to the allocation of and contracting for power resources and associated services marketed by the Commission.
3. "Arizona Power Authority" or "Authority" means the agency established pursuant to title 30, chapter 1, article 1, Arizona Revised Statutes.
4. "Commission" means the Arizona Power Authority Commission as established and organized pursuant to title 30, chapter 1, article 1, Arizona Revised Statutes.
5. "Party" has the meaning described in A.R.S. § 41-1001(14).
6. "Person" has the meaning described in A.R.S. § 41-1001(15).

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article IV, adopted effective November 14, 1952, renumbered as Section R12-14-604 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Section repealed by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-605. Applicability; Authority

- A.** These rules apply to any Appealable Agency Action heard by the Commission. Unless otherwise required by law or waived pursuant to subsection (B), all hearings shall be scheduled at the convenience of the Commission and shall be held at the Arizona Power Authority's business office in Phoenix, Arizona. The rules in this article were drafted, proposed, and adopted pursuant to A.R.S. § 41-1003 and A.R.S. § 41-1092.01(F).
- B.** The Commission may waive the application of any of these rules to further administrative convenience, expedition, and economy:
1. With the consent of the parties to the appeal, or
 2. If the waiver does not conflict with law, and does not cause undue prejudice to any party.
- C.** If a procedure is not provided by statute or these rules, the Commission may issue an order using the Arizona Rules of Civil Procedure or related local court rules for guidance.

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article V, adopted effective November 14, 1952, renumbered as Section R12-14-605 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Section repealed by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-606. Notice of Appealable Agency Action

- A.** The Authority shall serve notice of an Appealable Agency Action pursuant to A.R.S. § 41-1092.04. Pursuant to A.R.S. § 41-1092.03, the notice shall:
1. Identify the statute or rule on which the action is based.
 2. Include a description of any party's right to file a notice of appeal or to request a hearing on the Appealable Agency Action.
 3. Include a description of any party's right to request an informal settlement conference pursuant to A.R.S. § 41-1092.06.

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- B.** Each Appealable Agency Action shall be posted to the Arizona Power Authority website within 48 hours after the action is taken. The posting shall constitute official notice of the action. The Authority additionally may elect to provide any party, and such other interested persons as have officially requested to be included, electronic notice of the posting which may be accompanied by the referenced document. Otherwise, each person or entity which has participated in the process leading to the Appealable Agency Action shall be provided with written notice thereof, with notice at the Person's last address of record within five days of the notice being published on the Arizona Power Authority website.

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article VI, adopted effective November 14, 1952, renumbered as Section R12-14-606 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Section repealed by final rulemaking at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-607. Request for Hearing; Setting the Hearing

- A.** A party may initiate an appeal by filing a notice of appeal or request for a hearing with the Arizona Power Authority within 30 days after receiving the notice prescribed in R12-14-606(A). 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. 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 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, and the action being appealed and shall contain a concise statement of the reasons for the appeal or request for a hearing. If requested, the Authority shall schedule an appeal hearing pursuant to this section.
- B.** If good cause is shown, the Commission may accept an appeal or request for a hearing that is not filed in a timely manner.
- C.** A party filing a notice of appeal or requesting the Commission schedule an administrative hearing shall provide the following information:
1. Caption of the Appealable Agency Action, including the name and address of each party;
 2. The date the party appealed the agency action;
 3. A concise statement of the reasons for the appeal;
 4. Any request to expedite or consolidate the appeal; and
 5. If a hearing is requested:
 - a. the estimated time for the hearing;
 - b. the proposed hearing dates; and
 - c. any agreement of the Parties to waive applicable time limits to set the hearing.
- D.** The date scheduled for the hearing may be advanced or delayed on the agreement of the parties or on a showing of good cause, pursuant to A.R.S. § 41-1092.05.
- E.** Within 10 days of the Commission's receipt of a request for hearing, the Commission shall provide notice of the date, time, and location of the hearing in the same manner as provided in R12-14-606(B).

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article VII, adopted effective

November 14, 1952, renumbered as Section R12-14-607 (Supp. 85-6). Section repealed, new Section adopted effective November 1, 1993 (Supp. 93-4). Section renumbered to R12-14-601 at 9 A.A.R. 370, effective March 15, 2003 (Supp. 03-1-1). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-608. Summary Dismissal

An appeal to the Commission may be subject to summary dismissal by the Commission for any of the following causes:

1. If a statement of the reasons for the appeal is not included in the notice of appeal and is not filed within the time required;
2. If the notice of appeal or request for hearing is not filed within the time required.

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article VIII, adopted effective November 14, 1952, renumbered as Section R12-14-608 (Supp. 85-6). Section repealed effective November 1, 1993 (Supp. 93-4). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-609. Waiver of Rights

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

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article IX, adopted effective November 14, 1952, renumbered as Section R12-14-609 (Supp. 85-6). Section repealed effective November 1, 1993 (Supp. 93-4). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-610. Intervention; Amicus Curiae

- A.** A person who wishes to intervene in an appeal must file a motion to intervene. Except for good cause shown, a person must file the motion within 10 days after the Commission issues its notice pursuant to R12-14-607(E).
- B.** A motion to intervene must set forth the basis for the proposed intervention, including whether the person had a right to appeal the Appealable Agency Action or claims an interest in the subject of the action and the person is so situated that disposition of the action may as a practical matter impair or impede the person's ability to protect that interest, unless the Person's interest is adequately represented by existing parties.
- C.** The Commission may:
1. Grant the motion to intervene;
 2. Deny the motion to intervene for good cause, e.g., where granting it would disadvantage the rights of the existing parties or unduly delay adjudication of the appeal; or
 3. Grant the motion to intervene but limit the person's participation in the appeal.
- D.** A person may file a motion to file a brief as amicus curiae.
1. The motion must state the person's interest in the appeal and how its brief will be relevant to the Appealable Agency Action.
 2. The motion must contain a certification that the movant or movant's counsel has read any relevant filed briefs of the parties and that the movant's arguments are not duplicative of those presented by the parties.
 3. The Commission may grant or deny the motion in its discretion. The Commission may also allow a Person to file

a brief as amicus curiae if it denies the Person's motion to intervene.

- E. A person granted full or limited intervener status is a party to the appeal, while an amicus curiae is not. A person granted amicus curiae status shall serve its brief on the parties to the appeal.

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article X, adopted effective November 14, 1952, renumbered as Section R12-14-610 (Supp. 85-6). Section repealed effective November 1, 1993 (Supp. 93-4). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-611. Informal Settlement Conference

- A. If requested by any party to an appeal of an Appealable Agency Action, the Commission shall hold an informal settlement conference within 15 days after receiving the request. A request for an informal settlement conference shall be in writing and shall be filed with the Commission no later than twenty days before the hearing. If an informal settlement conference is requested, the party shall notify the Commission of the request and the outcome of the conference. 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 A.R.S. § 41-1092.05.
- B. If an informal settlement conference is held, a person designated by the Commission shall represent the Commission at the conference. The Commission 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. By participating in the settlement conference, the party or parties waive their right to object to the participation of the Commission representative in the final administrative decision.

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article XI, adopted effective November 14, 1952, renumbered as Section R12-14-611 (Supp. 85-6). Section repealed effective November 1, 1993 (Supp. 93-4). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-612. Ex Parte Communications

A party shall not communicate, either directly or indirectly, with the Commission or individual Commissioners about any substantive issue in a pending appeal unless:

1. All parties are present;
2. It is during a scheduled proceeding, provided that a party that fails to appear after proper notice waives its right to object to the subjects discussed or any rebuttal of these subjects or
3. It is in writing, including facsimile or other electronic means, with copies to all Parties.

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article XII, adopted effective November 14, 1952, renumbered as Section R12-14-612 (Supp. 85-6). Section repealed effective November 1, 1993 (Supp. 93-4). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-613. Motions

- A. Purpose. A party requesting a ruling from the Commission shall file a motion. Motions may be made for rulings such as:
1. Consolidation or severance of issues pursuant to R12-14-616;
 2. Continuing or expediting a hearing pursuant to R12-14-617;
 3. Vacating a hearing pursuant to R12-14-618;
 4. Prehearing conference pursuant to R12-14-619;
 5. Quashing a subpoena pursuant to R12-14-620;
 6. Telephonic testimony pursuant to R12-14-621; and
 7. Reconsideration of a previous order pursuant to R12-14-630 and R12-14-631.
- B. Form. Unless made during a prehearing conference or hearing, motions shall be made in writing and shall conform to R12-14-615. All motions, whether written or oral, shall state the factual and legal grounds supporting the motion, and the requested action.
- C. Time Limits. Absent good cause, or unless otherwise provided by law or these rules, written motions shall be filed with the Commission at least 10 days before any scheduled hearing. A party demonstrates good cause by showing that the grounds for the motion could not have been known in time, using reasonable diligence and:
1. A ruling on the motion will further administrative convenience, expedition or economy; or
 2. A ruling on the motion will avoid undue prejudice to any party.
- D. Response to Motion. A party may file a written response stating any objection to the motion within 5 days of service, or as directed by the Commission.
- E. Oral Argument. A party may request oral argument when filing a motion or response. The Commission may grant oral argument if it is necessary to develop a complete record.
- F. Rulings. Rulings on motions, other than those made during a prehearing conference or the hearing, shall be in writing and served on all parties.

Historical Note

Correction, not in original publication; former Rules of Practice and Procedure, Article XIII, adopted effective November 14, 1952, renumbered as Section R12-14-613 (Supp. 85-6). Section repealed effective November 1, 1993 (Supp. 93-4). New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-614. Computing Time

In computing any time period, the Commission shall exclude the day from which the designated time period begins to run. The Commission shall include the last day of the period unless it falls on a Saturday, Sunday, or legal holiday. When the time period is 10 days or less, the Commission shall exclude Saturdays, Sundays, and legal holidays.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-615. Filing and Service of Documents

- A. Docket. The Authority shall open a docket for each Appealable Agency Action upon receipt of a notice of appeal or request for hearing. All documents filed in an Appealable Agency Action with the Authority other than by electronic means shall be date stamped on the day received by the Authority and entered in the docket.

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- B. Definition. "Documents" include papers such as notices of appeal, requests for hearing, motions, responses, notices, and briefs.
- C. Form. A party shall state on the document the name and address of each party served and how service was made pursuant to subsection (E). A document shall contain the Authority's caption and docket number.
- D. Signature. A document filed with the Authority shall be signed by the party or the party's attorney. A signature constitutes a certification that the signer has read the document and has a good faith basis for submission of the document, and that it is not filed for the purpose of delay or harassment. Signatures can be either hand-written or electronic.
- E. Filing and service. A copy of a document filed with the Authority shall be served on all parties. Filing with the Authority and service shall be completed by personal delivery; first-class, certified or express mail; or facsimile or other electronic means.
- F. Date of filing and service. A document is filed with the Authority on the date it is received by the Authority, as established by the Authority's date stamp on the face of the document, the facsimile date or the electronic receipt date. A copy of a document is served on a party as follows:
 1. On the date it is personally served;
 2. Five days after it is mailed by express or 1st class mail;
 3. On the date of the return receipt if it is mailed by certified mail; or
 4. On the date indicated on the facsimile transmission or the electronic receipt date.
- G. 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 Commission and every other party to the action to the party's last address of record with the Authority. Each party shall inform the Authority of any change of address within five days of the change. Such service may include delivering the document by electronic means, such as email or facsimile, unless a party has specifically requested not to receive notice or service through electronic means, such as email or facsimile.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-616. Consolidation or Severance of Appeals

- A. Standards for consolidation. The Commission may order consolidation of pending appeals, if:
 1. There are substantially similar factual or legal issues, or
 2. All parties are the same, or
 3. If there are different parties, all parties consent to the consolidation.
- B. Order. The Commission shall send a written ruling granting or denying consolidation to all parties, identifying the cases, the reasons for the decision, and notification of any consolidated prehearing conference or consolidated hearing. The Commission shall designate the controlling docket number and caption to be used on all future documents.
- C. Severance. The Commission may sever consolidated Appealable Agency Actions to further administrative convenience, expedition, and economy, or to avoid undue prejudice. Severance may be ordered upon the Commission's own review, or a party's motion.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-617. Continuing or Expediting a Hearing; Reconvening a Hearing

- A. Continuing or expediting a hearing. When ruling on a motion to continue or expedite, the Commission shall consider such factors as:
 1. The time remaining between the filing of the motion and the hearing date;
 2. The position of other parties;
 3. The reasons for expediting the hearing or for the unavailability of the party, representative, or counsel on the date of the scheduled hearing;
 4. Whether testimony of an unavailable witness is authorized by law, and, if so, whether it can be taken telephonically or by deposition; and
 5. The status of settlement negotiations.
- B. Reconvening a hearing. The Commission may recess a hearing and reconvene at a future date by a verbal ruling during the initially noticed hearing or thereafter during any continuation of the hearing.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-618. Vacating a Hearing

The Commission may vacate a calendared hearing if:

1. The parties agree to vacate the hearing;
2. The Commission dismisses the matter;
3. The party withdraws the appeal;
4. The party fails to comply with any order of the Commission; or
5. Facts demonstrate to the Commission that it is appropriate to vacate the hearing for the purpose of informal disposition, or if the action will further administrative convenience, expedition and economy and does not conflict with law or cause undue prejudice to any party.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-619. Prehearing Conference

- A. Procedure. The Commission may hold a prehearing conference. The conference may be held telephonically. The Commission may issue a prehearing order outlining the issues to be discussed. As outlined by A.R.S. § 41-1092.05, prehearing conferences may be held for any of the following reasons:
 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; or
 7. Any other similar reason determined by the Commission to further administrative convenience, expedition, and economy, or to avoid undue prejudice.
- B. Record. The Commission may record any agreements reached during a prehearing conference by electronic or mechanical means, or memorialize them in an order.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-620. Subpoenas

- A. Form. As provided by A.R.S. § 41-1092.07 and A.R.S. § 41-1092.10, any party may request a subpoena in writing from the Commission and shall include in the request:
1. The caption of the Appealable Agency Action;
 2. A list or description of any documents sought;
 3. The full name and home or business address of the custodian of the documents sought or all persons to be subpoenaed;
 4. The date, time, and place to appear or to produce documents pursuant to the subpoena; and
 5. The name, address, and telephone number of the party, or the party's attorney, requesting the subpoena.
- B. The Commission may require a brief statement of the relevance of testimony or documents.
- C. Service of subpoena. Any person who is not a party and is at least 18 years of age may serve a subpoena. The person shall serve the subpoena by delivering a copy to the person to be served. The person serving the subpoena shall provide proof of service by filing with the Arizona Power Authority a certified statement of the date and manner of service and the name of the person served.
- D. Objection to subpoena. A party, or the person served with a subpoena who objects to the subpoena, or any portion of it, may file an objection with the Commission. The objection shall be filed within 5 days after service of the subpoena, or at the outset of the hearing if the subpoena is served fewer than 5 days before the hearing.
- E. Quashing, modifying subpoenas. The Commission shall quash or modify the subpoena if:
1. It is unreasonable or oppressive, or
 2. The desired testimony or evidence may be obtained by an alternative method, or
 3. The existing administrative record contains the information and evidence that would otherwise be proffered pursuant to the subpoena.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-621. Telephonic Testimony

The Commission may grant a motion for telephonic testimony if:

1. Personal attendance by a party or witness at the hearing will present an undue hardship for the party or witness;
2. Telephonic testimony will not cause undue prejudice to any party; and
3. The proponent of the telephonic testimony pays for any cost of obtaining the testimony telephonically.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-622. Rights and Responsibilities of Parties

- A. Generally. A party may present testimony and documentary evidence and argue with respect to the issues and may examine and cross-examine witnesses.
- B. Preparation. A party shall have all witnesses, documents and exhibits available on the date of the hearing.
- C. Exhibits. A party shall provide a copy of each exhibit to all other parties at the time the exhibit is offered to the Commission, unless it was previously provided through discovery.
- D. Responding to Orders. A party shall comply with an order issued by the Commission concerning the conduct of a hearing. Unless objection is made orally during a pre-hearing conference or hearing, a party shall file a motion requesting the Commission to reconsider the order.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-623. Hearings; Depositions

- A. Pursuant to A.R.S. § 30-107, all members of the Commission shall attend all hearings, unless excused from attendance for a justifiable excuse which shall be made part of the record. Three members shall constitute a quorum for conducting a hearing.
- B. The Parties to an 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 Commission may issue subpoenas to compel the attendance of witnesses and the production of documents. The subpoenas shall be served pursuant to R12-14-620(C) and, on application to the superior court, enforced in the manner provided by law for the service and enforcement of subpoenas in civil proceedings. The Commission 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 Commission 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 Commission 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 Commission shall secure either a court reporter or an electronic means of producing or preserving a clear and accurate record of the proceeding at the Authority'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 Commission. On 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 Commission'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 Commission's experience, technical competence and specialized knowledge may be used in the evaluation of the evidence.
 4. On application of a party and for use as evidence, the Commission may permit a deposition to be taken, in the manner and on the terms designated by the Commission, of a witness who cannot be subpoenaed or who is unable to attend the hearing. Subpoenas for the production of

documents may be ordered by the Commission 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 Arizona Power Authority rule. Notwithstanding A.R.S. § 12-2212, subpoenas, depositions or other discovery shall not be permitted except as provided by this subsection or subsection (C).

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.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-624. Conduct of Hearing

- A. Public access. Unless otherwise provided by law, all hearings are open to the public.
- B. Opening. The Commission shall begin the hearing by reading the caption, stating the nature and scope of the hearing, and identifying the parties, counsel, and witnesses for the record.
- C. Stipulations. The Commission shall enter into the record any stipulation, settlement agreement, or consent order entered into by any of the parties before or during the hearing.
- D. Opening statements. The party initiating the appeal may make an opening statement at the beginning of a hearing. All other parties may make statements in a sequence determined by the Commission.
- E. Order of presentation. After opening statements, the party initiating the appeal shall begin the presentation of evidence, unless the parties agree otherwise or the Commission determines that requiring another party to proceed first would be more expeditious or appropriate, and would not prejudice any other party.
- F. Examination. A party shall conduct direct and cross examination of witnesses in the order and manner determined by the Commission to expedite and ensure a fair hearing. The Commission shall make rulings necessary to prevent argumentative, repetitive, or irrelevant presentation of evidence, including testimony, and to expedite the examination to the extent consistent with the disclosure of all relevant testimony and information.
- G. Closing argument. When all evidence has been received, parties shall have the opportunity to present closing oral argument, in a sequence determined by the Commission. The Commission may permit or require closing oral argument to be supplemented by written memoranda. The Commission may permit or require written memoranda to be submitted simultaneously or sequentially, within time periods the Commission may prescribe.
- H. Conclusion of hearing. Unless otherwise provided by the Commission, the hearing is concluded upon the submission of all evidence, the making of final argument, or the submission of all post hearing memoranda, whichever occurs last.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-625. Failure of Party to Appear for Hearing

If a party fails to appear at a hearing, the Commission may proceed with the presentation of the evidence of the appearing party, vacate the hearing and return the matter to the Authority for any further action, or dismiss the appeal and conclude that there is a final action on the existing administrative record.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-626. Witnesses: Exclusion from Hearing

All witnesses at the hearing shall testify under oath or affirmation. At the request of a party, or at the discretion of the Commission, the Commission may exclude witnesses who are not parties from the hearing room so that they cannot hear the testimony of other witnesses.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-627. Proof

- A. Standard of proof. Unless otherwise provided by law, the standard of proof is a preponderance of the evidence.
- B. Burden of proof. Unless otherwise provided by law:
 1. The party asserting a claim, right, or entitlement has the burden of proof;
 2. A party asserting an affirmative defense has the burden of establishing the affirmative defense; and
 3. The proponent of a motion shall establish the grounds to support the motion.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-628. Disruptions

A person shall not interfere with access to or from the hearing room, or interfere, or threaten interference with the hearing. If a person interferes, threatens interference, or disrupts the hearing, the Commission may order the disruptive person to leave or be removed.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-629. Hearing Record

- A. Maintenance. The Commission shall maintain the official record of appeal and hearing.
- B. Transfer of record. Before the Commission makes a final administrative decision, the party may request that the record be available for its review or duplication. Any party requesting a copy of the record or any portion of the record shall make a request to the Commission and shall pay the reasonable costs of duplication.
- C. Release of exhibits. Exhibits shall be released:
 1. Upon the order of a court of competent jurisdiction; or
 2. Upon motion of the party who submitted the exhibits if the time for judicial appeal has expired and no appeal is pending.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-630. Final Administrative Decisions; Review

- A. For purposes of this article, the decision of the Commission on appeal is the final administrative decision.

- B. A party may appeal a final administrative decision pursuant to title 12, chapter 7, article 6, except that if a party has not requested a hearing upon receipt of a notice of Appealable Agency Action pursuant to section 41-1092.03, the Appealable Agency Action is not subject to judicial review.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-631. Rehearing or Review

- A. A party may file a motion for rehearing within 30 days after service of the final administrative decision pursuant to A.R.S. § 41-1092.09.
- B. Any other party may file a response to the motion for rehearing within 15 days after the date the motion for rehearing is filed.
- C. After a hearing has been held and a final administrative decision has been entered pursuant to A.R.S. § 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.
- D. 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.
- E. Except as provided in this subsection, the Commission shall rule on the motion within 15 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.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

R12-14-632. Notice of Judicial Appeal; Transmitting the Transcript

- A. Notification to the Arizona Power Authority. Within 10 days of filing a notice of appeal for judicial review of a final administrative decision, the party shall file a copy of the notice of appeal with the Arizona Power Authority. The Authority shall then transmit the record to the Superior Court.
- B. Transcript. A party requesting a transcript shall arrange for transcription at the party's expense. The Authority shall make a copy of its audio taped record available to the transcriber. The party arranging for transcription shall deliver the transcript, certified by the transcriber under oath to be a true and accurate transcription of the audio taped record, to the Authority, together with one unbound copy.

Historical Note

New Section made by final rulemaking at 21 A.A.R. 297, effective April 14, 2015 (Supp. 15-1).

30-103. Administrative powers of authority; compensation of assistants

A. The authority shall determine its organizational structure and methods of procedure in accordance with the provisions of this chapter, and may adopt, amend or rescind the routine and general rules, regulations and forms and prescribe a system of accounts.

B. The authority shall provide necessary records, including order, resolution and minute books. It may act, effectuate, manifest and record its actions by motion, resolution, order or other appropriate method. Minute, order and resolution records shall be orderly arranged and conveniently indexed. Records of the authority shall be public and open for inspection during business hours.

C. Subject to title 41, chapter 4, article 4, the authority may employ engineering, accounting, skilled and other assistants, define their duties and provide the conditions of employment. All positions shall be filled by persons selected and appointed on a nonpartisan, fitness and qualification basis.

D. Assistants, employed under the provisions of this section, shall receive compensation as determined pursuant to section 38-611.

30-124. Disposition of electric power; limitations; establishment of power rates

A. The authority shall take such steps as may be necessary, convenient or advisable to dispose of electric power within its jurisdiction.

B. The authority shall not operate primarily as a source of public revenue. Electric power, as nearly as practical, shall be disposed of in an equitable manner so as to render the greatest public service and at levels calculated to encourage the widest practical use of electrical energy.

C. Subject to the provisions of this chapter, electric rates of the authority shall be established and include such price components as are necessary to establish and maintain the authority, together with any works constructed or acquired by it, as a self-financing and liquidating project and to provide and maintain reasonable working capital and depreciation and other necessary and proper reserves. The rates for electrical energy generated from the bridge canyon project or other hydroelectric power facilities constructed after the effective date of this act may include such additional price components as the authority shall deem necessary to defray or contribute to the cost of storing, diverting or delivering waters of the main stream of the Colorado river with respect to facilities hereafter constructed and for the cost of construction of facilities for such purposes. Nothing herein contained shall be deemed to authorize the construction of aqueducts, canals or laterals, nor shall the authority have any jurisdiction or control whatsoever over diversions of water or rights to divert water from the main stream of the Colorado river. The rates shall include proportionate general price components, costs of purchases or production, transmission, depreciation, maintenance, amortization and such other appropriate price factors as the authority deems necessary or advisable, but no rates established by the authority shall increase rates to purchasers fixed in existing power contracts with the purchasers during the term of their respective contracts.

D. The authority may fix and prescribe the terms and conditions of its electric sales contracts and services and adopt such rules and regulations it finds necessary or convenient respecting electric services and disposition of electric power. The authority may provide that the purchaser will pass along to its customers the reduction in its cost of service to its customers which results from its purchase of electrical energy covered by its contract with the authority, but nothing contained in this section shall give the authority power to fix, prescribe or control the rates to be charged by any public service corporation.

E. The authority may establish appropriate rate schedules for its different classes of service or for its different zones of service. Rates shall not be discriminatory as between purchasers or classes of purchasers and rates may be uniform within zones or throughout the state.

F. Contract schedules may be modified by the authority when such action is necessary to achieve the purposes and policies of this chapter, but shall not operate to change the provisions of existing power contracts during the term thereof unless the contract so provides or unless with the consent of the holder of the contract.

45-1708. Contracts

A. The director may enter into and carry out contracts with water users for the delivery of Colorado river water through the facilities of the central Arizona project and for the sale and delivery of water from other sources included in the central Arizona project or other water projects, if any, hereafter included in the state water and power plan. The director shall provide in all contracts executed for the delivery of water from the central Arizona project that such contracts shall be subordinate to the satisfaction of all existing contracts between the United States secretary of the interior and users in Arizona heretofore made pursuant to the Boulder canyon project act. It may be required as a condition in any contract under which water is provided from the central Arizona project that the contractor agree to accept main stream water of the Colorado river in exchange for or in replacement of existing supplies from sources other than the main stream. Water which has been developed, stored or appropriated shall be sold only at wholesale rates which will not be unreasonably discriminatory for the same.

B. The authority may enter into and carry out contracts for the sale and transmission of power from power projects included in the state water and power plan. Notwithstanding the provisions of title 30, chapter 1, articles 2, 3 and 4, the power from such power projects included in the state water and power plan shall be sold at wholesale only to such power purchasers, located within or without the state, in such manner and upon such terms and conditions, as shall be determined by the authority to be necessary or advisable to effectuate the purposes of this article, except that power and energy of the authority from the Hoover power plant modifications project and Hoover power plant uprating project shall be sold to power purchasers within this state. Any public utility providing electrical service and any district organized to provide electrical service may enter into such contracts with the authority for the sale and transmission of power and energy by which such public utility or district is obligated to make payments in amounts which shall be sufficient to enable the authority to meet all its costs allocable thereto, including interest and principal payments, whether at maturity or upon sinking fund or other mandatory redemption, for its bonds or notes, reasonable reserves for debt service, operation and maintenance expenses and amounts to pay for renewals, replacements and improvements and to meet the requirements of any rate covenant with respect to debt service coverage and any other amounts required for reserves or other purposes, all as shall be provided in the resolution, trust indenture or other security instrument of the authority; except that nontax-exempt public utilities shall be granted an option to purchase the maximum amount of said capacity permitted by federal regulations governing the issuance of tax-free bonds. Such contracts may contain such other terms and conditions as the authority and such public utility or district may determine, including provisions by which the public utility or district is obligated to pay for power irrespective of whether energy is produced or delivered to it or whether any project contemplated by any such agreement is completed, operable or operating, and notwithstanding suspension, interruption, interference, reduction or curtailment of the output of such project.

C. The surplus revenues derived by the director from the central Arizona project and any other water project and by the authority from any power project shall be paid into the state water and power development fund in the amounts and in the manner and at the times specified in an agreement which shall be entered into by the authority and the director prior to the issuance of any bonds or notes. For this purpose, surplus revenues shall mean the revenues of any such project remaining after payment therefrom of operating and maintenance expenses of such project, debt service with respect to bonds and notes issued for such project, payments for renewals and replacements of such project and improvements thereof, any payments required under any license from the United States department of energy with respect to such project and any other charges or liens with respect to such project payable out of such revenues, including in each case reserves therefor, all to the extent required to be paid or provided for under the terms of any resolution or resolutions or trust indenture or indentures authorizing or securing bonds or notes issued for such project or any license from the United States department of energy with respect to such project. Such agreement may also provide for reasonable limitations on the amounts of the necessary operation and maintenance expense for the projects included in the state water and power plan, and it may contain such other terms, conditions and provisions consistent with the provisions of this article as may be necessary or desirable to effectuate the state water and power plan. It is recognized that such agreement will provide additional security for the bonds and notes of the authority and that the same may be pledged by the authority for such purpose.

D. The director or authority may enter into any obligation or contract with the United States necessary or required in carrying out or accomplishing any of the purposes or power authorized or permitted by this article and may conform to such requirements, rules or regulations not otherwise inconsistent with the laws of this state as may be prescribed by the United States in accordance with the acts of Congress applicable thereto now in effect or which may hereafter be adopted and the rules and regulations promulgated thereunder. Contracts or agreements entered into with the United States may contain such terms, conditions, covenants and restrictions for the security of the United States or any subsequent holders of bonds issued to evidence such loans, grants or advances of money. The director or authority may do any and all acts and things considered necessary or advisable by the United States and the director or authority in connection with or additionally to secure any such loans, grants or advances of money or issuance or sale of bonds provided for in the contract or agreement with the United States.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 18, Chapter 2, Article 6, 8, 12



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 6, 2023

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 14, 2023

SUBJECT: Department of Environmental Quality
Title 18, Chapter 2

This Five-Year-Review Report (5YRR) from the Department of Environmental Quality relates to rules in Title 18, Chapter 2 regarding Air Pollution Control. The report covers the following Articles:

Article 6 - Emissions from Existing and New Nonpoint Sources

Article 8 - Emissions from Mobile Sources (New and Existing)

Article 12 - Voluntary Emissions Bank

In the last 5YRR of these rules the Department proposed to amend several rules in Articles 6 & 8 to address minor clarity issues. The Department indicates they did not complete the proposed changes as they did not conduct a rulemaking to make material changes to Articles. Additionally, the Department also proposed to amend rules in Article 12 and completed the changes through final rulemaking effective July 28, 2019.

Proposed Action

Currently, the Department is proposing to amend several of its rules in order to make them more clear, concise, understandable, effective, and consistent with other rules and statutes. The Department indicates they submitted an exception request to the Governor's Office on

March 17, 2023, and plans to submit the Notice of Final Rulemaking to the Council by November 2023.

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes, the Department cites to both general and specific statutory authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department believes that the probable economic impacts of the rules have not changed since their assessments in 2007 and 2019. One of the major economic benefits of the rules described in the 2007 EIS is that they facilitate the maintenance of the National Ambient Air Quality Standards (NAAQS) in attainment areas and the transition of nonattainment areas into attainment areas. In doing so, they lower the cost burden of federal sanctions and more stringent control measure requirements. The 2019 EIS noted that the completely voluntary nature of the emissions bank means that the Article 12 rules impose no involuntary costs on businesses.

Stakeholders include the Department, owners of emissions sources, and the general public.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department conducted an internal survey of subject matter experts and an external survey of regulated stakeholders and concluded that the benefits of the rules in Articles 6, 8, and 12 outweigh the costs of the rules and impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying regulatory objectives set forth in the Clean Air Act (CAA).

4. **Has the agency received any written criticisms of the rules over the last five years?**

Yes, the Department indicates they received four written criticisms to the rules and adequately responded.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Department indicates the rules are overall clear, concise, and understandable with the exception of the following:

R18-2-604 - Open Areas, Dry Washes, or Riverbeds
R18-2-605 - Roadways and Streets
R18-2-606 - Material Handling

R18-2-607 - Storage Piles
R18-2-608 - Mineral Tailings
R18-2-609 - Agricultural Practices

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, the Department indicates the rules are overall consistent with other rules and statutes with the exception of the following:

R18-2-602 - Unlawful Open Burning
R18-2-801 - Classification of Mobile Sources
R18-2-804 - Roadway and Site Cleaning Machinery
R18-2-611 - Definitions for R18-2-611.01, R18-2-611.02, and R18-2-611.03

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates the rules are overall effective in achieving their objectives with the exception of the following:

R18-2-604 - Open Areas, Dry Washes, or Riverbeds
R18-2-605 - Roadways and Streets
R18-2-606 - Material Handling
R18-2-607 - Storage Piles
R18-2-608 - Mineral Tailings
R18-2-609 - Agricultural Practices

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Department indicates the rules are enforced as written with the exception of the following:

R18-2-602 - Unlawful Open Burning
R18-2-801 - Classification of Mobile Sources
R18-2-802 - Off-road Machinery
R18-2-804 - Roadway and Site Cleaning Machinery

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

No, the Department indicates the rules are not more stringent than the corresponding federal laws, CAA 110 and Part D of Title I of the CAA

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Department indicates most of the rules do not require the issuance of a general permit, however there are seven rules that require the issuance of a general permit. The Department complies with A.R.S. 41-1037(A).

11. Conclusion

As mentioned above, the Department is proposing to amend several of its rules in order to make them more clear, concise, understandable, effective, and consistent with other rules and statutes. The Department plans to submit a Notice of Final Rulemaking to the Council by November 2023.

Council staff recommends approval of this report.

Arizona Department of Environmental Quality

Five-Year Review Report

Title 18. Environmental Quality

Chapter 2. Department of Environmental Quality - Air Pollution Control

Article 6. Emissions from Existing and New Nonpoint Sources

Article 8. Emissions from Mobile Sources (New and Existing)

Article 12. Voluntary Emissions Bank

March 29, 2023

1. Authorization of the rule by existing statutes

Article 6. Emissions from Existing and New Nonpoint Sources

General Statutory Authority: A.R.S. §§ 49-104(A)(1), (10), 49-401, 49-404, 49-422(B), 49-424(4), and 49-425

Specific Statutory Authority: A.R.S. §§ 49-457 and 49-501

Article 8. Emissions from Mobile Sources (New and Existing)

General Statutory Authority: A.R.S. §§ 49-104(A)(1), (10), 49-401, 49-404, 49-422(B), 49-424(4), and 49-425

Article 12. Voluntary Emissions Bank

General Statutory Authority: A.R.S. §§ 49-104(A)(1), (10), 49-401, 49-404, 49-422(B), 49-424(4), and 49-425

Specific Statutory Authority: A.R.S. § 49-410

2. The objective of each rule:

Rule	Objective
R18-2-601	The rule establishes the criteria for the application of Article 6 to existing and new nonpoint sources.
R18-2-602	The rule defines terms used in Article 6, establishes the types of open burning that are unlawful and the procedure for obtaining a permit, establishes exemptions from the permit requirement for specific types of open burning, and creates authority to delegate permit issuance to other entities.
R18-2-603	Repealed.
R18-2-604	The rule establishes general standards for particulate matter emissions from various activities performed in or related to open areas, vacant lots, dry washes or river beds.
R18-2-605	The rule establishes general requirements to reduce airborne dust emissions from roadways and streets.
R18-2-606	The rule establishes work practice standards for activities related to the handling of materials that are likely to result in airborne dust.
R18-2-607	The rule establishes work practice standards for storage piles in order to reduce airborne dust emissions.

R18-2-608	The rule establishes work practice standards for mine tailing piles in order to reduce airborne dust emissions.
R18-2-609	The rule establishes a general work practice standard for controlling particulate matter emissions from agricultural activities outside the Phoenix metro and Yuma PM10 planning areas.
R18-2-610	The rule provides the definitions necessary to understand and implement R18-2-610.01, R18-2-610.02, and R18-2-610.03.
R18-2-610.01	The rule establishes the agricultural Particulate Matter (PM) general permit and Agricultural Best Management Practices (Ag BMP) for commercial farmers engaged in regulated agricultural activities within the Maricopa County PM Nonattainment Area.
R18-2-610.02	The rule establishes the agricultural PM general permit and Ag BMP for commercial farmers engaged in regulated agricultural activities within moderate PM nonattainment areas designated after June 1, 2009.
R18-2-610.03	The rule establishes the agricultural PM general permit and Ag BMP for commercial farmers engaged in regulated agricultural activities within the Pinal County PM Nonattainment Area.
R18-2-611	The rule provides the definitions necessary to understand and implement R18-2-611.01, R18-2-611.02, and R18-2-611.03.
R18-2-611.01	The rule establishes the agricultural PM general permit and Ag BMP for commercial animal operators engaged in regulated agricultural activities within the Maricopa County PM Nonattainment Area.
R18-2-611.02	The rule establishes the agricultural PM general permit and Ag BMP for commercial animal operators engaged in regulated agricultural activities within Moderate PM Nonattainment Areas Designated After June 1, 2009, except the Pinal County PM Nonattainment Area.
R18-2-611.03	The rule establishes the agricultural PM general permit and Ag BMP for commercial animal operators engaged in regulated agricultural activities within the Pinal County PM Nonattainment Area.
R18-2-612	The rule provides the definitions necessary to understand and implement R18-2-612.01.
R18-2-612.01	The rule establishes the agricultural PM general permit and Ag BMP for regulated Irrigation Districts within PM Nonattainment Areas Designated after June 1, 2009.
R18-2-613	The rule provides the definitions necessary to understand and implement R18-2-613.01.
R18-2-613.01	The rule establishes the agricultural PM general permit and Ag BMP for commercial farmers engaged in regulated agricultural activities within the Yuma PM10 Nonattainment Area.
R18-2-614	The rule establishes a 40% opacity standard for any nonpoint sources and specifies the test method used to evaluate visible emissions as applicable to Article 6, and exempts sources

	regulated under R18-2-602 (open burning permits) or Article 15 (prescribed burning) from this requirement.
R18-2-801	The rule clarifies the scope and applicability of the mobile source emission rules by prescribing various exemptions and creating a blanket opacity limit for mobile sources.
R18-2-802	The rule defines off-road machinery and sets an emission opacity limit, with prescribed exceptions.
R18-2-803	The rule sets an emission opacity limit for any heater-planer operated for the purpose of reconstructing asphalt pavements, with prescribed exceptions.
R18-2-804	The rule sets an emission opacity limit, with prescribed exceptions, for roadway and site-clearing machinery. It also requires that operators of such machinery take reasonable precautions to prevent airborne particulate matter and provides examples of precautions.
R18-2-805	The rule sets an emission opacity limit for asphalt or tar kettles and prescribes control measures required for the kettles.
R18-2-1201	The definition section defines key terms used in Article 12 to ensure the voluntary emission bank rules are specific and understandable to the general public.
R18-2-1202	The rule clarifies the scope and applicability of the voluntary emissions bank. It also provides that the emissions bank is voluntary and not a condition to create or use offset credits.
R18-2-1203	The rule establishes the process for permitted generators to apply for emission reduction credits and specifies what documentation must accompany an application for credits. It also establishes the procedure for the certification authority to act on such applications.
R18-2-1204	The rule establishes the process for regulatory generators to apply for emission reduction credits and specifies what documentation must accompany an application for credits. It also establishes the procedure for the certification authority to act on such applications.
R18-2-1205	The rule establishes the process for plan generators to apply for emission reduction credits and specifies what documentation must accompany an application for credits. It also establishes the procedure for the certification authority to act on such applications, including the required public notice process for any plan application.
R18-2-1206	The rule establishes the process to open an emissions bank account with the certification authority.
R18-2-1207	The rule establishes the process to register emission reduction credits in the emissions bank and information the certification authority must record about the credits.
R18-2-1208	The rule establishes the process to transfer, use, or retire emission reduction credits.
R18-2-1209	The rule excludes the consideration of emission reduction credits for state implementation plans and other planning purposes.
R18-2-1210	The rule establishes the fees associated with applying for certification or use of emission reduction credits.

3. **Are the rules effective in achieving their objectives?** Yes x No

The rules are effective in achieving their objectives. Minor clarifications can be made as described in the table below.

Rule	Explanation
R18-2-604 – R18-2-609	The "reasonable precaution" standard found in Article 6 could impair EPA approvability for these rules for SIP purposes. This issue inhibits approval of PM10 nonattainment plans and redesignation requests. ADEQ has determined that these rules are effective, and that amendments to them could impose further regulatory burdens on stakeholders statewide. Therefore, these rules will not be modified because rules in Article 13 can be amended to address SIP approvability issues in particular areas. ADEQ will amend Article 13 to address specific nonattainment areas where required by federal Clean Air Act provisions in instances where the Article 6 standard impairs SIP approval. This comment is also discussed below in Sections 6 and 7.

4. **Are the rules consistent with other rules and statutes?** Yes x No

The rules are consistent with the rules and statutes of Arizona and the United States. Minor clarifications can be made as described in the table below.

Rule	Explanation
R18-2-602	This rule, along with others found elsewhere throughout Title 18 of the Arizona Administrative Code ¹ , uses the term “air curtain destructor,” which is not consistent with federal regulations. 40 CFR §§ 60.2970 through 60.2974 use the term “air curtain incinerator” instead of “air curtain destructor.” All rules in Title 18 which use the term “air curtain destructor” will be amended through expedited rulemaking to use terminology found in applicable federal regulations. The exemption memo for this rulemaking was submitted the governor’s office on March 17, 2023. ADEQ anticipates submitting this rule to the Council in November of 2023.
R18-2-801, R18-2-802, R18-2-804	In 1990, Congress expressly prohibited states from adopting or attempting to enforce any standard relating to the control of emissions from new nonroad engines and vehicles. (42 U.S.C. § 7543(e)(1)). Subsequent case law determined federal preemption of state law also applied to used or in-use nonroad engines. Consequently, the smoke opacity standards contained in A.A.C. R18-2-801, R18-2-802, and R18-2-804 are now preempted under federal law to the extent they apply to emissions from nonroad engines or vehicles as defined in 42 U.S.C. § 7550(10) and (11). These rules will be amended through expedited rulemaking to clarify their limited scope. The exemption memo for this rulemaking was submitted the governor’s office on March 17, 2023. ADEQ anticipates submitting this rule to the Council in November of 2023.
R18-2-611 – R18-2-611.03	As a result of a recent statutory change and rulemaking to clarify the applicability of the AgBMP rules that was completed to alleviate EPA concerns, certain agricultural activities may be exempt from permitting under AgBMP which should not be exempt. ADEQ will

¹ R18-2-101(9), R18-2-326(C)(1), R18-2-704(B)(2), R18-2-704(C), R18-2-1509(B)(10)

	evaluate these rules to determine if they contain BMPs for any sources which should be regulated outside of the AgBMP program. Further discussion can be found in Section 7.
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5. **Are the rules enforced as written?** Yes x No

The rules are enforced as written. Minor changes may be appropriate as described in the table below

Rule	Explanation
R18-2-602	ADEQ enforces the rule, but according to internal feedback, “some county sheriffs have allowed unlawful open burning simply because they have always done it.” Further internal consultation with inspectors who enforce the open burning regulations revealed that this is an occasional occurrence and that the large majority of local partners enforce R18-2-602 as written. When a local partner does not uphold the rule as written, inspectors can provide relevant sections of the A.A.C. to the enforcement partner as well as issue notices of violation upon documenting noncompliant burning.
R18-2-801, R18-2-802, R18-2-804	As soon as ADEQ became aware of the partial preemption of these rules noted in Section 4, it stopped enforcing them to the extent that they are preempted.

6. **Are the rules clear, concise, and understandable?** Yes x No

The rules are clear, concise, and understandable. Minor clarifications can be made as described in the table below.

Rule	Explanation
R18-2-604 – R18-2-609	The clarity of the "reasonable precaution" standard may be an impediment to EPA approval of these rules for SIP purposes. ADEQ has determined that this standard should not be amended in order to avoid imposition of further regulatory burdens on stakeholders statewide. ADEQ will amend Article 13 to address specific nonattainment areas where required by federal Clean Air Act provisions in instances where the Article 6 standard impairs SIP approval, and therefore these rules do not need to be amended. Further discussion can be found in Section 7.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes x No

Rule	Explanation
Article 6 generally	<u>Criticism:</u> One external stakeholder provided feedback requesting that “A high wind speed exclusion to opacity limits should be established for times when proper dust controls are overwhelmed by high winds.” <u>Response:</u> ADEQ will analyze the applicable federal requirements to assess the feasibility of such an exclusion if changes are made to R18-2-614.
Article 6 generally	<u>Criticism:</u> One stakeholder comment points out that the "reasonable precaution" standard found in Article 6 is vague, which impairs enforcement, and EPA will not approve rules

	<p>with this standard for SIP purposes. This issue inhibits approval of PM10 nonattainment plans and redesignation requests.</p> <p><u>Response:</u> ADEQ recognizes the federal SIP-approvability concerns with the “reasonable precaution” standard found in the Article 6 rules. As opposed to revising these Article 6 rules, ADEQ has determined the best path forward is to adopt location-specific fugitive dust rules under Article 13 where required by federal Clean Air Act provisions. Amending Article 6 may impose a regulatory burden on stakeholders statewide, which ADEQ seeks to avoid. Amending Article 13 as needed imposes burdens only on specific stakeholders and when required by the Clean Air Act.</p>
R18-2-611 – R18-2-611.03	<p><u>Criticism:</u> One external stakeholder provided feedback stating that these Article 6 rules require revisions to conform with changes to A.R.S. § 49-457 regarding the definition of “regulated agricultural activities.”</p> <p><u>Response:</u> Future revisions to correct this issue may be warranted, conditioned upon revision of the AgBMP rules. ADEQ will evaluate these rules to determine their consistency with A.R.S. § 49-457. Revisions to the AgBMP rules are outside of ADEQ's scope of authority and must be undertaken by the Governor's Agricultural Best Management Practices Committee. At the next opportunity to revise these rules, ADEQ will recommend that the Committee consider revisions if they are found to be necessary.</p>

8. Economic, small business, and consumer impact comparison:

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on Chapter 18 and Articles 6 and 8 in 2007. ADEQ believes that the assessment of the probable economic impacts of the rules described at that time remain accurate. One of the major economic benefits of these rules described in the 2007 EIS is that they facilitate the maintenance of the NAAQS in attainment areas and the transition of nonattainment areas into attainment areas. In doing so, they lower the cost burden of federal sanctions and more stringent control measure requirements (for example, best available control measures). Efforts to attain the NAAQS in Arizona yield similar economic benefits today as they did in 2007. ADEQ believes that economic impacts of the Article 6 and 8 rules on the state’s economy, small businesses, and consumers have not changed since 2007.

ADEQ also submitted an EIS for Article 12 when the rules were updated to incorporate statutory changes in 2019. The EIS can be found in the NFRM for the updates at 25 A.A.R. 1435. This EIS noted that the completely voluntary nature of the emissions bank means that Article 12 rules impose no involuntary costs on businesses. ADEQ believes that the economic impacts of the Article 12 rules on the state’s economy, small businesses, and consumers have not changed since 2019, since the emissions bank remains voluntary today.

Please see the attached EIS as well as number 11 below for more information.

9. Has the agency received any business competitiveness analyses of the rules? Yes ____ No x

10. Has the agency completed the course of action indicated in the agency’s previous five-year-review report?

In 2017, ADEQ submitted a 5 Year Rule Review for Articles 6, 8, and 12. In this report, ADEQ indicated a course of action regarding several rules. The proposed course of action and explanation of each outcome are described in the table below.

Rule	Proposed Course of Action from Previous Report	Explanation
Article 6		
Article 6 Generally	ADEQ proposed a course of action to address minor clarity issues in Article 6, if ADEQ engaged in a rulemaking to make material changes.	ADEQ has not conducted a rulemaking to make material changes to Article 6 and therefore did not address the minor clarity issues. ADEQ intends to address clarity issues with the “reasonable precaution” standard in Article 6 by amending Article 13 when required by federal Clean Air Act provisions such as the reasonably available control measures (RACM) standard for nonattainment areas, as discussed in Section 7. Therefore, Article 6 rules will not be amended.
R18-2-602, and other rules throughout Title 18 ² which are not included in this 5YRR	The proposed course of action for this open burn rule intended to correct a discrepancy between the state rule, which uses the term “air curtain destructor,” and the related federal regulation, which uses “air curtain incinerator.” No stakeholders have raised concerns on this issue and ADEQ has not encountered enforcement issues based on the different language.	ADEQ anticipates conducting a rulemaking to complete this technical correction. This rulemaking will replace all instances of the term “air curtain destructor” with “air curtain incinerator” throughout Chapter 2. The exemption memo for this rulemaking was submitted the governor’s office on March 17, 2023. ADEQ anticipates submitting this rule to the Council in November of 2023.
R18-2-604 through R18-2-609	The proposed course of action for these rules references only “minor clarity issues” identified in a 2008 review. This appears to refer to that review’s statement that the “reasonable precaution” standard is no longer acceptable for SIP purposes.	ADEQ recognizes the federal SIP-approvability concerns with the “reasonable precaution” standard found in the Article 6 rules. As opposed to revising these Article 6 rules, ADEQ has determined the best path forward is to adopt location-specific fugitive dust rules under Article 13 where required by federal Clean Air Act provisions to meet the standard of reasonably available control measures (RACM) in nonattainment areas. Amending Article 6 may impose a regulatory burden on stakeholders statewide, which ADEQ seeks to avoid. Amending Article 13 as needed imposes burdens only on specific stakeholders and when required by the Clean Air Act.

² R18-2-101(9), R18-2-326(C)(1), R18-2-704(B)(2), R18-2-704(C), R18-2-1509(B)(10)

R18-2-611 through R18-2-613	The proposed course of action for these rules references only “minor clarity issues” identified in a 2008 review.	ADEQ has not completed this course of action because it appears to be an error, as the 2008 review does not note any issues with these agriculture general dust permit and BMP rules.
R18-2-610.01 through R18-2-610.02, R18-2-611.01 through R18-2-611.02	The prior review suggested to improve clarity with language that conforms with Maricopa County agricultural trackout rules.	ADEQ reviewed Maricopa County’s trackout rules and determined that none are applicable to agricultural operations permitted under the AgBMP program. Therefore, no revisions were recommended to the Governor’s AgBMP Committee.
R18-2-611.03	The prior review suggested to improve clarity with language that conforms with Maricopa County agricultural trackout rules.	ADEQ has not completed this proposal, as it appears to have been an error and is therefore not necessary to complete. The proposal references conformity with Maricopa rules, but Rule 611.03 pertains only to Pinal County PM10 areas.
Article 8		
Article 8 Generally	ADEQ proposed a course of action to address minor clarity issues in Article 8, if ADEQ engaged in a rulemaking to make material changes.	ADEQ has not conducted a rulemaking to make material changes to Article 8 and therefore has not addressed any minor clarity issues aside from the noted issues regarding rules R18-2-801, R18-2-802, and R18-2-804. The exemption memo amending rules R18-2-801, R18-2-802, and R18-2-804 was submitted the governor’s office on March 17, 2023. ADEQ anticipates submitting this rule to the Council in November of 2023.
R18-2-801 through R18-2-802, R18-2-804	ADEQ proposed to amend this rule based on the federal preemption issue noted by stakeholders and EPA, if material changes were made to A.A.C. R18-2-801.	ADEQ proposes to eliminate requirements no longer necessary for the operation of state government due to preemption of ADEQ’s statutory authority to regulate air emissions from certain mobile sources. In 1990, Congress expanded the scope of the Clean Air Act, thereby strengthening the federal government’s role in controlling air pollution and, in turn, curtailing state authority. Among other things, Congress expressly prohibited states from adopting or attempting to enforce any standard relating to the control of emissions from new nonroad engines and vehicles. 42 U.S.C. § 7543(e)(1). Subsequent case law determined federal preemption of state law also applied to used or in-use nonroad engines.

		ADEQ is in the process of conducting a rulemaking to complete this technical correction. The exemption memo for this rulemaking was submitted the governor's office on March 17, 2023. ADEQ anticipates submitting this rule to the Council in November of 2023.
R18-2-804	This change would address a minor clarity issue concerning a state test method for determining visible opacity of emissions to align state test methods with EPA-developed test methods.	ADEQ has determined that the applicable EPA-developed test method is not practically enforceable for sources regulated under this rule, and will therefore not pursue this rule revision.
R18-2-805	ADEQ proposed to reassess the need and purpose of this rule, and if found to be unnecessary, to work with EPA on removing the rule from the federally approved Arizona State Implementation Plan and conduct an "anti-backsliding analysis" in accordance with Clean Air Action Section 110(l).	ADEQ assessed the need for this rule and determined it to be necessary at this time, as it is a SIP-approved control which is neither obsolete nor duplicated by any other rules. Additionally, ADEQ has not received any written criticisms of this rule from Stakeholders. Accordingly, ADEQ will not pursue this rule revision.
Article 12		
Article 12 Generally	In 2017, the legislature amended the existing emissions bank statute A.R.S. § 49-410 to allow for new types of emission reduction credits to be deposited in the bank. House Bill (HB) 2152 (Fifty-third Legislature, First Regular Session, 2017, Chapter 225, Section 1). These amendments directed ADEQ to adopt rules implementing these changes. ADEQ proposed to amend the rules in Article 12 to implement these changes by December 2018.	ADEQ amended the rules in Article 12 to implement these changes by final rulemaking at 25 A.A.R. 1433, effective July 28, 2019 (Supp. 19-2). This amendment completed the course of action proposed for Article 12 in the previous 5YRR report (2017).

11. 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 regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

ADEQ conducted an internal survey of subject matter experts and an external survey of regulated stakeholders and concluded that the benefits of the rules in Articles 6, 8, and 12 outweigh the costs of the rules and impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying regulatory objectives set forth in the CAA. Criteria pollutants and hazardous air pollutants, require control because concentrations of the pollutants in the ambient air are known to cause serious health effects, including premature mortality, cardiovascular disease, and aggravated asthma. They are

also known to cause serious public welfare effects such as crop deterioration, harm to wildlife and natural vegetation, and damage to man-made materials. ADEQ is not aware of any less costly or burdensome alternatives to satisfy the rules' underlying objectives.

For Article 6 specifically, the quantifiable and non-quantifiable public health benefits from control of fugitive dust substantially outweigh the costs of compliance. Reducing ambient PM₁₀ concentrations from fugitive dust can lead to potential cost-saving benefits to the general public, based on a variety of avoided and mitigated adverse health effects. Thus, reducing PM₁₀ from becoming airborne from the sources of fugitive dust regulated under this Article provides both substantial human health and environmental benefits. The extent of the health benefits involves assessing the probability of the exposure rate to inhabitants living near the fugitive dust sources and the harm experienced, meaning the monetized value of the adverse health effects eliminated or mitigated. Avoided incidents of hospital admissions, for example, for cardiovascular, chronic obstructive pulmonary disease, and asthma are worth \$18,387, \$12,378, and \$6,634, respectively in 1999 dollars (U.S. EPA RIA 2002, pp. 8-23, 8-24).

For the AgBMP rules at 610-613.0, ADEQ notes that because many of the BMPs listed in rule are already used by farmers as standard practice, costs associated with implementing those techniques would represent sunk costs; therefore, they would not be considered incremental compliance costs of implementing these rules. Additionally, farmers can choose BMPs that are the most economically feasible for their specific operations and dust control needs, which tends to significantly reduce compliance costs for individual operators and in aggregate.

Article 8's benefits likewise outweigh its costs. The 2007 EIS classifies the individual economic cost of each individual rule within Article 8 as minimal (under \$10,000), largely because businesses can generally comply with Article 8 regulations simply by designing, maintaining, and operating equipment per manufacturer recommendations. The public health benefits (particularly through avoided illness) accrued to the general public in exchange for these minimal costs is substantial, as is described above for Article 6 regulations.

The EIS supporting the most recent rulemaking for Article 12 notes that "[s]ince participation in the bank is voluntary, this [rule] will impose no costs on businesses. However, any business that could generate reductions in emissions from a non-permitted activity could choose to seek certification and deposit of emission reduction credits in the emissions bank and thus become subject to the amended rule's requirements. The costs of obtaining certified emissions reduction credits under R18-2-1204, which applies to unpermitted activities that generate offsets under an EPA approved offset-creation rule, should be minimal. In most cases, the owners or operators of these activities will be able to deposit emission reduction credits simply by demonstrating that the reductions have been approved under the other rule." The benefits of Article 12 outweigh its minimal costs; the Governor's Air Quality Strategies Task Force of 1997-1998 recommended the establishment of an emissions bank because it

provides an economic incentive for permitted sources to reduce emissions above and beyond what is required while providing a mechanism to facilitate the expansion or creation of businesses in Arizona.

12. **Are the rules more stringent than corresponding federal laws?** Yes ____ No x

The rules in Articles 6, 8, and 12 are not more stringent than corresponding federal laws, specifically CAA § 110 and Part D of Title I of the CAA.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Most of the rules in Article 6 do not require a permit, so A.R.S. § 41-1037 does not apply. This statute does apply to the Article 6 AgBMP rules: 610.01, 610.02, 610.03, 611.01, 611.02, 611.03, and 612.01. These rules require the issuance of a general permit. Therefore, they comply with the requirements of A.R.S. § 41-1037(A).

Article 8 has not been modified since 1993, so A.R.S. § 41-1037 does not apply.

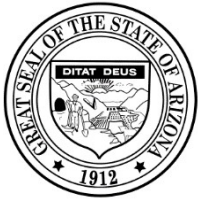
The emissions bank program under Article 12 is a voluntary program and does not require the issuance of a regulatory permit, license or agency authorization, so A.R.S. § 41-1037 does not apply.

14. **Proposed course of action**

As discussed above, ADEQ proposed a course of action regarding several rules to improve clarity and consistency issues. Specifically, ADEQ is proposing to complete technical corrections to rule R18-2-602. These corrections will improve consistency between state and federal regulations. In the same rulemaking, ADEQ is proposing to amend rules 801, 802, and 804 to reflect the limited scope of these rules under the 1990 Clean Air Act amendments. The exemption memo for this rulemaking was submitted the governor's office on March 17, 2023. ADEQ anticipates submitting this rule to the Council in November of 2023.

ADEQ does not propose a course of action regarding Article 6 reasonable precaution rules at this time.

ADEQ does not propose any course of action for Article 12 at this time.



Katie Hobbs
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Karen Peters
Director

March 30, 2023

SENT VIA EMAIL ONLY

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N. 15th Ave., #305
Phoenix, AZ 85007
grrc@azdoa.gov

Re: Submittal of Five-Year Review Report for A.A.C. Title 18, Chapter 2, Articles 6, 8, and 12

Dear Chair Sornsin:

I am pleased to submit to you, pursuant to A.R.S. § 41-1056 and A.A.C. R1-6-301, our agency's Five-Year Review Report for A.A.C. Title 18, Chapter 2, Article 6, 8, and 12: Department of Environmental Quality – Air Pollution Control. An exemption memo for the rulemaking associated with this report was submitted to the Governor's Office on March 17, 2023. ADEQ anticipates that this rulemaking will be approved and that the final rule will be submitted to GRRC in November of 2023.

Pursuant to A.R.S. § 41-1056(A), I certify that ADEQ is in compliance with A.R.S. § 41-1091 requirements for filing of notices of substantive policy statements and annual publication of a substantive policy statement directory.

Please contact Laura Mirtich at 602-771-4146 or mirtich.laura@azdeq.gov, if you have any questions.

Sincerely,

DocuSigned by:

Amanda Stone

A11A68124C2C413...

Amanda Stone
Deputy Director

Enclosure

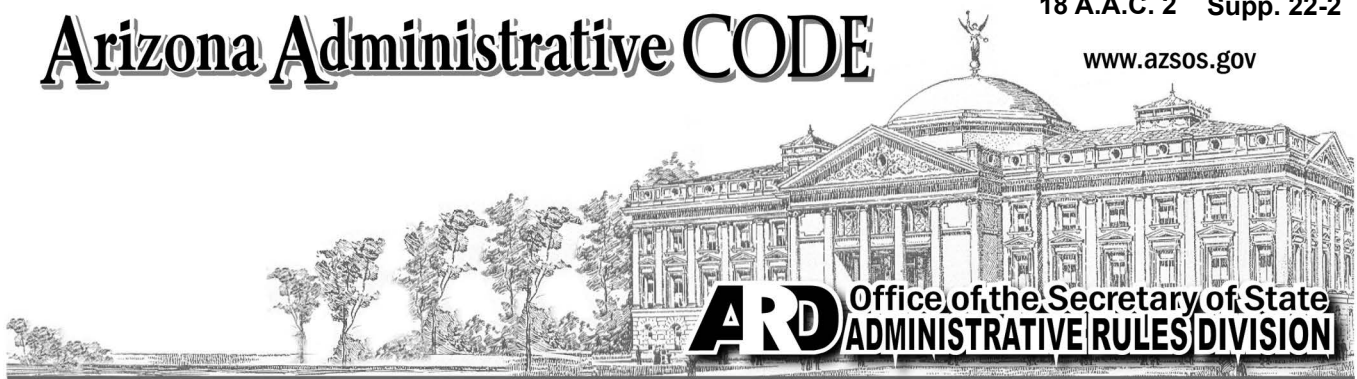
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TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

The table of contents on page one contains links to the referenced page numbers in this Chapter.
Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

This Chapter contains rules that were filed to be codified in the *Arizona Administrative Code* between the dates of
April 1, 2022 through June 30, 2022

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Questions about these rules? Contact:

Department: Arizona Department of Environmental Quality
Air Quality Division, AQIP Section

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

Website: www.azdeq.gov

Name: Zachary Dorn, Air Quality Planner

Telephone: (602) 771-4585
This number may be reached in-state by dialing 1-800-234-5677
and entering the seven digit number.

Email: dorn.zachary@azdeq.gov

The release of this Chapter in Supp. 22-2 replaces Supp. 21-4, 1-227 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), Administrative Rules Division, accepts state agency rule notice and other legal filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into Titles. Titles are divided into Chapters. A Chapter includes state agency rules. Rules in Chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each Chapter.

First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2022 is cited as Supp. 22-1. Supplements are traditionally released three to four weeks after the end of the quarter because filings are accepted until the last day of the quarter.

Please note: The Office publishes by Chapter, not by individual rule Section. Therefore there might be only a few Sections codified in each Chapter released in a supplement. This is why the Office lists only updated codified Sections on the previous page.

RULE HISTORY

Refer to the HISTORICAL NOTE at the end of each Section for the effective date of a rule. The note also includes the *Register* volume and page number in which the notice was published (A.A.R.) and beginning in supplement 21-4, the date the notice was published in the *Register*.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate Chapters of the *Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* Chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, www.azleg.gov. An agency’s authority note to make rules is often included at the beginning of a Chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a Chapter can be found at the Secretary of State’s website, www.azsos.gov under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor’s notes at the beginning of a Chapter provide information about rulemaking Sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

PERSONAL USE/COMMERCIAL USE

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Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.

Administrative Rules Division

The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

Authority: A.R.S. § 49-104 et seq.

Supp. 22-2

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1993 (Supp. 93-4).

Article 3 consisting of Sections R9-3-301 through R9-3-319 and R9-3-321 through R9-3-323 renumbered as Article 3, Sections R18-2-301 through R18-2-319 and R18-2-321 through R18-2-323 (Supp. 87-3).

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Article 4, consisting of Sections R18-2-401 through R18-2-410, renumbered as Article 6, Sections R18-2-601 through R18-2-610 (Supp. 93-4).

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Article 8, consisting of Sections R18-2-801 through R18-2-805, renumbered to Article 9, Sections R18-2-901 through R18-2-905 (Supp. 93-4).

Article 8 consisting of Sections R18-2-801 through R18-2-805 adopted effective February 26, 1988.

Former Article 8 consisting of Sections R9-3-801 through R9-3-829, R9-3-831, R9-3-832, R9-3-835 through R9-3-838, R9-3-840 through R9-3-848, and R9-3-857 through R9-3-859 repealed effective February 26, 1988.

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Article 9 consisting of Sections R18-2-901 and R18-2-902 adopted effective February 26, 1988.

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ARTICLE 1. GENERAL

R18-2-101. Definitions

The following definitions apply to this Chapter. Where the same term is defined in this Section and in the definitions Section for an Article of this Chapter, the Article-specific definition shall apply.

1. "Act" means the Clean Air Act of 1963 (P.L. 88-206; 42 U.S.C. 7401 through 7671q) as amended through December 31, 2011 (and no future editions).
2. "Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in subsections (2)(a) through (e), except that this definition shall not apply for calculating whether a significant emissions increase as defined in R18-2-401 has occurred, or for establishing a plantwide applicability limitation as defined in R18-2-401. Instead, the definitions of projected actual emissions and baseline actual emissions in R18-2-401 shall apply for those purposes.
 - a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period that precedes the particular date and that is representative of normal source operation. The Director may allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored or combusted during the selected time period.
 - b. The Director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.
 - c. For any emissions unit that is or will be located at a source with a Class I permit and has not begun normal operations on the particular date, actual emissions shall equal the unit's potential to emit on that date.
 - d. For any emissions unit that is or will be located at a source with a Class II permit and has not begun normal operations on the particular date, actual emissions shall be based on applicable control equipment requirements and projected conditions of operation.
 - e. This definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL. Instead, the definitions of projected actual emissions and baseline actual emissions in R18-2-401 shall apply for those purposes.
3. "Administrator" means the Administrator of the United States Environmental Protection Agency.
4. "Affected facility" means, with reference to a stationary source, any apparatus to which a standard is applicable.
5. "Affected source" means a source that includes one or more units which are subject to emission reduction requirements or limitations under Title IV of the Act.
6. "Affected state" means any state whose air quality may be affected by a source applying for a permit, permit revision, or permit renewal and that is contiguous to Arizona or that is within 50 miles of the permitted source.
7. "Afterburner" means an incinerator installed in the secondary combustion chamber or stack for the purpose of incinerating smoke, fumes, gases, unburned carbon, and other combustible material not consumed during primary combustion.
8. "Air contaminants" means smoke, vapors, charred paper, dust, soot, grime, carbon, fumes, gases, sulfuric acid mist aerosols, aerosol droplets, odors, particulate matter, wind-borne matter, radioactive materials, or noxious chemicals, or any other material in the outdoor atmosphere.
9. "Air curtain destructor" means an incineration device designed and used to secure, by means of a fan-generated air curtain, controlled combustion of only wood waste and slash materials in an earthen trench or refractory-lined pit or bin.
10. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in sufficient quantities, which either alone or in connection with other substances by reason of their concentration and duration are or tend to be injurious to human, plant or animal life, or cause damage to property, or unreasonably interfere with the comfortable enjoyment of life or property of a substantial part of a community, or obscure visibility, or which in any way degrade the quality of the ambient air below the standards established by the director. A.R.S. § 49-421(2).
11. "Air pollution control equipment" means equipment used to eliminate, reduce or control the emission of air pollutants into the ambient air.
12. "Air quality control region" (AQCR) means an area so designated by the Administrator pursuant to Section 107 of the Act and includes the following regions in Arizona:
 - a. Maricopa Intrastate Air Quality Control Region which is comprised of the County of Maricopa.
 - b. Pima Intrastate Air Quality Control Region which is comprised of the County of Pima.
 - c. Northern Arizona Intrastate Air Quality Control Region which encompasses the counties of Apache, Coconino, Navajo, and Yavapai.
 - d. Mohave-Yuma Intrastate Air Quality Control Region which encompasses the counties of La Paz, Mohave, and Yuma.
 - e. Central Arizona Intrastate Air Quality Control Region which encompasses the counties of Gila and Pinal.
 - f. Southeast Arizona Intrastate Air Quality Control Region which encompasses the counties of Cochise, Graham, Greenlee, and Santa Cruz.
13. "Allowable emissions" means the emission rate of a stationary source calculated using both the maximum rated capacity of the source, unless the source is subject to federally enforceable limits which restrict the operating rate or hours of operation, and the most stringent of the following:
 - a. The applicable standards as set forth in 40 CFR 60, 61 and 63;
 - b. The applicable emissions limitations approved into the state implementation plan, including those with a future compliance date; or,
 - c. The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.
14. "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.
15. "Applicable implementation plan" means those provisions of the state implementation plan approved by the Administrator or a federal implementation plan promulgated for Arizona or any portion of Arizona in accordance with Title I of the Act.
16. "Applicable requirement" means any of the following:
 - a. Any federal applicable requirement.

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- b. Any other requirement established pursuant to this Chapter or A.R.S. Title 49, Chapter 3.
- 17. "Arizona Testing Manual" means sections 1 and 7 of the Arizona Testing Manual for Air Pollutant Emissions amended as of March 1992 (and no future editions).
- 18. "ASTM" means the American Society for Testing and Materials.
- 19. "Attainment area" means any area that has been identified in regulations promulgated by the Administrator as being in compliance with national ambient air quality standards.
- 20. *"Begin actual construction" means, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. With respect to a change in method of operation this term refers to those onsite activities, other than preparatory activities, which mark the initiation of the change.*
 - a. For purposes of title I, parts C and D and section 112 of the clean air act, and for purposes of applicants that require permits containing limits designed to avoid the application of title I, parts C and D and section 112 of the clean air act, these activities include installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures but do not include any of the following, subject to subsection (20)(c):
 - i. Clearing and grading, including demolition and removal of existing structures and equipment, stripping and stockpiling of topsoil.
 - ii. Installation of access roads, driveways and parking lots.
 - iii. Installation of ancillary structures, including fences, office buildings and temporary storage structures, that are not a necessary component of an emissions unit or associated air pollution control equipment for which the permit is required.
 - iv. Ordering and onsite storage of materials and equipment.
 - b. For purposes other than those identified in subsection (20)(a), these activities do not include any of the following, subject to subsection (20)(c):
 - i. Clearing and grading, including demolition and removal of existing structures and equipment, stripping and stockpiling of topsoil and earthwork cut and fill for foundations.
 - ii. Installation of access roads, parking lots, driveways and storage areas.
 - iii. Installation of ancillary structures, including fences, warehouses, storerooms and office buildings, provided none of these structures impacts the design of any emissions unit or associated air pollution control equipment.
 - iv. Ordering and onsite storage of materials and equipment.
 - v. Installation of underground pipework, including water, sewer, electric and telecommunications utilities.
 - vi. Installation of building and equipment supports, including concrete forms, footers, pilings, foundations, pads and platforms, provided none of these supports impacts the design of any emissions unit or associated air pollution control equipment.
- c. An applicant's performance of any activities that are excluded from the definition of "begin actual construction" under subsection (20)(a) or (b) shall be at the applicant's risk and shall not reduce the applicant's obligations under this Chapter. The director shall evaluate an application for a permit or permit revision and make a decision on the same basis as if the activities allowed under subsection (20)(a) or (b) had not occurred. A.R.S. § 49-401.01(7).
- 21. "Best available control technology" (BACT) means an emission limitation, including a visible emissions standard, based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major source or major modification, taking into account energy, environmental, and economic impact and other costs, determined by the Director in accordance with R18-2-406(A)(4) to be achievable for such source or modification.
- 22. "Btu" means British thermal unit, which is the quantity of heat required to raise the temperature of one pound of water 1°F.
- 23. "Categorical sources" means the following classes of sources:
 - a. Coal cleaning plants with thermal dryers;
 - b. Kraft pulp mills;
 - c. Portland cement plants;
 - d. Primary zinc smelters;
 - e. Iron and steel mills;
 - f. Primary aluminum ore reduction plants;
 - g. Primary copper smelters;
 - h. Municipal incinerators capable of charging more than 50 tons of refuse per day;
 - i. Hydrofluoric, sulfuric, or nitric acid plants;
 - j. Petroleum refineries;
 - k. Lime plants;
 - l. Phosphate rock processing plants;
 - m. Coke oven batteries;
 - n. Sulfur recovery plants;
 - o. Carbon black plants using the furnace process;
 - p. Primary lead smelters;
 - q. Fuel conversion plants;
 - r. Sintering plants;
 - s. Secondary metal production plants;
 - t. Chemical process plants, which shall not include ethanol production facilities that produce ethanol by natural fermentation included in North American Industry Classification System codes 325193 or 312140;
 - u. Fossil-fuel boilers, combinations thereof, totaling more than 250 million Btus per hour heat input;
 - v. Petroleum storage and transfer units with a total storage capacity more than 300,000 barrels;
 - w. Taconite ore processing plants;
 - x. Glass fiber processing plants;
 - y. Charcoal production plants;
 - z. Fossil-fuel-fired steam electric plants and combined cycle gas turbines of more than 250 million Btus per hour heat input.
- 24. "Categorically exempt activities" means any of the following:
 - a. Any combination of diesel-, natural gas- or gasoline-fired engines with cumulative power equal to or less than 145 horsepower.
 - b. Natural gas-fired engines with cumulative power equal to or less than 155 horsepower.

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- c. Gasoline-fired engines with cumulative power equal to or less than 200 horsepower.
 - d. Any of the following emergency or stand-by engines used for less than 500 hours in each calendar year, provided the permittee keeps records documenting the hours of operation of the engines:
 - i. Any combination of diesel-, natural gas- or gasoline-fired emergency engines with cumulative power equal to or less than 2,500 horsepower.
 - ii. Natural gas-fired emergency engines with cumulative power equal to or less than 2,700 horsepower.
 - iii. Gasoline-fired emergency engines with cumulative power equal to or less than 3,700 horsepower.
 - e. Any combination of boilers with a cumulative maximum design heat input capacity of less than 10 million Btu/hr.
25. "CFR" means the Code of Federal Regulations, amended as of July 1, 2011, (and no future editions), with standard references in this Chapter by Title and Part, so that "40 CFR 51" means Title 40 of the Code of Federal Regulations, Part 51.
 26. "Charge" means the addition of metal bearing materials, scrap, or fluxes to a furnace, converter or refining vessel.
 27. "Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam, that was not in widespread use as of November 15, 1990.
 28. "Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy - Clean Coal Technology," up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology or similar projects funded through appropriations for the Environmental Protection Agency. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.
 29. "Coal" means all solid fossil fuels classified as anthracite, bituminous, subbituminous, or lignite by ASTM D-388-91, (Classification of Coals by Rank).
 30. "Combustion" means the burning of matter.
 31. "Commence" means, as applied to construction of a source, or a major modification as defined in Article 4 of this Chapter, that the owner or operator has all necessary preconstruction approvals or permits and either has:
 - a. Begun, or caused to begin, a continuous program of actual onsite construction of the source, to be completed within a reasonable time; or
 - b. Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.
 32. "Construction" means any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit, which would result in a change in emissions.
 33. "Continuous monitoring system" means a CEMS, CERMS, or CPMS.
 34. "Continuous emissions monitoring system" or "CEMS" means the total equipment, required under the emission monitoring provisions in this Chapter, used to sample, condition (if applicable), analyze, and provide, on a continuous basis, a permanent record of emissions.
 35. "Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).
 36. "Continuous parameter monitoring system" or "CPMS" means the total equipment, required under the emission monitoring provisions in this Chapter, to monitor process or control device operational parameters (for example, control device secondary voltages and electric currents) or other information (for example, gas flow rate, O₂ or CO₂ concentrations) and to provide, on a continuous basis, a permanent record of monitored values.
 37. "Controlled atmosphere incinerator" means one or more refractory-lined chambers in which complete combustion is promoted by recirculation of gases by mechanical means.
 38. "*Conventional air pollutant*" means any pollutant for which the Administrator has promulgated a primary or secondary national ambient air quality standard. A.R.S. § 49-401.01(12).
 39. "*Department*" means the Department of Environmental Quality. A.R.S. § 49-101(2)
 40. "*Director*" means the director of environmental quality who is also the director of the department. A.R.S. § 49-101(3).
 41. "Discharge" means the release or escape of an effluent from a source into the atmosphere.
 42. "Dust" means finely divided solid particulate matter occurring naturally or created by mechanical processing, handling or storage of materials in the solid state.
 43. "Dust suppressant" means a chemical compound or mixture of chemical compounds added with or without water to a dust source for purposes of preventing air entrainment.
 44. "Effluent" means any air contaminant which is emitted and subsequently escapes into the atmosphere.
 45. "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.
 46. "Emission" means an air contaminant or gas stream, or the act of discharging an air contaminant or a gas stream, visible or invisible.
 47. "Emission standard" or "emission limitation" means a requirement established by the state, a local government, or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.
 48. "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any regulated air pollutant and includes an electric steam generating unit.
 49. "Equivalent method" means any method of sampling and analyzing for an air pollutant which has been demon-

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- strated under R18-2-311(D) to have a consistent and quantitatively known relationship to the reference method, under specified conditions.
50. "Excess emissions" means emissions of an air pollutant in excess of an emission standard as measured by the compliance test method applicable to such emission standard.
 51. "Federal applicable requirement" means any of the following (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future effective compliance dates):
 - a. Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 CFR 52.
 - b. Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under Title I, including parts C or D, of the Act.
 - c. Any standard or other requirement under section 111 of the Act, including 111(d).
 - d. Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act.
 - e. Any standard or other requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder and incorporated pursuant to R18-2-333.
 - f. Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act.
 - g. Any standard or other requirement governing solid waste incineration, under section 129 of the Act.
 - h. Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act.
 - i. Any standard or other requirement for tank vessels under section 183(f) of the Act.
 - j. Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act.
 - k. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a Title V permit.
 - l. Any national ambient air quality standard or maximum increase allowed under R18-2-218 or visibility requirement under Part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.
 52. "Federal Land Manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.
 53. "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator under the Act, including all of the following:
 - a. The requirements of the new source performance standards and national emission standards for hazardous air pollutants.
 - b. The requirements of such other state or county rules or regulations approved by the Administrator, including the requirements of state and county operating and new source review permit and registration programs that have been approved by the Administrator. Notwithstanding this subsection, the condition of any permit or registration designated as being enforceable only by the state is not federally enforceable.
 - c. The requirements of any applicable implementation plan.
 - d. Emissions limitations, controls, and other requirements, and any associated monitoring, recordkeeping, and reporting requirements that are included in a permit pursuant to R18-2-306.01 or R18-2-306.02.
 54. "Federally listed hazardous air pollutant" means a pollutant listed pursuant to R18-2-1701(9).
 55. "Final permit" means the version of a permit issued by the Department after completion of all review required by this Chapter.
 56. "Fixed capital cost" means the capital needed to provide all the depreciable components.
 57. "Fuel" means any material which is burned for the purpose of producing energy.
 58. "Fuel burning equipment" means any machine, equipment, incinerator, device or other article, except stationary rotating machinery, in which combustion takes place.
 59. "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
 60. "Fume" means solid particulate matter resulting from the condensation and subsequent solidification of vapors of melted solid materials.
 61. "Fume incinerator" means a device similar to an afterburner installed for the purpose of incinerating fumes, gases and other finely divided combustible particulate matter not previously burned.
 62. "Good engineering practice (GEP) stack height" means a stack height meeting the requirements described in R18-2-332.
 63. "Hazardous air pollutant" means any federally listed hazardous air pollutant.
 64. "Heat input" means the quantity of heat in terms of Btus generated by fuels fed into the fuel burning equipment under conditions of complete combustion.
 65. "Incinerator" means any equipment, machine, device, contrivance or other article, and all appurtenances thereof, used for the combustion of refuse, salvage materials or any other combustible material except fossil fuels, for the purpose of reducing the volume of material.
 66. "Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.
 67. "Indian reservation" means any federally recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.
 68. "Insignificant activity" means any of the following activities:
 - a. Liquid Storage and Piping
 - i. Petroleum product storage tanks containing the following substances, provided the applicant lists and identifies the contents of each tank with a volume of 350 gallons or more and provides threshold values for throughput or capacity or both for each such tank: diesel fuels and fuel oil in storage tanks with capacity of 40,000 gallons or less, lubricating oil, transformer oil, and used oil.

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- ii. Gasoline storage tanks with capacity of 10,000 gallons or less.
 - iii. Storage and piping of natural gas, butane, propane, or liquified petroleum gas, provided the applicant lists and identifies the contents of each stationary storage vessel with a volume of 350 gallons or more and provides threshold values for throughput or capacity or both for each such vessel.
 - iv. Piping of fuel oils, used oil and transformer oil, provided the applicant includes a system description.
 - v. Storage and handling of drums or other transportable containers where the containers are sealed during storage, and covered during loading and unloading, including containers of waste and used oil regulated under the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901-6992(k). Permit applicants must provide a description of material in the containers and the approximate amount stored.
 - vi. Storage tanks of any size containing exclusively soaps, detergents, waxes, greases, aqueous salt solutions, aqueous solutions of acids that are not regulated air pollutants, or aqueous caustic solutions, provided the permit applicant specifies the contents of each storage tank with a volume of 350 gallons or more.
 - vii. Electrical transformer oil pumping, cleaning, filtering, drying and the re-installation of oil back into transformers.
 - b. Internal combustion engine-driven compressors, internal combustion engine-driven electrical generator sets, and internal combustion engine-driven water pumps used for less than 500 hours per calendar year for emergency replacement or standby service, provided the permittee keeps records documenting the hours of operation of this equipment.
 - c. Low Emitting Processes
 - i. Batch mixers with rated capacity of 5 cubic feet or less.
 - ii. Wet sand and gravel production facilities that obtain material from subterranean and subaqueous beds, whose production rate is 200 tons/hour or less, and whose permanent in-plant roads are paved and cleaned to control dust. This does not include activities in emissions units which are used to crush or grind any non-metallic minerals.
 - iii. Powder coating operations.
 - iv. Equipment using water, water and soap or detergent, or a suspension of abrasives in water for purposes of cleaning or finishing.
 - v. Blast-cleaning equipment using a suspension of abrasive in water and any exhaust system or collector serving them exclusively.
 - vi. Plastic pipe welding.
 - d. Site Maintenance
 - i. Housekeeping activities and associated products used for cleaning purposes, including collecting spilled and accumulated materials at the source, including operation of fixed vacuum cleaning systems specifically for such purposes.
 - ii. Sanding of streets and roads to abate traffic hazards caused by ice and snow.
 - iii. Street and parking lot striping.
 - iv. Architectural painting and associated surface preparation for maintenance purposes at industrial or commercial facilities.
 - e. Sampling and Testing
 - i. Noncommercial (in-house) experimental, analytical laboratory equipment which is bench scale in nature, including quality control/quality assurance laboratories supporting a stationary source and research and development laboratories.
 - ii. Individual sampling points, analyzers, and process instrumentation, whose operation may result in emissions but that are not regulated as emission units.
 - f. Ancillary Non-Industrial Activities
 - i. General office activities, such as paper shredding, copying, photographic activities, and blueprinting, but not to include incineration.
 - ii. Use of consumer products, including hazardous substances as that term is defined in the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) where the product is used at a source in the same manner as normal consumer use.
 - iii. Activities directly used in the diagnosis and treatment of disease, injury or other medical condition.
 - g. Miscellaneous Activities
 - i. Installation and operation of potable, process and waste water observation wells, including drilling, pumping, filtering apparatus.
 - ii. Transformer vents.
69. "Kraft pulp mill" means any stationary source which produces pulp from wood by cooking or digesting wood chips in a water solution of sodium hydroxide and sodium sulfide at high temperature and pressure. Regeneration of the cooking chemicals through a recovery process is also considered part of the kraft pulp mill.
70. "Lead" means elemental lead or alloys in which the predominant component is lead.
71. "Lime hydrator" means a unit used to produce hydrated lime product.
72. "Lime plant" includes any plant which produces a lime product from limestone by calcination. Hydration of the lime product is also considered to be part of the source.
73. "Lime product" means any product produced by the calcination of limestone.
74. "Major modification" is defined as follows:
- a. A major modification is any physical change in or change in the method of operation of a major source that would result in both a significant emissions increase of any regulated NSR pollutant and a significant net emissions increase of that pollutant from the stationary source.
 - b. Any emissions increase or net emissions increase that is significant for nitrogen oxides or volatile organic compounds is significant for ozone.
 - c. For the purposes of this definition, none of the following is a physical change or change in the method of operation:
 - i. Routine maintenance, repair, and replacement;
 - ii. Use of an alternative fuel or raw material by reason of an order under sections 2(a) and (b) of the Energy Supply and Environmental Coord-

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- dination Act of 1974, 15 U.S.C. 792, or by reason of a natural gas curtailment plan under the Federal Power Act, 16 U.S.C. 792 - 825r;
- iii. Use of an alternative fuel by reason of an order or rule under section 125 of the Act;
 - iv. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
 - v. For purposes of determining the applicability of R18-2-403 through R18-2-405 or R18-2-411, any of the following:
 - (1) Use of an alternative fuel or raw material by a stationary source that the source was capable of accommodating before December 21, 1976, unless the change would be prohibited under any federally enforceable permit condition established after December 12, 1976 under 40 CFR 52.21 or under Articles 3 or 4 of this Chapter; or
 - (2) Use of an alternative fuel or raw material by a stationary source that the source is approved to use under any permit issued under R18-2-403;
 - (3) An increase in the hours of operation or in the production rate, unless the change would be prohibited under any federally enforceable permit condition established after December 21, 1976, under 40 CFR 52.21, or under Articles 3 or 4 of this Chapter.
 - vi. For purposes of determining the applicability of R18-2-406 through R18-2-408 or R18-2-410, any of the following:
 - (1) Use of an alternative fuel or raw material by a stationary source that the source was capable of accommodating before January 6, 1975, unless the change would be prohibited under any federally enforceable permit condition established after January 6, 1975 under 40 CFR 52.21 or under Articles 3 or 4 of this Chapter;
 - (2) Use of an alternative fuel or raw material by a stationary source that the source is approved to use under any permit issued under 40 CFR 52.21, or under R18-2-406; or
 - (3) An increase in the hours of operation or in the production rate, unless the change would be prohibited under any federally enforceable permit condition established after January 6, 1975, under 40 CFR 52.21, or under Articles 3 or 4 of this Chapter.
 - vii. Any change in ownership at a stationary source;
 - viii. [Reserved.]
 - ix. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, if the project complies with:
 - (1) The SIP, and
 - (2) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated;
 - x. For electric utility steam generating units located in attainment and unclassifiable areas only, the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, if the project does not result in an increase in the potential to emit any regulated pollutant emitted by the unit. This exemption applies on a pollutant-by-pollutant basis; and
 - xi. For electric utility steam generating units located in attainment and unclassifiable areas only, the reactivation of a very clean coal-fired electric utility steam generating unit.
 - d. This definition shall not apply with respect to a particular regulated NSR pollutant when the major source is complying with the requirements of R18-2-412 for a PAL for that regulated NSR pollutant. Instead, the definition of PAL major modification in R18-2-401(20) shall apply.
75. "Major source" means:
- a. A major source as defined in R18-2-401.
 - b. A major source under section 112 of the Act:
 - i. For pollutants other than radionuclides, any stationary source that emits or has the potential to emit, in the aggregate, including fugitive emission 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as described in Article 11 of this Chapter. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or
 - ii. For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.
 - c. A major stationary source, as defined in section 302 of the Act, that directly emits or has the potential to emit, 100 tpy or more of any air pollutant including any major source of fugitive emissions of any such pollutant. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to a section 302(j) category.
76. "Malfunction" means any sudden and unavoidable failure of air pollution control equipment, process equipment or a process to operate in a normal and usual manner, but does not include failures that are caused by poor maintenance, careless operation or any other upset condition or equipment breakdown which could have been prevented by the exercise of reasonable care.
77. "Minor source" means a source of air pollution which is not a major source for the purposes of Article 4 of this Chapter and over which the Director, acting pursuant to A.R.S. § 49-402(B), has asserted jurisdiction.
78. "Minor source baseline area" means the air quality control region in which the source is located.

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79. "Mobile source" means any combustion engine, device, machine or equipment that operates during transport and that emits or generates air contaminants whether in motion or at rest. A.R.S. § 49-401.01(23).
80. "Modification" or "modify" means a physical change in or change in the method of operation of a source that increases the emissions of any regulated air pollutant emitted by such source by more than any relevant de minimis amount or that results in the emission of any regulated air pollutant not previously emitted by more than such de minimis amount. An increase in emissions at a minor source shall be determined by comparing the source's potential to emit before and after the modification. The following exemptions apply:
- A physical or operational change does not include routine maintenance, repair or replacement.
 - An increase in the hours of operation or if the production rate is not considered an operational change unless such increase is prohibited under any permit condition that is legally and practically enforceable by the department.
 - A change in ownership at a source is not considered a modification. A.R.S. § 49-401.01(24).
81. "Monitoring device" means the total equipment, required under the applicable provisions of this Chapter, used to measure and record, if applicable, process parameters.
82. "Motor vehicle" means any self-propelled vehicle designed for transporting persons or property on public highways.
83. "Multiple chamber incinerator" means three or more refractory-lined combustion chambers in series, physically separated by refractory walls and interconnected by gas passage ports or ducts.
84. "Natural conditions" includes naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.
85. "National ambient air quality standard" means the ambient air pollutant concentration limits established by the Administrator pursuant to section 109 of the Act. A.R.S. § 49-401.01(25).
86. "National emission standards for hazardous air pollutants" or "NESHAP" means standards adopted by the Administrator under section 112 of the Act.
87. "Necessary preconstruction approvals or permits" means those permits or approvals required under the Act and those air quality control laws and rules which are part of the SIP.
88. "Net emissions increase" means:
- The amount by which the sum of subsections (88)(a)(i) and (ii) exceeds zero:
 - The increase in emissions of a regulated NSR pollutant from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to R18-2-402(D); and
 - Any other increases and decreases in actual emissions of the regulated NSR pollutant at the source that are contemporaneous with the particular change and are otherwise creditable.
 - For purposes of calculating increases and decreases in actual emissions under subsection (88)(a)(ii), baseline actual emissions shall be determined as provided in the definition of baseline actual emissions in R18-2-401(2), except that R18-2-401(2)(a)(iii) and (b)(iv) shall not apply.
 - An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:
 - The date five years before a complete application for a permit or permit revision authorizing the particular change is submitted or actual construction of the particular change begins, whichever occurs earlier, and
 - The date that the increase from the particular change occurs.
 - For purposes of determining the applicability of R18-2-403 through R18-2-405 or R18-2-411, an increase or decrease in actual emissions is creditable only if the Director has not relied on it in issuing a permit or permit revision under R18-2-403, which permit is in effect when the increase in actual emissions from the particular change occurs. For purposes of determining the applicability of R18-2-406 through R18-2-408 or R18-2-410, an increase or decrease in actual emissions is creditable only if the Director has not relied on it in issuing a permit under R18-2-406, which permit is in effect when the increase in actual emissions from the particular change occurs.
 - An increase or decrease in actual emissions of sulfur dioxide, nitrogen oxides, PM₁₀, or PM_{2.5} which occurs before the applicable minor source baseline date, as defined in R18-2-218, is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.
 - An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.
 - A decrease in actual emissions is creditable only to the extent that it satisfies all of the following conditions:
 - The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions.
 - It is enforceable as a practical matter at and after the time that actual construction on the particular change begins.
 - It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.
 - The emissions unit was actually operated and emitted the specific pollutant.
 - For purposes of determining the applicability of R18-2-403 through R18-2-405 or R18-2-411, the Director has not relied on it in issuing any permit, permit revision, or registration under Article 4, R18-2-302.01, or R18-2-334, and the state has not relied on it in demonstrating attainment or reasonable further progress.
 - An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit, as defined in R18-2-401(24), that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.
 - Subsection (2)(a) shall not apply for determining creditable increases and decreases.

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89. "New source" means any stationary source of air pollution which is subject to a new source performance standard.
90. "New source performance standards" or "NSPS" means standards adopted by the Administrator under section 111(b) of the Act.
91. "Nitric acid plant" means any facility producing nitric acid 30% to 70% in strength by either the pressure or atmospheric pressure process.
92. "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods set forth in the Appendices to 40 CFR 60.
93. "Nonattainment area" means an area so designated by the Administrator acting pursuant to section 107 of the Act as exceeding national primary or secondary ambient air standards for a particular pollutant or pollutants.
94. "Nonpoint source" means a source of air contaminants which lacks an identifiable plume or emission point.
95. "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.
96. "Operation" means any physical or chemical action resulting in the change in location, form, physical properties, or chemical character of a material.
97. "Owner or operator" means any person who owns, leases, operates, controls, or supervises an affected facility or a stationary source.
98. "Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.
99. "Particulate matter emissions" means all finely divided solid or liquid materials other than uncombined water, emitted to the ambient air as measured by applicable test methods and procedures described in R18-2-311.
100. "Permitting authority" means the department or a county department, agency or air pollution control district that is charged with enforcing a permit program adopted pursuant to A.R.S. § 49-480(A). A.R.S. § 49-401.01(28).
101. "Permitting exemption thresholds" for a regulated minor NSR pollutant means the following:
- | Regulated Air Pollutant | Emission Rate in tons per year (TPY) |
|---|--------------------------------------|
| PM _{2.5} (primary emissions only; levels for precursors are set below) | 5 |
| PM ₁₀ | 7.5 |
| SO ₂ | 20 |
| NO _x | 20 |
| VOC | 20 |
| CO | 50 |
| Pb | 0.3 |
102. "Person" means any public or private corporation, company, partnership, firm, association or society of persons, the federal government and any of its departments or agencies, the state and any of its agencies, departments or political subdivisions, as well as a natural person.
103. "Planning agency" means an organization designated by the governor pursuant to 42 U.S.C. 7504. A.R.S. § 49-401.01(29).
104. "PM_{2.5}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR 50 Appendix L, or by an equivalent method designated according to 40 CFR 53.
105. "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method contained within 40 CFR 50 Appendix J or by an equivalent method designated in accordance with 40 CFR 53.
106. "PM₁₀ emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by applicable test methods and procedures described in R18-2-311.
107. "Plume" means visible effluent.
108. "Pollutant" means an air contaminant the emission or ambient concentration of which is regulated pursuant to this Chapter.
109. "Portable source" means any stationary source that is capable of being operated at more than one location.
110. "Potential to emit" or "potential emission rate" means the maximum capacity of a stationary source to emit a pollutant, excluding secondary emissions, under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is legally and practically enforceable by the Department or a county under A.R.S. Title 49, Chapter 3; any rule, ordinance, order or permit adopted or issued under A.R.S. Title 49, Chapter 3 or the state implementation plan.
111. "Predictive Emissions Monitoring System" or "PEMS" means the total equipment, required under the emission monitoring provisions in this Chapter, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.
112. "Primary ambient air quality standards" means the ambient air quality standards which define levels of air quality necessary, with an adequate margin of safety, to protect the public health, as specified in Article 2 of this Chapter.
113. "Process" means one or more operations, including equipment and technology, used in the production of goods or services or the control of by-products or waste.
114. "Project" means a physical change in, or change in the method of operation of, an existing major source.
115. "Proposed final permit" means the version of a Class I permit or Class I permit revision that the Department proposes to issue and forwards to the Administrator for review in compliance with R18-2-307(A). A proposed final permit constitutes a final and enforceable authorization to begin actual construction of, but not to operate, a new Class I source or a modification to a Class I source.
116. "Proposed permit" means the version of a permit for which the Director offers public participation under R18-2-330 or affected state review under R18-2-307(D).
117. "Reactivation of a very clean coal-fired electric utility steam generating unit" means any physical change or change in the method of operation associated with commencing commercial operations by a coal-fired utility unit after a period of discontinued operation if the unit:
- Has not been in operation for the two-year period before enactment of the Clean Air Act Amendments

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- of 1990, and the emissions from the unit continue to be carried in the Director's emissions inventory at the time of enactment;
- b. Was equipped before shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85% and a removal efficiency for particulates of no less than 98%;
 - c. Is equipped with low-NO_x burners before commencement of operations following reactivation; and
 - d. Is otherwise in compliance with the Act.
118. "Reasonable further progress" means the schedule of emission reductions defined within a nonattainment area plan as being necessary to come into compliance with a national ambient air quality standard by the primary standard attainment date.
119. "Reasonably available control technology" (RACT) means devices, systems, process modifications, work practices or other apparatus or techniques that are determined by the Director to be reasonably available taking into account:
- a. The necessity of imposing the controls in order to attain and maintain a national ambient air quality standard;
 - b. The social, environmental, energy and economic impact of the controls;
 - c. Control technology in use by similar sources; and
 - d. The capital and operating costs and technical feasibility of the controls.
120. "Reclaiming machinery" means any machine, equipment device or other article used for picking up stored granular material and either depositing this material on a conveyor or reintroducing this material into the process.
121. "Reference method" means the methods of sampling and analyzing for an air pollutant as described in the Arizona Testing Manual; 40 CFR 50, Appendices A through K; 40 CFR 51, Appendix M; 40 CFR 52, Appendices D and E; 40 CFR 60, Appendices A through F; and 40 CFR 61, Appendices B and C, as incorporated by reference in 18 A.A.C. 2, Appendix 2.
122. "Regulated air pollutant" means any of the following:
- a. Any conventional air pollutant.
 - b. Nitrogen oxides and volatile organic compounds.
 - c. Any pollutant that is subject to a new source performance standard.
 - d. Any pollutant that is subject to a national emission standard for hazardous air pollutants or other requirements established under section 112 of the Act, including sections 112(g), (j), and (r), including the following:
 - i. Any pollutant subject to requirements under section 112(j) of the act. If the administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to section 112(e) of the Act; and
 - ii. Any pollutant for which the requirements of section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to the section 112(g)(2) requirement.
 - e. Any Class I or II substance subject to a standard promulgated under title VI of the Act.
123. "Regulated minor NSR pollutant" means any pollutant for which a national ambient air quality standard has been promulgated and the following precursors for such pollutants:
- a. VOC and nitrogen oxides as precursors to ozone.
 - b. Nitrogen oxides and sulfur dioxide as precursors to PM_{2.5}.
124. "Regulated NSR pollutant" is defined as follows:
- a. For purposes of determining the applicability of R18-2-403 through R18-2-405 and R18-2-411, regulated NSR pollutant means any pollutant for which a national ambient air quality standard has been promulgated and any pollutant identified under this subsection as a constituent of or precursor to such pollutant, provided that such constituent or precursor pollutant may only be regulated under NSR as part of the regulation of the general pollutant. Precursors for purposes of NSR are the following:
 - i. Volatile organic compounds and nitrogen oxides are precursors to ozone in all areas.
 - ii. Sulfur dioxide is a precursor to PM_{2.5} in all areas.
 - iii. Nitrogen oxides are precursors to PM_{2.5} in all areas.
 - iv. VOC and ammonia are precursors to PM_{2.5} in PM_{2.5} nonattainment areas.
 - b. For all other purposes, regulated NSR pollutant means the pollutants identified in subsection (a) and the following:
 - i. Any pollutant that is subject to any new source performance standard except greenhouse gases as defined in 40 CFR 86.1818-12(a).
 - ii. Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act as of July 1, 2011.
 - iii. Any pollutant that is otherwise subject to regulation under the Act, except greenhouse gases as defined in 40 CFR 86.1818-12(a).
 - c. Notwithstanding subsections (124)(a) and (b), the term regulated NSR pollutant shall not include any or all hazardous air pollutants either listed in section 112 of the Act, or added to the list pursuant to section 112(b)(2) of the Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the Act.
 - d. PM_{2.5} emissions and PM₁₀ emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On and after January 1, 2011, condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀ in permits issued under Article 4.
125. "Repowering" means:
- a. Replacing an existing coal-fired boiler with one of the following clean coal technologies:
 - i. Atmospheric or pressurized fluidized bed combustion;
 - ii. Integrated gasification combined cycle;
 - iii. Magnetohydrodynamics;
 - iv. Direct and indirect coal-fired turbines;
 - v. Integrated gasification fuel cells; or
 - vi. As determined by the Administrator, in consultation with the United States Secretary of

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- Energy, a derivative of one or more of the above technologies; and
- vii. Any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.
- b. Repowering also includes any oil, gas, or oil and gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the United States Department of Energy.
- c. The Director shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection (and) is granted an extension under section 409 of the Act.
126. "Run" means the net period of time during which an emission sample is collected, which may be, unless otherwise specified, either intermittent or continuous within the limits of good engineering practice.
127. "Secondary ambient air quality standards" means the ambient air quality standards which define levels of air quality necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant, as specified in Article 2 of this Chapter.
128. "Secondary emissions" means emissions which are specific, well defined, quantifiable, occur as a result of the construction or operation of a major source or major modification, but do not come from the major source or major modification itself, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not otherwise be constructed or increase its emissions except as a result of the construction or operation of the major source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.
129. "Section 302(j) category" means:
- a. Any of the classes of sources listed in the definition of categorical source in subsection (23); or
- b. Any category of affected facility which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.
130. "Shutdown" means the cessation of operation of any air pollution control equipment or process equipment for any purpose, except routine phasing out of process equipment.
131. "Significant" means, in reference to a significant emissions increase, a net emissions increase, a stationary source's potential to emit or a stationary source's maximum capacity to emit with any elective limits as defined in R18-2-301(13):
- a. A rate of emissions of conventional pollutants that would equal or exceed any of the following:
- | Pollutant | Emissions Rate |
|-------------------|---|
| Carbon monoxide | 100 tons per year (tpy) |
| Nitrogen oxides | 40 tpy |
| Sulfur dioxide | 40 tpy |
| PM ₁₀ | 15 tpy |
| PM _{2.5} | 10 tpy of direct PM _{2.5} emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions. |
- Ozone 40 tpy of VOC or nitrogen oxides
- Lead 0.6 tpy
- b. For purposes of determining the applicability of R18-2-302(B)(2) or R18-2-406, in addition to the rates specified in subsection (131)(a), a rate of emissions of non-conventional pollutants that would equal or exceed any of the following:
- | Pollutant | Emissions Rate |
|---|----------------------------|
| Particulate matter | 25 tpy |
| Fluorides | 3 tpy |
| Sulfuric acid mist | 7 tpy |
| Hydrogen sulfide (H ₂ S) | 10 tpy |
| Total reduced sulfur (including H ₂ S) | 10 tpy |
| Reduced sulfur compounds (including H ₂ S) | 10 tpy |
| Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans) | 3.5 x 10 ⁻⁶ tpy |
| Municipal waste combustor metals (measured as particulate matter) | 15 tpy |
| Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride) | 40 tpy |
| Municipal solid waste landfill emissions (measured as nonmethane organic compounds) | 50 tpy |
| Any regulated NSR pollutant not specifically listed in this subsection (or) subsection (131)(a), except for ammonia. | Any emission rate |
- c. In ozone nonattainment areas classified as serious or severe, the emission rate for nitrogen oxides or VOC determined under R18-2-405.
- d. In a carbon monoxide nonattainment area classified as serious, a rate of emissions that would equal or exceed 50 tons per year, if the Administrator has determined that stationary sources contribute significantly to carbon monoxide levels in that area.
- e. In PM_{2.5} nonattainment areas, an emission rate that would equal or exceed 40 tons per year of VOC as a precursor of PM_{2.5}.
- f. In PM_{2.5} nonattainment areas, for purposes of determining the applicability of R18-2-403 or R18-2-404, an emission rate that would equal or exceed 40 tons per year of ammonia, as a precursor to PM_{2.5}. This subsection shall take effect on the effective date of the Administrator's action approving it as part of the state implementation plan.
- g. Notwithstanding the emission rates listed in subsection (131)(a) or (b), for purposes of determining the applicability of R18-2-406, any emissions rate or any net emissions increase associated with a major source or major modification, which would be constructed within 10 kilometers of a Class I area and have an impact on the ambient air quality of such area equal to or greater than 1 µg/m³ (24-hour average).

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132. "Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant as defined in this Section for that pollutant.
133. "Smoke" means particulate matter resulting from incomplete combustion.
134. "Source" means any building, structure, facility or installation that may cause or contribute to air pollution or the use of which may eliminate, reduce or control the emission of air pollution. A.R.S. § 49-401.01(23).
135. "Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.
136. "Stack in existence" means that the owner or operator had either:
- Begun, or caused to begin, a continuous program of physical onsite construction of the stack;
 - Entered into binding agreements or contractual obligations, which could not be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a reasonable time.
137. "Start-up" means the setting into operation of any air pollution control equipment or process equipment for any purpose except routine phasing in of process equipment.
138. "State implementation plan" or "SIP" means the accumulated record of enforceable air pollution control measures, programs and plans adopted by the Director and submitted to and approved by the Administrator pursuant to 42 U.S.C. 7410.
139. "Stationary rotating machinery" means any gas engine, diesel engine, gas turbine, or oil fired turbine operated from a stationary mounting and used for the production of electric power or for the direct drive of other equipment.
140. "Stationary source" means any building, structure, facility or installation which emits or may emit any regulated NSR pollutant, any regulated air pollutant or any pollutant listed under section 112(b) of the act. "Building," "structure," "facility," or "installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" as described in the "Standard Industrial Classification Manual, 1987."
141. "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the Act, or a nationally-applicable regulation codified by the administrator in 40 CFR chapter I, subchapter C, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity.
142. "Sulfuric acid plant" means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, or acid sludge, but does not include facilities where conversion to sulfuric acid is utilized as a means of preventing emissions of sulfur dioxide or other sulfur compounds to the atmosphere.
143. "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project operated for five years or less, and that complies with the applicable implementation plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated.
144. "Temporary source" means a source which is portable, as defined in A.R.S. § 49-401.01(23) and which is not an affected source.
145. "Total reduced sulfur" (TRS) means the sum of the sulfur compounds, primarily hydrogen sulfide, methyl mercaptan, dimethyl sulfide, and dimethyl disulfide, that are released during kraft pulping and other operations and measured by Method 16 in 40 CFR 60, Appendix A.
146. "Trivial activities" means activities and emissions units, such as the following, that may be omitted from a permit or registration application. Certain of the following listed activities include qualifying statements intended to exclude similar activities:
- Low-Emitting Combustion
 - Combustion emissions from propulsion of mobile sources;
 - Emergency or backup electrical generators at residential locations;
 - Portable electrical generators that can be moved by hand from one location to another. "Moved by hand" means capable of being moved without the assistance of any motorized or non-motorized vehicle, conveyance, or device;
 - Low- Or Non-Emitting Industrial Activities
 - Blacksmith forges;
 - Hand-held or manually operated equipment used for buffing, polishing, carving, cutting, drilling, sawing, grinding, turning, routing or machining of ceramic art work, precision parts, leather, metals, plastics, fiberboard, masonry, carbon, glass, or wood;
 - Brazing, soldering, and welding equipment, and cutting torches related to manufacturing and construction activities that do not result in emission of HAP metals. Brazing, soldering, and welding equipment, and cutting torches related to manufacturing and construction activities that emit HAP metals are insignificant activities based on size or production level thresholds. Brazing, soldering, and welding equipment, and cutting torches directly related to plant maintenance and upkeep and repair or maintenance shop activities that emit HAP metals are treated as trivial and listed separately in this definition;
 - Drop hammers or hydraulic presses for forging or metalworking;
 - Air compressors and pneumatically operated equipment, including hand tools;
 - Batteries and battery charging stations, except at battery manufacturing plants;
 - Drop hammers or hydraulic presses for forging or metalworking;
 - Equipment used exclusively to slaughter animals, not including other equipment at slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment;
 - Hand-held applicator equipment for hot melt adhesives with no VOC in the adhesive formulation;

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- x. Equipment used for surface coating, painting, dipping, or spraying operations, except those that will emit VOC or HAP;
- xi. CO₂ lasers used only on metals and other materials that do not emit HAP in the process;
- xii. Electric or steam-heated drying ovens and autoclaves, but not the emissions from the articles or substances being processed in the ovens or autoclaves or the boilers delivering the steam;
- xiii. Salt baths using nonvolatile salts that do not result in emissions of any regulated air pollutants;
- xiv. Laser trimmers using dust collection to prevent fugitive emissions;
- xv. Process water filtration systems and demineralizers;
- xvi. Demineralized water tanks and demineralizer vents;
- xvii. Oxygen scavenging or de-aeration of water;
- xviii. Ozone generators;
- xix. Steam vents and safety relief valves;
- xx. Steam leaks; and
- xxi. Steam cleaning operations and steam sterilizers;
- xxii. Use of vacuum trucks and high pressure washer/cleaning equipment within the stationary source boundaries for cleanup and in-source transfer of liquids and slurried solids to waste water treatment units or conveyances;
- xxiii. Equipment using water, water and soap or detergent, or a suspension of abrasives in water for purposes of cleaning or finishing.
- xxiv. Electric motors.
- c. Building and Site Maintenance Activities
 - i. Plant and building maintenance and upkeep activities, including grounds-keeping, general repairs, cleaning, painting, welding, plumbing, re-tarring roofs, installing insulation, and paving parking lots, if these activities are not conducted as part of a manufacturing process, are not related to the source's primary business activity, and do not otherwise trigger a permit revision. Cleaning and painting activities qualify as trivial activities if they are not subject to VOC or hazardous air pollutant control requirements;
 - ii. Repair or maintenance shop activities not related to the source's primary business activity, not including emissions from surface coating, de-greasing, or solvent metal cleaning activities, and not otherwise triggering a permit revision;
 - iii. Janitorial services and consumer use of janitorial products;
 - iv. Landscaping activities;
 - v. Routine calibration and maintenance of laboratory equipment or other analytical instruments;
 - vi. Sanding of streets and roads to abate traffic hazards caused by ice and snow;
 - vii. Street and parking lot striping;
 - viii. Caulking operations which are not part of a production process.
- d. Incidental, Non-Industrial Activities
 - i. Air-conditioning units used for human comfort that do not have applicable requirements under Title VI of the Act;
 - ii. Ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing, industrial or commercial process;
 - iii. Tobacco smoking rooms and areas;
 - iv. Non-commercial food preparation;
 - v. General office activities, such as paper shredding, copying, photographic activities, pencil sharpening and blueprinting, but not including incineration;
 - vi. Laundry activities, except for dry-cleaning and steam boilers;
 - vii. Bathroom and toilet vent emissions;
 - viii. Fugitive emissions related to movement of passenger vehicles, if the emissions are not counted for applicability purposes under subsection (146)(c) of the definition of major source in this Section and any required fugitive dust control plan or its equivalent is submitted with the application;
 - ix. Use of consumer products, including hazardous substances as that term is defined in the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) where the product is used at a source in the same manner as normal consumer use;
 - x. Activities directly used in the diagnosis and treatment of disease, injury or other medical condition;
 - xi. Circuit breakers;
 - xii. Adhesive use which is not related to production.
- e. Storage, Piping and Packaging
 - i. Storage tanks, vessels, and containers holding or storing liquid substances that will not emit any VOC or HAP;
 - ii. Storage tanks, reservoirs, and pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, if appropriate lids and covers are used;
 - iii. Chemical storage associated with water and wastewater treatment where the water is treated for consumption and/or use within the permitted facility;
 - iv. Chemical storage associated with water and wastewater treatment where the water is treated for consumption and/or use within the permitted facility;
 - v. Storage cabinets for flammable products;
 - vi. Natural gas pressure regulator vents, excluding venting at oil and gas production facilities;
 - vii. Equipment used to mix and package soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, if appropriate lids and covers are used;
- f. Sampling and Testing
 - i. Vents from continuous emissions monitors and other analyzers;
 - ii. Bench-scale laboratory equipment used for physical or chemical analysis, but not laboratory fume hoods or vents;
 - iii. Equipment used for quality control, quality assurance, or inspection purposes, including sampling equipment used to withdraw materials for analysis;
 - iv. Hydraulic and hydrostatic testing equipment;

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- v. Environmental chambers not using HAP gases;
- vi. Soil gas sampling;
- vii. Individual sampling points, analyzers, and process instrumentation, whose operation may result in emissions but that are not regulated as emission units;
- g. Safety Activities
 - i. Fire suppression systems;
 - ii. Emergency road flares;
- h. Miscellaneous Activities
 - i. Shock chambers;
 - ii. Humidity chambers;
 - iii. Solar simulators;
 - iv. Cathodic protection systems;
 - v. High voltage induced corona; and
 - vi. Filter draining.
- 147. "Unclassified area" means an area which the Administrator, because of a lack of adequate data, is unable to classify as an attainment or nonattainment area for a specific pollutant, and which, for purposes of this Chapter, is treated as an attainment area.
- 148. "Uncombined water" means condensed water containing analytical trace amounts of other chemical elements or compounds.
- 149. "Urban or suburban open area" means an unsubdivided tract of land surrounding a substantial urban development of a residential, industrial, or commercial nature and which, though near or within the limits of a city or town, may be uncultivated, used for agriculture, or lie fallow.
- 150. "Vacant lot" means a subdivided residential or commercial lot which contains no buildings or structures of a temporary or permanent nature.
- 151. "Vapor" means the gaseous form of a substance normally occurring in a liquid or solid state.
- 152. "Visibility impairment" means any humanly perceptible change in visibility (light extinction, visual range, contrast, coloration) from that which would have existed under natural conditions.
- 153. "Visible emissions" means any emissions which are visually detectable without the aid of instruments and which contain particulate matter.
- 154. "Volatile organic compounds" or "VOC" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, that participates in atmospheric photochemical reactions. This includes any such organic compound other than the following:
 - a. Methane;
 - b. Ethane;
 - c. Methylene chloride (dichloromethane);
 - d. 1,1,1-trichloroethane (methyl chloroform);
 - e. 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113);
 - f. Trichlorofluoromethane (CFC-11);
 - g. Dichlorodifluoromethane (CFC-12);
 - h. Chlorodifluoromethane (HCFC-22);
 - i. Trifluoromethane (HFC-23);
 - j. 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114);
 - k. Chloropentafluoroethane (CFC-115);
 - l. 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);
 - m. 1,1,1,2-tetrafluoroethane (HFC-134(a));
 - n. 1,1-dichloro 1-fluoroethane (HCFC-141(b));
 - o. 1-chloro 1,1-difluoroethane (HCFC-142(b));
 - p. 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);
 - q. Pentafluoroethane (HFC-125);
 - r. 1,1,2,2-tetrafluoroethane (HFC-134);
 - s. 1,1,1-trifluoroethane (HFC-143(a));
 - t. 1,1-difluoroethane (HFC-152(a));
 - u. Parachlorobenzotrifluoride (PCBTF);
 - v. Cyclic, branched, or linear completely methylated siloxanes;
 - w. Acetone;
 - x. Perchloroethylene (tetrachloroethylene);
 - y. 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225(ca));
 - z. 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225(cb));
 - aa. 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);
 - bb. Difluoromethane (HFC-32);
 - cc. Ethylfluoride (HFC-161);
 - dd. 1,1,1,3,3,3-hexafluoropropane (HFC-236(fa));
 - ee. 1,1,2,2,3-pentafluoropropane (HFC-245(ca));
 - ff. 1,1,2,3,3-pentafluoropropane (HFC-245(ea));
 - gg. 1,1,1,2,3-pentafluoropropane (HFC-245(eb));
 - hh. 1,1,1,3,3-pentafluoropropane (HFC-245(fa));
 - ii. 1,1,1,2,3,3-hexafluoropropane (HFC-236(ea));
 - jj. 1,1,1,3,3-pentafluorobutane (HFC-365(mfc));
 - kk. Chlorofluoromethane (HCFC-31);
 - ll. 1-chloro-1-fluoroethane (HCFC-151(a));
 - mm. 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123(a));
 - nn. 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C₄F₉OCH₃);
 - oo. 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CFCF₂OCH₃);
 - pp. 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅);
 - qq. 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CFCF₂OC₂H₅);
 - rr. Methyl acetate; and
 - ss. 1,1,1,2,2,3,3-heptafluoro-3-methoxypropane (n-C₃F₇OCH₃, HFE—7000);
 - tt. 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE – 7500);
 - uu. 1,1,1,2,3,3,3-hentafluoropropane (HFC 227ea);
 - vv. Methyl formate (HCOOCH₃); and
 - ww. (1) 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE—7300);
 - xx. Propylene carbonate;
 - yy. Dimethyl carbonate; and
 - zz. Trans -1,3,3,3-tetrafluoropropene;
 - aaa. HCF₂OCF₂H (HFE-134);
 - bbb. HCF₂OCF₂OCF₂H (HFE-236(cal2));
 - ccc. HCF₂OCF₂CF₂OCF₂H (HFE-338(pcc13));
 - ddd. HCF₂OCF₂OCF₂CF₂OCF₂H (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180));
 - eee. Trans 1-chloro-3,3,3-trifluoroprop-1-ene;
 - fff. 2,3,3,3-tetrafluoropropene;
 - ggg. 2-amino-2-methyl-1-propanol; and
 - hhh. Perfluorocarbon compounds that fall into these classes:
 - i. Cyclic, branched, or linear, completely fluorinated alkanes.
 - ii. Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations.
 - iii. Cycle, branched, or linear, completely fluorinated tertiary amines with no unsaturations; or
 - iv. Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.
 - v. The following compound is VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory

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requirements which apply to VOC and shall be uniquely identified in emission reports, but is not VOC for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate.

155. “Wood waste burner” means an incinerator designed and used exclusively for the burning of wood wastes consisting of wood slabs, scraps, shavings, barks, sawdust or other wood material, including those that generate steam as a by-product.

Historical Note

Former Section R9-3-101 repealed, new Section R9-3-101 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, paragraph (133) (Supp. 80-1). Editorial correction, paragraph (58) (Supp. 80-2). Amended effective July 9, 1980. Amended by adding new paragraphs (24), (55), (102), and (115) and renumbering accordingly, effective August 29, 1980 (Supp. 80-4). Amended effective May 28, 1982 (Supp. 82-3). Amended effective September 22, 1983 (Supp. 83-5). Amended paragraph (133), added paragraph (156) and renumbered accordingly effective September 28, 1984 (Supp. 84-5). Amended paragraph (29) by deleting (aa) and (bb) effective August 9, 1985 (Supp. 85-4). Former Section R9-3-101 renumbered without change as R18-2-101 (Supp. 87-3). Amended paragraph (98) effective December 1, 1988 (Supp. 88-4). Amended effective September 26, 1990 (Supp. 90-3). Amended effective November 15, 1993 (Supp. 93-4). Amended effective June 10, 1994 (Supp. 94-2). Amended effective October 7, 1994 (Supp. 94-4). Amended effective February 28, 1995 (Supp. 95-1). Amended effective August 1, 1995 (Supp. 95-3). Amended effective January 31, 1997; filed with the Office of Secretary of State January 10, 1997 (Supp. 97-1). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 8 A.A.R. 2543, effective May 24, 2002 (Supp. 02-2). Amended by final rulemaking at 9 A.A.R. 4541, effective December 2, 2003 (Supp. 03-4). Amended by final rulemaking at 11 A.A.R. 3305, effective October 3, 2005 (Supp. 05-3). Amended by final rulemaking at 11 A.A.R. 5504, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1). Amended by final rulemaking at 25 A.A.R. 3630, effective February 1, 2020 (Supp. 19-4). Amended by final expedited rulemaking at 28 A.A.R. 1135 (May 27, 2022), with an immediate effective date of May 4, 2022 (Supp. 22-2).

R18-2-102. Incorporated Materials

- A. The following documents are incorporated by reference and are on file with the Office of the Secretary of State (1700 W. Washington St., Suite 103, Phoenix, AZ 85007) and the Department (1110 W. Washington St., Phoenix, AZ 85007):
1. Sections 1 and 7 of the Department’s “Arizona Testing Manual for Air Pollutant Emissions,” amended as of March 1992 (and no future editions).
 2. All ASTM test methods referenced in this Chapter as of the year specified in the reference (and no future amendments). They are available from the American Society for

Testing and Materials, 1916 Race St., Philadelphia, PA 19103-1187.

3. The U.S. Government Printing Office’s “Standard Industrial Classification Manual, 1987” (and no future editions).
- B. The Code of Federal Regulations is published by the United States Government Printing Office, 732 North Capital Street, NW, Washington, DC 20401-0001, is on file with the Department of Environmental Quality, 1110 West Washington Street, Phoenix, Arizona 85007, and is available at the Arizona State Library, Archives & Public Records, 1700 West Washington Street, Phoenix, Arizona 85007 and at other Federal depository libraries in the state (see http://catalog.gpo.gov/fdlpdir/FDLP-dir.jsp?st_12=AZ&flag=searchp). It is also available online at <http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.

Historical Note

Adopted effective September 26, 1990 (Supp. 90-3). Amended effective February 3, 1993 (Supp. 93-1). Amended effective November 15, 1993 (Supp. 93-4). Amended effective June 10, 1994 (Supp. 94-2). Amended effective December 7, 1995 (Supp. 95-4). Amended by final rulemaking at 5 A.A.R. 3221, effective August 12, 1999 (Supp. 99-3). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-103. Applicable Implementation Plan; Savings

No rule adopted in this Chapter shall preempt or nullify any applicable requirement or emission standard in an applicable implementation plan unless the Director revises the applicable implementation plan in conformance with the requirements of 40 CFR 51, Subpart F, and the Administrator approves the revision.

Historical Note

Adopted effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

ARTICLE 2. AMBIENT AIR QUALITY STANDARDS; AREA DESIGNATIONS; CLASSIFICATIONS**R18-2-201. Particulate Matter: PM₁₀ and PM_{2.5}****A. PM₁₀ Standards**

1. The level of the primary and secondary ambient air quality standards for PM₁₀ is 150 micrograms per cubic meter of PM₁₀ – 24-hour average concentration.
2. To determine attainment of the primary and secondary standards, a person shall measure PM₁₀ in the ambient air by:
 - a. A reference method based on 40 CFR 50, Appendix J, and designated according to 40 CFR 53; or
 - b. An equivalent method designated according to 40 CFR 53.
3. The primary and secondary 24-hour ambient air quality standards for PM₁₀ are attained when the expected number of days per calendar year with a 24-hour average concentration above 150 micrograms per cubic meter, determined according to 40 CFR 50, Appendix K, is less than or equal to one.

B. PM_{2.5} Standards

1. The primary ambient air quality standards for PM_{2.5} are:
 - a. 12 micrograms per cubic meter of PM_{2.5} – annual arithmetic mean concentration.
 - b. 35 micrograms per cubic meter of PM_{2.5} – 24-hour average concentration.

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2. The secondary ambient air quality standards for $PM_{2.5}$ are:
 - a. 15 micrograms per cubic meter of $PM_{2.5}$ – annual arithmetic mean concentration.
 - b. 35 micrograms per cubic meter of $PM_{2.5}$ – 24-hour average concentration.
3. To determine attainment of the primary and secondary standards, a person shall measure $PM_{2.5}$ in the ambient air by:
 - a. A reference method based on 40 CFR 50, Appendix L, and designated according to 40 CFR 53; or
 - b. An equivalent method designated according to 40 CFR 53.
4. The primary annual ambient air quality standard for $PM_{2.5}$ is met when the annual arithmetic mean concentration, determined according to 40 CFR 50, Appendix N, is less than or equal to 12 micrograms per cubic meter.
5. The secondary annual ambient air quality standard for $PM_{2.5}$ is met when the annual arithmetic mean concentration, determined according to 40 CFR 50, Appendix N, is less than or equal to 15 micrograms per cubic meter.
6. The primary and secondary 24-hour ambient air quality standards for $PM_{2.5}$ are met when the 98th percentile 24-hour concentration, determined according to 40 CFR 50, Appendix N, is less than or equal to 35 micrograms per cubic meter.

Historical Note

Amended effective December 22, 1976 (Supp. 76-5). Former Section R9-3-201 repealed, new Section R9-3-201 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, subsection (E) (Supp. 80-2). Amended effective August 29, 1980 (Supp. 80-4). Amended subsection(B)(1) and deleted subsections (C) through (E) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-201 renumbered without change as Section R18-2-201 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Amended by final rulemaking at 11 A.A.R. 3305, effective October 3, 2005 (Supp. 05-3). Section corrected to include subsection (B), which was inadvertently omitted in Supp. 05-3 (Supp. 07-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-202. Sulfur Oxides (Sulfur Dioxide)

- A. The primary ambient air quality standards for sulfur oxides, measured as sulfur dioxide, are:
 1. 0.03 parts per million (ppm) ($80 \mu\text{g}/\text{m}^3$) -- annual arithmetic mean.
 2. 0.14 parts per million (ppm) ($365 \mu\text{g}/\text{m}^3$) – maximum 24-hour concentration not to be exceeded more than once per calendar year.
 3. 75 parts per billion (ppb) – maximum one-hour concentration. The one-hour primary standard is met at an ambient air quality monitoring site when the three-year average of the annual 99th percentile of the daily maximum one-hour average concentrations is less than or equal to 75 parts per billion, as determined according to 40 CFR 50, Appendix T.
- B. The secondary ambient air quality standard for sulfur oxides, measured as sulfur dioxide, is 0.5 parts per million (ppm) ($1300 \mu\text{g}/\text{m}^3$) -- maximum three-hour concentration not to be exceeded more than once per year.

- C. The level of the standards shall be measured by a reference method based on 40 CFR 50, Appendix A or A-1, or by a Federal Equivalent Method designated according to 40 CFR 53.
- D. The standards in subsections (A)(1) and (2) shall apply:
 1. In an area designated nonattainment for a standard in subsections (A)(1) or (2) as of August 23, 2011, and areas not meeting a state implementation plan call for a standard in subsections (A)(1) or (2), until the state submits pursuant to section 191 of the Act, and the Administrator approves, a state implementation plan providing for attainment the standard in subsection (A)(3) in that area.
 2. In areas other than those identified in subsection (D)(1), until the effective date of the designation of that area, pursuant to section 107 of the act, for the standard in subsection (A)(3).

Historical Note

Amended effective December 22, 1976 (Supp. 76-5). Former Section R9-3-202 repealed, new Section R9-3-202 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective August 29, 1980 (Supp. 80-4). Amended subsection (B) effective May 28, 1982 (Supp. 82-3). Amended by deleting subsections (C) through (E) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-202 renumbered without change as Section R18-2-202 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Amended by final rulemaking at 11 A.A.R. 3305, effective October 3, 2005 (Supp. 05-3). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

R18-2-203. Ozone

- A. The eight-hour average primary ambient air quality standard for ozone is 0.070 ppm.
- B. The eight-hour average secondary ambient air quality standard for ozone is 0.070 ppm.
- C. To determine attainment of the primary and secondary standards, a person shall measure ozone in the ambient air by:
 1. A reference method based on 40 CFR 50, Appendix D, and designated according to 40 CFR 53; or
 2. An equivalent method designated according to 40 CFR 53.
- D. The eight-hour average primary ambient air quality standard for ozone is met at an ambient air quality monitoring site when the three-year average of the annual fourth highest daily maximum eight-hour average ozone concentration is less than or equal to 0.070 ppm, determined according to 40 CFR 50, Appendix U.

Historical Note

Amended effective December 22, 1976 (Supp. 76-5). Former Section R9-3-204 repealed, new Section R9-3-204 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective August 29, 1980 (Supp. 80-4). Amended by deleting subsections (B) through (D) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-204 renumbered without change as Section R18-2-204 (Supp. 87-3). Section R18-2-103 renumbered from R18-2-204 and amended effective September 26, 1990 (Supp. 90-3). Amended by final rulemaking at 11 A.A.R. 3305, effective October 3, 2005 (Supp. 05-3). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-204. Carbon monoxide

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- A. The primary ambient air quality standards for carbon monoxide are:
1. 9 parts per million (10 milligrams per cubic meter) -- maximum eight-hour concentration not to be exceeded more than once per year.
 2. 35 parts per million (40 milligrams per cubic meter) -- maximum one-hour concentration not to be exceeded more than once per year.
- B. An eight-hour average shall be considered valid if at least 75% of the hourly averages for the eight-hour period are available. In the event that only six or seven hourly averages are available, the eight-hour average shall be computed on the basis of the hours available using 6 or 7 as the divisor.
- C. When summarizing data for comparison with the standards, averages shall be stated to one decimal place. Comparison of the data with the levels of the standards in parts per million shall be made in terms of integers with fractional parts of 0.5 or greater rounding up.

Historical Note

Amended effective December 22, 1976 (Supp. 76-5).
Former Section R9-3-205 repealed, new Section R9-3-205 adopted effective May 14, 1979 (Supp. 79-1).
Amended effective October 2, 1979 (Supp. 79-5).
Amended effective August 29, 1980 (Supp. 80-4).
Amended by deleting subsections (B) through (D) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-205 renumbered without change as Section R18-2-205 (Supp. 87-3). Former Section R18-2-204 renumbered to R18-2-203, new Section R18-2-204 renumbered from R18-2-205 and amended effective September 26, 1990 (Supp. 90-3).

R18-2-205. Nitrogen Oxides (Nitrogen Dioxide)

- A. The primary ambient air quality standards for oxides of nitrogen, measured in the ambient air as nitrogen dioxide, are:
1. 53 parts per billion -- annual average concentration.
 2. 100 parts per billion -- one-hour average concentration.
- B. The secondary ambient air quality standard for nitrogen dioxide is 0.053 (parts per million (100 micrograms per cubic meter) -- annual arithmetic mean.
- C. The levels of the standards shall be measured by a reference method based on 40 CFR 50, Appendix F or a federal equivalent method designated in accordance with 40 CFR 53.
- D. The annual primary standard is met when the annual average concentration in a calendar year is less than or equal to 53 ppb, as determined in accordance with 40 CFR, Appendix S for the annual standard.
- E. The one-hour primary standard is met when the three-year average of the annual 98th percentile of the daily maximum one-hour average concentration is less than or equal to 100 parts per billion, as determined in accordance with 40 CFR 50, Appendix S.
- F. The secondary standard is attained when the annual arithmetic mean concentration in a calendar year is less than or equal to 0.053 ppm, rounded to three decimal places, with fractional parts equal to or greater than 0.0005 ppm rounded up. To demonstrate attainment, an annual mean shall be based upon hourly data that is at least 75% complete or upon data derived from the manual methods, that is at least 75% complete for the scheduled sampling days in each calendar quarter.

Historical Note

Amended effective December 22, 1976 (Supp. 76-5).
Former Section R9-3-206 repealed, new Section R9-3-206 adopted effective May 14, 1979 (Supp. 79-1).
Amended effective October 2, 1979 (Supp. 79-5).
Amended effective August 29, 1980 (Supp. 80-4).

Amended by deleting subsections (B) through (D) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-206 renumbered without change as Section R18-2-206 (Supp. 87-3). Former Section R18-2-205 renumbered to R18-2-204, new Section R18-2-205 renumbered from R18-2-206 and amended effective September 26, 1990 (Supp. 90-3). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

R18-2-206. Lead

- A. The primary ambient air quality standard for lead and its compounds, measured as elemental lead, is 0.15 micrograms per cubic meter -- maximum arithmetic mean averaged over a three-month period.
- B. The secondary ambient air quality standard for lead and its compounds, measured as elemental lead, is 0.15 micrograms per cubic meter -- maximum arithmetic mean averaged over a three-month period.
- C. The level of the standards shall be measured by a reference method based on 40 CFR 50, Appendix G and designated in accordance with 40 CFR 53, or by an equivalent designated in accordance with part 53 of this chapter.
- D. The national primary and secondary ambient air quality standards for lead are met when the maximum arithmetic three-month mean concentration for a three-year period, as determined in accordance with 40 CFR 50, Appendix R, is less than or equal to 0.15 micrograms per cubic meter.
- E. The former primary and secondary ambient air quality standards for lead of 1.5 micrograms per cubic meter averaged over a calendar quarter shall apply to an area until one year after the effective date of the designation of that area, pursuant to section 107 of the Act, for the standards in subsections (A) and (B).

Historical Note

Former Section R9-3-207 repealed effective May 14, 1979 (Supp. 79-1). New Section R9-3-207 adopted effective October 2, 1979 (Supp. 79-5). Amended effective August 29, 1980 (Supp. 80-4). Amended by deleting subsections (B) through (D) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-207 renumbered without change as Section R18-2-207 (Supp. 87-3). Former Section R18-2-206 renumbered to R18-2-205, new Section R18-2-206 renumbered from R18-2-207 and amended effective September 26, 1990 (Supp. 90-3). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

R18-2-207. Renumbered**Historical Note**

Former Section R9-3-207 renumbered to R18-2-206 effective September 26, 1990 (Supp. 90-3).

R18-2-208. Reserved**R18-2-209. Reserved****R18-2-210. Attainment, Nonattainment, and Unclassifiable Area Designations**

40 CFR 81.303 as amended as of July 1, 2014 (and no future amendments or editions) is incorporated by reference as an applicable requirement and on file with the Department of Environmental Quality. 40 CFR 81.303 is available from the U.S. Government Printing Office, Superintendent of Documents, bookstore.gpo.gov, Mail Stop: SSOP IDCC-SSOM, Washington, D.C. 20402-9328.

Historical Note

Adopted effective November 15, 1993 (Supp. 93-4).
Amended effective December 7, 1995 (Supp. 95-4).

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Amended by final rulemaking at 5 A.A.R. 3221, effective August 12, 1999 (Supp. 99-3). Amended by final rulemaking at 8 A.A.R. 2543, effective May 24, 2002 (Supp. 02-2). Amended by final rulemaking at 10 A.A.R. 3281, effective September 27, 2004 (Supp. 04-3). Amended by final rulemaking at 11 A.A.R. 3305, effective October 3, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 4199, effective January 5, 2008 (Supp. 07-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

R18-2-211. Reserved**R18-2-212. Reserved****R18-2-213. Reserved****R18-2-214. Reserved****R18-2-215. Ambient air quality monitoring methods and procedures**

- A. Only those methods which have been either designated by the Administrator as reference or equivalent methods or approved by the Director shall be used to monitor ambient air.
- B. Quality assurance, monitor siting, and sample probe installation procedures shall be in accordance with procedures described in the Appendices to 40 CFR 58.
- C. The Director may approve other procedures upon a finding that the proposed procedures are substantially equivalent or superior to procedures in the Appendices to 40 CFR 58.

Historical Note

Adopted effective September 22, 1983 (Supp. 83-5). Former Section R9-3-215 renumbered without change as Section R18-2-215 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3).

R18-2-216. Interpretation of Ambient Air Quality Standards and Evaluation of Air Quality Data

Unless otherwise specified, interpretation of all ambient air quality standards contained in this Article shall be in accordance with 40 CFR 50, incorporated by reference in Appendix 2 of this Chapter.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-216 repealed, new Section R9-3-216 adopted effective August 29, 1980 (Supp. 80-4). Former Section R9-3-216 renumbered without change as Section R18-2-216 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).

R18-2-217. Designation and Classification of Attainment Areas

- A. All areas shall be classified as either Class I, Class II or Class III.
- B. All of the following areas which were in existence on August 7, 1977 shall be Class I areas irrespective of attainment status and shall not be redesignated:
 - 1. International parks;
 - 2. National wilderness areas which exceed 5,000 acres in size;
 - 3. National memorial parks which exceed 5,000 acres in size; and
 - 4. National parks which exceed 6,000 acres in size.
- C. Areas which were redesignated as Class I under regulations promulgated before August 7, 1977, shall remain Class I, but may be redesignated as provided in this Section.

- D. Any other area, unless otherwise specified in the legislation creating such an area, is initially designated Class II, but may be redesignated as provided in this Section.

- E. The following areas shall be designated only as Class I or II:
 - 1. An area which as of August 7, 1977, exceeds 10,000 acres in size and is one of the following:
 - a. A national monument,
 - b. A national primitive area,
 - c. A national preserve,
 - d. A national recreational area,
 - e. A national wild and scenic river,
 - f. A national wildlife refuge,
 - g. A national lakeshore or seashore.
 - 2. A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.
- F. Except as otherwise provided in subsections (B) to (E), the Governor may redesignate areas of the state as Class I or Class II, provided that the following requirements are fulfilled:
 - 1. At least one public hearing is held in or near the area affected in accordance with 40 CFR 51.102;
 - 2. Other states, Indian governing bodies and Federal Land Managers, whose land may be affected by the proposed redesignation are notified at least 30 days prior to the public hearing.
 - 3. A discussion document of the reasons for the proposed redesignation including a description and analysis of health, environmental, economic, social and energy effects of the proposed redesignation is prepared by the Governor or the Governor's designee. The discussion document shall be made available for public inspection at least 30 days prior to the hearing and the notice announcing the hearing shall contain appropriate notification of the availability of such discussion document.
 - 4. Prior to the issuance of notice respecting the redesignation of an area which includes any federal lands, the Governor or the Governor's designee has provided written notice to the appropriate Federal Land Manager and afforded the Federal Land Manager adequate opportunity, not in excess of 60 days, to confer with the state respecting the redesignation and to submit written comments and recommendations. The Governor or the Governor's designee shall publish a list of any inconsistency between such redesignation and such recommendations, together with the reasons for making such redesignation against the recommendation of the Federal Land Manager, if any Federal Land Manager has submitted written comments and recommendations.
 - 5. The redesignation is proposed after consultation with the elected leadership of local governments in the area covered by the proposed redesignation.
 - 6. The redesignation is submitted to the Administrator as a revision to the SIP.

- G. Except as otherwise provided in subsections (B) to (E), the Governor may redesignate areas of the state as Class III if all of the following criteria are met:
 - 1. Such redesignation meets the requirements of subsection (F);
 - 2. Such redesignation has been approved after consultation with the appropriate committee of the legislature if it is in session or with the leadership of the legislature if it is not in session.
 - 3. The general purpose units of local government representing a majority of the residents of the area to be redesignated concur in the redesignation;
 - 4. Such redesignation shall not cause, or contribute to, a concentration of any air pollutant which exceeds any

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- national ambient air quality standard or any maximum increase allowed under R18-2-218;
5. For any new major source as defined in R18-2-401 or a major modification of such source which may be permitted to be constructed and operated only if the area in question is redesignated as Class III, any permit application and materials submitted as part of the application shall be available for public inspection prior to any public hearing on the redesignation of the area as Class III.
 6. The redesignation is submitted to the Administrator as a revision to the SIP.

H. A redesignation shall not be effective until approved by the Administrator as part of an applicable implementation plan. If the Administrator disapproves the redesignation, the classification of the area shall be that which was in effect before the disapproved redesignation.

I. Lands within the exterior boundaries of Indian reservations may be redesignated only by the appropriate Indian governing body.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, subsection (A), paragraph (5), subparagraph (d) (Supp. 80-2). Amended effective May 28, 1982 (Supp. 82-3). Former Section R9-3-217 renumbered without change as Section R18-2-217 (Supp. 87-3). Amended and subsection (B) renumbered to Section R18-2-218 effective September 26, 1990 (Supp. 90-3). Amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-218. Limitation of Pollutants in Classified Attainment Areas

A. Areas designated as Class I, II, or III shall be limited to the following increases in air pollutant concentrations occurring over the baseline concentration; provided that for any period other than an annual period, the applicable maximum allowable increase may be exceeded once per year at any one location:

CLASS I

Maximum Allowable Increase (Micrograms per cubic meter)

Particulate matter: PM_{2.5}

Annual arithmetic mean	1
24-hr maximum	2

Particulate matter: PM₁₀

Annual arithmetic mean	4
24-hour maximum	8

Sulfur dioxide:

Annual arithmetic mean	2
24-hour maximum	5
3-hour maximum	25

Nitrogen dioxide:

Annual arithmetic mean	2.5
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CLASS II

Particulate matter: PM_{2.5}

Annual arithmetic mean	4
24-hr maximum	9

Particulate matter: PM₁₀

Annual arithmetic mean	17
24-hour maximum	30

Sulfur dioxide:

Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512

Nitrogen dioxide:

Annual arithmetic mean	25
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CLASS III

Particulate matter: PM_{2.5}

Annual arithmetic mean	8
24-hr maximum	18

Particulate matter: PM₁₀

Annual arithmetic mean	34
24-hour maximum	60

Sulfur dioxide:

Annual arithmetic mean	40
24-hour maximum	182
3-hour maximum	700

Nitrogen dioxide:

Annual arithmetic mean	50
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B. The baseline concentration is that ambient concentration level which exists in the baseline area at the time of the applicable minor source baseline data.

1. The major source baseline date is:
 - a. January 6, 1975, for sulfur dioxide and PM₁₀.
 - b. February 8, 1988, for nitrogen dioxide.
 - c. October 20, 2010, for PM_{2.5}.
2. The minor source baseline date shall be the earliest date after the trigger date on which a major source as defined in R18-2-401 or major modification subject to 40 CFR 52.21 or R18-2-406 submits a complete application under the relevant regulations.
 - a. The trigger date is:
 - i. August 7, 1977, for PM₁₀ and sulfur dioxide.
 - ii. February 8, 1988, for nitrogen dioxide.
 - iii. October 20, 2011, for PM_{2.5}.
 - b. Any minor source baseline date established originally for total suspended particulates shall remain in effect and shall apply for purposes of determining the amount of available PM-10 increments, except that the Department may rescind any such minor source baseline date where it can be shown, to the satisfaction of the Department, that the emissions increase from the major source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM-10 emissions.
3. A baseline concentration shall be determined for each pollutant for which there is a minor source baseline date and shall include both:
 - a. The actual emissions representative of sources in existence on the minor source baseline date, except as provided in subsection (B)(4); and
 - b. The allowable emissions of major sources as defined in R18-2-401 which commenced construction before the major source baseline date but were not in operation by the applicable minor source baseline date.

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4. The following shall not be included in the baseline concentration and shall affect the applicable maximum allowable increase:
 - a. Actual emissions from any major source as defined in R18-2-401 on which construction commenced after the major source baseline date; and
 - b. Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.
- C. The baseline date shall be established for each pollutant for which maximum allowable increases or other equivalent measures have been established if both:
 1. The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 or R18-2-406; and
 2. In the case of a major source as defined in R18-2-401, the pollutant would be emitted in significant amounts, or in the case of a major modification, there would be a significant net emissions increase of the pollutant.
- D. The baseline area shall be the AQCR that contains the area, designated as attainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the Act, in which the major source as defined in R18-2-401 or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the minor source baseline date is established, as follows: greater than or equal to 1 microgram per cubic meter (annual average) for sulfur dioxide, nitrogen dioxide or PM₁₀; or greater than or equal to 0.3 microgram per cubic meter (annual average) for PM_{2.5}.
 1. Area redesignations under section 107(d)(1)(A)(ii) or (iii) of the Act that would redesignate a baseline area may not intersect or be smaller than the area of impact of any new major source as defined in R18-2-401 or a major modification which either:
 - a. Establishes a minor source baseline date, or
 - b. Is subject to either 40 CFR 52.21 or R18-2-406 and would be constructed in Arizona.
 2. Any baseline area established originally for total suspended particulates shall remain in effect and shall apply for purposes of determining the amount of available PM₁₀ increments, except that such baseline area shall not remain in effect if the Department rescinds the corresponding minor source baseline date in accordance with subsection (B)(2)(b).
- E. The maximum allowable concentration of any air pollutant in any area to which subsection (A) applies shall not exceed a concentration for each pollutant equal to the concentration permitted under the national ambient air quality standards.
- F. For purposes of determining compliance with the maximum allowable increases in ambient concentrations of an air pollutant, the following concentrations of such pollutant shall not be taken into account:
 1. Concentration of such pollutant attributable to the increase in emissions from major and stationary sources which have converted from the use of petroleum products, or natural gas, or both, by reason of a natural gas curtailment order which is in effect under the provisions of sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, 15 U.S.C. 792, over the emissions from such sources before the effective date of such order;
 2. The concentration of such pollutant attributable to the increase in emissions from major and stationary sources which have converted from using gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act, 16 U.S.C. 792 - 825r, over the emissions from such sources before the effective date of the natural gas curtailment plan;
3. Concentrations of PM₁₀ or PM_{2.5} attributable to the increase in emissions from construction or other temporary emission related activities of a new or modified source;
4. The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and
5. Concentrations attributable to the temporary increase in emissions of sulfur dioxide, nitrogen oxides, PM_{2.5}, or PM₁₀ from major sources as defined in R18-2-401 when the following conditions are met:
 - a. The permits issued to such sources specify the time period during which the temporary emissions increase of sulfur dioxide, nitrogen oxides, PM_{2.5} or PM₁₀ would occur. Such time period shall not be renewable and shall not exceed two years.
 - b. The temporary emissions increase will not:
 - i. Impact any Class I area or any area where a maximum increase allowed by subsection (A) is known to be violated; or
 - ii. Cause or contribute to the violation of a national ambient air quality standard.
 - c. The operating permit issued to such sources specifies that, at the end of the time period described in subsection (F)(5)(a), the emissions levels from the sources would not exceed the levels occurring before the temporary emissions increase was approved.
6. The exception granted by subsections (F)(1) and (2) with respect to maximum increases allowed under subsection (A) shall not apply more than five years after the effective date of the order or natural gas curtailment plan on which the exception is based.
- G. If the Director or the Administrator determines that the SIP is substantially inadequate to prevent significant deterioration or that an applicable maximum allowable increase as specified in subsection (A) is being violated, the SIP shall be revised to correct the inadequacy or the violation. The SIP shall be revised within 60 days of such a finding by the Director or within 60 days following notification by the Administrator, or by such later date as prescribed by the Administrator after consultation with the Director.
- H. The Director shall review the adequacy of the SIP on a periodic basis and within 60 days of such time as information becomes available that an applicable maximum allowable increase is being violated.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, subsection (A), paragraph (5), subparagraph (d) (Supp. 80-2). Amended effective May 28, 1982 (Supp. 82-3). Former Section R9-3-217 renumbered without change as Section R18-2-217 (Supp. 87-3). Former Section R18-2-218 renumbered to R18-2-219, new Section R18-2-218 renumbered from R18-2-217(B) and amended effective September 26, 1990 (Supp. 90-3). Amended effective November 15, 1993 (Supp. 93-4). Amended effective February 28, 1995 (Supp. 95-1). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final

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rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-219. Repealed**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-218 repealed, new Section R9-3-218 adopted effective September 22, 1983 (Supp. 83-5). Former Section R9-3-218 renumbered without change as Section R18-2-218 (Supp. 87-3). Former Section R18-2-219 renumbered to R18-2-220, new Section R18-2-219 renumbered from R18-2-218 and amended effective September 26, 1990 (Supp. 90-3). Section repealed by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

R18-2-220. Air Pollution Emergency Episodes

- A. Procedures shall be implemented by the Director in order to prevent the occurrence of ambient air pollutant concentrations which would cause significant harm to the health of persons, as specified in subsection (B)(4). The procedures and actions required for each stage are described in the Department's "Procedures for Prevention of Emergency Episodes," amended as of August 2018 (and no future edition), which is incorporated herein by reference and on file with the Department.
- B. The following stages are identified by air quality criteria in order to provide for sequential emissions reductions, public notification and increased Department monitoring and forecast responsibilities. The declaration of any stage, and the area of the state affected, shall be based on air quality measurements and meteorological analysis and forecast.

1. A Stage I air pollution alert shall be declared when any of the alert level concentrations listed in subsection (B)(4) are exceeded at any monitoring site and when meteorological conditions indicate that there will be a continuance or recurrence of alert level concentrations for the same pollutant during the subsequent 24-hour period. If, 48 hours after an alert has been initially declared, air pollution concentrations and meteorological conditions do not improve, the warning stage control actions shall be implemented but no warning shall be declared, unless air quality has deteriorated to the extent described in subsection (B)(2).
2. A Stage II air pollution warning shall be declared when any of the warning level concentrations listed in subsection (B)(4) are exceeded at any monitoring site and when meteorological conditions indicate that there will be a continuance or recurrence of concentrations of the same pollutant exceeding the warning level during the subsequent 24-hour period. If, 48 hours after a warning has been initially declared, air pollution concentrations and meteorological conditions do not improve, the emergency stage shall be declared and its control actions implemented.
3. A Stage III air pollution emergency shall be declared when any of the emergency level concentrations listed in subsection (B)(4) are exceeded at any monitoring site and when meteorological conditions indicate that there will be a continuance or recurrence of concentrations of the same pollutant exceeding the emergency level during the subsequent 24-hour period.
4. Summary of emergency episode and significant harm levels:

Pollutant	Averaging Time	Alert	Warning	Emergency	Significant Harm
Carbon monoxide (mg/m ³)	1-hr	--	--	--	144
	4-hr	--	--	--	86.3
	8-hr	17	34	46	57.5
Nitrogen dioxide (µg/m ³)	1-hr	1,130	2,260	3,000	3,750
	24-hr	282	565	750	938
Ozone (ppm)	1-hr	.2	.4	.5	.6
PM _{2.5} (µg/m ³)	24-hr	140.5	210.5	280.5	350.5
PM ₁₀ (µg/m ³)	24-hr	350	420	500	600
Sulfur dioxide (µg/m ³)	24-hr	800	1,600	2,100	2,620

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Editorial correction, subsection (B), paragraph (2) (Supp. 80-1). Editorial correction, subsection (A) (Supp. 80-2). Former Section R9-3-219 repealed, new Section R9-3-219 adopted effective May 28, 1982 (Supp. 82-3). Former Section R9-3-219 renumbered without change as Section R18-2-219 (Supp. 87-3). Section R18-2-220 renumbered from R18-2-219 and amended effective September 26, 1990 (Supp. 90-3). Section amended by final rulemaking at 25 A.A.R. 888, effective May 18, 2019 (Supp. 19-1).

ARTICLE 3. PERMITS AND PERMIT REVISIONS**R18-2-301. Definitions**

The following definitions apply to this Article:

1. "Alternative method" means any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to produce results adequate for the Director's determination of compliance in accordance with R18-2-311(D).
2. "Billable permit action" means the issuance or denial of a new permit, significant permit revision, or minor permit revision, or the renewal of an existing permit.
3. "Capacity factor" means the ratio of the average load on a machine or equipment for the period of time considered to the capacity rating of the machine or equipment.
4. "CEM" means a continuous emission monitoring system as defined in R18-2-101.
5. "Complete" means, in reference to an application for a permit, permit revision or registration, that the application contains all the information necessary for processing the application. Designating an application complete for purposes of a permit, permit revisions or registration processing does not preclude the Director from requesting or accepting any additional information.

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6. "Dispersion technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by any of the following:
 - a. Using that portion of a stack which exceeds good engineering practice stack height;
 - b. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or
 - c. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. This shall not include any of the following:
 - i. The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream.
 - ii. The merging of exhaust gas streams under any of the following conditions:
 - (1) The source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams;
 - (2) After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant, applying only to the emission limitation for that pollutant; or
 - (3) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the reviewing agency shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the reviewing agency shall deny credit for the effects of such merging in calculating the allowable emissions for the source.
 - iii. Smoke management in agricultural or silvicultural prescribed burning programs.
 - iv. Episodic restrictions on residential woodburning and open burning.
 - v. Techniques which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.
7. "Emissions allowable under the permit" means a permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or an emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.
8. "Fossil fuel-fired steam generator" means a furnace or boiler used in the process of burning fossil fuel for the primary purpose of producing steam by heat transfer.
9. "Fuel oil" means Number 2 through Number 6 fuel oils as specified in ASTM D-396-90a (Specification for Fuel Oils), gas turbine fuel oils Numbers 2-GT through 4-GT as specified in ASTM D-2880-90a (Specification for Gas Turbine Fuel Oils), or diesel fuel oils Numbers 2-D and 4-D as specified in ASTM D-975-90a (Specification for Diesel Fuel Oils).
10. "Itemized bill" means a breakdown of the permit processing time into the categories of pre-application activities, completeness review, substantive review, and public involvement activities, and within each category, a further breakdown by employee name.
11. "Major source threshold" means the lowest applicable emissions rate for a pollutant that would cause the source to be a major source at the particular time and location, under the definition of major source in R18-2-101.
12. "Maximum capacity to emit" means the maximum amount a source is capable of emitting under its physical and operational design without taking any limitations on operations or air pollution controls into account.
13. "Maximum capacity to emit with any elective limits" means the maximum amount a source is capable of emitting under its physical and operational design taking into account the effect on emissions of any elective limits included in the source's registration under R18-2-302.01(F).
14. "Minor NSR Modification" means any of the following changes that do not qualify as a major source or major modification:
 - a. Any physical change in or change in the method of operation of an emission unit or a stationary source that either:
 - i. Increases the potential to emit of a regulated minor NSR pollutant by an amount greater than or equal to the permitting exemption thresholds, or
 - ii. Results in emissions of a regulated minor NSR pollutant not previously emitted by such emission unit or stationary source in an amount greater than or equal to the permitting exemption thresholds.
 - b. Construction of one or more new emissions units that have the potential to emit regulated minor NSR pollutants at an amount greater than or equal to the permitting exemption threshold.
 - c. A change covered by subsections (12)(a) or (b) constitutes a minor NSR modification regardless of whether there will be a net decrease in total source emissions or a net increase in total source emissions that is less than the permitting exemption threshold as a result of decreases in the potential to emit of other emission units at the same stationary source.
 - d. For the purposes of this subsection (the) following do not constitute a physical change or change in the method of operation:
 - i. A change consisting solely of the construction of, or changes to, a combination of emissions units qualifying as a categorically exempt activity.
 - ii. For a stationary source that is required to obtain a Class II permit under R18-2-302 and that is

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- subject to source-wide emissions caps under R18-2-306.01 or R18-2-306.02, a change that will not result in the violation of the existing emissions cap for that regulated minor NSR pollutant.
- iii. Replacement of an emission unit by a unit with a potential to emit regulated minor NSR pollutants that is less than or equal to the potential to emit of the existing unit, provided the replacement does not cause an increase in emissions at other emission units at the stationary source. A unit installed under this provision is subject to any limits applicable to the unit it replaced.
 - iv. Routine maintenance, repair, and replacement.
 - v. Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, 15 U.S.C. 792, or by reason of a natural gas curtailment plan under the Federal Power Act, 16 U.S.C. 792 to 825r.
 - vi. Use of an alternative fuel by reason of an order or rule under Section 125 of the Act.
 - vii. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.
 - viii. Use of an alternative fuel or raw material by a stationary source that either:
 - (1) The source was capable of accommodating before December 12, 1976, unless the change would be prohibited under any federally enforceable permit condition established after December 12, 1976, under 40 CFR 52.21, or under Articles 3 or 4 of this Chapter; or
 - (2) The source is approved to use under any permit issued under 40 CFR 52.21, or under Articles 3 or 4 of this Chapter.
 - ix. An increase in the hours of operation or in the production rate, unless the change would be prohibited under any federally enforceable permit condition established after December 12, 1976, under 40 CFR 52.21, or under Articles 3 or 4 of this Chapter.
 - x. Any change in ownership at a stationary source.
 - xi. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, if the project complies with:
 - (1) The SIP, and
 - (2) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.
 - xii. For electric utility steam generating units located in attainment and unclassifiable areas only, the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, if the project does not result in an increase in the potential to emit any regulated pollutant emitted by the unit. This exemption applies on a pollutant-by-pollutant basis.
 - xiii. For electric utility steam generating units located in attainment and unclassifiable areas only, the reactivation of a very clean coal-fired electric utility steam generating unit.
- e. For purposes of this subsection:
 - i. "Potential to emit" means the lower of a source's or emission unit's potential to emit or its allowable emissions.
 - ii. In determining potential to emit, the fugitive emissions of a stationary source shall not be considered unless the source belongs to a section 302(j) category.
 - iii. All of the roadways located at a stationary source constitute a single emissions unit.
- 15. "NAICS" means the five- or six-digit North American Industry Classification System-United States, 1997, number for industries used by the U.S. Department of Commerce.
 - 16. "Permit processing time" means all time spent by Air Quality Division staff or consultants on tasks specifically related to the processing of an application for the issuance or renewal of a particular permit or permit revision, including time spent processing an application that is denied.
 - 17. "Quantifiable" means, with respect to emissions, including the emissions involved in equivalent emission limits and emission trades, capable of being measured or otherwise determined in terms of quantity and assessed in terms of character. Quantification may be based on emission factors, stack tests, monitored values, operating rates and averaging times, materials used in a process or production, modeling, or other reasonable measurement practices.
 - 18. "Registration" means a registration under R18-2-302.01.
 - 19. "Replicable" means, with respect to methods or procedures, sufficiently unambiguous that the same or equivalent results would be obtained by the application of the method or procedure by different users.
 - 20. "Responsible official" means one of the following:
 - a. For a corporation: 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 a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:
 - i. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
 - ii. The delegation of authority to such representatives is approved in advance by the permitting authority;
 - b. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;
 - c. For a municipality, state, federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this Article, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or
 - d. For affected sources:
 - i. The designated representative in so far as actions, standards, requirements, or prohibi-

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- tions under Title IV of the Act or the regulations promulgated thereunder are concerned; and
- ii. The designated representative for any other purposes under 40 CFR 70.
21. "Screening model" means air dispersion modeling performed with screening techniques in accordance with 40 CFR 51, Appendix W as of June 30, 2017 (and no future amendments or additions).
 22. "Small source" means a source with a potential to emit, without controls, less than the rate defined as permitting exemption thresholds in R18-2-101, but required to obtain a permit solely because it is subject to a standard under 40 CFR 63.
 23. "Startup" means the setting in operation of a source for any purpose.
 24. "Synthetic minor" means a source with a permit that contains voluntarily accepted emissions limitations, controls, or other requirements (for example, a cap on production rates or hours of operation, or limits on the type of fuel) under R18-2-306.01 to reduce the potential to emit to a level below the major source threshold.

Historical Note

Former Section R18-2-301 renumbered to R18-2-302, new Section R18-2-301 adopted effective September 26, 1990 (Supp. 90-3). Correction to table in subsection (A)(13) (Supp. 93-1). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

Amended effective August 1, 1995 (Supp. 95-3). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 343, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 7 A.A.R. 5670, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1). Amended by final rulemaking at 25 A.A.R. 3630, effective February 1, 2020 (Supp. 19-4).

R18-2-302. Applicability; Registration; Classes of Permits

- A. Except as otherwise provided in this Article, no person shall begin actual construction of, operate, or make a modification to any stationary source subject to regulation under this Article, without obtaining a registration, permit or permit revision from the Director.
- B. Class I and II permits and registrations shall be required as follows:
 1. A Class I permit shall be required for a person to begin actual construction of or operate any of the following:
 - a. Any major source,
 - b. Any solid waste incineration unit required to obtain a permit pursuant to Section 129(e) of the Act,
 - c. Any affected source, or
 - d. Any stationary source in a source category designated by the Administrator pursuant to 40 CFR 70.3 and adopted by the Director by rule.
 2. Unless a Class I permit is required, a Class II permit shall be required for:
 - a. A person to begin actual construction of or operate any stationary source that emits, or has the maximum capacity to emit with any elective limits, any regulated NSR pollutant in an amount greater than or equal to the significant level.
 - b. A person to make a physical or operational change to a stationary source that would cause the source to emit, or have the maximum capacity to emit with any elective limits, any regulated NSR pollutant in an amount greater than or equal to the significant level.
- C. Notwithstanding subsections (A) and (B), the following stationary sources do not require a permit or registration unless the source is a major source, or unless operation without a permit would result in a violation of the Act:
 1. A stationary source that consists solely of a single categorically exempt activity plus any combination of trivial activities.
 2. Agricultural equipment used in normal farm operations. "Agricultural equipment used in normal farm operations" does not include equipment classified as a source that

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requires a permit under Title V of the Act, or that is subject to a standard under 40 CFR 60, 61 or 63.

- D. No person may construct or reconstruct any major source of hazardous air pollutants, unless the Director determines that maximum achievable control technology emission limitation (MACT) for new sources under Section 112 of the Act will be met. If MACT has not been established by the Administrator, such determination shall be made on a case-by-case basis pursuant to 40 CFR 63.40 through 63.44, as incorporated by reference in R18-2-1101(B). For purposes of this subsection, constructing and reconstructing a major source shall have the meaning prescribed in 40 CFR 63.41.
- E. Elective limits or controls adopted under R18-2-302.01(F) shall not be considered in determining whether a source requires registration or a Class I permit but shall be considered in determining any of the following:
 - 1. Whether the registration is subject to the public participation requirements of R18-2-330, as provided in R18-2-302.01(B)(3).
 - 2. Whether review for possible interference with attainment or maintenance of ambient standards is required under R18-2-302.01(C).
 - 3. Whether the source requires a Class II permit, as provided in subsections (B)(2)(a) or (b).
- F. The fugitive emissions of a stationary source shall not be considered in determining whether the source requires a Class II permit under subsections (B)(2)(a) or (b) or a registration under subsections (B)(3)(a) or (d), unless the source belongs to a section 302(j) category. If a permit is required for a stationary source, the fugitive emissions of the source shall be subject to all of the requirements of this Article.
- G. Notwithstanding subsections (A) and (B), a person may begin actual construction, but not operation, of a source requiring a Class I permit or Class I permit revision upon the Director's issuance of the proposed final permit or proposed final permit revision.

Historical Note

Amended effective August 7, 1975 (Supp. 75-1).
 Amended as an emergency effective December 15, 1975 (Supp. 75-2). Amended effective May 10, 1976 (Supp. 76-3). Amended effective April 12, 1977 (Supp. 77-2).
 Amended effective March 24, 1978 (Supp. 78-2). Former Section R9-3-301 repealed, new Section R9-3-301 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended effective May 28, 1982 (Supp. 82-3). Amended subsections (B) and (C) effective September 22, 1983 (Supp. 83-5). Amended subsection (B), paragraph (3) effective September 28, 1984 (Supp. 84-5). Former Section R9-3-301 renumbered without change as Section R18-2-301 (Supp. 87-3). Former Section R18-2-302 renumbered to R18-2-302.01, new Section R18-2-302 renumbered from R18-2-301 and amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-302.01. Source Registration Requirements

- A. Application. An application for registration shall be submitted on the form specified by the Director and shall include the following information:

1. The name of the applicant.
 2. The physical location of the source, including the street address, city, county, zip code and latitude and longitude coordinates.
 3. The source's maximum capacity to emit with any elective limits each regulated minor NSR pollutant.
 4. Identification of any elective limits or controls adopted under subsection (F).
 5. In the case of a modification, each increase in the source's maximum capacity to emit with any elective limits that exceeds the applicable threshold in subsection (G)(1)(a).
 6. Identification of the method used to determine the maximum capacity to emit under R18-2-302(B)(3)(a), a change in the maximum capacity to emit under R18-2-302(B)(3)(d), or the maximum capacity to emit with any elective limits under subsection (G)(1)(a).
 7. Process information for the source, including a list of emission units, design capacity, operations schedule, and identification of emissions control devices.
- B. Registration Processing Procedures.
 1. The Department shall complete a review of a registration application for administrative completeness within 30 calendar days, calculated in accordance with A.A.C. R18-1-503, after its receipt.
 2. The Department shall complete a substantive review and take final action on a registration application within 60 calendar days if no hearing is requested, and 90 calendar days if a hearing is requested, calculated in accordance with A.A.C. R18-1-504, after the application is administratively complete.
 3. Except as provided in subsection (B)(5), a registration for construction of a source shall be subject to the public notice and participation requirements of R18-2-330. The materials relevant to the registration decision made available to the public under R18-2-330(D) shall include any determination made or modeling conducted by the Director under subsection (C).
 4. The Department shall also send a copy of the notice required by subsection (B)(3) to the administrator through the appropriate regional office, and to all other state and local air pollution control agencies having jurisdiction in the region in which the source subject to the registration will be located. The notice shall also be sent to any other agency in the region having responsibility for implementing the procedures required under 40 CFR 51, Subpart I.
 5. A registration for construction of a source shall not be subject to subsections (B)(3) or (4), if the source's maximum capacity to emit with any elective limits each regulated minor NSR pollutant is less than the applicable permitting exemption threshold.
 - C. Review for National Ambient Air Quality Standards Compliance; Requirement to Obtain a Permit.
 1. The Director shall review each application for registration of a source with the maximum capacity to emit with any elective limits any regulated minor NSR pollutant in an amount equal to or greater than the permitting exemption threshold. The purpose of the review shall be to determine whether the new or modified source may interfere with attainment or maintenance of a national ambient air quality standard in any area. In making the determination required by this subsection, the Director shall take into account the following factors:

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- a. The source's emission rates, including fugitive emission rates, taking into account any elective limits or controls adopted under subsection (F).
 - b. The location of emission units within the facility and their proximity to the ambient air.
 - c. The terrain in which the source is or will be located.
 - d. The source type.
 - e. The location and emissions of nearby sources.
 - f. Background concentrations of regulated minor NSR pollutants.
2. The Director may undertake the review specified in subsection (C)(1) for a source with the maximum capacity to emit with any elective limits regulated minor NSR pollutants in an amount less than the permitting exemption threshold.
 3. If the Director determines under subsections (C)(1) or (C)(2) that a source's emissions may interfere with attainment or maintenance of a national ambient air quality standard, the Director shall perform a screening model run for each regulated minor NSR pollutant for which that determination has been made.
 4. If the Director determines, based on performance of the screening model pursuant to subsection (C)(3), that a source's emissions, taking into account any elective limits or controls adopted under subsection (F), will interfere with attainment or maintenance of a national ambient air quality standard, the Director shall deny the application for registration. Notwithstanding R18-2-302(B)(3), the owner or operator of the source shall be required to obtain a permit under R18-2-302 and shall comply with R18-2-334 before beginning actual construction of the source or modification.
- D. Requirement to Obtain a Permit.** Notwithstanding R18-2-302(B)(3)(b) and (c), the Director shall deny an application for registration for a source subject to a standard under section 111 or 112 of the Act and require the owner or operator to obtain a permit under R18-2-302, if the Director determines based on the following factors that the requirement to obtain a permit is warranted:
1. The size and complexity of the source.
 2. The complexity of the section 111 or 112 standard applicable to the source.
 3. The public health or environmental risks posed by the pollutants subject to regulation under the section 111 or 112 standard.
- E. Registration Contents.** A registration shall contain the following elements:
1. Enforceable emission limitations and standards, including operational requirements and limitations, that ensure compliance with all applicable SIP requirements at the time of issuance and any testing, monitoring, recordkeeping and reporting obligations imposed by the applicable requirement or by R18-2-312.
 2. Any elective limits or controls and associated operating, maintenance, monitoring and recordkeeping requirements adopted pursuant to subsection (F).
 3. A requirement to retain any records required by the registration at the source for at least three years in a form that is suitable for expeditious inspection and review.
 4. For any source that has adopted elective limits or controls under subsection (F), a requirement to submit an annual compliance report on the form provided by the Director in the registration.
- F. Elective Limits or Controls.** The owner or operator of a source requiring registration may elect to include any of the following emission limitations in the registration, provided the Department approves the limitation and the registration also includes the operating, maintenance, monitoring, and recordkeeping requirements specified below for the limitation.
1. A limitation on the hours of operation of any process or combination of processes.
 - a. The registration shall express the limitation in terms of hours per rolling 12-month period and shall specify the process or combination of processes subject to the limitation.
 - b. The owner or operator shall maintain a log or readily available business records showing actual operating hours through the preceding operating day for the process or processes subject to the limitation.
 2. A limitation on the production rate for any process or combination of processes.
 - a. The registration shall express the limitation in terms of an appropriate unit of mass or production per rolling 12-month period and shall specify the process or combination of processes subject to the limitation.
 - b. The owner or operator shall maintain a log or readily available business records showing the actual production rate through the preceding operating day for the process or processes subject to the limitation. The owner or operator shall update the log or business records at least once per operating day.
 3. A requirement to operate a fabric filter for the control of particulate matter emissions.
 - a. The owner or operator shall operate the fabric filter at all times that the emission unit controlled by the fabric filter is operated.
 - b. The owner or operator shall inspect the fabric filter at least once per month for tears and leaks and shall promptly repair any tears or leaks identified. If the fabric filter is subject to a limit on the opacity of emissions, the inspection shall include an opacity observation in accordance with the applicable reference method.
 - c. The owner or operator shall operate and maintain the fabric filter in substantial compliance with the manufacturer's operation and maintenance recommendations.
 - d. The owner or operator shall keep a log or readily available business records of the inspections required by subsection (F)(3)(b) and the maintenance activities required by subsection (F)(3)(c). The owner or operator shall update the log or business records within 24 hours after an inspection or maintenance activity is performed.
 - e. The registration shall identify the fabric filters and processes subject to this requirement.
 4. Limitations on the total amount of VOC or hazardous air pollutants in solvents, coatings or other process materials used at the registered source.
 - a. The registration shall identify the pollutants and processes covered by the limitations and shall express the limitations in terms of pounds per rolling 12-month period.
 - b. The owner or operator shall maintain a log or readily available business records showing the concentration of each covered VOC or hazardous air pollutant in each VOC or hazardous air pollutant containing material used at the source. The owner or operator shall update the records whenever the concentration in any material changes or a new material is used. The presence at the source of a current material

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safety data sheet for a material used without dilution or other alteration satisfies this requirement.

- c. The owner or operator shall maintain a spreadsheet or database to record the amount of each material containing a covered VOC or hazardous air pollutant used. The spreadsheet or database shall calculate the total pounds of the VOC or hazardous air pollutant used by multiplying the concentration of VOC or hazardous air pollutant in a material by the amount of material used and shall employ appropriate units of measurement and conversion factors. The owner or operator shall update the spreadsheet or database at least once per operating day.

G. Revised Registrations.

1. Unless a Class II permit is required under R18-2-302(B)(2)(b), the owner or operator of a registered source shall file a revised registration on the occurrence of any of the following:
 - a. A modification to the source that would result in an increase in the source's maximum capacity to emit with any elective limits exceeding any of the following amounts:
 - i. 2.5 tons per year for NO_x, SO₂, PM₁₀, PM_{2.5}, VOC or CO.
 - ii. 0.3 tons per year for lead.
 - b. Relocation of a portable source.
 - c. The transfer of the source to a new owner.
2. The requirements of subsection (B) shall not apply to a revised registration. The owner or operator may begin actual construction and operation of the modified, relocated or transferred source on filing the revised registration.

H. Registration Term.

1. A source's registration shall expire five years after the date of issuance of the last registration for the source or any modification to the source.
2. A source shall submit an application for renewal of a registration not later than six months before expiration of the registration's term.
3. If a source submits a timely and complete application for renewal of a registration, the source's authorization to operate under its existing registration shall continue until the Director takes final action on the application.
4. The Director may terminate a registration under R18-2-321(C). If the Director terminates a registration under R18-2-321(C)(3), the owner or operator shall be required to apply for a permit for the source under R18-2-302.

- I. Issuance of a registration shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of the SIP and any other requirements under local, state, or federal law.

Historical Note

Amended effective August 7, 1975 (Supp. 75-1); Former Section R9-3-302 repealed, new Section R9-3-302 adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-302 repealed, new Section R9-3-302 adopted effective October 2, 1979 (Supp. 79-5). Former Section R9-3-302 repealed, new Section R9-3-302 adopted effective May 28, 1982 (Supp. 82-3). Former Section R9-3-302 renumbered without change as Section R18-2-302 (Supp. 87-3). Section R18-2-302.01 renumbered from Section R18-2-302 and amended effective September 26, 1990 (Supp. 90-3). Section repealed effective November 15, 1993 (Supp. 93-4). New Section made by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23

A.A.R. 333, effective March 21, 2017 (Supp. 17-1). Amended by final rulemaking at 25 A.A.R. 3630, effective February 1, 2020 (Supp. 19-4).

R18-2-303. Transition from Installation and Operating Permit Program to Unitary Permit Program; Registration Transition; Minor NSR Transition

- A. An installation or operating permit issued before September 1, 1993, and the authority to operate, as provided in Laws 1992, Ch. 299, § 65, continues in effect until the installation or operating permit is terminated, or until the Director issues or denies a Class I or Class II permit to the source, whichever is earlier.
- B. The terms and conditions of installation permits issued before September 1, 1993, or in permits or permit revisions issued under R18-2-302 and authorizing the construction or modification of a stationary source, remain federal applicable requirements unless modified or revoked by the Director.
- C. All sources in existence on September 1, 2012, requiring a registration shall provide notice to the Director by no later than December 1, 2012, on a form provided by the Director.
- D. All sources requiring a registration that are in existence on the date R18-2-302.01 becomes effective under R18-2-302.01(I) may submit applications for registration at any time after R18-2-302.01 is effective and shall submit an application no later than 180 days after receipt of written notice from the Director that an application is required.
- E. Sources in existence on December 2, 2015 are not subject to R18-2-334, unless the source undertakes a minor NSR modification after that date. Notwithstanding any other provision of this Chapter, R18-2-334 shall apply only to applications for permits or permit revisions filed after December 2, 2015.

Historical Note

Amended effective August 7, 1975 (Supp. 75-1). Amended effective August 6, 1976 (Supp. 76-4). Former Section R9-3-303 repealed, new Section R9-3-303 adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-303 repealed, new Section R9-3-303 adopted effective October 2, 1979 (Supp. 79-5). Amended effective May 28, 1982 (Supp. 82-3). Amended subsection (D), paragraph (1) effective September 28, 1984 (Supp. 84-5). Former Section R9-3-303 renumbered without change as Section R18-2-303 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-304. Permit Application Processing Procedures

- A. Unless otherwise noted, this Section applies to each source requiring a Class I or II permit or permit revision.
- B. Standard Application Form and Required Information. To apply for a permit required by this Chapter, applicants shall complete the applicable standard application form provided by the Director and supply all information required by the form's filing instructions. The application forms and filing instructions for Class I Permits shall at a minimum require submission of the following elements:
 1. Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.
 2. A description of the source's processes and products (by Standard Industrial Classification (SIC) Code), including

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- those associated with any proposed alternative operating scenarios (AOS) identified by the source.
3. The following emission-related information:
 - a. All emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except as otherwise provided in R18-2-304(F)(8). The Director shall require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under R18-2-326.
 - b. Identification and description of all points of emissions described in subsection (B)(3)(a) in sufficient detail to establish the basis for fees and applicability of requirements.
 - c. Emissions rate in tons per year (tpy) and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method. For emissions units subject to an annual emissions cap, tpy can be reported as part of the aggregate emissions associated with the cap, except where more specific information is needed, including where necessary to determine and/or assure compliance with an applicable requirement.
 - d. The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.
 - e. Identification and description of air pollution control equipment and compliance monitoring devices or activities.
 - f. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the Class I source.
 - g. Other information required by any applicable requirement (including information related to stack height limitations in R18-2-332).
 - h. Calculations on which the information in subsections (B)(3)(a) through (g) is based.
 4. The following air pollution control requirements:
 - a. Citation and description of all applicable requirements, and
 - b. Description of or reference to any applicable test method for determining compliance with each applicable requirement.
 5. Other specific information that may be necessary to implement and enforce other applicable requirements or to determine the applicability of such requirements.
 6. An explanation of any proposed exemptions from otherwise applicable requirements.
 7. Additional information as determined to be necessary by the Director to define proposed AOS identified by the source pursuant to R18-2-306(A)(11) or to define permit terms and conditions implementing any AOS under R18-2-306(A)(11) or implementing R18-2-317, R18-2-306(A)(12), R18-2-306(A)(14), or R18-2-306.02. The permit application shall include documentation demonstrating that the source has obtained all authorizations required under the applicable requirements relevant to any proposed AOS, or a certification that the source has submitted all relevant materials to the Director for obtaining such authorizations.
 8. A compliance plan for all Class I sources that contains all of the following:
 - a. A description of the compliance status of the source with respect to all applicable requirements.
 - b. A description as follows:
 - i. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.
 - ii. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.
 - iii. For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.
 - iv. For applicable requirements associated with a proposed AOS, a statement that the source will meet such requirements upon implementation of the AOS. If a proposed AOS would implicate an applicable requirement that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.
 - c. A compliance schedule as follows:
 - i. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.
 - ii. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet, in a timely manner, applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.
 - iii. A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction non-compliance with, the applicable requirements on which it is based.
 - iv. For applicable requirements associated with a proposed AOS, a statement that the source will meet such requirements upon implementation of the AOS. If a proposed AOS would implicate an applicable requirement that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet, in a timely manner, applicable requirements that become effective during the permit term will satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

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- d. A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a schedule of compliance to remedy a violation.
 - e. The compliance plan content requirements specified in subsection (B)(8) shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under title IV of the Act with regard to the schedule and methods the source will use to achieve compliance with the acid rain emissions limitations.
9. Requirements for compliance certification, including the following:
- a. A certification of compliance with all applicable requirements by a responsible official, which shall include:
 - i. Identification of the applicable requirement that is the basis of the certification;
 - ii. The method used for determining the compliance status of the source, including a description of monitoring, recordkeeping, and reporting requirements and test methods;
 - iii. The compliance status; and
 - iv. Such other facts as the Director may require;
 - b. A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the permitting authority;
 - c. A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act; and
 - d. A certification of truth, accuracy, and completeness pursuant to R18-2-304(I).
10. The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under title IV of the act.
- C. The Director, either upon the Director's own initiative or on the request of a permit applicant, may waive a requirement that specific information or data be submitted in the application for a Class II permit for a particular source or category of sources if the Director determines that the information or data would be unnecessary to determine all of the following:
- 1. The applicable requirements to which the source may be subject;
 - 2. That the source is so designed, controlled, or equipped with such air pollution control equipment that it may be expected to operate without emitting or without causing to be emitted air contaminants in violation of the provisions of A.R.S. Title 49, Chapter 3, Article 2 and this Chapter;
 - 3. The fees to which the source may be subject; and
 - 4. A proposed emission limitation, control, or other requirement that meets the requirements of R18-2-306.01 or R18-2-306.02.
- D. A timely application is:
- 1. For a source, that becomes subject to the permit program as a result of a change in regulation and not as a result of construction or a physical or operational change, one that is submitted within 12 months after the source becomes subject to the permit program.
 - 2. For purposes of permit renewal, a timely application is one that is submitted at least six months, but not more than 18 months, prior to the date of permit expiration.
 - 3. Any source under R18-2-326(A)(3) which becomes subject to a standard promulgated by the Administrator pursuant to section 112(d) of the Act shall, within 12 months of the date on which the standard is promulgated, submit an application for a permit revision demonstrating how the source will comply with the standard.
- E. If an applicable implementation plan allows the determination of an alternative emission limit, a source may, in its application, propose an emission limit that is equivalent to the emission limit otherwise applicable to the source under the applicable implementation plan. The source shall also demonstrate that the equivalent limit is quantifiable, accountable, enforceable, and subject to replicable compliance determination procedures.
- F. A complete application shall comply with all of the following:
- 1. To be complete, an application shall provide all information required by subsection (B) (standard application form section). An application for permit revision only need supply information related to the proposed change, unless the source's proposed permit revision will change the permit from a Class II permit to a Class I permit. A responsible official shall certify the submitted information consistent with subsection (I) (Certification of Truth, Accuracy, and Completeness).
 - 2. An application for a new permit or permit revision shall contain an assessment of the applicability of the requirements of Article 4 of this Chapter. If the applicant determines that the proposed new source is a major source as defined in R18-2-401, or the proposed permit revision constitutes a major modification as defined in R18-2-101, then the application shall comply with all applicable requirements of Article 4.
 - 3. An application for a new permit or permit revision shall contain an assessment of the applicability of Minor New Source Review requirements in R18-2-334. If the applicant determines that the proposed new source is subject to R18-2-334, or the proposed permit revision constitutes a Minor NSR Modification, then the application shall comply with all applicable requirements of R18-2-334.
 - 4. Except for proposed new major sources or major modifications subject to the requirements of Article 4 of this Chapter, an application for a new permit, a permit revision, or a permit renewal shall be deemed to be complete unless, within 60 days of receipt of the application, the Director notifies the applicant by certified mail that the application is not complete.
 - 5. If a source wishes to voluntarily enter into an emissions limitation, control, or other requirement pursuant to R18-2-306.01, the source shall describe that emissions limitation, control, or other requirement in its application, along with proposed associated monitoring, recordkeeping, and reporting requirements necessary to demonstrate that the emissions limitation, control, or other requirement is permanent, quantifiable, and otherwise enforceable as a practical matter.
 - 6. If, while processing an application that has been determined or deemed to be complete, the Director determines that additional information is necessary to evaluate or take final action on that application, the Director may request such information in writing and set a reasonable deadline for a response. Except for minor permit revisions as set forth in R18-2-319, a source's ability to continue operating without a permit, as set forth in

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subsection (K), shall be in effect from the date the application is determined to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the Director.

7. The completeness determination shall not apply to revisions processed through the minor permit revision process.
 8. Activities which are insignificant pursuant to the definition of insignificant activities in R18-2-101 shall be listed in the application. Except as necessary to complete the assessment required by subsections (F)(2) or (3), the application need not provide emissions data regarding insignificant activities. If the Director determines that an activity listed as insignificant does not meet the requirements of the definition of insignificant activities in R18-2-101 or that emissions data for the activity is required to complete the assessment required by subsections (F)(2) or (3), the Director shall notify the applicant in writing and specify additional information required.
 9. If a permit applicant requests terms and conditions allowing for the trading of emission increases and decreases in the permitted facility solely for the purpose of complying with a federally enforceable emission cap that is established in the permit independent of otherwise applicable requirements, the permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable.
 10. The Director is not in disagreement with a notice of confidentiality submitted with the application pursuant to A.R.S. § 49-432.
- G.** A source applying for a Class I permit that has submitted information with an application under a claim of confidentiality pursuant to A.R.S. § 49-432 and R18-2-305 shall submit a copy of such information directly to the Administrator.
- H.** Duty to Supplement or Correct Application. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a proposed permit.
- I.** Certification of Truth, Accuracy, and Completeness. Any application form, report, or compliance certification submitted pursuant to this Chapter shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this Article shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.
- J.** Action on Application.
1. The Director shall issue or deny each permit according to the provisions of A.R.S. § 49-427. The Director may issue a permit with a compliance schedule for a source that is not in compliance with all applicable requirements at the time of permit issuance.
 2. In addition, a permit may be issued, revised, or renewed only if all of the following conditions have been met:
 - a. The application received by the Director for a permit, permit revision, or permit renewal shall be complete according to subsection (F).
 - b. Except for revisions qualifying as administrative or minor under R18-2-318 and R18-2-319, all of the requirements for public notice and participation under R18-2-330 shall have been met.
- c. For Class I permits, the Director shall have complied with the requirements of R18-2-307 for notifying and responding to affected states, and if applicable, other notification requirements of R18-2-402(D)(2) and R18-2-410(C)(2).
 - d. For Class I and II permits, the conditions of the permit shall require compliance with all applicable requirements.
 - e. For permits for which an application is required to be submitted to the Administrator under R18-2-307(A), and to which the Administrator has properly objected to its issuance in writing within 45 days of receipt of the proposed final permit and all necessary supporting information from the Department, the Director has revised and submitted a proposed final permit in response to the objection and EPA has not objected to this proposed final permit within 45 days of receipt.
 - f. For permits to which the Administrator has objected to issuance pursuant to a petition filed under 40 CFR 70.8(d), the Administrator's objection has been resolved.
 - g. For a Class II permit that contains voluntary emission limitations, controls, or other requirements established pursuant to R18-2-306.01, the Director shall have complied with the requirement of R18-2-306.01(C) to provide the Administrator with a copy of the proposed permit.
3. If the Director denies a permit under this Section, a notice shall be served on the applicant by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the denial and a statement that the permit applicant is entitled to a hearing.
 4. The Director shall provide a statement that sets forth the legal and factual basis for the proposed permit conditions including references to the applicable statutory or regulatory provisions. The Director shall send this statement to any person who requests it and, for Class I permits, to the Administrator.
 5. Priority shall be given by the Director to taking action on applications for construction or modification submitted pursuant to Title I, Parts C (Prevention of Significant Deterioration) and D (New Source Review) of the Act.
- K.** Requirement for a Permit. Except as noted under the provisions in R18-2-317 and R18-2-319, no source may operate after the time that it is required to submit a timely and complete application, except in compliance with a permit issued pursuant to this Chapter. However, if a source under R18-2-326(A)(3) submits a timely and complete application for continued operation under a permit revision or renewal, the source's failure to have a permit is not a violation of this Article until the Director takes final action on the application. This protection shall cease to apply if, subsequent to the completeness determination, the applicant fails to submit, by the deadline specified in writing by the Director, any additional information identified as being needed to process the application. This subsection does not affect a source's obligation to obtain a permit revision before making a modification to the source.

Historical Note

Amended effective August 7, 1975 (Supp. 75-1). Former Section R9-3-304 repealed, new Section R9-3-304 formerly Section R9-3-305 renumbered and amended effective August 6, 1976 (Supp. 76-4). Former Section R9-3-

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304 repealed, new Section R9-3-304 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Former Section R9-3-304 repealed, new Section R9-3-304 adopted effective May 28, 1982 (Supp. 82-3). Former Section R9-3-304 renumbered without change as Section R18-2-304 (Supp. 87-3).

Amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective October 7, 1994 (Supp. 94-4). Amended effective August 1, 1995 (Supp. 95-3). The reference to R18-2-101(54) in subsection (E)(8) corrected to reference R18-2-101(57) (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 343, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1). Amended by final rulemaking at 25 A.A.R. 3630, February 1, 2020 (Supp. 19-4).

R18-2-305. Public Records; Confidentiality

- A. The Director shall make all permits, including all elements required to be in the permit pursuant to R18-2-306, available to the public. No permit shall be issued unless the information required by R18-2-306 is present in the permit.
- B. A notice of confidentiality pursuant to A.R.S. § 49-432(C) shall:
 - 1. Precisely identify the information in the documents submitted which is considered confidential.
 - 2. Contain sufficient supporting information to allow the Director to evaluate whether such information satisfies the requirements related to trade secrets or, if applicable, how the information, if disclosed, is likely to cause substantial harm to the person's competitive position.
- C. Within 30 days of receipt of a notice of confidentiality that complies with subsection (B) above, the Director shall make a determination as to whether the information satisfies the requirements for trade secret or competitive position pursuant to A.R.S. § 49-432(C)(1) and so notify the applicant in writing. If the Director agrees with the applicant that the information covered by the notice of confidentiality satisfies the statutory requirements, the Director shall include a notice in the file for the permit or permit application that certain information has been considered confidential.
- D. If the Director takes action pursuant to A.R.S. § 49-432(D) and obtains a final order authorizing disclosure, the Director shall place the information in the public file and shall notify any person who has requested disclosure. If the court determines that the information is not subject to disclosure, the Director shall provide the notice specified in subsection (C) above.

Historical Note

Amended effective August 7, 1975 (Supp. 75-1). Amended as an emergency effective December 15, 1975 (Supp. 75-2). Amended effective May 10, 1976 (Supp. 76-3). Former Section R9-3-306 renumbered as Section R9-3-305 effective August 6, 1976. References changed to conform (Supp. 76-4). Amended effective April 12, 1977 (Supp. 77-2). Amended effective March 24, 1978 (Supp. 78-2). Former Section R9-3-305 repealed, new Section R9-3-305 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Former Section R9-3-305 repealed, new Section R9-3-305 adopted effective May 28, 1982 (Supp. 82-3). Former

Section R9-3-305 renumbered without change as R18-2-305 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

R18-2-306. Permit Contents

- A. Each permit issued by the Director shall include the following elements:
 - 1. The date of issuance and the permit term.
 - 2. Enforceable emission limitations and standards, including operational requirements and limitations that ensure compliance with all applicable requirements at the time of issuance and operational requirements and limitations that have been voluntarily accepted under R18-2-306.01.
 - a. The permit shall specify and reference the origin of and authority for each term or condition and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.
 - b. The permit shall state that, if an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by the Administrator.
 - c. Any permit containing an equivalency demonstration for an alternative emission limit submitted under R18-2-304(E) shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.
 - d. The permit shall specify applicable requirements for fugitive emission limitations, regardless of whether the source category in question is included in the list of sources contained in the definition of major source in R18-2-101.
 - 3. Each permit shall contain the following requirements with respect to monitoring:
 - a. All monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including:
 - i. Monitoring and analysis procedures or test methods under 40 CFR 64;
 - ii. Other procedures and methods promulgated under sections 114(a)(3) or 504(b) of the Act; and
 - iii. Monitoring and analysis procedures or test methods required under R18-2-306.01.
 - b. 40 CFR 64 as adopted July 1, 1998, is incorporated by reference and on file with the Department and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions if the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements not included in the permit as a result of such streamlining;
 - c. If the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit as reported under subsection (A)(4). The monitoring requirements shall

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- ensure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement, and as otherwise required under R18-2-306.01. Recordkeeping provisions may be sufficient to meet the requirements of this subsection; and
- d. As necessary, requirements concerning the use, maintenance, and, if appropriate, installation of monitoring equipment or methods.
4. The permit shall incorporate all applicable recordkeeping requirements including recordkeeping requirements established under R18-2-306.01, for the following:
 - a. Records of required monitoring information that include the following:
 - i. The date, place as defined in the permit, and time of sampling or measurement;
 - ii. The date any analyses was performed;
 - iii. The name of the company or entity that performed the analysis;
 - iv. A description of the analytical technique or method used;
 - v. The results of any analysis; and
 - vi. The operating conditions existing at the time of sampling or measurement;
 - b. Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation and copies of all reports required by the permit.
 5. The permit shall incorporate all applicable reporting requirements including reporting requirements established under R18-2-306.01 and require the following:
 - a. Submittal of reports of any required monitoring. All instances of deviations from permit requirements shall be clearly identified in the reports. All required reports shall be certified by a responsible official consistent with R18-2-304(I) and R18-2-309(A)(5) and shall be submitted with the following frequency:
 - i. For a Class I permit, at least once every six months;
 - ii. For a Class II permit, at least once per year.
 - b. Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of the deviations, and any corrective actions or preventive measures taken. Where the applicable requirement contains a definition of prompt or otherwise specifies a timeframe for reporting deviations, that definition or timeframe shall govern. Where the applicable requirement does not address the timeframe for reporting deviations, the permittee shall submit reports of deviations in compliance with the following schedule:
 - i. Notice that complies with timeframe in R18-2-310.01(A) is prompt for deviations that constitute excess emissions;
 - ii. Except as otherwise provided in the permit, notice that complies with subsection (A)(5)(a) is prompt for all other types of deviation.
 6. A permit condition prohibiting emissions exceeding any allowances the source lawfully holds under Title IV of the Act or the regulations promulgated thereunder.
 - a. A permit revision is not required for increases in emissions that are authorized by allowances acquired under the acid rain program, if the increases do not require a permit revision under any other applicable requirement.
 - b. A limit shall not be placed on the number of allowances held by the source. The source shall not, however, use allowances as a defense to noncompliance with any other applicable requirement.
 - c. Any allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act.
 - d. Any permit issued under the requirements of this Chapter and Title V of the Act to a unit subject to the provisions of Title IV of the Act shall include conditions prohibiting all of the following:
 - i. Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide held by the owner or operator of the unit or the designated representative of the owner or operator,
 - ii. Exceedances of applicable emission rates,
 - iii. Use of any allowance before the year for which it is allocated, and
 - iv. Contravention of any other provision of the permit.
 7. A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portion of the permit.
 8. Provisions stating the following:
 - a. The permittee shall comply with all conditions of the permit including all applicable requirements of Arizona air quality statutes A.R.S. Title 49, Chapter 3, and the air quality rules, 18 A.A.C. 2. Any permit noncompliance is grounds for enforcement action; for a permit termination, revocation and reissuance, or revision; or for denial of a permit renewal application. Noncompliance with any federally enforceable requirement in a permit is a violation of the Act.
 - b. 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 the permit.
 - c. The permit may be revised, reopened, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.
 - d. The permit does not convey any property rights of any sort, or any exclusive privilege to the permit holder.
 - e. The permittee shall furnish to the Director, within a reasonable time, any information that the Director may request in writing to determine whether cause exists for revising, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. Upon the Director's request, the permittee shall also furnish to the Director copies of records required to be kept by the permit. For information claimed to be confidential, the permittee shall furnish a copy of the records directly to the Administrator along with a claim of confidentiality.
 - f. For any major source operating in a nonattainment area for all pollutants for which the source is classi-

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- fied as a major source, the source shall comply with reasonably available control technology.
9. A provision to ensure that the source pays fees to the Director under A.R.S. § 49-426(E), R18-2-326, and R18-2-511.
 10. A provision stating that a permit revision shall not be required under any approved economic incentives, marketable permits, emissions trading, and other similar programs or processes for changes provided for in the permit.
 11. Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the Director. The terms and conditions shall:
 - a. Require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;
 - b. Extend the permit shield described in R18-2-325 to all terms and conditions under each such operating scenario; and
 - c. Ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this Chapter.
 12. Terms and conditions, if the permit applicant requests them, and as approved by the Director, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading the increases and decreases without a case-by-case approval of each emissions trade. The terms and conditions:
 - a. Shall include all terms required under subsections (A) and (C) to determine compliance;
 - b. Shall not extend the permit shield in subsection (D) to all terms and conditions that allow the increases and decreases in emissions;
 - c. Shall not include trading that involves emission units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades; and
 - d. Shall meet all applicable requirements and requirements of this Chapter.
 13. Terms and conditions, if the permit applicant requests them and they are approved by the Director, setting forth intermittent operating scenarios including potential periods of downtime. If the terms and conditions are included, the state's emissions inventory shall not reflect the zero emissions associated with the periods of downtime.
 14. Upon request of a permit applicant, the Director shall issue a permit that contains terms and conditions allowing for the trading of emission increases and decreases in the permitted facility solely for the purpose of complying with a federally enforceable emission cap established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The Director shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements. Changes made under this subsection (shall) not include modifications under any provision of Title I of the Act and shall not exceed emissions allowable under the permit. The terms and conditions shall provide, for Class I sources, for notice that conforms to R18-2-317(D) and (E), and for Class II sources, for logging that conforms to R18-2-317.02(B)(5). In addition, the notices for Class I and Class II sources shall describe how the increases and decreases in emissions will comply with the terms and conditions of the permit.
 15. Other terms and conditions as are required by the Act, A.R.S. Title 49, Chapter 3, Articles 1 and 2, and the rules adopted in 18 A.A.C. 2.
- B. Federally-enforceable Requirements.**
1. The following permit conditions shall be enforceable by the Administrator and citizens under the Act:
 - a. Except as provided in subsection (B)(2), all terms and conditions in a Class I permit, including any provision designed to limit a source's potential to emit;
 - b. Terms or conditions in a Class II permit setting forth federal applicable requirements; and
 - c. Terms and conditions in any permit entered into voluntarily under R18-2-306.01, as follows:
 - i. Emissions limitations, controls, or other requirements; and
 - ii. Monitoring, recordkeeping, and reporting requirements associated with the emissions limitations, controls, or other requirements in subsection (B)(1)(c)(i).
 2. Notwithstanding subsection (B)(1)(a), the Director shall specifically designate as not being federally enforceable under the Act any terms and conditions included in a Class I permit that are not required under the Act or under any of its applicable requirements.
- C.** Each permit shall contain a compliance plan as specified in R18-2-309.
- D.** Each permit shall include the applicable permit shield provisions under R18-2-325.
- E. Emergency provision.**
1. An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, that requires immediate corrective action to restore normal operation and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.
 2. An emergency constitutes an affirmative defense to an action brought for noncompliance with technology-based emission limitations if the conditions of subsection (E)(3) are met.
 3. The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - a. An emergency occurred and the permittee can identify the cause or causes of the emergency;
 - b. At the time of the emergency the permitted facility was being properly operated;
 - c. During the period of the emergency, the permittee took all reasonable steps to minimize levels of emissions that exceeded the emissions standards or other requirements in the permit; and
 - d. The permittee submitted notice of the emergency to the Director by certified mail, facsimile, or hand delivery within two working days of the time when emission limitations were exceeded due to the emer-

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gency. This notice shall contain a description of the emergency, any steps taken to mitigate emissions, and corrective action taken.

4. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.
 5. This provision is in addition to any emergency or upset provision contained in any applicable requirement.
- F. A Class I permit issued to a major source shall require that revisions be made under R18-2-321 to incorporate additional applicable requirements adopted by the Administrator under the Act that become applicable to a source with a permit with a remaining permit term of three or more years. A revision shall not be required if the effective date of the applicable requirement is after the expiration of the permit. The revisions shall be made as expeditiously as practicable, but not later than 18 months after the promulgation of the standards and regulations. Any permit revision required under this subsection (shall) comply with R18-2-322 for permit renewal and shall reset the five-year permit term.

Historical Note

Adopted effective August 7, 1975 (Supp. 75-1). Former Section R9-3-307 renumbered as Section R9-3-306 effective August 6, 1976. Reference changed to conform (Supp. 76-4). Former Section R9-3-306 repealed, new Section R9-3-306 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective May 28, 1982 (Supp. 82-3). Amended subsection (A) effective September 28, 1984 (Supp. 84-5). Former Section R9-3-306 renumbered without change as R18-2-306 (Supp. 87-3). Amended subsection (I) effective December 1, 1988 (Supp. 88-4). Amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective August 1, 1995 (Supp. 95-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 343, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-306.01. Permits Containing Voluntarily Accepted Emission Limitations and Standards

- A. A source may voluntarily propose in its application, and accept in its permit, emissions limitations, controls, or other requirements that are permanent, quantifiable, and otherwise enforceable as a practical matter in order to avoid classification as a source that requires a Class I permit or to avoid one or more other applicable requirements. For the purposes of this Section, "enforceable as a practical matter" means that specific means to assess compliance with an emissions limitation, control, or other requirement are provided for in the permit in a manner that allows compliance to be readily determined by an inspection of records and reports.
- B. In order for a source to obtain a permit containing voluntarily accepted emissions limitations, controls, or other requirements, the source shall demonstrate all of the following in its permit application:
 1. The emissions limitations, controls, or other requirements to be imposed for the purpose of avoiding an applicable requirement are at least as stringent as the emissions limitations, controls, or other requirements that would otherwise be applicable to that source, including those that

originate in an applicable implementation plan; and the permit does not waive, or make less stringent, any limitations or requirements contained in or issued pursuant to an applicable implementation plan, or that are otherwise federally enforceable.

2. All voluntarily accepted emissions limitations, controls, or other requirements will be permanent, quantifiable, and otherwise enforceable as a practical matter.
- C. At the same time as notice of proposed issuance is first published pursuant to A.R.S. § 49-426(D), the Director shall send a copy of any Class II permit proposed to be issued pursuant to this Section to the Administrator for review during the comment period described in the notice pursuant to R18-2-330(C)(3).
 - D. The Director shall send a copy of each final permit issued pursuant to this Section to the Administrator.

Historical Note

Adopted effective August 1, 1995 (Supp. 95-3). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-306.02. Expired**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2982, effective September 15, 2016 (Supp. 16-3).

R18-2-307. Permit Review by the EPA and Affected States

- A. Except as provided in R18-2-304(G) and as waived by the Administrator, for each Class I permit, a copy of each of the following shall be provided to the Administrator as follows:
 1. The applicant shall provide a complete copy of the application including any attachments, compliance plans, and other information required by R18-2-304(F) at the time of submittal of the application to the Director.
 2. The Director shall provide the proposed final permit after public and affected state review.
 3. The Director shall provide the final permit at the time of issuance.
- B. The Director shall keep all records associated with all permits for a minimum of five years from issuance.
- C. No permit for which an application is required to be submitted to the Administrator under subsection (A) shall be issued if the Administrator properly objects to its issuance in writing within 45 days of receipt of the proposed final permit from the Department and all necessary supporting information.
- D. Review by Affected States.
 1. For each Class I permit, the Director shall provide notice of each proposed permit to any affected state on or before the time that the Director provides this notice to the public as required under R18-2-330 except to the extent R18-2-319 requires the timing of the notice to be different.
 2. If the Director refuses to accept a recommendation of any affected state submitted during the public or affected state review period, the Director shall notify the Administrator and the affected state in writing. The notification shall include the Director's reasons for not accepting any such recommendation and shall be provided to the Administrator as part of the submittal of the proposed final permit. The Director shall not be required to accept recommendations that are not based on federal applicable requirements or requirements of state law.

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- E. Any person who petitions the Administrator pursuant to 40 CFR 70.8(d) shall notify the Department by certified mail of such petition as soon as possible, but in no case more than 10 days following such petition. Such notice shall include the grounds for objection and whether such objections were raised during the public comment period. If the Administrator objects to the permit as a result of a petition filed under this subsection, the Director shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day administrative review period and prior to the Administrator's objection.
- F. If the Director has issued a permit prior to receipt of the Administrator's objection under subsection (E), and the Administrator indicates that it should be revised, terminated, or revoked and reissued, the Director shall reopen the permit in accordance with R18-2-321 and may thereafter issue only a revised permit that satisfies the Administrator's objection. In any case, the source shall not be in violation of the requirement to have submitted a timely and complete application.
- G. Prohibition on Default Issuance.
1. No Class I permit including a permit renewal or revision shall be issued until affected states and the Administrator have had an opportunity to review the proposed permit.
 2. No permit or renewal shall be issued unless the Director has acted on the application.

Historical Note

Adopted effective August 7, 1975 (Supp. 75-1). Former Section R9-3-307 renumbered as Section R9-3-306 effective August 6, 1976 (Supp. 76-4). New Section R9-3-307 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Former Section R9-3-307 repealed, new Section R9-3-307 adopted effective May 28, 1982 (Supp. 82-3). Amended subsection (B)(4)(b) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-307 renumbered without change as R18-2-307 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-308. Emission Standards and Limitations

Wherever applicable requirements apply different standards or limitations to a source for the same item, all applicable requirements shall be included in the permit.

Historical Note

Adopted effective August 7, 1975 (Supp. 75-1). Former Section R9-3-308 repealed, new Section R9-3-308 adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-308 renumbered without change as R18-2-308 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

R18-2-309. Compliance Plan; Certification

All permits shall contain the following elements with respect to compliance:

1. The elements required by R18-2-306(A)(3), (4), and (5).
2. Requirements for certifications of compliance with terms and conditions contained in the permit, including emissions limitations, standards, and work practices. Permits shall include each of the following:
 - a. The frequency of submissions of compliance certifications, which shall not be less than annually;
 - b. The means to monitor the compliance of the source with its emissions limitations, standards, and work practices;
 - c. A requirement that the compliance certification include all of the following (the identification of applicable information may cross-reference the permit or previous reports, as applicable):
 - i. The identification of each term or condition of the permit that is the basis of the certification;
 - ii. The identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. The methods and other means shall include, at a minimum, the methods and means required under R18-2-306(A)(3). If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;
 - iii. The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the methods or means designated in subsection (2)(c)(ii). The certification shall identify each deviation and take it into account in the compliance certification. For emission units subject to 40 CFR 64, the certification shall also identify as possible exceptions to compliance any period during which compliance is required and in which an excursion or exceedance defined under 40 CFR 64 occurred; and
 - iv. Other facts the Director may require to determine the compliance status of the source.
 - d. A requirement that permittees submit all compliance certifications to the Director. Class I permittees shall also submit compliance certifications to the Administrator.
 - e. Additional requirements specified in sections 114(a)(3) and 504(b) of the Act or pursuant to R18-2-306.01.
3. A requirement for any document required to be submitted by a permittee, including reports, to contain a certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this Section shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.
4. Inspection and entry provisions that require that upon presentation of proper credentials, the permittee shall allow the Director to:
 - a. Enter upon the permittee's premises where a source is located, emissions-related activity is conducted, or records are required to be kept under the conditions of the permit;
 - b. Have access to and copy, at reasonable times, any records that are required to be kept under the conditions of the permit;
 - c. Inspect, at reasonable times, any facilities, equipment (including monitoring and air pollution control

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- equipment), practices, or operations regulated or required under the permit;
- d. Sample or monitor, at reasonable times, substances or parameters for the purpose of assuring compliance with the permit or other applicable requirements; and
 - e. Record any inspection by use of written, electronic, magnetic, or photographic media.
5. A compliance plan that contains all the following:
 - a. A description of the compliance status of the source with respect to all applicable requirements;
 - b. A description as follows:
 - i. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with the requirements;
 - ii. For applicable requirements that will become effective during the permit term, a statement that the source will meet the requirements on a timely basis; and
 - iii. For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements;
 - c. A compliance schedule as follows:
 - i. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with the requirements;
 - ii. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement;
 - iii. A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. The schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirement for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. The schedule of compliance shall supplement, and shall not sanction noncompliance with, the applicable requirements on which it is based.
 - d. A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a schedule of compliance to remedy a violation. The progress reports shall contain:
 - i. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones, or compliance were achieved; and
 - ii. An explanation of why any dates in the schedule of compliance were not or will not be met,
 6. The compliance plan content requirements specified in subsection (5) shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the Act, and incorporated under R18-2-333 with regard to the schedule and each method the source will use to achieve compliance with the acid rain emissions limitations.
 7. If there is a Federal Implementation Plan (FIP) applicable to the source, a provision that compliance with the FIP is required.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amendment filed September 18, 1979, effective following the adoption of Article 7. Nonferrous Smelter Orders.

Amended effective October 2, 1979 (Supp. 79-5). Article 7. Nonferrous Smelter Orders adopted effective January 8, 1980. Amendment filed September 18, 1979 effective January 8, 1980 (Supp. 80-2). Amended effective September 28, 1984 (Supp. 84-5). Former Section R9-3-309 renumbered without change as R18-2-309 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective October 7, 1994 (Supp. 94-4). Amended effective August 1, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 343, effective December 20, 1999 (Supp. 99-4).

Amended by final rulemaking at 10 A.A.R. 2833, effective June 17, 2004 (Supp. 04-2).

R18-2-310. Affirmative Defenses for Excess Emissions Due to Malfunctions, Startup, and Shutdown**A. Applicability.**

This rule establishes affirmative defenses for certain emissions in excess of an emission standard or limitation and applies to all emission standards or limitations except for standards or limitations:

1. Promulgated pursuant to Sections 111 or 112 of the Act,
2. Promulgated pursuant to Titles IV or VI of the Clean Air Act,
3. Contained in any Prevention of Significant Deterioration (PSD) or New Source Review (NSR) permit issued by the U.S. E.P.A.,
4. Contained in R18-2-715(F), or
5. Included in a permit to meet the requirements of R18-2-406(A)(5).

B. Affirmative Defense for Malfunctions.

Emissions in excess of an applicable emission limitation due to malfunction shall constitute a violation. The owner or operator of a source with emissions in excess of an applicable emission limitation due to malfunction has an affirmative defense to a civil or administrative enforcement proceeding based on that violation, other than a judicial action seeking injunctive relief, if the owner or operator of the source has complied with the reporting requirements of R18-2-310.01 and has demonstrated all of the following:

1. The excess emissions resulted from a sudden and unavoidable breakdown of process equipment or air pollution control equipment beyond the reasonable control of the operator;
2. The air pollution control equipment, process equipment, or processes were at all times maintained and operated in a manner consistent with good practice for minimizing emissions;

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3. If repairs were required, the repairs were made in an expeditious fashion when the applicable emission limitations were being exceeded. Off-shift labor and overtime were utilized where practicable to ensure that the repairs were made as expeditiously as possible. If off-shift labor and overtime were not utilized, the owner or operator satisfactorily demonstrated that the measures were impracticable;
 4. The amount and duration of the excess emissions (including any bypass operation) were minimized to the maximum extent practicable during periods of such emissions;
 5. All reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality;
 6. The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;
 7. During the period of excess emissions there were no exceedances of the relevant ambient air quality standards established in Article 2 of this Chapter that could be attributed to the emitting source;
 8. The excess emissions did not stem from any activity or event that could have been foreseen and avoided, or planned, and could not have been avoided by better operations and maintenance practices;
 9. All emissions monitoring systems were kept in operation if at all practicable; and
 10. The owner or operator's actions in response to the excess emissions were documented by contemporaneous records.
- C. Affirmative Defense for Startup and Shutdown.**
1. Except as provided in subsection (C)(2), and unless otherwise provided for in the applicable requirement, emissions in excess of an applicable emission limitation due to startup and shutdown shall constitute a violation. The owner or operator of a source with emissions in excess of an applicable emission limitation due to startup and shutdown has an affirmative defense to a civil or administrative enforcement proceeding based on that violation, other than a judicial action seeking injunctive relief, if the owner or operator of the source has complied with the reporting requirements of R18-2-310.01 and has demonstrated all of the following:
 - a. The excess emissions could not have been prevented through careful and prudent planning and design;
 - b. If the excess emissions were the result of a bypass of control equipment, the bypass was unavoidable to prevent loss of life, personal injury, or severe damage to air pollution control equipment, production equipment, or other property;
 - c. The source's air pollution control equipment, process equipment, or processes were at all times maintained and operated in a manner consistent with good practice for minimizing emissions;
 - d. The amount and duration of the excess emissions (including any bypass operation) were minimized to the maximum extent practicable during periods of such emissions;
 - e. All reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality;
 - f. During the period of excess emissions there were no exceedances of the relevant ambient air quality standards established in Article 2 of this Chapter that could be attributed to the emitting source;
 - g. All emissions monitoring systems were kept in operation if at all practicable; and
 - h. The owner or operator's actions in response to the excess emissions were documented by contemporaneous records.
 2. If excess emissions occur due to a malfunction during routine startup and shutdown, then those instances shall be treated as other malfunctions subject to subsection (B).
- D. Affirmative Defense for Malfunctions During Scheduled Maintenance.**
- If excess emissions occur due to a malfunction during scheduled maintenance, then those instances will be treated as other malfunctions subject to subsection (B).
- E. Demonstration of Reasonable and Practicable Measures.**
- For an affirmative defense under subsections (B) or (C), the owner or operator of the source shall demonstrate, through submission of the data and information required by this Section and R18-2-310.01, that all reasonable and practicable measures within the owner or operator's control were implemented to prevent the occurrence of the excess emissions.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective June 19, 1981 (Supp. 81-3). Amended Arizona Testing Manual for Air Pollutant Emissions, effective September 22, 1983 (Supp. 83-5). Amended Arizona Testing Manual for Air Pollutant Emissions, as of September 15, 1984, effective August 9, 1985 (Supp. 85-4). Amended effective September 28, 1984 (Supp. 84-5). Former Section R9-3-310 renumbered without change as R18-2-310 (Supp. 87-3). Amended effective February 26, 1988 (Supp. 88-1). Amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1164, effective February 15, 2001 (Supp. 01-1).

R18-2-310.01. Reporting Requirements

- A.** The owner or operator of any source shall report to the Director any emissions in excess of the limits established by this Chapter or the applicable permit. The owner or operator of any registered source may report excess emissions in accordance with this Section in order to qualify for the affirmative defense established in R18-2-310. The report shall be in two parts as specified below:
1. Notification by telephone or facsimile within 24 hours of the time the owner or operator first learned of the occurrence of excess emissions that includes all available information from subsection (B).
 2. Detailed written notification by submission of an excess emissions report within 72 hours of the notification under subsection (A)(1).
- B.** The excess emissions report shall contain the following information:
1. The identity of each stack or other emission point where the excess emissions occurred;
 2. The magnitude of the excess emissions expressed in the units of the applicable emission limitation and the operating data and calculations used in determining the magnitude of the excess emissions;
 3. The time and duration or expected duration of the excess emissions;
 4. The identity of the equipment from which the excess emissions emanated;
 5. The nature and cause of the emissions;
 6. The steps taken, if the excess emissions were the result of a malfunction, to remedy the malfunction and the steps taken or planned to prevent the recurrence of the malfunctions;

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7. The steps that were or are being taken to limit the excess emissions; and
 8. If the source's permit contains procedures governing source operation during periods of startup or malfunction and the excess emissions resulted from startup or malfunction, a list of the steps taken to comply with the permit procedures.
- C. In the case of continuous or recurring excess emissions, the notification requirements of this Section shall be satisfied if the source provides the required notification after excess emissions are first detected and includes in the notification an estimate of the time the excess emissions will continue. Excess emissions occurring after the estimated time period or changes in the nature of the emissions as originally reported shall require additional notification pursuant to subsections (A) and (B).

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 1164, effective February 15, 2001 (Supp. 01-1).
Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

R18-2-311. Test Methods and Procedures

- A. Except as otherwise specified in this Chapter, the applicable procedures and testing methods contained in the Arizona Testing Manual; 40 CFR 52, Appendices D and E; 40 CFR 60, Appendices A through F; and 40 CFR 61, Appendices B and C shall be used to determine compliance with the requirements established in this Chapter or contained in permits issued pursuant to this Chapter.
- B. Except as otherwise provided in this subsection the opacity of visible emissions shall be determined by Reference Method 9 of the Arizona Testing Manual or by alternative method ALT-082 approved by the Administrator on May 15, 2012. A permit may specify a method, other than Method 9 or ALT-082, for determining the opacity of emissions from a particular emissions unit, if the method has been promulgated by the Administrator in 40 CFR 60, Appendix A or approved by the Administrator as an alternative method.
- C. Except as otherwise specified in this Chapter, the heat content of solid fuel shall be determined according to ASTM method D-3176-89, (Practice for Ultimate Analysis of Coal and Coke) and ASTM method D-2015-91, (Test Method for Gross Calorific Value of Coal and Coke by the Adiabatic Bomb Calorimeter).
- D. Except for ambient air monitoring and emissions testing required under Articles 9 and 11 of this Chapter, alternative and equivalent test methods in any test plan submitted to the Director may be approved by the Director for the duration of that plan provided that the following three criteria are met:
1. The alternative or equivalent test method measures the same chemical and physical characteristics as the test method it is intended to replace.
 2. The alternative or equivalent test method has substantially the same or better reliability, accuracy, and precision as the test method it is intended to replace.
 3. Applicable quality assurance procedures are followed in accordance with the Arizona Testing Manual, 40 CFR 60 or other quality assurance methods which are consistent with principles contained in the Arizona Testing Manual or 40 CFR 60 as approved by the Director.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Amended effective September 28, 1984 (Supp. 84-5). Former Section R9-3-311 renumbered without change as R18-2-311

(Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-312. Performance Tests

- A. Except as provided in subsection (J), within 60 days after a source subject to the permit requirements of this Article has achieved the capability to operate at its maximum production rate on a sustained basis but no later than 180 days after initial start-up of such source and at such other times as may be required by the Director, the owner or operator of such source shall conduct performance tests and furnish the Director a written report of the results of the tests.
- B. Performance tests shall be conducted and data reduced in accordance with the test method and procedures contained in the Arizona Testing Manual unless the Director:
1. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;
 2. Approves the use of an equivalent method;
 3. Approves the use of an alternative method the results of which he has determined to be adequate for indicating whether a specific source is in compliance; or
 4. Waives the requirement for performance tests because the owner or operator of a source has demonstrated by other means to the Director's satisfaction that the source is in compliance with the standard.
 5. Nothing in this Section shall be construed to abrogate the Director's authority to require testing.
- C. Performance tests shall be conducted under such conditions as the Director shall specify to the plant operator based on representative performance of the source. The owner or operator shall make available to the Director such records as may be necessary to determine the conditions of the performance tests. Operations during periods of start-up, shutdown, and malfunction shall not constitute representative conditions of performance tests unless otherwise specified in the applicable standard.
- D. The owner or operator of a permitted source shall provide the Director two weeks prior notice of the performance test to afford the Director the opportunity to have an observer present.
- E. The owner or operator of a permitted source shall provide, or cause to be provided, performance testing facilities as follows:
1. Sampling ports adequate for test methods applicable to such facility.
 2. Safe sampling platform(s).
 3. Safe access to sampling platform(s).
 4. Utilities for sampling and testing equipment.
- F. Each performance test shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in the applicable standard. For the purpose of determining compliance with an applicable standard, the arithmetic means of results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs is required to be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner or operator's control, compliance may, upon the Director's approval, be determined using the arithmetic means of the results of the two other runs. If the Director, or the Director's designee is present, tests may only be stopped with the Director's or such designee's approval. If the Director, or the Director's designee is not present, tests may only be stopped for good cause, which includes forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorologi-

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cal conditions, or other circumstances beyond the operator's control. Termination of testing without good cause after the first run is commenced shall constitute a failure of the test.

- G. Except as provided in subsection (H) compliance with the emission limits established in this Chapter or as prescribed in permits issued pursuant to this Chapter shall be determined by the performance tests specified in this Section or in the permit.
- H. In addition to performance tests specified in this Section, compliance with specific emission limits may be determined by:
 1. Opacity tests.
 2. Emission limit compliance tests specifically designated as such in the regulation establishing the emission limit to be complied with.
 3. Continuous emission monitoring, where applicable quality assurance procedures are followed and where it is designated in the permit or in an applicable requirement to show compliance.
- I. Nothing in this Section shall be so construed as to prevent the utilization of measurements from emissions monitoring devices or techniques not designated as performance tests as evidence of compliance with applicable good maintenance and operating requirements.
- J. The owner or operator of a source subject to this Section may request an extension to the performance test deadline due to a force majeure event as follows:
 1. If a force majeure event is about to occur, occurs, or has occurred for which the owner or operator intends to assert a claim of force majeure, the owner or operator shall notify the Director in writing as soon as practicable following the date the owner or operator first knew, or through due diligence should have known that the event may cause or caused a delay in testing beyond the regulatory deadline. The notification must occur before the performance test deadline unless the initial force majeure or a subsequent force majeure event delays the notice, and in such cases, the notification shall be given as soon as practicable.
 2. The owner or operator shall provide to the Director a written description of the force majeure event and a rationale for attributing the delay in testing beyond the regulatory deadline to the force majeure; describe the measures taken or to be taken to minimize the delay; and identify a date by which the owner or operator proposes to conduct the performance test. The performance test shall be conducted as soon as practicable after the force majeure event occurs.
 3. The decision as to whether or not to grant an extension to the performance test deadline is solely within the discretion of the Director. The Director shall notify the owner or operator in writing of approval or disapproval of the request for an extension as soon as practicable.
 4. Until an extension of the performance test deadline has been approved by the Director under subsections (1), (2), and (3), the owner or operator remains subject to the requirements of this Section.
 5. For purposes of this subsection, a "force majeure event" means an event that will be or has been caused by circumstances beyond the control of the source, its contractors, or any entity controlled by the source that prevents the owner or operator from complying with the regulatory requirement to conduct performance tests within the specified timeframe despite the source's best efforts to fulfill the obligation. Examples of such events are acts of nature, acts of war or terrorism, or equipment failure or safety hazard beyond the control of the source.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective September 28, 1984 (Supp. 84-5). Former Section R9-3-312 renumbered without change as R18-2-312 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-313. Existing Source Emission Monitoring

- A. Every source subject to an existing source performance standard as specified in this Chapter shall install, calibrate, operate, and maintain all monitoring equipment necessary for continuously monitoring the pollutants and other gases specified in this Section for the applicable source category.
 1. Applicability.
 - a. Fossil-fuel fired steam generators, as specified in subsection (C)(1), shall be monitored for opacity, nitrogen oxides emissions, sulfur dioxide emissions, and oxygen or carbon dioxide.
 - b. Fluid bed catalytic cracking unit catalyst regenerators, as specified in subsection (C)(4), shall be monitored for opacity.
 - c. Sulfuric acid plants, as specified in subsection (C)(3), shall be monitored for sulfur dioxide emissions.
 - d. Nitric acid plants, as specified in subsection (C)(2), shall be monitored for nitrogen oxides emissions.
 2. Emission monitoring shall not be required when the source of emissions is not operating.
 3. Variations.
 - a. Unless otherwise prohibited by the Act, the Director may approve, on a case-by-case basis, alternative monitoring requirements different from the provisions of this Section if the installation of a continuous emission monitoring system cannot be implemented by a source due to physical plant limitations or extreme economic reasons. Alternative monitoring procedures shall be specified by the Director on a case-by-case basis and shall include, as a minimum, annual manual stack tests for the pollutants identified for each type of source in this Section. Extreme economic reasons shall mean that the requirements of this Section would cause the source to be unable to continue in business.
 - b. Alternative monitoring requirements may be prescribed when installation of a continuous emission monitoring system or monitoring device specified by this Section would not provide accurate determinations of emissions (e.g., condensed, uncombined water vapor may prevent an accurate determination of opacity using commercially available continuous emission monitoring systems).
 - c. Alternative monitoring requirements may be prescribed when the affected facility is infrequently operated (e.g., some affected facilities may operate less than one month per year).
 4. Monitoring system malfunction: A temporary exemption from the monitoring and reporting requirements of this Section may be provided during any period of monitoring system malfunction, provided that the source owner or operator demonstrates that the malfunction was unavoidable and is being repaired expeditiously.
- B. Installation and performance testing required under this Section shall be completed and monitoring and recording shall commence within 18 months of the effective date of this Section.
- C. Minimum monitoring requirements:

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1. Fossil-fuel fired steam generators: Each fossil-fuel fired steam generator, except as provided in the following subsections, with an annual average capacity factor of greater than 30%, as reported to the Federal Power Commission for calendar year 1976, or as otherwise demonstrated to the Department by the owner or operator, shall conform with the following monitoring requirements when such facility is subject to an emission standard for the pollutant in question.
 - a. A continuous emission monitoring system for the measurement of opacity which meets the performance specifications of this Section shall be installed, calibrated, maintained, and operated in accordance with the procedures of this Section by the owner or operator of any such steam generator of greater than 250 million Btu per hour heat input except where:
 - i. Gaseous fuel is the only fuel burned; or
 - ii. Oil or a mixture of gas and oil are the only fuels burned and the source is able to comply with the applicable particulate matter and opacity regulations without utilization of particulate matter collection equipment, and where the source has never been found to be in violation through any administrative or judicial proceedings, or accepted responsibility for any violation of any visible emission standard.
 - b. A continuous emission monitoring system for the measurement of sulfur dioxide which meets the performance specifications of this Section shall be installed, calibrated, using sulfur dioxide calibration gas mixtures or other gas mixtures approved by the Director, maintained and operated on any fossil-fuel fired steam generator of greater than 250 million Btu per hour heat input which has installed sulfur dioxide pollutant control equipment.
 - c. A continuous emission monitoring system for the measurement of nitrogen oxides which meets the performance specification of this Section shall be installed, calibrated using nitric oxide calibration gas mixtures or other gas mixtures approved by the Director, maintained and operated on fossil-fuel fired steam generators of greater than 1000 million Btu per hour heat input when such facility is located in an air quality control region where the Director has specifically determined that a control strategy for nitrogen dioxide is necessary to attain the ambient air quality standard specified in R18-2-205, unless the source owner or operator demonstrates during source compliance tests as required by the Department that such a source emits nitrogen oxides at levels 30% or more below the emission standard within this Chapter.
 - d. A continuous emission monitoring system for the measurement of the percent oxygen or carbon dioxide which meets the performance specifications of this Section shall be installed, calibrated, operated, and maintained on fossil-fuel fired steam generators where measurements of oxygen or carbon dioxide in the flue gas are required to convert either sulfur dioxide or nitrogen oxides continuous emission monitoring data, or both, to units of the emission standard within this Chapter.
2. Nitric acid plants: Each nitric acid plant of greater than 300 tons per day production capacity, the production capacity being expressed as 100% acid located in an air quality control region where the Director has specifically determined that a control strategy for nitrogen dioxide is necessary to attain the ambient air quality standard specified in R18-2-205, shall install, calibrate using nitrogen dioxide calibration gas mixtures, maintain, and operate a continuous emission monitoring system for the measurement of nitrogen oxides which meets the performance specifications of this Section for each nitric acid producing facility within such plant.
3. Sulfuric acid plants: Each sulfuric acid plant as defined in R18-2-101, of greater than 300 tons per day production capacity, the production being expressed as 100% acid, shall install, calibrate using sulfur dioxide calibration gas mixtures or other gas mixtures approved by the Director, maintain and operate a continuous emission monitoring system for the measurement of sulfur dioxide which meets the performance specifications of this Section for each sulfuric acid producing facility within such a plant.
4. Fluid bed catalytic cracking unit catalyst regenerators at petroleum refineries. Each catalyst regenerator for fluid bed catalytic cracking units of greater than 20,000 barrels per day fresh-feed capacity shall install, calibrate, maintain and operate a continuous emission monitoring system for the measurement of opacity which meets the performance specifications of this Section for each regenerator within such refinery.
- D. Minimum specifications: Owners or operators of monitoring equipment installed to comply with this Section shall demonstrate compliance with the following performance specifications.
 1. The performance specifications set forth in Appendix B of 40 CFR 60 are incorporated herein by reference and shall be used by the Director to determine acceptability of monitoring equipment installed pursuant to this Section. However where reference is made to the Administrator in Appendix B of 40 CFR 60, the Director may allow the use of either the state-approved reference method or the federally approved reference method as published in 40 CFR 60. The performance specifications to be used with each type of monitoring system are listed below.
 - a. Continuous emission monitoring systems for measuring opacity shall comply with performance specification 1.
 - b. Continuous emission monitoring systems for measuring nitrogen oxides shall comply with performance specification 2.
 - c. Continuous emission monitoring systems for measuring sulfur dioxide shall comply with performance specification 2.
 - d. Continuous emission monitoring systems for measuring sulfur dioxide shall comply with performance specification 3.
 - e. Continuous emission monitoring systems for measuring carbon dioxide shall comply with performance specification 3.
 2. Calibration gases: Span and zero gases shall be traceable to National Bureau of Standards reference gases whenever these reference gases are available. Every six months from date of manufacture, span and zero gases shall be reanalyzed by conducting triplicate analyses using the reference methods in Appendix A of 40 CFR 60 (Chapter 1) as amended: For sulfur dioxide, use Reference Method 6; for nitrogen oxides, use Reference method 7; and for carbon dioxide or oxygen, use Reference Method 3. The gases may be analyzed at less fre-

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- quent intervals if longer shelf lives are guaranteed by the manufacturer.
3. Cycling time: Time includes the total time required to sample, analyze, and record an emission measurement.
 - a. Continuous emission monitoring systems for measuring opacity shall complete a minimum of one cycle of sampling and analyzing for each successive six-minute period.
 - b. Continuous emission monitoring systems for measuring oxides of nitrogen, carbon dioxide, oxygen, or sulfur dioxide shall complete a minimum of one cycle of operation (sampling, analyzing, and date recording) for each successive 15-minute period.
 4. Monitor location: All continuous emission monitoring systems or monitoring devices shall be installed such that representative measurements of emissions of process parameter (i.e., oxygen, or carbon dioxide) from the affected facility are obtained. Additional guidance for location of continuous emission monitoring systems to obtain representative samples are contained in the applicable performance specifications of Appendix B of 40 CFR 60.
 5. Combined effluents: When the effluents from two or more affected facilities of similar design and operating characteristics are combined before being released to the atmosphere through more than one point, separate monitors shall be installed.
 6. Zero and drift: Owners or operators of all continuous emission monitoring systems installed in accordance with the requirements of this Section shall record the zero and span drift in accordance with the method prescribed by the manufacturer's recommended zero and span check at least once daily, using calibration gases specified in subsection (C) as applicable, unless the manufacturer has recommended adjustments at shorter intervals, in which case such recommendations shall be followed; shall adjust the zero span whenever the 24-hour zero drift or 24-hour calibration drift limits of the applicable performance specifications in Appendix B of Part 60, Chapter 1, Title 40 CFR are exceeded.
 7. Span: Instrument span should be approximately 200% of the expected instrument data display output corresponding to the emission standard for the source.
- E. Minimum data requirement:** The following subsections set forth the minimum data reporting requirements for sources employing continuous monitoring equipment as specified in this Section. These periodic reports do not relieve the source operator from the reporting requirements of R18-2-310.01.
1. The owners or operators of facilities required to install continuous emission monitoring systems shall submit to the Director a written report of excess emissions for each calendar quarter and the nature and cause of the excess emissions, if known. The averaging period used for data reporting shall correspond to the averaging period specified in the emission standard for the pollutant source category in question. The required report shall include, as a minimum, the data stipulated in this subsection.
 2. For opacity measurements, the summary shall consist of the magnitude in actual percent opacity of all six-minute opacity averages greater than any applicable standards for each hour of operation of the facility. Average values may be obtained by integration over the averaging period or by arithmetically averaging a minimum of four equally spaced, instantaneous opacity measurements per minute. Any time periods exempted shall be deleted before determining any averages in excess of opacity standards.
 3. For gaseous measurements the summary shall consist of emission averages in the units of the applicable standard for each averaging period during which the applicable standard was exceeded.
 4. The date and time identifying each period during which the continuous emission monitoring system was inoperative, except for zero and span checks and the nature of system repair or adjustment shall be reported. The Director may require proof of continuous emission monitoring system performance whenever system repairs or adjustments have been made.
 5. When no excess emissions have occurred and the continuous emission monitoring system(s) have not been inoperative, repaired, or adjusted, such information shall be included in the report.
 6. Owners or operators of affected facilities shall maintain a file of all information reported in the quarterly summaries, and all other data collected either by the continuous emission monitoring system or as necessary to convert monitoring data to the units of the applicable standard for a minimum of two years from the date of collection of such data or submission of such summaries.
- F. Data reduction:** Owners or operators of affected facilities shall use the following procedures for converting monitoring data to units of the standard where necessary.
1. For fossil-fuel fired steam generators the following procedures shall be used to convert gaseous emission monitoring data in parts per million to g/million cal (lb/million Btu) where necessary.
 - a. When the owner or operator of a fossil-fuel fired steam generator elects under subsection (C)(1)(d) to measure oxygen in the flue gases, the measurements of the pollutant concentration and oxygen concentration shall each be on a consistent basis (wet or dry).
 - i. When measurements are on a wet basis, except where wet scrubbers are employed or where moisture is otherwise added to stack gases, the following conversion procedure shall be used:

$$E(Q) = C(ws)F(w) \left[\frac{20.9}{20.9(1 - B(wa)) - \%O(2ws)} \right]$$
 - ii. When measurements are on a wet basis and the water vapor content of the stack gas is determined at least once every 15 minutes the following conversion procedure shall be used:

$$E(Q) = C(ws)F \left[\frac{20.9}{20.9(1 - B(wa))\%O(2ws)} \right]$$

Use of this equation is contingent upon demonstrating the ability to accurately determine B(ws) such that any absolute error in B(ws) will not cause an error of more than $\pm 1.5\%$ in the term:

$$\left[\frac{20.9}{20.9(1 - B(wa)) - \%O(2ws)} \right]$$
 - iii. When measurements are on a dry basis, the following conversation procedure shall be used:

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$$E(Q) = CF \left[\frac{20.9}{20.9 - \%O(2ws)} \right]$$

- b. When the owner or operator elects under subsection (C)(1)(d) to measure carbon dioxide in the flue gases, the measurement of the pollutant concentration and the carbon dioxide concentration shall each be on a consistent basis (wet or dry) and the following conversion procedure used;

$$E(Q) = CF(c) \left[\frac{100}{\%CO(2)} \right]$$

- c. The values used in the equations under subsection (F)(1) above are derived as follows:

$E(Q)$ = pollutant emission, g/million cal (lb/million Btu).

C = pollutant concentration, g/dscm (lb/dscf), determined by multiplying the average concentration (ppm) for each hourly period by 4.16×10^{-5} M g/dscm per ppm (2.64×10^{-9} M lb/dscf per ppm) where M = pollutant molecular weight, g/g-mole (lb/lb-mole), $M = 64$ for sulfur dioxide and 46 for oxides of nitrogen.

$C(ws)$ = pollutant concentrations at stack conditions, g/wscm (lb/wscf), determined by multiplying the average concentration (ppm) for each one-hour period by 4.15×10^{-5} M lb/wscf per ppm (2.59×10^{-5} M lb/wscf per ppm) where M = pollutant molecular weight, g/g mole (lb/lb mole). $M = 64$ for sulfur dioxide and 46 for nitrogen oxides.

$\%O(2)$, $\%CO(2)$ = Oxygen or carbon dioxide volume (expressed as percent) determined with equipment specified under subsection (D)(1)(d).

$F, F(c)$ = A factor representing a ratio of the volume of dry flue gases generated to the calorific value of the fuel combusted (F), a factor representing a ratio of the volume of carbon dioxide generated to the calorific value of the fuel combusted ($F(c)$), respectively. Values of F and $F(c)$ are given in 40 CFR 60.45(f) (Chapter 1).

$F(w)$ = A factor representing a ratio of the volume of wet flue gases generated to the calorific value of the fuel combusted. Values of $F(w)$ are given in Reference Method 19 of the Arizona Testing Manual.

$B(wa)$ = Proportion by volume of water vapor in the ambient air. Approval may be given for determination of $B(w)a$ by on-site instrumental measurement provided that the absolute accuracy of the measurement technique can be demonstrated to be within $\pm 0.7\%$ water vapor. Estimation methods for $B(wa)$ are given in Reference Method 19 of the Arizona Testing Manual.

$B(ws)$ = Proportion by volume of water vapor in the stack gas.

2. For sulfuric acid plants as defined in R18-2-101, the owner or operator shall:

- a. Establish a conversion factor three times daily according to the procedures of 40 CFR 60.84(b) (Chapter 1),
 - b. Multiply the conversion factor by the average sulfur dioxide concentration in the flue gases to obtain average sulfur dioxide emissions in Kg/metric ton (lb/short ton), and
 - c. Report the average sulfur dioxide emission for each averaging period in excess of the applicable emission standard in the quarterly summary.
3. For nitric acid plants, the owner or operator shall:
- a. Establish a conversion factor according to the procedures of 40 CFR 60.73(b) (Chapter 1),
 - b. Multiply the conversion factor by the average nitrogen oxides concentration in the flue gases to obtain the nitrogen oxides emissions in the units of the applicable standard,
 - c. Report the average nitrogen oxides emission for each averaging period in excess of applicable emission standard in the quarterly summary.
4. The Director may allow data reporting or reduction procedures varying from those set forth in this Section if the owner or operator of a source shows to the satisfaction of the Director that his procedures are at least as accurate as those in this Section. Such procedures may include but are not limited to the following:
- a. Alternative procedures for computing emission averages that do not require integration of data (e.g., some facilities may demonstrate that the variability of their emissions is sufficiently small to allow accurate reduction of data based upon computing averages from equally spaced data points over the averaging period).
 - b. Alternative methods of converting pollutant concentration measurements to the units of the emission standards.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, subsection (C), paragraph (1), subparagraph (d) (Supp. 80-2). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-313 renumbered without change as R18-2-313 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 1164, effective February 15, 2001 (Supp. 01-1).

R18-2-314. Quality Assurance

Facilities subject to the permit requirements of this Article shall submit a quality assurance plan to the Director that meets the requirements of R18-2-311(D)(3) within 12 months of the effective date of this Section. Facilities subject to the requirements of R18-2-313 shall submit a quality assurance plan as specified in the permit.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-314 renumbered without change as R18-2-314 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

R18-2-315. Posting of Permit

- A. Any person who has been granted an individual or general permit shall post such permit or a certificate of permit issuance on location where the equipment is installed in such a manner as

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to be clearly visible and accessible. All equipment covered by the permit shall be clearly marked with one of the following:

1. The current permit number;
 2. A serial number or other equipment number that is also listed in the permit to identify that piece of equipment.
- B.** A copy of the complete permit shall be kept on the site.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-315 renumbered without change as R18-2-315 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

R18-2-316. Notice by Building Permit Agencies

All agencies of the county or political subdivisions of the county that issue or grant building permits or approvals shall examine the plans and specifications submitted by an applicant for a permit or approval to determine if an air pollution permit will possibly be required under the provisions of this Chapter. If it appears that an air pollution permit will be required, the agency or political subdivision shall give written notice to the applicant to contact the Director and shall furnish a copy of that notice to the Director.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-316 renumbered without change as R18-2-316 (Supp. 87-3).

R18-2-317. Facility Changes Allowed Without Permit Revisions - Class I

- A.** A facility with a Class I permit may make changes that contravene an express permit term without a permit revision if all of the following apply:
1. The changes are not modifications under any provision of Title I of the Act or under A.R.S. § 49-401.01(24);
 2. The changes do not exceed the emissions allowable under the permit whether expressed therein as a rate of emissions or in terms of total emissions;
 3. The changes do not violate any applicable requirements or trigger any additional applicable requirements;
 4. The changes satisfy all requirements for a minor permit revision under R18-2-319(A);
 5. The changes do not contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements; and
 6. The changes do not constitute a minor NSR modification.
- B.** The substitution of an item of process or pollution control equipment for an identical or substantially similar item of process or pollution control equipment shall qualify as a change that does not require a permit revision, if the substitution meets all of the requirements of subsections (A), (D), and (E).
- C.** Except for sources with authority to operate under general permits, permitted sources may trade increases and decreases in emissions within the permitted facility, as established in the permit under R18-2-306(A)(12), if an applicable implementation plan provides for the emissions trades without applying for a permit revision and based on the seven working days notice prescribed in subsection (D). This provision is available if the permit does not provide for the emissions trading as a minor permit revision.
- D.** For each change under subsections (A) through (C), a written notice by certified mail or hand delivery shall be received by the Director and the Administrator a minimum of seven working days in advance of the change. Notifications of changes associated with emergency conditions, such as malfunctions necessitating the replacement of equipment, may be provided

less than seven working days in advance of the change but must be provided as far in advance of the change or, if advance notification is not practicable, as soon after the change as possible.

- E.** Each notification shall include:
1. When the proposed change will occur;
 2. A description of the change;
 3. Any change in emissions of regulated air pollutants;
 4. The pollutants emitted subject to the emissions trade, if any;
 5. The provisions in the implementation plan that provide for the emissions trade with which the source will comply and any other information as may be required by the provisions in the implementation plan authorizing the trade;
 6. If the emissions trading provisions of the implementation plan are invoked, then the permit requirements with which the source will comply; and
 7. Any permit term or condition that is no longer applicable as a result of the change.
- F.** The permit shield described in R18-2-325 shall not apply to any change made under subsections (A) through (C). Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the implementation plan authorizing the emissions trade.
- G.** Except as otherwise provided for in the permit, making a change from one alternative operating scenario to another as provided under R18-2-306(A)(11) shall not require any prior notice under this Section.
- H.** The Director shall make available to the public monthly summaries of all notices received under this Section.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-317 renumbered without change as R18-2-317 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

R18-2-317.01. Facility Changes that Require a Permit Revision - Class II

- A.** The following changes at a source with a Class II permit shall require a permit revision:
1. A change that would trigger a new applicable requirement or violate an existing applicable requirement.
 2. Establishment of, or change in, an emissions cap under R18-2-306.02;
 3. A change that will require a case-by-case determination of an emission limitation or other standard, or a source-specific determination of ambient impacts, or a visibility or increment analysis;
 4. A change that results in emissions that are subject to monitoring, recordkeeping or reporting under R18-2-306(A)(3), (4), or (5) if the emissions cannot be measured or otherwise adequately quantified by monitoring, recordkeeping, or reporting requirements already in the permit;
 5. A change that will authorize the burning of used oil, used oil fuel, hazardous waste, or hazardous waste fuel, or any other fuel not currently authorized by the permit;
 6. A change that requires the source to obtain a Class I permit;

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7. Replacement of an item of air pollution control equipment listed in the permit with one that does not have the same or better pollutant removal efficiency;
 8. Establishment or revision of a limit under R18-2-306.01;
 9. Increasing operating hours or rates of production above the permitted level;
 10. A change that relaxes monitoring, recordkeeping, or reporting requirements, except when the change results:
 - a. From removing equipment that results in a permanent decrease in actual emissions, if the source keeps onsite records of the change in a log that satisfies Appendix 3 of this Chapter and if the requirements that are relaxed are present in the permit solely for the equipment that was removed; or
 - b. From a change in an applicable requirement; and
 11. A minor NSR modification.
- B.** A source with a Class II permit may make any physical change or change in the method of operation without revising the source's permit unless the change is specifically prohibited in the source's permit or is a change described in subsection (A). A change that does not require a permit revision may still be subject to requirements in R18-2-317.02.
- Historical Note**
- New Section adopted by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3).
Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).
- R18-2-317.02. Procedures for Certain Changes that Do Not Require a Permit Revision - Class II**
- A.** Except for a physical change or change in the method of operation at a Class II source requiring a permit revision under R18-2-317.01, or a change subject to logging or notice requirements in subsections (B) or (C), a change at a Class II source shall not be subject to revision, notice, or logging requirements under this Chapter.
- B.** Except as otherwise provided in the conditions applicable to an emissions cap created under R18-2-306.02, the following changes may be made if the source keeps onsite records of the changes according to Appendix 3:
1. Implementing an alternative operating scenario, including raw material changes;
 2. Changing process equipment, operating procedures, or making any other physical change if the permit requires the change to be logged;
 3. Engaging in any new insignificant activity listed in the definition of insignificant activities in R18-2-101 but not listed in the permit;
 4. Replacing an item of air pollution control equipment listed in the permit with an identical (same model, different serial number) item. The Director may require verification of efficiency of the new equipment by performance tests; and
 5. A change that results in a decrease in actual emissions if the source wants to claim credit for the decrease in determining whether the source has a net emissions increase for any purpose. The logged information shall include a description of the change that will produce the decrease in actual emissions. A decrease that has not been logged is creditable only if the decrease is quantifiable, enforceable, and otherwise qualifies as a creditable decrease.
- C.** Except as provided in the conditions applicable to an emissions cap created under R18-2-306.02, the following changes may be made if the source provides written notice to the Department in advance of the change as provided below:
1. Replacing an item of air pollution control equipment listed in the permit with one that is not identical but that is substantially similar and has the same or better pollutant removal efficiency: seven days. The Director may require verification of efficiency of the new equipment by performance tests;
 2. A physical change or change in the method of operation that increases actual emissions more than 10% of the major source threshold for any conventional pollutant but does not require a permit revision: seven days;
 3. Replacing an item of air pollution control equipment listed in the permit with one that is not substantially similar but that has the same or better efficiency: 30 days. The Director may require verification of efficiency of the new equipment by performance tests;
 4. A change that would trigger an applicable requirement that already exists in the permit: 30 days unless otherwise required by the applicable requirement;
 5. A change that amounts to reconstruction of the source or an affected facility: seven days. For purposes of this subsection, reconstruction of a source or an affected facility shall be presumed if the fixed capital cost of the new components exceeds 50% of the fixed capital cost of a comparable entirely new source or affected facility and the changes to the components have occurred over the 12 consecutive months beginning with commencement of construction; and
 6. A change that will result in the emissions of a new regulated air pollutant above an applicable regulatory threshold but that does not trigger a new applicable requirement for that source category: 30 days. For purposes of this requirement, an applicable regulatory threshold for a conventional air pollutant shall be 10% of the applicable major source threshold for that pollutant.
- D.** For each change under subsection (C), the written notice shall be by certified mail or hand delivery and shall be received by the Director the minimum amount of time in advance of the change. Notifications of changes associated with emergency conditions, such as malfunctions necessitating the replacement of equipment, may be provided with less than required notice, but must be provided as far in advance of the change, or if advance notification is not practicable, as soon after the change as possible. The written notice shall include:
1. When the proposed change will occur,
 2. A description of the change,
 3. Any change in emissions of regulated air pollutants, and
 4. Any permit term or condition that is no longer applicable as a result of the change.
- E.** A source may implement any change in subsection (C) without the required notice by applying for a minor permit revision under R18-2-319 and complying with R18-2-319(D)(2) and (G).
- F.** The permit shield described in R18-2-325 shall not apply to any change made under this Section, other than implementation of an alternate operating scenario under subsection (B)(1).
- G.** Notwithstanding any other part of this Section, the Director may require a permit to be revised for any change that, when considered together with any other changes submitted by the same source under this Section over the term of the permit, constitutes a change under R18-317.01(A).
- H.** If a source change is described under both subsections (B) and (C), the source shall comply with subsection (C). If a source change is described under both subsection (C) and R18-2-317.01(B), the source shall comply with R18-2-317.01(B).
- I.** A copy of all logs required under subsection (B) shall be filed with the Director within 30 days after each anniversary of the

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permit issue date. If no changes were made at the source requiring logging, a statement to that effect shall be filed instead.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

R18-2-318. Administrative Permit Amendments

- A. Except for provisions pursuant to Title IV of the Act, an administrative permit amendment is a permit revision that does any of the following:
1. Corrects typographical errors;
 2. Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;
 3. Requires more frequent monitoring or reporting by the permittee;
 4. Allows for a change in ownership or operational control of a source as approved under R18-2-323 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 permittee has been submitted to the Director;
- B. Administrative permit amendments to Title IV provisions of the permit shall be governed by regulations promulgated by the Administrator under Title IV of the Act.
- C. The Director shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and for Class I permits may incorporate such changes without providing notice to the public or affected states provided that it designates any such permit revisions as having been made pursuant to this Section.
- D. The Director shall submit a copy of Class I permits revised under this Section to the Administrator.
- E. Except for administrative permit amendments involving a transfer under R18-2-323, the source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-318 renumbered without change as R18-2-318 (Supp. 87-3). Amended subsection (A) effective December 1, 1988 (Supp. 88-4). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

R18-2-318.01. Annual Summary Permit Amendments for Class II Permits

The Director may amend any Class II permit annually without following R18-2-321 in order to incorporate changes reflected in logs or notices filed under R18-2-317.02. The amendment shall be effective to the anniversary date of the permit. The Director shall make available to the public for any source:

1. A complete record of logs and notices sent to the Department under R18-2-317.02; and
2. Any amendments or revisions to the source's permit.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3).

R18-2-319. Minor Permit Revisions

- A. Minor permit revision procedures may be used only for those changes at a Class I source that satisfy all of the following:

1. Do not violate any applicable requirement;
 2. Do not involve substantive changes to existing monitoring, reporting, or recordkeeping requirements in the permit;
 3. Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination of ambient impacts, or an analysis of impacts on visibility or maximum increases allowed under R18-2-218;
 4. Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed in order to avoid an applicable requirement to which the source would otherwise be subject. The terms and conditions include:
 - a. A federally enforceable emissions cap that the source would assume to avoid classification as a modification under any provision of Title I of the Act; and
 - b. An alternative emissions limit approved under regulations promulgated under the section 112(i)(5) of the Act.
 5. Are not modifications under any provision of Title I of the Act;
 6. Are not changes in fuels not represented in the permit application or provided for in the permit;
 7. Are not minor NSR modifications subject to R18-2-334; and
 8. Are not required to be processed as a significant permit revision under R18-2-320.
- B. Minor permit revision procedures shall be used for the following changes at a Class II source:
1. A change that triggers a new applicable requirement if all of the following apply:
 - a. The change is not a minor NSR modification subject to R18-2-334;
 - b. A case-by-case determination of an emission limitation or other standard is not required; and
 - c. The change does not require the source to obtain a Class I permit.
 2. A change that increases emissions above the permitted level unless the increase otherwise creates a condition that requires a significant permit revision;
 3. A change in fuel from fuel oil or coal, to natural gas or propane, if not authorized in the permit;
 4. A change that results in emissions subject to monitoring, recordkeeping, or reporting under R18-2-306(A)(3),(4), or (5) and that cannot be measured or otherwise adequately quantified by monitoring, recordkeeping, or reporting requirements already in the permit;
 5. A decrease in the emissions permitted under an emissions cap unless the decrease requires a change in the conditions required to enforce the cap or to ensure that emissions trades conducted under the cap are quantifiable and enforceable; and
 6. Replacement of an item of air pollution control equipment listed in the permit with one that does not have the same or better efficiency.
- C. As approved by the Director, minor permit revision procedures may be used for permit revisions involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that the minor permit revision procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by the Administrator.

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- D.** An application for minor permit revision shall be on the standard application form provided under R18-2-304(B) and include the following:
1. A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;
 2. For Class I sources, and any source that is making the change immediately after it files the application, the source's suggested draft permit;
 3. Certification by a responsible official, consistent with standard permit application requirements, that the proposed revision meets the criteria for use of minor permit revision procedures and a request that the procedures be used;
- E.** EPA and affected state notification. For Class I permits, within five working days of receipt of an application for a minor permit revision, the Director shall notify the Administrator and affected states of the requested permit revision in accordance with R18-2-307.
- F.** For Class I permits, the Director shall not issue a final permit revision until after the Administrator's 45-day review period or until the Administrator has notified the Director that the Administrator will not object to issuance of the permit revision, whichever is first, although the Director may approve the permit revision before that time. Within 90 days of the Director's receipt of an application under minor permit revision procedures, or 15 days after the end of the Administrator's 45-day review period, whichever is later, the Director shall do one or more of the following:
1. Issue the permit revision as proposed,
 2. Deny the permit revision application,
 3. Determine that the proposed permit revision does not meet the minor permit revision criteria and should be reviewed under the significant revision procedures, or
 4. Revise the proposed permit revision and transmit to the Administrator the new proposed permit revision as required in R18-2-307.
- G.** The source may make the change proposed in its minor permit revision application immediately after it files the application. After a Class I source makes a change allowed by the preceding sentence, and until the Director takes any of the actions specified in subsection (F), the source shall comply with both the applicable requirements governing the change and the proposed revised permit terms and conditions. During this time period, the Class I source need not comply with the existing permit terms and conditions it seeks to modify. However, if the Class I source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to revise may be enforced against it.
- H.** The permit shield under R18-2-325 shall not extend to minor permit revisions.
- I.** Notwithstanding any other part of this Section, the Director may require a permit to be revised under R18-2-320 for any change that, when considered together with any other changes submitted by the same source under this Section or R18-2-317.02 over the life of the permit, do not satisfy subsection (A) for Class I sources or subsection (B) for Class II sources.
- J.** The Director shall make available to the public monthly summaries of all applications for minor permit revisions.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-319 renumbered without change as R18-2-319 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 5 A.A.R. 4074, effective September

22, 1999 (Supp. 99-3). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-320. Significant Permit Revisions

- A.** For Class I sources, a significant revision shall be used for an application requesting a permit revision that does not qualify as a minor permit revision or as an administrative amendment. A significant revision that is only required because of a change described in R18-2-319(A)(6) or (7) shall not be considered a significant permit revision under part 70 for the purposes of 40 CFR 64.5(a)(2). Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall follow significant revision procedures.
- B.** A source with a Class II permit shall make the following changes only after the permit is revised following the public participation requirements of R18-2-330:
1. Establishing or revising a voluntarily accepted emission limitation or standard as described by R18-2-306.01 or R18-2-306.02, except a decrease in the limitation authorized by R18-2-319(B)(5);
 2. Making any change in fuel not authorized by the permit and that is not fuel oil or coal, to natural gas or propane;
 3. A change that is a minor NSR modification subject to R18-2-334;
 4. A change that relaxes monitoring, recordkeeping, or reporting requirements, except when the change results from:
 - a. Removing equipment that results in a permanent decrease in actual emissions, if the source keeps onsite records of the change in a log that satisfies Appendix 3 of this Chapter and if the requirements that are relaxed are present in the permit solely for the equipment that was removed; or
 - b. A change in an applicable requirement.
 5. A change that will cause the source to violate an existing applicable requirement including the conditions establishing an emissions cap;
 6. A change that will require any of the following:
 - a. A case-by-case determination of an emission limitation or other standard;
 - b. A source-specific determination of ambient impacts, or an analysis of impacts on visibility or maximum allowable increases allowed under R18-2-218; or
 - c. A case-by-case determination of a monitoring, recordkeeping, and reporting requirement.
 7. A change that requires the source to obtain a Class I permit.
- C.** Any modification to a major source of federally listed hazardous air pollutants, and any reconstruction of a source, or a process or production unit, under section 112(g) of the Act and regulations promulgated thereunder, shall follow significant permit revision procedures and any rules adopted under A.R.S. § 49-426.03.
- D.** Significant permit revisions shall meet all requirements of this Article for applications, public participation, review by affected states, and review by the Administrator that apply to permit issuance and renewal. Notwithstanding R18-2-330(C), the Director may provide notice for changes requiring a significant permit revision solely under subsections (B)(2), (4) or (6)(c) by posting a notice on the Department's web site, sending e-mails to persons who have requested electronic notification of the Department's proposed air quality permit actions and by mailing a copy of the notice as provided in R18-2-330(C)(1).

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- E. When an existing source applies for a significant permit revision to revise its permit from a Class II permit to a Class I permit, it shall submit a Class I permit application in accordance with R18-2-304. The Director shall issue the entire permit, and not just the portion being revised, in accordance with Class I permit content and issuance requirements, including requirements for public, affected state, and EPA review, contained in R18-2-307 and R18-2-330.

Historical Note

Adopted effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 343, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-321. Permit Reopenings; Revocation and Reissuance; Termination**A. Reopening for Cause.**

1. Each issued permit shall include provisions specifying the conditions under which the permit shall be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:
 - a. Additional applicable requirements under the Act become applicable to a major source with a remaining permit term of three or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to R18-2-322(B). Any permit revision required pursuant to this subsection shall comply with provisions in R18-2-322 for permit renewal and shall reset the five-year permit term.
 - b. Additional requirements, including excess emissions requirements, become applicable to an affected source under the acid rain program. Upon approval by the Administrator, excess emissions offset plans shall be deemed to be incorporated into the Class I permit.
 - c. The Director or the Administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.
 - d. The Director or the Administrator determines that the permit needs to be revised or revoked to assure compliance with the applicable requirements.
2. Proceedings to reopen and issue a permit, including appeal of any final action relating to a permit reopening, shall follow the same procedures as apply to initial permit issuance and shall, except for reopenings under subsection (A)(1)(a), affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.
3. Reopenings under subsection (A)(1) shall not be initiated before a notice of such intent is provided to the source by the Director at least 30 days in advance of the date that

the permit is to be reopened, except that the Director may provide a shorter time period in the case of an emergency.

4. When a permit is reopened and revised pursuant to this Section, the Director may make appropriate revisions to the permit shield established pursuant to R18-2-325.
- B. Within 10 days of receipt of notice from the Administrator that cause exists to reopen a Class I permit, the Director shall notify the source. The source shall have 30 days to respond to the Director. Within 90 days of receipt of notice from the Administrator that cause exists to reopen a permit, or within any extension to the 90 days granted by EPA, the Director shall forward to the Administrator and the source a proposed determination of termination, revision, or revocation and reissuance of the permit. Within 90 days of receipt of an EPA objection to the Director's proposal, the Director shall resolve the objection and act on the permit.
- C. The Director may issue a notice of termination of a permit or registration issued pursuant to this Chapter if:
 1. The Director has reasonable cause to believe that the permit or registration was obtained by fraud or misrepresentation.
 2. The person applying for the permit or registration failed to disclose a material fact required by the application form or the regulation applicable to the permit or registration, of which the applicant had or should have had knowledge at the time the application was submitted.
 3. The terms and conditions of the permit or registration have been or are being violated.
- D. If the Director issues a notice of termination under this Section, the notice shall be served on the permittee by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the revocation and a statement that the permittee is entitled to a hearing.

Historical Note

Adopted effective September 22, 1983 (Supp. 83-5). Former Section R9-3-321 renumbered without change as R18-2-321 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

R18-2-322. Permit Renewal and Expiration

- A. A permit being renewed is subject to the same procedural requirements, including any for public participation and affected states and Administrator review, that would apply to that permit's initial issuance.
- B. Except as provided in R18-2-303(A), permit expiration terminates the source's right to operate unless a timely application for renewal that is sufficient under A.R.S. § 41-1064 has been submitted in accordance with R18-2-304. Any testing that is required for renewal shall be completed before the proposed permit is issued by the Director.
- C. The Director shall act on an application for a permit renewal within the same time-frames as on an initial permit.

Historical Note

Adopted effective September 22, 1983 (Supp. 83-5). Former Section R9-3-322 renumbered without change as R18-2-322 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

R18-2-323. Permit Transfers

- A. Except as provided in A.R.S. § 49-429 and subsection (B), a Class I or II permit may be transferred to another person if the person who holds the permit gives notice to the Director in

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writing at least 30 days before the proposed transfer. The notice shall contain the following:

1. The permit number and expiration date;
2. The name, address, and telephone number of the current permit holder;
3. The name, address and telephone number of the person to receive the permit;
4. The name and title of the individual within the organization who is accepting responsibility for the permit along with a signed statement by that person indicating such acceptance;
5. A description of the equipment to be transferred;
6. A written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee;
7. Provisions for the payment of any fees pursuant to R18-2-326 or R18-2-501 that will be due and payable before the effective date of transfer;
8. Sufficient information about the source's technical and financial capabilities of operating the source to allow the Director to make the decision in subsection (B) including:
 - a. The qualifications of each person principally responsible for the operation of the source;
 - b. A statement by the chief financial officer of the new permittee that it is financially capable of operating the facility in compliance with the law, and the information that provides the basis for that statement;
 - c. A brief description of any action for the enforcement of any federal or state law, or any county, city, or local government ordinance relating to the protection of the environment, instituted against any person employed by the new permittee and principally responsible for operating the facility during the five years preceding the date of application. In lieu of this description, the new permittee may submit a copy of the certificate of disclosure or 10-K form required under A.R.S. § 49-109, or a statement that this information has been filed in compliance with A.R.S. § 49-109.

- B. The Director shall deny the transfer if the Director determines that the organization receiving the permit is not capable of operating the source in compliance with A.R.S. Title 49, Chapter 3, Article 2, the provisions of this Chapter or the provisions of the permit. Notice of the denial shall be sent to the original permit holder by certified mail stating the reason for the denial within 10 working days of the Director's receipt of the application. If the transfer is not denied within 10 working days after receipt of the notice, it shall be deemed approved.
- C. To appeal the transfer denial:
 1. Both the transferor and transferee shall petition the Office of Administrative Hearings in writing for a public hearing; and
 2. All parties shall follow the appeal process for a permit.
- D. The Director shall make available to the public monthly summaries of all notices received under this Section.

Historical Note

Adopted effective September 22, 1983 (Supp. 83-5). Former Section R9-3-323 renumbered without change as R18-2-323 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 12 A.A.R. 4698, effective February 3, 2007 (Supp. 06-4).

R18-2-324. Portable Sources

- A. A portable source that will operate for the duration of its permit solely in one county that has established a local air pollution control program pursuant to A.R.S. § 49-479 shall obtain a permit from that county. A portable source with a county permit shall not operate in any other county. A portable source that has a permit issued by the Director and obtains a county permit shall request that the Director terminate the permit. Upon issuance of the county permit, the permit issued by the Director is no longer valid.
- B. A portable source which has a county permit but proposes to operate outside that county shall obtain a permit from the Director. A portable source that has a permit issued by a county and obtains a permit issued by the Director shall request that the county terminate the permit. Upon issuance of a permit by the Director, the county permit is no longer valid. Before commencing operation in the new county, the source shall notify the Director and the control officer who has jurisdiction in the county that includes the new location according to subsection (C).
- C. A portable source may be transferred from one location to another provided that the owner or operator of such equipment notifies the Director and any control officer who has jurisdiction over the geographic area that includes the new location of the transfer prior to the transfer. The notification required under this subsection shall include:
 1. A description of the equipment to be transferred including the permit number for such equipment;
 2. A description of the present location;
 3. A description of the new location;
 4. The date on which the equipment is to be moved; and
 5. The date on which operation of the equipment will begin at the new location.
- D. Any permit for a portable source shall contain conditions that will assure compliance with all applicable requirements at all authorized locations.

Historical Note

Adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-325. Permit Shields

- A. Each Class I or II permit issued under this Chapter shall specifically identify all federal, state, and local air pollution control requirements applicable to the source at the time the permit is issued. The permit shall state that compliance with the conditions of the permit shall be deemed compliance with any applicable requirement as of the date of permit issuance, provided that such applicable requirements are included and expressly identified in the permit. The Director may include in a permit determinations that other requirements specifically identified are not applicable. Any permit under this Chapter that does not expressly state that a permit shield exists shall not provide such a shield.
- B. Nothing in this Section or in any permit shall alter or affect the following:
 1. The provisions of Section 303 of the Act (emergency orders), including the authority of the Administrator under that Section;
 2. The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;
 3. The applicable requirements of the acid rain program, consistent with Section 408(a) of the Act;

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4. The ability of the Administrator or the Director to obtain information from a source pursuant to Section 114 of the Act, or any provision of state law;
 5. The authority of the Director to require compliance with new applicable requirements adopted after the permit is issued.
- C. In addition to the provisions of R18-2-321, a permit may be reopened by the Director and the permit shield revised when it is determined that standards or conditions in the permit are based on incorrect information provided by the applicant.

Historical Note

Emergency rule adopted effective September 17, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency rule re-adopted without change effective December 16, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency expired; text deleted (Supp. 93-1). New Section adopted effective November 15, 1993 (Supp. 93-4).

R18-2-326. Fees Related to Individual Permits

- A. Source Categories. The owner or operator of a source required to have an air quality permit from the Director shall pay the fees described in this Section unless authorized to operate under a general permit issued under Article 5. The fees are based on a source being classified in one of the following three categories:
1. Class I Title V sources are those required or that elect to have a permit under R18-2-302(B)(1).
 2. Class II Title V sources are those required to have a permit under R18-2-302(B)(2) and that are subject to new source performance standards or national emission standards for hazardous air pollutants.
 3. Class II Non-Title V sources are those required to have a permit under R18-2-302(B)(2) and that are not subject to new source performance standards or national emission standards for hazardous air pollutants.
- B. Fees for Permit Actions.
1. The owner or operator of a Class I Title V source, Class II Title V source, or Class II Non-Title V source shall pay to the Director the following:
 - a. \$133.50 per hour, adjusted annually under subsection (H), for all permit processing time required for a billable permit action; and
 - b. The actual costs of public notice conducted according to R18-2-330.
 2. The Director may require periodic payment of permit processing fees based on the most recent accounting of time spent processing the permit including any fees for contractors.
 3. Upon completion of permit processing activities other than issuance or denial of the permit or permit revision, the Director shall send notice of the decision to the applicant along with a final itemized bill. The maximum fee for any billable permit action for a non-Title V source is \$25,000. Except as provided in subsection (G), the Director shall not issue a permit or permit revision until the final bill is paid in full.
- C. Class I Title V Fees. The owner or operator of a Class I Title V source that has undergone initial startup by January 1 shall annually pay to the Director an administrative fee plus an emissions-based fee as follows:
1. The applicable administrative fee from the table below, as adjusted annually under subsection (H). The fee is due by

February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.

Class I Title V Source Category	Administrative Fee
Aerospace	\$20,800
Air Curtain Destructors	\$750
Cement Plants	\$63,690
Combustion/Boilers	\$15,480
Compressor Stations	\$12,730
Electronics	\$20,490
Expandable Foam	\$14,680
Foundries	\$19,520
Landfills	\$15,960
Lime Plants	\$60,160
Copper & Nickel Mines	\$15,000
Gold Mines	\$15,000
Mobile Home Manufacturing	\$14,830
Paper Mills	\$20,480
Paper Coaters	\$15,480
Petroleum Products Terminal Facilities	\$22,730
Polymeric Fabric Coaters	\$20,480
Reinforced Plastics	\$15,480
Semiconductor Fabrication	\$26,930
Copper Smelters	\$63,690
Utilities - Fossil Fuel Fired Except Coal	\$16,440
Utilities - Coal Fired	\$32,570
Vitamin/Pharmaceutical Manufacturing	\$15,800
Wood Furniture	\$15,480
Others	\$20,490
Others with Continuous Emissions Monitoring	\$20,490

2. An emissions-based fee of \$38.25 per ton of actual emissions of all regulated pollutants emitted during the previous calendar year ending 12 months earlier. The fee is adjusted annually under subsection (C)(2)(d) and due by February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.
 - a. For purposes of this Section, "actual emissions" means the quantity of all regulated pollutants emitted during the calendar year, as determined by the annual emissions inventory under R18-2-327.
 - b. For purposes of this Section, regulated pollutants consist of the following:
 - i. Nitrogen oxides and any volatile organic compounds;
 - ii. Conventional air pollutants, except carbon monoxide and ozone;
 - iii. Any pollutant that is subject to any standard promulgated under Section 111 of the Act, including fluorides, sulfuric acid mist, hydrogen sulfide, total reduced sulfur, and reduced sulfur compounds; and
 - iv. Any federally listed hazardous air pollutant.
 - c. For purposes of this Section, the following emissions of regulated pollutants are excluded from a source's actual emissions:
 - i. Emissions of any regulated pollutant from the source in excess of 4,000 tons per year;

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- ii. Emissions of any regulated pollutant already included in the actual emissions for the source, such as a federally listed hazardous air pollutant that is already accounted for as a VOC or as PM₁₀;
- iii. Emissions from insignificant activities listed in the permit application for the source under R18-2-304(F)(8);
- iv. Fugitive emissions of PM₁₀ from activities other than crushing, belt transfers, screening, or stacking; and
- v. Fugitive emissions of VOC from solution-extraction units.
- d. The Director shall adjust the rate for emission-based fees every November 1, after December 4, 2007, by multiplying \$38.25 by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year 2007. The Consumer Price Index for any year is the average of the Consumer Price Index for all-urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of that year.
- D. Class II Title V Fees.** The owner or operator of a Class II Title V source that has undergone initial startup by January 1 shall pay the applicable administrative fee from the table below, adjusted under subsection (H), for that calendar year, and annually thereafter. The fee is due by February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.
- | Class II Title V Source Category | Administrative Fee |
|--|--|
| Synthetic minor sources, except portable sources | Administrative fee from Class I Title V table for category |
| Stationary | \$8,070 |
| Portables | \$8,070 |
| Small Source | \$750 |
- E. Class II Non-Title V Fees.** The owner or operator of a Class II Non-Title V source that has undergone initial startup by January 1 shall pay the applicable inspection fee from the table below, adjusted under subsection (H), for that calendar year, and annually thereafter. The fee is due by February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.
- | Class II Non-Title V Source Category | Inspection Fee |
|--------------------------------------|----------------|
| Stationary | \$5,230 |
| Portables | \$5,230 |
| Gasoline Service Stations | \$750 |
- F.** The Director shall mail the owner or operator of each source an invoice for all fees due under subsections (C), (D), or (E) by December 1.
- G.** Any person who receives a final itemized bill from the Director under this Section for a billable permit action may request an informal review of the hours billed and may pay the bill under protest as provided below:
- The request shall be made in writing, and received by the Director within 30 days of the date of the final bill. Unless the Director and person agree otherwise, the informal review shall take place within 30 days after the Director's receipt of the request. The Director shall arrange the date and location of the informal review with the person at least 10 business days before the informal review. The Director shall review whether the amounts of time billed are correct and reasonable for the tasks involved. The Director shall mail his or her decision on the informal review to the person within 10 business days after the informal review date.
 - The Director's decision after informal review shall become final unless, within 30 days after person's receipt of the informal review decision, the person requests a hearing under R18-1-202.
 - If the final itemized bill is paid under protest, the Director shall take final action on the permit or permit revision.
- H.** The Director shall adjust the hourly rate every November 1, to the nearest 10 cents per hour, after December 4, 2007, by multiplying \$133.50 by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year 2007. The Director shall adjust the administrative or inspection fees listed in subsections (C), (D), and (E) every November 1, to the nearest \$10, beginning December 4, 2007, by multiplying the administrative or inspection fee by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year 2007. The Consumer Price Index for any year is the average of the Consumer Price Index for all-urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of that year.
- I.** An applicant for a Class I or Class II permit or permit revision may request that the Director provide accelerated processing of the application by providing the Director written notice 60 days before filing the application. The request shall be accompanied by an initial fee of \$15,000. The fee is non-refundable to the extent of the Director's costs for accelerating the processing if the Director undertakes the accelerated processing described below:
- If an applicant requests accelerated permit processing, the Director may, to the extent practicable, undertake to process the permit or permit revision according to the following schedule:
 - For applications for initial Class I and II permits under R18-2-302 or significant permit revisions under R18-2-320, the Director shall issue or deny the proposed permit or permit revision within 120 days after the Director determines that the application is complete.
 - For minor permit revisions under R18-2-319, the Director shall issue or deny the permit revision within 60 days after receiving a complete application.
 - At any time after an applicant requests accelerated permit processing, the Director may require additional advance payments based on the most recent estimate of additional costs.
 - Upon completion of permit processing activities but before issuance or denial of the permit or permit revision, the Director shall send notice of the decision to the applicant along with a final bill. The maximum fee for any billable permit action for a non-Title V source is \$25,000. The final bill shall include all regular permit processing and other fees due, and, in addition, the difference between the cost of accelerating the permit application, including any costs incurred by the Director in contracting for, hiring, or supervising the work of outside consultants, and all advance payments submitted for accelerated processing. In the event all payments made exceed actual accelerated permit costs, the Director shall refund the

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excess advance payments. Nothing in this subsection affects the public participation requirements of R18-2-330, or EPA and affected state review as required under R18-2-307 or R18-2-319.

- J. Inactive Sources. The owner or operator of a permitted source that has undergone initial startup but was shut down for the entire preceding year shall pay 50 percent of the administrative or inspection fee required under subsections (C), (D), or (E). The owner or operator of a source claiming inactive status under this subsection shall submit a letter to the Director by December 15 of the calendar year for which the source was inactive. Termination of a permit does not relieve a source of any past fees due.
- K. If an applicant uses the Tier 4 method for conducting a risk management analysis (RMA) according to R18-2-1708(B), the applicant shall pay any costs incurred by the Director in contracting for, hiring or supervising work of outside consultants.
- L. Transition.
 1. Subsections (A) through (J) of this Section are effective December 4, 2007. The first administrative or inspection fees are due on February 1, 2008.
 2. Except as provided in subsection (b), all fees incurred after December 4, 2007, are payable in accordance with the rates contained in this Section.
 - a. Emission-based fees for calendar year 2006 shall be billed at \$38.25 per ton and be due February 1, 2008.
 - b. The hourly rates and maximum fees for a new permit or permit revision are those in effect when the application for the permit or revision is determined to be complete.
 - c. Fees accrued but not yet paid before the effective date of this Section remain as obligations to be paid to the Department.

Historical Note

Emergency rule adopted effective September 17, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency rule re-adopted without change effective December 16, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency expired; text deleted (Supp. 93-1). New Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 5670, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 10 A.A.R. 4767, effective November 4, 2004 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 4379, effective December 4, 2007 (Supp. 07-4). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-326.01. Expired**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 844, effective July 1, 2010 (Supp. 10-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 613, effective February 14, 2017 (Supp. 17-1).

R18-2-327. Emissions Inventory Questionnaire and Emissions Statement**A. Emissions Inventory Questionnaire Requirements**

1. Every source subject to permit requirements under this Chapter shall complete and submit to the Director an emissions inventory questionnaire as follows:
 - a. Sources Requiring a Class I Permit under R18-2-302(B). Sources requiring a Class I permit under R18-2-302(B) shall complete and submit to the

Director an emissions inventory questionnaire no later than June 1 of each year.

- b. Sources Requiring a Class II Permit under R18-2-302(B)
 - i. Sources requiring a Class II permit under R18-2-302(B) shall complete and submit to the Director an emissions inventory questionnaire no later than June 1 every three years beginning June 1, 2021.
 - ii. At the Director's request, sources requiring a Class II permit under R18-2-302(B) may be required to complete and submit emissions inventory questionnaires in addition to the triennial emissions inventory questionnaire required under subsection (A)(1)(b)(i). The Director shall notify the owner or operator of the source in writing of the decision to require additional emissions inventory questionnaires.
2. These requirements apply whether or not a permit has been issued and whether or not a permit application has been filed.
3. The emissions inventory questionnaire shall be on an electronic or paper form provided by the Director and shall include the following information for the previous calendar year:
 - a. The source's name, description, mailing address, contact person and contact person phone number, and physical address and location, if different than the mailing address.
 - b. Process information for the source, including design capacity, throughput, operations schedule, and emissions control devices, their description and efficiencies.
 - c. The actual quantity of emissions from permitted emission points and fugitive emissions as provided in the permit, including documentation of the method of measurement, calculation, or estimation, determined pursuant to subsection (C), of the following regulated air pollutants:
 - i. Any single regulated air pollutant in a quantity greater than 1 ton or the amount listed for the pollutant in the definition of "significant" in R18-2-101(131)(a) or (b), whichever is less.
 - ii. Any combination of regulated air pollutants in a quantity greater than 2 1/2 tons.
 - d. A certification by a responsible official of truth, accuracy, and completeness. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.
4. An amendment to an emissions inventory questionnaire, containing the documentation required by subsection (A)(3), shall be submitted to the Director by any source whenever it discovers or receives notice, within two years of the original submittal, that incorrect or insufficient information was submitted to the Director by a previous emissions inventory questionnaire. The amendment shall be submitted to the Director within 30 days of discovery or receipt of notice. If the incorrect or insufficient information resulted in an incorrect annual emissions fee, the Director shall require that additional payment be made or shall apply an amount as a credit to a future annual emissions fee. The submittal of an amendment under this subsection shall not subject the owner or operator to an enforcement action or a civil or criminal penalty if the

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original submittal of incorrect or insufficient information was not due to willful neglect.

5. The Director may require submittal of supplemental emissions inventory questionnaires for air contaminants pursuant to A.R.S. §§ 49-422, 49-424, and 49-426.03 through 49-426.08.

B. Emissions Statement Requirements

1. Any stationary source located in an ozone nonattainment area that has actual emissions of 25 tons or more of nitrogen oxides (NO_x) or volatile organic compounds (VOCs) during the calendar year shall complete and submit to the Director an emissions statement no later than June 1 of the following year, except as provided in subsection (B)(5).
2. The emissions statement shall be on an electronic or paper form provided by the Director and shall require the following information for the previous calendar year:
 - a. The source's name, description, mailing address, contact person and contact person phone number, and physical address and location, if different than the mailing address.
 - b. Process information for the source, including design capacity, throughput, operations schedule, and emissions control devices, their description and efficiencies.
 - c. Actual emissions of NO_x and VOC including documentation of the method of measurement, calculation, or estimation, determined pursuant to subsection (C).
 - d. A certification by a responsible official of truth, accuracy, and completeness. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.
3. If either NO_x or VOC annual emissions are greater than or equal to 25 tons, the other pollutant shall be included in the emissions statement even if less than 25 tons.
4. An amendment to an emissions statement, containing the documentation required by subsection (B)(2), shall be submitted to the Director by any source whenever it discovers or receives notice, within two years of the original submittal, that incorrect or insufficient information was submitted to the Director by a previous emissions statement. The amendment shall be submitted to the Director within 30 days of discovery or receipt of notice. The submittal of an amendment under this subsection shall not subject the owner or operator to an enforcement action or a civil or criminal penalty if the original submittal of incorrect or insufficient information was not due to willful neglect.
5. A source that submits an emissions inventory questionnaire under subsection (A) is exempt from subsection (B) requirements for that submission year.

C. Emissions Estimation Methodology

1. Actual quantities of emissions shall be determined using the following emission factors or data.
 - a. Whenever available, emissions estimates shall either be calculated from continuous emissions monitors certified pursuant to 40 CFR 75, Subpart C and referenced appendices, or data quality assured pursuant to Appendix F of 40 CFR 60.
 - b. When sufficient data pursuant to subsection (C)(1)(a) is not available, emissions estimates shall be calculated from data from source performance tests conducted pursuant to R18-2-312 in the calen-

dar year being reported or, when not available, conducted in the most recent calendar year representing the operating conditions of the year being reported.

- c. When sufficient data pursuant to subsections (C)(1)(a) or (b) is not available, emissions estimates shall be calculated using emissions factors from EPA Publication No. AP-42 "Compilation of Air Pollutant Emission Factors," Volume I: Stationary Point and Area Sources, Fifth Edition, 1995, U.S. Environmental Protection Agency, Research Triangle Park, NC, including Supplements A through F and all updates published through July 1, 2011 (and no future editions). AP-42 is incorporated by reference and is on file with the Department of Environmental Quality and can be obtained from the Government Printing Office, 732 North Capitol Street, NW, Washington, D.C. 20401, telephone (202) 512-1800, or by downloading the document from the website for the EPA Clearinghouse for Emission Inventories and Emission Factors.
- d. When sufficient data pursuant to subsections (C)(1)(a) through (c) is not available, emissions estimates shall be calculated from material balance using engineering knowledge of process.
- e. When sufficient data pursuant to subsections (C)(1)(a) through (d) is not available, emissions estimates shall be calculated by equivalent methods approved by the Director. The Director shall only approve methods that are demonstrated as accurate and reliable as one of the methods in subsections (C)(1)(a) through (d).
2. Actual quantities of emissions calculated under subsection (C) shall be determined on the basis of actual operating hours, production rates, in-place process control equipment, operational process control data, and types of materials processed, stored, or combusted.

Historical Note

Emergency rule adopted effective September 17, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency rule re-adopted without change effective December 16, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency expired; text deleted (Supp. 93-1). New Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective December 7, 1995 (Supp. 95-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1). Amended by final rulemaking at 26 A.A.R. 3092, effective January 19, 2021 (Supp. 20-4.)

R18-2-328. Conditional Orders

- A. The Director may grant to any person a conditional order for each air pollution source which allows such person to vary from any provision of A.R.S. Title 49, Chapter 3, Article 2, or this Chapter, for any non-federally enforceable requirement of a permit issued pursuant to this Chapter if the Director makes each of the following findings:
 1. Issuance of the conditional order will not endanger public health or the environment, impede attainment or maintenance of the national ambient air quality standards, or constitute a violation of the Act; and
 2. Either of the following is true:
 - a. There has been a breakdown of equipment or upset of operations beyond the control of the petitioner which causes the source to be out of compliance

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- with the requirements of this Chapter; the source was in compliance with the requirements of this Chapter before the breakdown or upset, and the breakdown or upset may be corrected within a reasonable time;
- b. There is no reasonable relationship between the economic and social cost of, and benefits to be obtained from, achieving compliance.
- B.** The following procedures shall apply to a person seeking a conditional order:
1. The person shall file a petition for a conditional order with the Director. The petition shall contain at a minimum:
 - a. A description of the breakdown or upset;
 - b. A description of corrective action being undertaken to bring the source back into compliance;
 - c. An estimate of emissions related to the breakdown or upset;
 - d. A compliance schedule with a date of final compliance and interim dates as appropriate;
 - e. A detailed analysis of the economic and social costs and benefits of achieving compliance with the requirement for which the variance is sought, if the petition is based on subsection (A)(2)(b).
 2. If the issuance of the conditional order requires a public hearing pursuant to R18-2-330, the Director shall set the hearing date within 30 days after the filing of the petition and the hearing shall be held within 60 days after the filing of the petition.
 3. Notice of the filing of a petition for a conditional order and of the hearing date on said petition shall be published in the manner provided in A.R.S. § 49-444 and R18-2-330.
- C.** Decisions on petitions for a conditional order shall be made as follows:
1. For any conditional order that requires a revision to the SIP, the Director shall comply with the requirements contained in 40 CFR 51, Subpart F.
 2. For any other conditional order, the Director shall grant or deny the petition with such terms and conditions as are listed in subsection (E)(2) within 30 days after the conclusion of any required hearing, or, if no hearing is held, within 60 days after the filing of the petition.
- D.** A fee to cover the costs of processing conditional orders may be charged by the Director prior to issuance consistent with R18-2-326(I) or (J). The fee shall be deposited in the permit administration fund established in A.R.S. § 49-455.
- E.** The terms of a conditional order or its renewal shall conform to the following:
1. A conditional order issued by the Director shall be valid for such period as the Director prescribes but in no event for more than one year in the case of a source that is required to obtain a permit pursuant to this Chapter and Title V of the Act, and three years in the case of any other source that is required to obtain a permit pursuant to this Chapter.
 2. The terms and conditions which are imposed as a condition to the granting or the continued existence of a conditional order shall include:
 - a. A detailed plan for completion of corrective steps needed to conform to the provisions of A.R.S. Title 49, Chapter 3, Article 2, this Chapter, and the requirements of any permit issued pursuant to this Chapter;
 - b. A requirement that necessary construction shall begin as expeditiously as practicable and proceed as specified in the compliance schedule;
 - c. Written reports, at least quarterly, of the status of the source and construction progress;
 - d. The right of the Director to make periodic inspection of the facilities for which the conditional order is granted;
 - e. Such additional terms and conditions as the Director finds necessary to meet the requirements of this Section and A.R.S. § 49-437.
3. A holder of a conditional order may petition the Director to renew the order. The total term of the initial period and all renewals shall not exceed three years from the date of initial issuance of the order. Petitions for renewal may be filed at any time not more than 60 days nor less than 30 days prior to the expiration of the order. The Director, within 30 days of receipt of a petition, shall renew the conditional order for one year if the petitioner is in compliance and conforming with the terms and conditions imposed. The Director may refuse to renew the conditional order if, after a public hearing held within 30 days of receipt of a petition, the Director finds that the petitioner is not in compliance and conforming with the terms and conditions of the conditional order. If, after a period of three years from the date of original issuance, the petitioner is not in compliance and conforming with the terms and conditions, the Director may renew a conditional order for a total term of two additional years only if the Director finds that failure to comply and conform is due to conditions beyond the control of such petitioner.
4. If the Director amends or adopts any rule imposing conditions on the operation of an air pollution source which have become effective as to the source by reason of the action of the Director or otherwise, and which require the implementation of control strategies necessitating the installation of additional or different air pollution control equipment, the Director may renew a conditional order for an additional term. The term of the renewal shall be governed by the preceding subsections of this Section, except that the total term of the renewal shall not exceed two years.
5. A conditional order issued by the Director shall be effective when issued unless:
- a. The conditional order varies from the requirements of the applicable implementation plan, in which case the conditional order shall be submitted to the Administrator as a revision to the applicable implementation plan pursuant to Section 110(I) of the Act and shall become effective upon approval by the Administrator.
 - b. The conditional order varies from the requirements of a permit issued for a facility that is required to obtain a permit pursuant to Title V of the Act, in which case the conditional order shall be submitted to the Administrator if required by Section 505 of the Act and shall be effective at the end of the review period specified in such section, unless objected to within such period by the Administrator.
- F.** Violation of the terms and conditions of the conditional order shall subject the source to suspension or revocation of the conditional order in accordance with A.R.S. § 49-441.

Historical Note

Adopted effective November 15, 1993 (Supp. 93-4).

R18-2-329. Permits Containing the Terms and Conditions

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of Federal Delayed Compliance Orders (DCO) or Consent Decrees

- A. The terms and conditions of either a delayed compliance order (DCO) or consent decree shall be incorporated into a permit through a permit revision. In the event the permit expires prior to the expiration of the DCO or consent decree, the DCO or consent decree shall be incorporated into any permit renewal.
- B. The owner or operator of a source subject to a DCO or consent decree shall submit to the Director a quarterly report of the status of the source and construction progress and copies of any reports to the Administrator required under the order or decree. The Director may require additional reporting requirements and conditions in permits issued under this Article.
- C. For the purpose of this Chapter, sources subject to a consent decree issued by a federal court shall meet the same requirements as those subject to a DCO.

Historical Note

Adopted effective November 15, 1993 (Supp. 93-4).

R18-2-330. Public Participation

- A. The Director shall provide public notice, an opportunity for public comment, and an opportunity for a hearing before taking any of the following actions:
 - 1. The issuance or denial of a permit or permit renewal,
 - 2. The issuance or denial of a significant permit revision,
 - 3. The revocation and reissuance or reopening of a permit,
 - 4. The grant of any conditional orders pursuant to R18-2-328,
 - 5. The issuance or denial of a registration for the construction of a source, except as provided in R18-2-302.01(B)(5).
- B. The Director shall provide public notice of receipt of complete applications for permits or permit revisions subject to Article 4 of this Chapter by publishing a notice in a newspaper of general circulation in the county where the source is or will be located.
- C. The Director shall provide the notice required pursuant to subsection (A) as follows:
 - 1. The Director shall publish the notice once each week for two consecutive weeks in two newspapers of general circulation in the county where the source is or will be located.
 - 2. The Director shall mail a copy of the notice to persons on a mailing list developed by the Director consisting of those persons who have requested in writing to be placed on such a mailing list.
 - 3. The notice shall include the following:
 - a. Identification of the affected facility;
 - b. Name and address of the permittee or applicant;
 - c. Name and address of the permitting authority processing the permit action;
 - d. The activity or activities involved in the permit action;
 - e. The emissions change involved in any permit revisions;
 - f. The air contaminants to be emitted;
 - g. If applicable, that a notice of confidentiality has been filed under R18-2-305;
 - h. If applicable, that the source has submitted a risk management analysis under R18-2-1708;
 - i. A statement that any person may submit written comments, or a written request for a public hearing, or both, on the proposed permit action, along with the deadline for such requests or comments;

- j. The name, address, and telephone number of a person from the Department from whom additional information may be obtained;
 - k. Locations where the materials identified in subsection (D) may be reviewed and the times at which they shall be available for public inspection.
 - l. The Director shall include a statement in the public notice if the permit or permit revision would result in the generation of emission reduction credits under R18-2-1204, or the utilization of emission reduction credits under R18-2-1206.
- D. By no later than the date notice is first published under subsection (A), the Department shall make copies of the following materials available at a public location in the same county as the stationary source that is the subject of the application and at the closest Department office:
 - 1. The application;
 - 2. The proposed permit or permit revision, if applicable;
 - 3. The Department's analysis in support of the grant or denial of the permit or permit revision; and
 - 4. All other materials available to the Director that are relevant to the permit decision.
- E. The Director shall hold a public hearing to receive comments on petitions for conditional orders which would vary from requirements of the applicable implementation plan. For all other actions involving a proposed permit, the Director shall hold a public hearing only upon written request. If a public hearing is requested, the Director shall schedule the hearing and publish notice as described in A.R.S. § 49-444 and subsection (D). The Director shall give notice of any public hearing at least 30 days in advance of the hearing.
- F. At the time the Director publishes the first notice under subsection (C)(1), the applicant shall post a notice containing the information required in subsection (C)(3) at the site where the source is or may be located. Consistent with federal, state, and local law, the posting shall be prominently placed at a location under the applicant's legal control, adjacent to the nearest public roadway, and visible to the public using the public roadway. If a public hearing is to be held, the applicant shall place an additional posting providing notice of the hearing. Any posting shall be maintained until the public comment period is closed.
- G. The Director shall provide at least 30 days from the date of its first notice for public comment to receive comments and requests for a hearing. The Director shall keep a record of the commenters and of the issues raised during the public participation process and shall prepare written responses to all comments received. At the time a final proposed permit is submitted to EPA, in the case of a Class I permit, or a final decision is made, in the case of a Class II permit, the record and copies of the Director's responses shall be made available to the applicant and all commenters.

Historical Note

Adopted effective November 15, 1993 (Supp. 93-4).
Amended by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1). R18-2-330 has been corrected to include subsection (D)(12), which was omitted when the Section was amended in the 02-1 supplement (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-331. Material Permit Conditions

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- A. For the purposes of A.R.S. §§ 49-464(G) and 49-514(G), a “material permit condition” shall mean a condition which satisfies all of the following:
1. The condition is in a permit or permit revision issued by the Director or a control officer after November 15, 1993.
 2. The condition is identified within the permit as a material permit condition.
 3. The condition is one of the following:
 - a. An enforceable emission standard imposed to avoid classification as a major modification or major source or to avoid triggering any other applicable requirement;
 - b. A requirement to install, operate, or maintain a maximum achievable control technology or hazardous air pollutant reasonably available control technology required under Article 17 of this Chapter;
 - c. A requirement for the installation or certification of a monitoring device;
 - d. A requirement for the installation of air pollution control equipment;
 - e. A requirement for the operation of air pollution control equipment;
 - f. An opacity standard required by Section 111 or Title I, Part C or D of the Act.
 4. Violation of the condition is not covered by A.R.S. § 49-464(A) through (F), or (H) through (J) or A.R.S. § 49-514(A) through (F), or (H) through (J).
- B. For the purposes of subsections (A)(3)(c), (d), and (e), a permit condition shall not be material where the failure to comply resulted from circumstances which were outside the control of the source. As used in this Section, “circumstances outside the control of the source” shall mean circumstances where the violation resulted from a sudden and unavoidable breakdown of the process or the control equipment, resulted from unavoidable conditions during a start up or shut down or resulted from upset of operations.
- C. For purposes of this Section, the term “emission standard” shall have the meaning specified in A.R.S. §§ 49-464(U) and 49-514(T).
1. 213.25 feet (65 meters) measured from the ground-level elevation at the base of the stack;
 2. The result of one of the following equations, where “Hg” = good engineering practice stack height measured from the ground-level elevation at the base of the stack; “H” = height of nearby structures measured from the ground-level elevation at the base of the stack; and “L” = lesser dimension (height or projected width) of nearby structures:
 - a. For stacks in existence on January 12, 1979, and for which the owner or operator had obtained all applicable preconstruction permits or approvals required under 40 CFR 51 and 52, $H_g = 2.5H$, provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation; or
 - b. For all other stacks, $H_g = H + 1.5L$, provided that EPA, the Director, or local control agency may require the use of a field study or fluid model to verify good engineering practice stack height for the source;
 3. The height demonstrated by a fluid model or a field study approved by the reviewing agency, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures, or nearby terrain features.
- D. As used in this Section:
1. For a specific structure or terrain feature, “nearby” means:
 - a. For purposes of applying the formulae in subsection (C)(2), that distance up to five times the lesser of the height or the width dimension of a structure but not greater than 0.8 km (1/2 mile).
 - b. For conducting demonstrations under subsection (C)(3), not greater than 0.8 km (1/2 mile). An exception is that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height (Ht) of the feature, not to exceed 2 miles if such feature achieved a height (Ht) 0.8 km from the stack that is at least 40% of the good engineering practice stack height determined by the formula provided in subsection (C)(2)(b), or 85 feet (26 meters), whichever is greater, as measured from the ground-level elevation at the base of the stack.
 2. “Excessive concentrations” means:
 - a. For sources seeking credit for stack height exceeding that established under subsection (C)(2), a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than a national ambient air quality standard. For sources subject to R18-2-406, an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of such downwash,

Historical Note

Adopted effective November 15, 1993 (Supp. 93-4).
 Amended effective June 4, 1998 (Supp. 98-2). Amended
 by final rulemaking at 12 A.A.R. 1953, effective January
 1, 2007 (Supp. 06-2).

R18-2-332. Stack Height Limitation

- A. The degree of emission limitation required of any source for control of any pollutant shall not be affected by so much of the source’s stack height that exceeds good engineering practice or by any other dispersion technique, except as provided in subsection (B). This Section does not require the plan to restrict, in any manner, the actual stack height of any source.
- B. Subsection (A) shall not apply to:
1. Stacks in existence, or dispersion techniques implemented, on or before December 31, 1970, unless the stationary source or emission unit emitting pollutants through the stack, or employing the dispersion technique, was constructed, reconstructed or underwent a major modification after December 31, 1970; or
 2. Coal-fired steam electric generating units, subject to the provisions of Section 118 of the Act which commenced operation before July 1, 1957, with stacks constructed under a construction contract awarded before February 8, 1974.
- C. Good engineering practice stack height is the greater of the following heights:

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wakes, or eddy effects and greater than the applicable maximum allowable increase contained in R18-2-218. The allowable emission rate to be used in making demonstrations under subsection (C)(3) shall be prescribed by the new source performance standard which is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the Director, an alternative emission rate shall be established in consultation with the source owner or operator;

- b. For sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under subsection (C)(2), either:
 - i. A maximum ground-level concentration due in whole or in part to downwash, wakes, or eddy effects as provided in subsection (D)(2)(a), except that emission rate specified by any applicable SIP (or, in the absence of such a limit, the actual emission rate) shall be used; or
 - ii. The actual presence of a local nuisance caused by the existing stack, as determined by the Director; and
- c. For sources seeking credit after January 12, 1979, for a stack height determined under subsection (C)(2), where the Director requires the use of a field study or fluid model to verify good engineering practice stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in subsection (C)(2), a maximum ground-level concentration due in whole or in part to downwash, wakes, or eddy effects that is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

- E. Before the Director issues a permit or permit revision under R18-2-334 or Article 4 to a source based on a good engineering practice stack height that exceeds the height allowed by subsections (B)(1) or (2), the Director shall notify the public of the availability of the demonstration study and provide opportunity for a public hearing in accordance with the requirements of R18-2-330.

Historical Note

Adopted effective November 15, 1993 (Supp. 93-4).
Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-333. Acid Rain

- A. 40 CFR 72, 74, 75 and 76 and all accompanying appendices, adopted as of June 28, 2013, (and no future amendments) are incorporated by reference as applicable requirements. These standards are on file with the Department and shall be applied by the Department. These standards can be obtained from the U.S. Government Printing Office, Superintendent of Documents, bookstore.gpo.gov, Mail Stop: SSOP IDCC-SSOM, Washington, D.C. 20402-9328.
- B. When used in 40 CFR 72, 74, 75 or 76, "Permitting Authority" means the Arizona Department of Environmental Quality and "Administrator" means the Administrator of the United States Environmental Protection Agency.
- C. If the provisions or requirements of the regulations incorporated in this Section conflict with any of the remaining por-

tions of this Title, the regulations incorporated in this Section apply and take precedence.

Historical Note

Adopted effective October 7, 1994 (Supp. 94-4).
Amended effective December 7, 1995 (Supp. 95-4).
Amended effective December 4, 1997 (Supp. 97-4).
Amended by final rulemaking at 5 A.A.R. 3221, effective August 12, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 4170, effective October 11, 2000 (Supp. 00-4). Amended by final rulemaking at 8 A.A.R. 2543, effective May 24, 2002 (Supp. 02-2). Amended by final rulemaking at 10 A.A.R. 3281, effective September 27, 2004 (Supp. 04-3). Amended by final rulemaking at 11 A.A.R. 5504, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 4199, effective January 5, 2008 (Supp. 07-4). Amended by final expedited rulemaking at 21 A.A.R. 2747, effective December 13, 2015 (Supp. 15-4).

R18-2-334. Minor New Source Review

- A. Applicability.
 1. Except as provided in subsection (A)(4), this Section shall apply to the following activities:
 - a. Construction of any new Class I or Class II source, including the construction of any source requiring a Class II permit under R18-2-302.01(C)(4); or
 - b. Any minor NSR modification to a Class I or Class II source.
 2. This Section shall apply to a regulated minor NSR pollutant emitted by a new stationary source subject to this Section, if the source will have the potential to emit that pollutant at an amount equal to or greater than the permitting exemption threshold.
 3. This Section shall apply to an increase in emissions of a regulated minor NSR pollutant from a minor NSR modification, if the modification would increase the source's potential to emit that pollutant by an amount equal to or greater than the permitting exemption threshold.
 4. This Section shall not apply to the emissions of a pollutant from any of the activities identified in this subsection, if the emissions of that pollutant are subject to Article 4 of this Chapter.
- B. No person shall begin actual construction of a new stationary source, or minor NSR modification, subject to this Section without first obtaining a permit, a permit revision, a proposed final permit, or a proposed final permit revision from the Director in accordance with R18-2-304.
- C. The Director shall not issue a proposed final Class I permit or permit revision or a Class II permit or permit revision subject to this Section to a person proposing to construct a new source or make a minor NSR modification unless the source or modification meets one of the following conditions for each regulated minor NSR pollutant subject to this Section:
 1. The owner or operator elects to implement RACT.
 - a. In the case of a new source, the owner or operator shall implement RACT for each emissions unit that has the potential to emit a regulated minor NSR pollutant in an amount equal to or greater than 20% of the permitting exemption threshold.
 - b. In the case of a minor NSR modification, the owner or operator shall implement RACT for each emissions unit that will experience an increase in the potential to emit a regulated minor NSR pollutant equal to or greater than 20% of the permitting exemption threshold.

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- c. When it is technically feasible and otherwise consistent with the definition of RACT to apply the same devices, systems, process modifications, work practices or other apparatus or techniques to a group of emissions units, that group of emissions units shall be treated as a single emissions unit for purposes of subsections (C)(1)(a) and (b). The following are examples of situations to which this subsection (may) apply:
 - i. Emissions from a group of emissions units can be vented to a single control device.
 - ii. A low-VOC coating can be used in several spray-painting booths.
 - 2. An ambient air quality assessment demonstrates that emissions from the source or minor NSR modification will not interfere with attainment or maintenance of a national ambient air quality standard in any area.
 - a. An owner or operator may elect to have the Director perform a screening model of its emissions. If the results of the screening model indicate that the source or minor NSR modification will interfere with attainment or maintenance of a national ambient air quality standard, the owner or operator may perform a more refined model to make the demonstration required by this subsection.
 - b. The requirements of this subsection shall be satisfied, if the results of the screening or more refined model conducted pursuant to subsection (B)(2)(a) demonstrate either of the following:
 - i. Ambient concentrations resulting from emissions from the source or modification combined with existing concentrations of regulated minor NSR pollutants will not interfere with attainment or maintenance of a national ambient air quality standard.
 - ii. Emissions from the source or minor modification will have an ambient impact below the significance levels as defined in R18-2-401.
 - c. The assessment required by this subsection shall take into account any limitations, controls or emissions decreases that are or will be enforceable in the permit or permit revision for the source.
- D. RACT Determinations.
 - 1. Except as otherwise provided in this subsection, the Director shall determine RACT on the basis of a case-by-case analysis performed by the permit applicant of the emission reduction methods available for each emission unit subject to the RACT requirement under subsection (C)(1).
 - 2. The Director shall accept a requirement proposed by a permit applicant as RACT under subsection (C)(1) if it complies with the most recently adopted of the following guidelines or standards in effect at the time of the application:
 - a. A control technique guideline issued by the Administrator under section 108(f)(1) of the Act.
 - b. An emissions standard established or revised by the Administrator for the same type of source under section 111 or 112 of the Act after November 15, 1990.
 - c. An applicable requirement of this Chapter or of air quality control regulations adopted by a County under A.R.S. § 49-479 that has been specifically identified as constituting RACT.
 - d. A RACT standard imposed on the same type of source by a general permit.
 - e. A RACT standard imposed on the same type of source under this Section no more than 10 years before submission of the application by the permit applicant. To facilitate identification of previously imposed RACT standards, the Director shall establish an online database of RACT determinations made under this Section.
- E. Notwithstanding an election to adopt RACT under subsection (C)(1), a permit applicant subject to this Section shall conduct an ambient air quality impact assessment under subsection (C)(2) upon the Director's request. The Director shall make such a request, if there is reason to believe that a source or minor NSR modification could interfere with attainment or maintenance of a national ambient air quality standards. In making that determination, the Director shall take into consideration:
 - 1. The source's emission rates.
 - 2. The location of emission units within the facility and their proximity to the ambient air.
 - 3. The terrain in which the source is or will be located.
 - 4. The source type.
 - 5. The location and emissions of nearby sources.
 - 6. Background concentrations of regulated minor NSR pollutants.
- F. The Director shall deny an application for a Class I permit or permit revision or a Class II permit or permit revision subject to this Section, if an assessment conducted pursuant to subsection (C)(2) demonstrates that the source or modification will interfere with attainment or maintenance of a national ambient air quality standard.
- G. A copy of the notice required by R18-2-330 for permits or significant permit revisions subject to this Section must also be sent to the Administrator through the appropriate regional office, and to all other state and local air pollution control agencies having jurisdiction in the region in which the source subject to the permit or permit revision will be located. The notice also must be sent to any other agency in the region having responsibility for implementing the procedures required under 40 CFR 51, Subpart I.
- H. All modeling required pursuant to this Section shall be conducted in accordance with 40 CFR 51, Appendix W as of June 30, 2017 (and no future amendments or additions).
- I. The Director shall specify those conditions in the permit that are implemented pursuant to this Section. The specified conditions shall be included in subsequent permit renewals unless modified pursuant to this Section or Article 4 of this Chapter.
- J. The issuance of a permit or permit revision under this Section shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of the SIP and any other requirements under local, state, or federal law.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1). Amended by final rulemaking at 25 A.A.R. 3630, effective February 1, 2020 (Supp. 19-4).

ARTICLE 4. PERMIT REQUIREMENTS FOR NEW MAJOR SOURCES AND MAJOR MODIFICATIONS TO EXISTING MAJOR SOURCES

R18-2-401. Definitions

The following definitions apply to this Article:

- 1. "Adverse impact on visibility" means visibility impairment that interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of a federal Class I area, as determined according to

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R18-2-410. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these factors correlate with times of visitor use of the federal Class I area and the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas.

2. "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with subsections (2)(a) through (d).
 - a. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five-year period immediately preceding when the owner or operator begins actual construction of the project. The Director shall allow the use of a different time period upon a determination that it is more representative of normal source operation.
 - i. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.
 - ii. The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.
 - iii. For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.
 - iv. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subsection (2)(a)(ii).
 - b. For any existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Administrator for a permit required under 40 CFR 52.21 or by the Director for a permit required under the state implementation plan, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.
 - i. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.
 - ii. The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period. This provision applies to excess emissions associated with a malfunction.
- iii. The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major source must currently comply, had such major source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR 63, the baseline actual emissions need only be adjusted if the state of Arizona has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G).
- iv. For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units affected by the project. A different consecutive 24-month period may be used for each regulated NSR pollutant.
- v. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subsection (2)(b)(ii) or (iii).
- c. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.
- d. For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures in subsection (2)(a), for other existing emissions units in accordance with the procedures contained in subsection (2)(b), and for new emissions units in accordance with the procedures contained in subsection (2)(c).

3. "Basic design parameter" means:

- a. Except as provided in subsection (3)(c), for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on Btu content shall be used for determining the basic design parameters for a coal-fired electric utility steam generating unit.
- b. Except as provided in subsection (3)(c), the basic design parameters for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material when selecting a basic design parameter.

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- c. If the owner or operator believes the basic design parameters in subsections (3)(a) and (b) are not appropriate for a specific industry or type of process unit, the owner or operator may propose to the Director an alternative basic design parameters for the source's process unit. If the Director approves of the use of an alternative basic design parameters, the Director shall issue a permit that is legally enforceable that records such basic design parameters and requires the owner or operator to comply with such parameters.
 - d. The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameters specified in subsections (3)(a) and (b).
 - e. If design information is not available for a process unit, then the owner or operator shall determine the process unit's basic design parameters using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.
 - f. Efficiency of a process unit is not a basic design parameter.
 - g. The replacement activity shall not cause the process unit to exceed any emission limitation, or operational limitation that has the effect of constraining emissions, that applies to the process unit and that is legally enforceable.
4. "Complete" means, in reference to an application for a permit or permit revision, that the application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the Department from requesting or accepting any additional information.
 5. "Dispersion technique" means any technique that attempts to affect the concentration of a pollutant in the ambient air by any of the following:
 - a. Using that portion of a stack that exceeds good engineering practice stack height;
 - b. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or
 - c. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams that increases the exhaust gas plume rise. This shall not include any of the following:
 - i. The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream.
 - ii. The merging of exhaust gas streams under any of the following conditions:
 - (1) The source owner or operator demonstrates that the facility was originally designed and constructed with the merged gas streams;
 - (2) After July 8, 1985, the merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant, applying only to the emission limitation for that pollutant; or
- (3) Before July 8, 1985, the merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the Department shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the Department shall deny credit for the effects of the merging in calculating the allowable emissions for the source.
 - iii. Smoke management in agricultural or silvicultural prescribed burning programs.
 - iv. Episodic restrictions on residential woodburning and open burning.
 - v. Techniques that increase final exhaust gas plume rise if the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.
6. "Existing emissions unit" is any emissions unit that is currently in existence and that is not a new emissions unit. A replacement unit is an existing emissions unit.
 7. "Federal Class I area" means an area designated as Class I under R18-2-217.
 8. "High terrain" means any area having an elevation of 900 feet or more above the base of the stack of a source.
 9. "Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice, or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.
 10. "Low terrain" means any area other than high terrain.
 11. "Lowest achievable emission rate" (LAER) means, for any source, the more stringent rate of emissions based on one of the following:
 - a. The most stringent emissions limitation that is contained in any implementation plan approved or promulgated under sections 110 or 172 of the Act for the class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that the limitation is not achievable; or
 - b. The most stringent emissions limitation that is achieved in practice by the class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. The application of this term shall not permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under the applicable new source performance standards.

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12. "Major emissions unit" means:
- Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or
 - Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant for nonattainment areas. For example, in accordance with the definition of major stationary source in section 182(c) of the Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.
13. "Major source" is defined as follows:
- For purposes of determining the applicability of R18-2-403 through R18-2-405 or R18-2-411, major source means any stationary source that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant, except that the following thresholds shall apply in areas subject to subpart 2, subpart 3 or subpart 4 of part D, Title I of the Act:
- | Pollutant Emitted | Nonattainment Pollutant and Classification | Quantity Threshold tons/year or more |
|--|--|--------------------------------------|
| Carbon Monoxide (CO) | CO, Serious, if stationary sources contribute significantly to CO levels in the area as determined under rules issued by the Administrator | 50 |
| VOC | Ozone, Serious | 50 |
| VOC | Ozone, Severe | 25 |
| PM ₁₀ | PM ₁₀ , Serious | 70 |
| PM _{2.5} | PM _{2.5} Serious | 70 |
| PM _{2.5} precursors identified in R18-2-101(124)(a) | PM _{2.5} Serious | 70 |
| NO _x | Ozone, Serious | 50 |
| NO _x | Ozone, Severe | 25 |
- For purposes of determining the applicability of R18-2-406 through R18-2-408 or R18-2-410, major source means any stationary source that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant if the source is classified as a categorical source, or 250 tons per year or more of any regulated NSR pollutant if the source is not classified as a categorical source;
 - A major source includes a physical change that would occur at a stationary source, not otherwise qualifying under subsection (13)(a) or (b) as a major source, if the change would constitute a major source by itself.
 - A major source that is major for VOC or nitrogen oxides shall be considered major for ozone.
 - The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this Article whether it is a major source, unless the source belongs to a section 302(j) category.
14. "Mandatory federal Class I area" means an area identified in R18-2-217(B).
15. "New emissions unit" means any emissions unit which is (or will be) newly constructed and which has existed for less than two years from the date such emissions unit first operated.
16. "Plantwide applicability limitation" or "PAL" means an emission limitation that is based on the baseline actual emissions of all emissions units at the stationary source that emit or have the potential to emit the PAL pollutant, expressed in tons per year, for a pollutant at a major source, that is enforceable as a practical matter and established source-wide in accordance with this Section.
17. "PAL allowable emissions" means "allowable emissions" as defined in R18-2-101, except that the allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.
18. PAL effective date generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.
19. "PAL effective period" means the period beginning with the PAL effective date and ending 10 years later.
20. "PAL major modification" means any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.
21. "PAL permit" means the permit issued by the Director that establishes a PAL for a major source under Article 3 or 4 of this Chapter.
22. "PAL pollutant" means the pollutant for which a PAL is established at a major source.
23. "Projected actual emissions" means:
- The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant during any 12-month period in the 60 calendar months following the date the unit resumes regular operation after the project, or in any 12-month period in the 120 calendar months following that date if the project involves increasing the design capacity or potential to emit of any emissions unit for that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major source.
 - In determining the projected actual emissions before beginning actual construction, the owner or operator of the major source:
 - Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the county, state or federal regulatory authorities, and compliance plans under these regulations; and
 - Shall include fugitive emissions to the extent quantifiable;
 - Shall include emissions associated with start-ups, shutdowns, and malfunctions; and
 - Shall exclude, only for calculating any increase in emissions that results from the particular

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- project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or
- c. In lieu of using the method set out subsections 23(b)(i) through (iv), the owner or operator may elect to use the emissions unit's potential to emit, in tons per year.
24. "Replacement unit" means an emissions unit for which all the criteria listed in subsections (24)(a) through (d) are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.
- The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.
 - The emissions unit is identical to or functionally equivalent to the replaced emissions unit.
 - The replacement does not alter the basic design parameters of the process unit.
 - The replaced emissions unit is permanently removed from the major source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.
25. "Resource recovery project" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. Only energy conversion facilities that utilize solid waste that provides more than 50% of the heat input shall be considered a resource recovery project under this Article.
26. "Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.
27. "Significance levels" means the following ambient concentrations for the enumerated pollutants:

Averaging Time					
Pollutant	Annual	24-Hour	8-Hour	3-Hour	1-Hour
SO ₂	1 µg/m ³	5 µg/m ³		25 µg/m ³	
NO ₂	1 µg/m ³				
CO			0.5 mg/m ³		2 mg/m ³
PM ₁₀	1 µg/m ³	5 µg/m ³			
PM _{2.5} federal Class I area	0.06 µg/m ³	0.07 µg/m ³			
PM _{2.5} federal Class II area	0.3 µg/m ³	1.2 µg/m ³			
PM _{2.5} federal Class III area	0.3 µg/m ³	1.2 µg/m ³			

Except for the annual pollutant concentrations, the Department shall deem that exceedance of significance levels has occurred when the ambient concentration of the above pollutant is exceeded more than once per year at any one location. If the concentration occurs at a specific location and at a time when the national ambient air quality standards for the pollutant are not violated, the significance level does not apply.

28. "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Former Section R9-3-401 renumbered without change as Section R18-2-401 (Supp. 87-3). Section R18-2-401 renumbered to R18-2-601. New Section R18-2-401 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Typographical error corrected in R18-2-401(9)(a) (Supp. 00-4). Amended by final rulemaking at 13 A.A.R. 1134, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-402. General

- The preconstruction review requirements of this Article shall apply to the construction of any new major source or any project at an existing major source.
- The requirements of R18-2-403 through R18-2-410 apply to the construction of any new major source or any major modification of any existing major source, except as this Article otherwise provides.
- No person shall begin actual construction of a new major source or a major modification subject to the requirements of R18-2-403 through R18-2-410 without first obtaining a proposed final permit from the Director, pursuant to R18-2-307(A)(2), stating that the major source or major modification shall meet those requirements.
- The requirements of this Article apply to projects at major sources in accordance with the following principles.
 - Except as otherwise provided in subsection (E), a project is a major modification for a regulated NSR pollutant if it causes both a significant emissions increase and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.
 - The procedure for calculating before beginning actual construction whether a significant emissions increase will occur depends upon the types of emissions units being modified as set forth in subsections (D)(3) through (6). The procedure for calculating before beginning actual construction whether a significant net emissions increase will occur at the major source is set forth in the definition of net emissions increase in R18-2-101. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.
 - Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the

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- projected actual emissions and the baseline actual emissions, for each existing emissions unit, equals or exceeds the significant amount for that pollutant.
4. Actual-to-potential applicability test for projects that only involve new emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.
 5. [Reserved.]
 6. Hybrid applicability test for projects that involve both new emissions units and existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subsections (D)(3) through (D)(4), as applicable with respect to each emissions unit, equals or exceeds the significant amount for that pollutant.
- E.** Any major source with a PAL for a regulated NSR pollutant shall comply with R18-2-412.
- F.** This subsection applies with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of subsection (F)(6), that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant and the owner or operator elects to use the method specified in R18-2-401(23)(b)(i) through (iv) of the definition of projected actual emissions for calculating projected actual emissions.
1. Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:
 - a. A description of the project;
 - b. Identification of the emissions unit(s) with emissions of a regulated NSR pollutant that could be affected by the project;
 - c. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions the amount of emissions excluded under R18-2-401(23)(b)(iv) of the definition of projected actual emissions, and an explanation for why such amount was excluded; and
 - d. Any netting calculations, if applicable.
 2. If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in subsection (F)(1) to the Director. Nothing in this subsection shall be construed to require the owner or operator of such a unit to obtain any determination from the Director before beginning actual construction.
 3. The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subsection (F)(1)(b); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit. For purposes of this subsection, fugitive emissions (to the extent quantifiable) shall be monitored if the emissions unit is part of a section 302(j) category or if the emissions unit is located at a major stationary source that belongs to a section 302(j) category.
 4. The owner or operator shall submit a report to the Director if for a calendar year the annual emissions, in tons per year, from the project identified in subsection (F)(1) exceed the sum of the baseline actual emissions, as documented and maintained under subsection (F)(1)(c), by a significant amount for that regulated NSR pollutant, and if the emissions differ from the preconstruction projection as documented and maintained under subsection (F)(1)(c). The owner or operator shall submit the report to the Director within 60 days after the end of the calendar year. The report shall contain the following:
 - a. The name, address and telephone number of the major source;
 - b. The annual emissions as calculated pursuant to subsection (F)(3); and
 - c. Any other information that the owner or operator wishes to include in the report, such as an explanation as to why the emissions differ from the preconstruction projection.
 5. Notwithstanding subsection (F)(4), if any existing emissions unit identified in subsection (F)(1)(b) is an electric utility steam generating unit, the owner or operator shall submit a report to the Director within 60 days after the end of each calendar year during which the owner or operator must generate records under subsection (F)(3). The report shall document the unit's post-project annual emissions during the calendar year that preceded submission of the report.
 6. A "reasonable possibility" under subsection (F) occurs when the owner or operator calculates the project to result in one of the following:
 - a. A projected actual emissions increase of at least 50% of the amount that is a significant emissions increase (without reference to the amount that is a significant net emissions increase) for the regulated NSR pollutant.
 - b. A projected actual emissions increase that, added to the amount of emissions excluded under subsection R18-2-401(23)(b)(iv) of the definition of projected actual emissions, sums to at least 50% of the amount that is a significant emissions increase (without reference to the amount that is a significant net emissions increase) for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of subsection (F)(6)(b), and not also within the meaning of subsection (F)(6)(a), subsections (F)(2) through (5) do not apply to the project.
 7. The owner or operator of the source shall make the information required to be documented and maintained under subsection (F) available for review upon request for inspection by the Department or the general public.
- G.** An application for a permit or permit revision under this Article, other than a PAL permit pursuant to R18-2-412, shall not be considered complete unless the application demonstrates that:
1. The requirements in subsection (H) are met;
 2. The more stringent of the applicable new source performance standards or the existing source performance standards in Article 7 of this Chapter are applied to the

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- proposed new major source or major modification of a major source;
3. The visibility requirements contained in R18-2-410 are satisfied;
 4. All applicable provisions of Article 3 of this Chapter are met;
 5. The new major source or major modification will be in compliance with whatever emission limitation, design, equipment, work practice or operational standard, or combination thereof is applicable to the source or modification. The degree of emission limitation required for control of any pollutant under this Article shall not be affected in any manner by:
 - a. Stack height in excess of GEP stack height except as provided in R18-2-332; or
 - b. Any other dispersion technique, unless implemented prior to December 31, 1970;
 6. The new major source or major modification will not exceed the applicable standards for hazardous air pollutants contained in this Chapter;
 7. The new major source or major modification will not exceed the limitations, if applicable, on emission from nonpoint sources contained in Article 6 of this Chapter;
 8. The new major source or major modification will not have an adverse impact on visibility, as determined according to R18-2-410.
- H.** Except for assessing air quality impacts within federal Class I areas, the air impact analysis required to be conducted as part of a permit application shall initially consider only the geographical area located within a 50 kilometer radius from the point of greatest emissions for the new major source or major modification. The Director, on his own initiative or upon receipt of written notice from any person shall have the right at any time to request an enlargement of the geographical area for which an air quality impact analysis is to be performed by giving the person applying for the permit or permit revision written notice thereof, specifying the enlarged radius to be so considered. In performing an air impact analysis for any geographical area with a radius of more than 50 kilometers, the person applying for the permit or permit revision may use monitoring or modeling data obtained from major sources having comparable emissions or having emissions which are capable of being accurately used in such demonstration, and which are subjected to terrain and atmospheric stability conditions which are comparable or which may be extrapolated with reasonable accuracy for use in such demonstration.
- I.** The Director shall comply with following requirements with respect to an application for a permit or permit revision subject to this Article:
1. Within 60 days after receipt of the application, or any addition to the application, the Director shall advise the applicant of any deficiency. The date of receipt of a complete application shall be, for the purpose of this Section, the date on which the Director receives all required information. The permit application shall not be deemed complete if the Director fails to meet the requirements of this subsection.
 2. Within one year after receipt of a complete application, the Director shall do all of the following:
 - a. Make a preliminary determination as to whether the permit or permit revision should be granted or denied.
 - b. Make the application, all materials the applicant submitted, the preliminary determination, and materials relating to the application available under R18-2-330(D).
 - c. Notify the public of the application, the preliminary determination and the opportunity for a public hearing and to submit written comments in accordance with R18-2-330(C). In the case of an application subject to R18-2-406, the notice shall include the degree of consumption of the maximum allowable increases allowed under R18-2-218 that is expected to occur as a result of emissions from the proposed source or modification.
 - d. Take final action on the application by denying the permit or permit revision or issuing a proposed final permit or permit revision.
 - e. Notify the applicant in writing of the approval or denial and make the notification, comments on the proposed action, and materials supporting the final action available for public inspection at the location where materials relating to the proposed action were placed under R18-2-330(D).
 3. A copy of any notice required by R18-2-330 and subsection (I)(2)(c) shall be sent to the permit applicant, to the Administrator, and to the following officials and agencies having cognizance over the location where the proposed major source or major modification would occur:
 - a. The air pollution control officer, if one exists, for the county wherein the proposed or existing source that is the subject of the permit or permit revision application is located;
 - b. The county manager for the county wherein the proposed or existing source that is the subject of the permit or permit revision application is located;
 - c. The city or town managers of the city or town which contains, and any city or town the boundaries of which are within 5 miles of, the location of the proposed or existing source that is the subject of the permit or permit revision application;
 - d. Any regional land use planning agency with authority for land use planning in the area where the proposed or existing source that is the subject of the permit or permit revision application is located; and
 - e. Any state, Federal Land Manager, or Indian governing body whose lands may be affected by emissions from the proposed source or modification.
 - J.** The authority to construct and operate a new major source or major modification under a permit or permit revision issued under this Article shall terminate if the owner or operator does not commence the proposed construction or major modification within 18 months of issuance or if, during the construction or major modification, the owner or operator suspends work for more than 18 months. The Director may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

Historical Note

Amended effective August 6, 1976 (Supp. 76-4). Former Section R9-3-402 repealed, new Section R9-3-402 adopted effective May 14, 1979 (Supp. 79-1). Amended and adopted by reference Open Burning Guidelines for Air Pollution Control effective September 22, 1983 (Supp. 83-5). Former Section R9-3-402 renumbered without change as Section R18-2-402 (Supp. 87-3). Section R18-2-402 renumbered to R18-2-602, new Section R18-2-402 adopted effective November 15, 1993 (Supp.

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93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-403. Permits for Sources Located in Nonattainment Areas

- A.** Except as provided in subsections (C) through (G) below, no permit or permit revision shall be issued under this Article to a person proposing to construct a new major source or make a major modification that is major for the pollutant for which the area is designated nonattainment unless:
1. The person demonstrates that the new major source or the major modification will meet an emission limitation which is the lowest achievable emission rate (LAER) for that source for that regulated NSR pollutant.
 2. The person demonstrates that all existing major sources owned or operated by that person (or any entity controlling, controlled by, or under common control with that person) in the state are in compliance with, or on a schedule of compliance for, all conditions contained in permits of each of the sources and all other applicable emission limitations and standards under the Act and this Chapter.
 3. The person demonstrates that emission reductions for the specific pollutant(s) from source(s) in existence in the allowable offset area of the new major source or major modification (whether or not under the same ownership) meet the offset requirements of R18-2-404.
 4. The Administrator has not determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed source is to be constructed or modified in accordance with the requirements in this Section.
- B.** No permit or permit revision under this Article shall be issued to a person proposing to construct a new major source or make a major modification to a major source located in a nonattainment area unless:
1. The person performs an analysis of alternative sites, sizes, production processes, and environmental control techniques for such new major source or major modification; and
 2. The Director determines that the analysis demonstrates that the benefits of the new major source or major modification significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.
- C.** At such time that a particular source or modification becomes a major source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as restriction on hours of operation, then the requirements of this Section shall apply to the source or modification as though construction had not yet commenced on the source or modification.
- D.** Secondary emissions shall not be considered in determining the potential to emit of a new source or modification and therefore whether the new source or modification is major. However, if a new source or modification is subject to this Section on the basis of its direct emissions, a permit or permit revision under this Article to construct the new source or modification shall be denied unless the requirements of R18-2-403(A)(3) and R18-2-404 are met for reasonably quantifiable secondary emissions caused by the new source or modification.
- E.** A permit to construct a new major source or major modification shall be denied unless the conditions specified in subsections (A)(1), (2), and (3) are met for fugitive emissions caused by the new source or modification. However, these conditions

shall not apply to a new major source or major modification that would be a major source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential emissions of the source or modification, and the source does not belong to a section 302(j) category.

- F.** The requirements of subsection (A)(3) shall not apply to temporary emissions units, such as pilot plants, portable facilities that will be relocated outside of the nonattainment area and the construction phase of a new source, if those units will operate for no more than 24 months in the nonattainment area, are otherwise in compliance with the requirement to obtain a permit under this Chapter and are in compliance with the conditions of that permit.
- G.** A decrease in actual emissions shall be considered in determining the potential of a new source or modification to emit only to the extent that the Director has not relied on it in issuing any permit or permit revision under this Article or the state has not relied on it in demonstrating attainment or reasonable further progress.
- H.** The Director shall transmit to the Administrator a copy of each permit application relating to a major stationary source or major modification under this Section. Within 30 days of the issuance of any permit under this Section, the Director shall also submit control technology information from the permit to the Administrator for the purposes listed in Section 173(d) of the Act.
- I.** The issuance of a permit or permit revision under this Article in accordance with this Section shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of the SIP and any other requirements under local, state, or federal law.

Historical Note

Former Section R9-3-403 repealed, new Section R9-3-403 adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-403 renumbered without change as Section R18-2-403 (Supp. 87-3). Section R18-2-403 renumbered to R18-2-603, new Section R18-2-403 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-404. Offset Standards

- A.** Increased emissions by a major source or major modification subject to R18-2-403 of each pollutant for which the area has been designated as nonattainment and for which the source or modification is classified as major shall be offset by real reductions in the actual emissions of the pollutant. Offsets shall be for the same regulated NSR Pollutant. Except as provided in R18-2-405 and subsection (J), the ratio of the total actual reductions to the emissions increase shall be at least 1 to 1.
- B.** Except as provided in subsections (B)(1) or (2), for sources and modifications subject to this Section, the baseline for determining credit for emissions reductions is the emissions limit for the source generating the offset credit under the applicable implementation plan in effect at the time the application for a permit or permit revision is filed.
1. The offset baseline shall be the actual emissions of the source from which offset credit is obtained where either of the following conditions is satisfied:
 - a. The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located

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within a designated nonattainment area for which the preconstruction review program was adopted.

- b. The applicable implementation plan does not contain an emissions limitation for that source or source category.
2. Where the emissions limit under the applicable implementation plan allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential.
- C. For an existing fuel combustion source, emissions offset credit shall be based on the allowable emissions under the applicable implementation plan for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable or actual emissions for the fuels involved is not acceptable, unless the permit for the existing source is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a fuel generating higher emissions. The owner or operator of the existing source must demonstrate that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches.
- D. Offset Credit for Shutdowns.
 1. Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may be credited for offsets if they meet both of the following conditions.
 - a. The reductions are surplus, permanent, quantifiable, and federally enforceable.
 - b. The shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this subsection, the Director may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.
 2. Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements in subsection (D)(1)(b) may be credited only if one of the following conditions is satisfied:
 - a. The shutdown or curtailment occurred on or after the date the construction permit application is filed.
 - b. The applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment met the requirements of subsection (D)(1)(a).
- E. No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds," 42 FR 35314 (July 8, 1977).
- F. All emission reductions claimed as offset credits shall be federally enforceable by the time a proposed final permit is issued to the owner or operator of the major source subject to this Section and shall be in effect by the time the new or modified source subject to the permit commences operation.
- G. The owner or operator of a major source or major modification subject to this Section must obtain offset credits from the same source or from other sources in the same nonattainment area,

except that the Director may allow the owner or operator to obtain offset credits from another nonattainment area if both of the following conditions are satisfied:

1. The other area has an equal or higher nonattainment classification than the area in which the source is located.
2. Emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located.
- H. Credit for an emissions reduction can be claimed to the extent that the Director has not relied on it in issuing any permit under this Article, R18-2-334, or the state has not relied on it in a demonstration of attainment or reasonable further progress.
- I. The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset under this Section shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.
- J. In ozone nonattainment areas classified as marginal, total emissions of VOC and oxides of nitrogen from other sources shall offset those proposed or permitted from the major source or major modification by a ratio of at least 1.10 to 1. In ozone nonattainment areas classified as moderate, total emissions of VOC and oxides of nitrogen from other sources shall offset those proposed or permitted from the major source or major modification by a ratio of at least 1.15 to 1. New major sources and major modifications in serious and severe ozone nonattainment areas shall comply with this Section and R18-2-405.

Historical Note

Former Section R9-3-404 repealed, new Section R9-3-404 adopted effective May 14, 1979 (Supp. 79-1). Amended by adding subsection (C) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-404 renumbered without change as Section R18-2-404 (Supp. 87-3). Amended subsection (C) effective December 1, 1988 (Supp. 88-4). Section R18-2-404 renumbered to R18-2-604, new Section R18-2-404 adopted effective November 15, 1993 (Supp. 93-4). Amended effective February 28, 1995 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1). Amended by final expedited rulemaking at 28 A.A.R. 1135 (May 27, 2022), with an immediate effective date of May 4, 2022 (Supp. 22-2).

R18-2-405. Special Rule for Major Sources of VOC or Nitrogen Oxides in Ozone Nonattainment Areas Classified as Serious or Severe

- A. Applicability. The provisions of this Section only apply to stationary sources of VOC or nitrogen oxides in ozone nonattainment areas classified as serious or severe. Unless otherwise provided in this Section, all requirements of Articles 3 and 4 of this Chapter apply.
- B. "Significant" means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds or nitrogen oxides that would result from any physical change in, or change in the method of operation of, a major source, if the emissions increase of volatile organic compounds or nitrogen oxides exceeds 25 tons per year.

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- C. For any major source that emits or has the potential to emit less than 100 tons of VOC or oxides of nitrogen per year, a physical or operational change that results in a significant increase in VOC or oxides of nitrogen, respectively, from any discrete operation, unit, or other pollutant emitting activity at the source shall constitute a major modification, except that the increase shall not constitute a major modification, if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of VOC or oxides of nitrogen, as applicable, from other operations, units or activities at the source at an internal offset ratio of at least 1.3 to 1. If the owner or operator does not make such an election, the change shall constitute a major modification but BACT shall be substituted for LAER when applying R18-2-403(A)(1) to the major modification.
- D. For any stationary source that emits or has the potential to emit 100 tons or more of VOC or oxides of nitrogen per year, a physical or operational change that results in any significant increase in VOC from any discrete operation, unit or other pollutant emitting activity at the source or oxides of nitrogen, respectively, shall constitute a major modification except that if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of VOC or oxides of nitrogen, as applicable, from other operations, units or activities within the source at an internal offset ratio of at least 1.3 to 1, R18-2-403(A)(1) shall not apply to the change.
- E. For any new major source or major modification that is classified as major because of emissions or potential to emit VOC or nitrogen oxides in an ozone nonattainment area classified as serious, the increase in emissions of these pollutants from the source or modification shall be offset at a ratio of 1.2 to 1. The offset shall be made in accordance with the provisions of R18-2-404.
- F. For any new major source or major modification that is classified as such because of emissions or potential to emit VOC or nitrogen oxides in an ozone nonattainment area classified as severe, the increase in emissions of these pollutants from the source or modification shall be offset at a ratio of 1.3 to 1. These offsets shall be made in accordance with the provisions of R18-2-404.
1. A new major source shall apply best available control technology (BACT) for each regulated NSR pollutant for which the potential to emit is significant.
 2. A major modification shall apply BACT for each regulated NSR pollutant for which the project would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.
 3. For phased construction projects, the determination of BACT shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of BACT for the source.
 4. BACT shall be determined on a case-by-case basis and may constitute application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment, clean fuels, or innovative fuel combustion techniques, for control of such pollutant. In no event shall such application of BACT result in emissions of any pollutant, which would exceed the emissions allowed by any applicable new source performance standard or national emission standard for hazardous air pollutants or by the applicable implementation plan. If the Director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation and shall provide for compliance by means which achieve equivalent results.
 5. The person applying for the permit or permit revision under this Article performs an air impact analysis and monitoring as specified in R18-2-407, and the analysis demonstrates that allowable emission increases from the proposed new major source or major modification, in conjunction with all other applicable emission increases or reductions, including secondary emissions, would not cause or contribute to concentrations of conventional air pollutants in violation of:
 - a. Any national ambient air quality standard in any air quality control region; or
 - b. Any applicable maximum increase allowed under R18-2-218 over the baseline concentration in any area.
 6. Air quality models:
 - a. All estimates of ambient concentrations required under this Section shall be based on the applicable air quality models, databases, and other requirements specified in 40 CFR 51, Appendix W, "Guideline On Air Quality Models," as of June 30, 2017 (and no future amendments or editions), which shall be referred to hereinafter as "Guideline" and is adopted by reference and is on file with the Department.
 - b. Where an air quality impact model specified in the "Guideline" is not applicable, the model may be modified or another model substituted. Such a

Historical Note

Former R9-3-405, Other industries, renumbered R9-3-406, new Section adopted effective September 17, 1975 (Supp. 75-1). Former Section R9-3-405 repealed, new Section R9-3-405 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Former Section R9-3-405 renumbered without change as Section R18-2-405 (Supp. 87-3). Section R18-2-405 renumbered to R18-2-605, new Section R18-2-405 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-406. Permit Requirements for Sources Located in Attainment and Unclassifiable Areas

- A. Except as provided in subsections (B) through (J) and R18-2-408 (Innovative control technology), no permit or permit revision under this Article shall be issued to a person proposing to construct a new major source or make a major modification to a major source that would be constructed in an area designated as attainment or unclassifiable for any regulated NSR pollutant unless the source or modification meets the following conditions:

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change shall be subject to notice and opportunity for public comment under R18-2-330. Written approval of the EPA Administrator shall be obtained for any modification or substitution.

- B. This Section and R18-2-407 shall not apply to a new major source or major modification to a source with respect to a particular pollutant if the person applying for the permit or permit revision under this Article demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment for the pollutant. This exemption shall not apply to an area designated nonattainment for a revoked national ambient air quality standard in 40 CFR 81.
- C. This Section, R18-2-407, and R18-2-410(B), (F), and (G) shall not apply to a new major source or a major modification if the source or modification would be a major source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential emissions of the source or modification, and the source does not belong to a section 302(j) category.
- D. This Section, R18-2-407, and R18-2-410(B), (F), and (G) shall not apply to a new major source or major modification to a source when the owner or operator of the source is a nonprofit health or educational institution.
- E. This Section, R18-2-407, and R18-2-410(B), (F) and (G) shall not apply to a portable source which would otherwise be a new major source or major modification to an existing source if all of the following conditions are satisfied:
 1. The portable source proposes to relocate and will operate for no more than 24 months at its new location.
 2. The source is subject to a permit or permit revision issued under this Section or 40 CFR 52.21.
 3. The source is in compliance with the conditions of that permit or permit revision.
 4. Emissions from the source will not impact a federal Class I area or an area where an applicable maximum increase allowed under R18-2-218 is known to be violated.
 5. Reasonable notice is given to the Director prior to the relocation identifying the proposed new location and the probable duration of operation at the new location at least 10 calendar days in advance of the proposed relocation, unless a different time duration is previously approved by the Director.
- F. Subsection (A)(5), R18-2-407, and R18-2-410(B) shall not apply to a proposed major source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification, would be temporary and impact no federal Class I area and no area where a maximum increase allowed under R18-2-218 is known to be violated.
- G. Subsection (A)(5), R18-2-407, and R18-2-410(B) as they relate to any maximum allowable increase for a Class II area shall not apply to a modification of a major stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of best available control technology would be less than 50 tons per year.
- H. Subsection (A)(5)(b) shall not apply to a stationary source or modification with respect to any maximum increase allowed for nitrogen oxides under R18-2-218 if the owner or operator of the source or modification submitted an application for a permit under the applicable permit program approved or promulgated under the Act before the provisions embodying the maximum allowable increase took effect as part of the state implementation plan and the Director subsequently determined that the application as submitted before that date was complete.
 - I. Subsection (A)(5)(b) shall not apply to a stationary source or modification with respect to any maximum increase allowed for PM₁₀ under R18-2-218 if the owner or operator of the source or modification submitted an application for a permit under the applicable permit program approved under the Act before the provisions embodying the maximum allowable increases for PM₁₀ took effect as part of the state implementation plan and the Director subsequently determined that the application as submitted before that date was complete. Instead, subsection (A)(5)(b) shall apply with respect to the maximum allowable increases for total suspended particulate as in effect on the date the application was submitted.
 - J. Subsection (A)(5)(a) shall not apply to a stationary source or modification with respect to the national ambient air quality standards for PM_{2.5} in effect on March 18, 2013 if either of the following is true:
 1. The Director determined a permit application subject to this Section was complete on or before December 14, 2012. Instead, subsection (A)(5)(a) shall apply with respect to the national ambient air quality standards for PM_{2.5} in effect at the time the Director determined the permit application to be complete.
 2. The Director first published before March 18, 2013 a public notice of a proposed permit subject to this Section. Instead, subsection (A)(5)(a) shall apply with respect to the national ambient air quality standards for PM_{2.5} in effect at the time of first publication of the public notice.
 - K. Subsection (A)(5)(a) shall not apply to a stationary source or modification with respect to the revised national ambient air quality standards for ozone published on October 26, 2015 if:
 1. The Director has determined the permit application subject to this Section to be complete on or before October 1, 2015. Instead, subsection (A)(5)(a) shall apply with respect to the national ambient air quality standards for ozone in effect at the time the Director determined the permit application to be complete.
 2. The Director has first published, before December 25, 2015, a public notice of a preliminary determination or draft permit for the permit application subject to this Section. Instead, subsection (A)(5)(a) shall apply with respect to the national ambient air quality standards for ozone in effect at the time the Director determined the permit application to be complete.
 - L. The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make a determination required under this Section. The owner or operator shall also provide information regarding:
 1. The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact, and
 2. The air quality impacts and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the source or modification would affect.
 - M. The issuance of a permit or permit revision under this Article in accordance with this Section shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of the SIP and any other requirements under local, state, or federal law.
 - N. At such time that a particular source or modification becomes a major source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this Section shall

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apply to the source or modification as though construction had not yet commenced on the source or modification.

Historical Note

Former Section R9-3-405, renumbered effective September 17, 1975 (Supp. 75-1). Former Section R9-3-406 repealed, new Section R9-3-406 adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-406 renumbered without change as Section R18-2-406 (Supp. 87-3). Section R18-2-406 renumbered to R18-2-606, new Section R18-2-406 adopted effective November 15, 1993 (Supp. 93-4). Amended effective February 28, 1995 (Supp. 95-1). The references to R18-2-101(97)(a) in subsection (A)(1) and (2) amended to reference R18-2-101(104)(a) (Supp. 99-3). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1). Amended by final rulemaking at 25 A.A.R. 3630, effective February 1, 2020 (Supp. 19-4).

R18-2-407. Air Quality Impact Analysis and Monitoring Requirements

- A. Any application for a permit or permit revision under R18-2-406 to construct a new major source or major modification to a major source shall contain an analysis of ambient air quality in the area that the new major source or major modification would affect for each of the following pollutants:
 1. For the new source, each pollutant that it would have the potential to emit in a significant amount;
 2. For the modification, each pollutant for which it would result in a significant net emissions increase.
- B. With respect to any such pollutant for which no national ambient air quality standard exists, the analysis shall contain all air quality monitoring data as the Director determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of the pollutant would affect.
- C. With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.
- D. In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceding receipt of the application, except that, if the Director determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period.
- E. The owner or operator of a proposed stationary source or modification to a source of volatile organic compounds who satisfies all conditions of 40 CFR 51, Appendix S, Section IV, may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under subsections (B), (C), and (D) above.
- F. Post-construction monitoring. The owner or operator of a new major source or major modification shall, after construction of the source or modification, conduct such ambient monitoring as the Director determines is necessary to determine the effect emissions from the new source or modification may have, or are having, on air quality in any area.
- G. Operations of monitoring stations. The owner or operator of a new major source or major modification shall meet the requirements of 40 CFR 58, Appendix B, during the operation

of monitoring stations for purposes of satisfying subsections (B) through (F) above.

- H. The requirements of subsections (B) through (G) above shall not apply to a new major source or major modification to an existing source with respect to monitoring for a particular pollutant if:
 1. The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:
 - a. Carbon Monoxide - 575 $\mu\text{g}/\text{m}^3$, eight-hour average;
 - b. Nitrogen dioxide - 14 $\mu\text{g}/\text{m}^3$, annual average;
 - c. $\text{PM}_{2.5}$ - 0 $\mu\text{g}/\text{m}^3$, 24-hour average;
 - d. PM_{10} - 10 $\mu\text{g}/\text{m}^3$, 24-hour average;
 - e. Sulfur dioxide - 13 $\mu\text{g}/\text{m}^3$, 24-hour average;
 - f. Lead - 0.1 $\mu\text{g}/\text{m}^3$, 3-month average;
 - g. Fluorides - 0.25 $\mu\text{g}/\text{m}^3$, 24-hour average;
 - h. Total reduced sulfur - 10 $\mu\text{g}/\text{m}^3$, one-hour average;
 - i. Hydrogen sulfide - 0.04 $\mu\text{g}/\text{m}^3$, one-hour average;
 - j. Reduced sulfur compounds - 10 $\mu\text{g}/\text{m}^3$, one-hour average;
 - k. Ozone - net emissions increases of less than 100 tons per year of volatile organic compounds or oxides of nitrogen;
 2. The concentrations of the pollutant in the area that the new source or modification would affect are less than the concentrations listed in subsection (H)(1); or
 3. The pollutant is not listed in subsection (H)(1).

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-407 renumbered without change as Section R18-2-407 (Supp. 87-3). Section R18-2-407 renumbered to R18-2-607, new Section R18-2-407 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-408. Innovative Control Technology

- A. Notwithstanding the provisions of R18-2-406(A)(1) through (3), the owner or operator of a proposed new major source or major modification may request that the Director approve a system of innovative control technology rather than the best available control technology requirements otherwise applicable to the new source or modification.
- B. The Director shall approve the installation of a system of innovative control technology if the following conditions are met:
 1. The owner or operator of the proposed source or modification satisfactorily demonstrates that the proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;
 2. The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under R18-2-406(A)(1) or (2) by a date specified in the permit or permit revision under this Article for the source. Such date shall not be later than four years from the time of start-up or seven years from the issuance of a permit or permit revision under this Article;
 3. The source or modification would meet requirements equivalent to those in R18-2-406(A) based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified in the permit or permit revision under this Article.

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4. Before the date specified in the permit or permit revision under this Article, the source or modification would not:
 - a. Cause or contribute to any violation of an applicable national ambient air quality standard; or
 - b. Impact any area where an applicable maximum increase allowed under R18-2-208 is known to be violated.
 5. All other applicable requirements including those for public participation have been met.
 6. The Director receives the consent of the governors of other affected states.
 7. The requirements of R18-2-410 for federal Class I areas will be met for all periods during the life of the source or modification.
- C. The Director shall withdraw any approval to employ a system of innovative control technology made under this Section if:
1. The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or
 2. The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or
 3. The Director decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.
- D. If the new source or major modification fails to meet the required level of continuous emissions reduction within the specified time period, or if the approval is withdrawn in accordance with subsection (C) above, the Director may allow the owner or operator of the source or modification up to an additional three years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Former Section R9-3-408 renumbered without change as Section R18-2-408 (Supp. 87-3). Section R18-2-408 renumbered to R18-2-608, new Section R18-2-408 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-409. Air Quality Models

- A. Where the Director requires a person requesting a permit or permit revision under this Article to perform air quality impact modeling to obtain such permit or permit revision under this Article, the modeling shall be performed in a manner consistent with the Guideline specified in R18-2-406(A)(6)(a).
- B. Where the person requesting a permit or permit revision under this Article can demonstrate that an air quality impact model specified in the Guideline is inappropriate, the model may be modified or another model substituted. However, before such modification or substitution can occur, the Director shall make a written finding that:
1. No model in the Guideline is appropriate for a particular permit or permit revision under this Article under consideration, or
 2. The data base required for the appropriate model in the Guideline is not available, and
 3. The model proposed as a substitute or modification is likely to produce results equal or superior to those obtained by models in the Guideline, and
 4. The model proposed as a substitute or modification has been approved by the Administrator.

- C. The substitution or modification of an air quality model under this Section shall be included in the public notice under R18-2-330(C).

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-409 renumbered without change as Section R18-2-409 (Supp. 87-3). Section R18-2-409 renumbered to R18-2-609, new Section R18-2-409 adopted effective November 15, 1993 (Supp. 93-4).

R18-2-410. Visibility and Air Quality Related Value Protection

- A. Applicability.
1. All of the requirements of this Section apply to a new major source or major modification that would be constructed in an area that is designated attainment or unclassified.
 2. Subsections (B) to (D) apply to the following:
 - a. A new major source or major modification that may have an impact on any integral vista of a mandatory federal Class I area, if it is identified in accordance with 40 CFR 51.304 by the Federal Land Manager at least twelve months before submission of a complete permit application for the source or modification, except where the Federal Land Manager has provided notice and opportunity for public comment on the integral vista, in which case the review must include impacts on any integral vista identified at least six months before submission of a complete permit application. This subsection shall not apply if the Director determines under 40 CFR 51.304(d) that the identification was not in accordance with the identification criteria.
 - b. A new major source or major modification that proposes to locate in an area designated as nonattainment and that may have an impact on visibility in any mandatory federal Class I area.
- B. Application Requirements. Any application for a permit or permit revision to construct a major source or major modification subject to this Section shall contain:
1. An analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the new source or modification and general commercial, residential, industrial, and other growth associated with the new source or modification. The applicant need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.
 2. An analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the new source or modification.
- C. Notification Requirements.
1. The Director shall provide written notice of the application for a permit or permit revision subject to this Section to the Administrator, the Federal Land Manager and the federal official charged with direct responsibility for management of any lands within any Class I area that may be affected by the source or modification. The notice shall be provided within 30 days of receipt of the application and at least 60 days before any public hearing on the application. The notice shall:
 - a. Include a copy of the application and all information relevant to the permit or permit revision under this Article;

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- b. Include an analysis of the anticipated impacts of the proposed source on visibility in any federal Class I area; and
 - c. Provide for no less than a 30-day period within which written comments may be submitted.
 2. The Director shall notify the individuals identified in subsection (C)(1) within 30 days of receipt of any advance notification of any such permit or permit revision.
 3. The Director shall notify the individuals identified in subsection (C)(1) of the preliminary determination for the application under R18-2-402(I)(2)(c) and shall make available any materials used in making that determination.
 4. The Director shall provide notice to the administrator of every action related to the consideration of such permit or permit revision.
- D. Consideration of Federal Land Manager Analysis.**
1. The Federal Land Manager and the federal official charged with direct responsibility for management of federal Class I areas have an affirmative responsibility to protect the air quality related values, including visibility, of any such areas and to consider, in consultation with the Administrator, whether a proposed source or modification would have an adverse impact on such values.
 2. The Director shall consider any analysis performed by the Federal Land Manager and provided within 30 days of the notification required by subsection (C)(1) that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in a federal Class I area or integral vista.
 3. In considering the analysis, the Director shall ensure that the source's emissions will be consistent with making reasonable progress toward the national visibility goal referred to in 40 CFR 51.300(a), taking into account the costs of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source.
 4. If the Director concurs with the analysis, the Director shall deny the permit or permit revision.
 5. If the Director finds that the analysis does not demonstrate to the satisfaction of the Director that an adverse impact on visibility will result in the federal Class I area or integral vista, the Director shall, in the notice required by R18-2-402(I)(2)(c), either explain that decision or give notice as to where the explanation can be obtained.
- E. Federal Land Manager Analysis Showing Adverse Impact Despite Compliance with Maximum Allowable Increases for Class I Area.**
1. Within 30 days after the notification required by subsection (C)(3), the Federal Land Manager may present to the Director a demonstration that the emissions attributed to a new major source or major modification would have an adverse impact on visibility or other specifically defined air quality related values of any mandatory federal Class I area, even though the change in air quality resulting from emissions attributable to the source or modification will not cause or contribute to concentrations that exceed the maximum increases allowed for the area in R18-2-218.
 2. If the Director concurs with the demonstration, the Director shall not issue a permit or permit revision for the major source or major modification.
- F. Class I Variance with Federal Land Manager Concurrence.**
1. The owner or operator of a proposed source or modification may demonstrate to the Federal Land Manager that emissions from the source will have no adverse impact on the air quality related values (including visibility) of fed-

eral Class I areas, even though the change in air quality resulting from emissions from the source or modification are projected to cause or contribute to concentrations that exceed the maximum increases allowed for a Class I area under R18-2-218.

2. If the Federal land manager concurs with the demonstration and so certifies to the Director, the Director may issue the permit, provided that:
 - a. Applicable requirements are otherwise met; and
 - b. The permit contains emission limits necessary to assure that emissions of sulfur dioxide, PM_{2.5}, PM₁₀, and nitrogen oxides will not cause increases in ambient concentrations of those pollutants exceeding the following maximum allowable increases over minor source baseline concentrations:

Pollutant	Maximum allowable increase (micrograms per cubic meter)
PM _{2.5} :	
Annual arithmetic mean	4
24-hr maximum	9
PM ₁₀ :	
Annual arithmetic mean	17
24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	325
Nitrogen dioxide	
Annual arithmetic mean	25

- G. Class I Sulfur Dioxide Variance by Governor with Concurrence by Federal Land Manager or President.**
1. The owner or operator of a proposed source or modification that cannot be approved under subsection (F) may demonstrate to the Governor that the source cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for a period of twenty-four hours or less applicable to any Class I area and, in the case of mandatory federal Class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The Governor, after consideration of the Federal Land Manager's recommendation (if any) and subject to his concurrence, may, after notice and public hearing, grant a variance from the maximum allowable increase. If the variance is granted, the Director shall issue a permit or permit to the source or modification pursuant to the requirements of subsection (G)(3), provided that the applicable requirements of R18-2-406 are otherwise met.
 2. In any case where the Governor recommends a variance in which the Federal Land Manager does not concur, the recommendations of the Governor and the Federal Land Manager shall be transmitted to the President. The President may approve the Governor's recommendation if the President finds that the variance is in the national interest. If the variance is approved, the Director shall issue a permit pursuant to subsection (G)(3), provided that the applicable requirements of R18-2-406 are otherwise met.
 3. In the case of a permit issued pursuant to subsections (G)(1) or (G)(2) the source or modification shall comply with emission limitations necessary to assure that emis-

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sions of sulfur dioxide from the source or modification will not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations that would exceed the following maximum allowable increases over the baseline concentration and to assure that the emissions will not cause or contribute to concentrations that exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period:

Maximum Allowable Increase [Micrograms per cubic meter]		
Period of exposure	Terrain areas	
	Low	High
24-hr maximum	36	62
3-hr maximum	130	221

- H.** Visibility Monitoring. The Director may require monitoring of visibility in any federal Class I area near a proposed major source or major modification for such purposes and by such means as the Director deems necessary and appropriate.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-410 renumbered without change as Section R18-2-410 (Supp. 87-3). Section R18-2-410 renumbered to R18-2-610, new Section R18-2-410 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-411. Permit Requirements for Sources that Locate in Attainment or Unclassifiable Areas and Cause or Contribute to a Violation of Any National Ambient Air Quality Standard

- A.** Except as provided in subsections (C) or (D), the Director shall deny a permit or permit revision to any major source or major modification that would locate in any attainment or unclassified area, if the source or modification would cause or contribute to a violation of any national ambient air quality standard.
- B.** A major source or major modification will be considered to cause or contribute to a violation of a national ambient air quality standard when the source or modification would, at a minimum, cause an increase in the concentrations of a regulated NSR pollutant that exceeds the significance level at any locality that does not, or as a result of the increase would not, meet the standard.
- C.** A proposed major source or major modification subject to subsection (A) may reduce the impact of its emissions upon air quality by obtaining sufficient emission reductions to, at a minimum, compensate for its adverse ambient impact where the major source or major modification would otherwise cause or contribute to a violation of any national ambient air quality standard.
- D.** Subsection (A) shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as non-attainment pursuant to section 107 of the Act.

Historical Note

Adopted effective November 15, 1993 (Supp. 93-4). Section repealed by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). New Section made

by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-412. PALs

- A.** Applicability.
- The Director may approve the use of a PAL for any existing major source if the PAL meets the requirements of this Section.
 - Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements of this Section, and complies with the PAL permit:
 - Is not a major modification for the PAL pollutant,
 - Does not have to be approved under R18-2-403 or R18-2-406, and
 - Is not subject to the provisions in R18-2-403(C) or R18-2-406(M).
 - Except as provided under subsection (A)(2)(c), a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.
- B.** Permit application requirements. As part of a permit application requesting a PAL, the owner or operator of a major source shall submit the following information to the Director for approval:
- A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit.
 - Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions shall include emissions associated not only with operation of the unit, but also emissions associated with the startup, shutdown and malfunction.
 - The calculation procedures that the major source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subsection (L)(1).
- C.** General requirements for establishing PALs.
- The Director is allowed to establish a PAL at a major source, provided that at a minimum, the following requirements are met:
 - The PAL shall impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for the entire major source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month sum, rolled monthly). For each month during the first 11 months from the PAL effective date, the major source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.
 - The PAL shall be established in a PAL permit that meets the requirements in subsection (D).
 - The PAL permit shall contain all the requirements of subsection (F).

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- d. The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major source.
- e. Each PAL shall regulate emissions of only one pollutant.
- f. Each PAL shall have a PAL effective period of 10 years.
- g. The owner or operator of the major source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in subsections (K) through (M) for each emissions unit under the PAL through the PAL effective period.
- 2. At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under R18-2-404 unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.
- D. Action on PAL permit application.** A PAL permit application shall be processed in accordance with one of the following:
 - 1. As an initial Class I permit pursuant to R18-2-304.
 - 2. As a renewal of a Class I permit pursuant to R18-2-322.
 - 3. As a significant revision to a Class I permit pursuant to R18-2-320.
- E. Setting the 10-year actuals PAL level.**
 - 1. Except as provided in subsection (E)(2), the PAL level for a major source shall be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant. When establishing the PAL level, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The Director shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that the Director is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_x to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).
 - 2. For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in subsection (E)(1), the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.
- F. Contents of the PAL permit.** The PAL permit must contain, at a minimum, the following information:
 - 1. The PAL pollutant and the applicable source-wide emission limitation in tons per year.
 - 2. The PAL permit effective date and the expiration date of the PAL (PAL effective period).
 - 3. Specification in the PAL permit that if a major source owner or operator applies to renew a PAL in accordance with subsection (I) before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the Director.
- 4. A requirement that emission calculations for compliance purposes must include emissions from startups, shutdowns, and malfunctions.
- 5. A requirement that, once the PAL expires, the major source is subject to the requirements of subsection (H).
- 6. The calculation procedures that the major source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by subsection (L)(1).
- 7. A requirement that the major source owner or operator monitor all emissions units in accordance with the provisions under subsection (K).
- 8. A requirement to retain the records required under subsection (L) onsite. Such records may be retained in an electronic format.
- 9. A requirement to submit the reports required under subsection (M) by the required deadlines.
- 10. Any other requirements that the Director deems necessary to implement and enforce the PAL.
- G. PAL effective period and reopening of the PAL permit.**
 - 1. PAL effective period. The Director shall specify a PAL effective period of 10 years.
 - 2. Reopening of the PAL permit.
 - a. During the PAL effective period, the Director must reopen the PAL permit to:
 - i. Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL,
 - ii. Reduce the PAL if the owner or operator of the major source creates creditable emissions reductions for use as offsets under R18-2-404, and
 - iii. Revise the PAL to reflect an increase in the PAL as provided under subsection (J).
 - b. The Director shall have discretion to reopen the PAL permit for the following:
 - i. Reduce the PAL to reflect new federal applicable requirements with compliance dates after the PAL effective date;
 - ii. Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the state may impose on the major source under the State Implementation Plan; and
 - iii. Reduce the PAL if the Director determines that a reduction is necessary to avoid causing or contributing to a violation of a national ambient air quality standard or a maximum increase allowed under R18-2-208, or to an adverse impact on an air quality related value that has been identified for a federal Class I area by a Federal Land Manager and for which information is available to the general public.
 - c. Except for the permit reopening in subsection (G)(2)(a)(i) for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of subsection (D).
- H. Expiration of a PAL.** Any PAL that is not renewed in accordance with the procedures in subsection (I) shall expire at the end of the PAL effective period, and the following requirements shall apply.

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1. Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures.
 - a. Within the time-frame specified for PAL renewals in subsection (I)(2), the major source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate) by distributing the PAL allowable emissions for the major source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as would be required under subsection (I)(5), such distribution shall be made as if the PAL had been adjusted.
 - b. The Director shall decide how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Director determines is appropriate.
 2. Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The Director may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.
 3. Until the Director issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subsection (H)(1)(b), the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.
 4. Any physical change or change in the method of operation at the major source will be subject to the nonattainment major NSR requirements if such change meets the definition of major modification.
 5. The major source owner or operator shall continue to comply with any applicable requirements that may have applied either during the PAL effective period or before the PAL effective period except for those emission limitations that had been established pursuant to R18-2-403(C) or R18-2-406(H), but were eliminated by the PAL in accordance with subsection (A)(2)(c).
- I. Renewal of a PAL.**
1. The Director shall follow the procedures specified in subsection (D) in approving any request to renew a PAL for a major source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Director.
 2. Application deadline. A major source owner or operator shall submit a timely application to the Director to request renewal of a PAL. A timely application is one that is submitted at least six months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.
 3. Application requirements. The application to renew a PAL permit shall contain the following information.
 - a. The information required in subsections (B)(1) through (3).
 - b. A proposed PAL level.
 - c. The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).
 - d. Any other information the owner or operator wishes the Director to consider in determining the appropriate level for renewing the PAL.
- J. Increasing a PAL during the PAL effective period.**
1. The Director may increase a PAL emission limitation only if the following requirements are met:
 - a. The owner or operator of the major source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major source's emissions to equal or exceed its PAL.
 - b. As part of this application, the major source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT or LAER equivalent controls, plus the sum of the PAL allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT or LAER equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT or LAER analysis at the

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time the application is submitted, as applicable for the particular PAL pollutant, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

- c. The owner or operator obtains a major NSR permit for all emissions unit(s) identified in subsection (J)(1)(a), regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the major NSR process (for example, BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.
 - d. The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.
2. The Director shall calculate the new PAL level as the sum of the PAL allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT or LAER equivalent controls as determined in accordance with subsection (J)(1)(b), plus the sum of the baseline actual emissions of the small emissions units.
 3. The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of subsection (D).
- K. Monitoring requirements for PALs.**
1. General requirements.
 - a. Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.
 - b. The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in subsections (K)(2)(a) through (d) and must be approved by the Director.
 - c. Notwithstanding subsection (K)(1)(b), the owner or operator may also employ an alternative monitoring approach if approved by the Director as meeting the requirements of subsection (K)(1)(a).
 - d. Failure to use a monitoring system that meets the requirements of this Section renders the PAL invalid.
 2. Minimum performance requirements for approved monitoring approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subsections (K)(3) through (9):
 - a. Mass balance calculations for activities using coatings or solvents,
 - b. CEMS,
 - c. CPMS or PEMS, and
 - d. Emission factors.
 3. Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:
 - a. Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;
 - b. Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and
 - c. Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the Director determines there is site-specific data or a site-specific monitoring program to support another content within the range.
 4. CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:
 - a. CEMS must comply with applicable Performance Specifications found in 40 CFR 60, Appendix B; and
 - b. CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.
 5. CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:
 - a. The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and
 - b. Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the Director, while the emissions unit is operating.
 6. Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:
 - a. All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;
 - b. The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and
 - c. If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six months of PAL permit issuance, unless the Director determines that testing is not required.
 7. A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

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8. Notwithstanding the requirements in subsections (K)(3) through (7), where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Director shall, at the time of permit issuance:
 - a. Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s), or
 - b. Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.
 9. Re-validation. All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the Director. Such testing must occur at least once every five years after issuance of the PAL.
- L. Recordkeeping requirements.**
1. The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this Section and with the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.
 2. The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five years:
 - a. A copy of the PAL permit application and any applications for revisions to the PAL, and
 - b. Each annual certification of compliance pursuant to R18-2-309(2) and the data relied on in certifying compliance.
- M. Reporting and notification requirements.** The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Director in accordance with R18-2-306(A)(5). The reports shall meet the following requirements:
1. Semi-annual report. The semi-annual report shall be submitted to the Director within 30 days of the end of each reporting period. This report shall contain the following information:
 - a. The identification of owner and operator and the permit number.
 - b. Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to subsection (L)(1).
 - c. All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions.
 - d. A list of any emissions units modified or added to the major source during the preceding six-month period.
 - e. The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.
 - f. A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by subsection (K)(7).
 - g. A certification by the responsible official consistent with R18-2-304(I).
2. Deviation report. The major source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL permit requirements, including periods where no monitoring is available, in accordance with R18-2-306(A)(5). The reports shall contain the following information:
 - a. The identification of owner and operator and the permit number,
 - b. The PAL permit requirement that experienced the deviation or that was exceeded,
 - c. Emissions resulting from the deviation or the exceedance, and
 - d. A certification by the responsible official consistent with R18-2-304(I).
 3. Re-validation results. The owner or operator shall submit to the Director the results of any re-validation test or method within three months after completion of such test or method.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

ARTICLE 5. GENERAL PERMITS**R18-2-501. Applicability**

- A. The Director may issue general permits for a facility class that contains 10 or more facilities that are similar in nature, have substantially similar emissions, and would be subject to the same or substantially similar requirements governing operations, emissions, monitoring, reporting, or recordkeeping. "Similar in nature" refers to facility size, processes, and operating conditions.
- B. The Director may issue general permits, in accordance with subsection (A), with emission limitations, controls, or other requirements that meet the requirements of R18-2-306.01. A source that seeks to vary from such a general permit, and obtain an emission limitation, control, or other requirement not contained in that general permit, shall apply for a permit pursuant to Article 3 of this Chapter.
- C. General permits shall not be issued for affected sources except as provided in regulations promulgated by the Administrator under Title IV of the Act.
- D. Unless otherwise stated, the provisions of Article 3 shall apply to general permits.

Historical Note

Former Section R18-2-501 renumbered to R18-2-502, new Section R18-2-501 adopted effective September 26, 1990 (Supp. 90-3). Former Section R18-2-501 renumbered to R18-2-701; new Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective August 1, 1995 (Supp. 95-3).

R18-2-502. General Permit Development

- A. The Director may issue a general permit on the Director's own initiative or in response to a petition.
- B. Any person may submit a petition to the Director requesting the issuance of a general permit for a defined class of facilities. The petition shall propose a particular class of facilities, and list the approximate number of facilities in the proposed class along with their size, processes, and operating conditions, and demonstrate how the class meets the criteria for a general per-

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mit as specified in R18-2-501 and A.R.S. § 49-426(H). The Director shall provide a written response to the petition within 120 days of receipt.

- C. General permits shall be issued for classes of facilities using the same engineering principles that applies to permits for individual sources and following the public notice requirements of R18-2-504.
- D. General permits shall include all of the following:
 1. All elements required by R18-2-306(A) except R18-2-306(A)(2)(b) and (6).
 2. The process for individual sources to apply for coverage under the general permit.
- E. General permits may include conditions imposed under R18-2-515.

Historical Note

Former Section R9-3-501 repealed, new Section R9-3-501 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (D) effective June 19, 1981 (Supp. 81-3). Amended subsections (C) and (D) effective February 2, 1982 (Supp. 82-1). Amended subsection (D) effective May 25, 1982 (Supp. 82-3). Former Section R9-3-501 renumbered without change as Section R18-2-501 (Supp. 87-3). Former Section R18-2-502 repealed, new Section R18-2-502 renumbered from R18-2-501 and amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-502 renumbered to R18-2-702; new Section R18-2-502 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-503. Application for Coverage under General Permit

- A. Once the Director has issued a general permit, any source which is a member of the class of facilities covered by the general permit may apply to the Director for authority to operate under the general permit. At the time the Director issues a general permit, the Director may also establish a specific application form with filing instructions for sources in the category covered by the general permit. Applicants shall complete the specific application form or, if a specific form has not been adopted, the standard application form provided under R18-2-304(B). The specific application form shall, at a minimum, require the applicant to submit the following information:
 1. Information identifying and describing the source, its processes, and operating conditions in sufficient detail to allow the Director to determine qualification for, and to assure compliance with, the general permit.
 2. A compliance plan that meets the requirements of R18-2-514.
- B. For sources required to obtain a permit under Title V of the Act, the Director shall provide the Administrator with a permit application summary form and any relevant portion of the permit application and compliance plan. To the extent possible, this information shall be provided in computer-readable format compatible with the Administrator's national database management system.
- C. The Director shall act on the application for coverage under a general permit as expeditiously as possible. The source may operate under the terms of the applicable general permit during that time. The Director may defer acting on an application under this subsection (if) the Director has provided notice of intent to renew or not renew the permit.

- D. The Director shall deny an application for coverage from any Class I source that is subject to case-by-case standards or requirements.
- E. Upon notification from the Director of the availability of a web portal to apply for and obtain a general permit, an applicant shall file all applications and conduct all transactions related to the general permit through the portal.

Historical Note

Former Section R9-3-503 repealed, new Section R9-3-503 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (C), paragraph (6) effective June 19, 1981 (Supp. 81-3). Amended subsection (C) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-503 renumbered without change as Section R18-2-503 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-503 renumbered to R18-2-703; new Section R18-2-503 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-504. Public Notice

- A. This Section applies to issuance, revision, or renewal of a general permit.
- B. The Director shall provide public notice for any proposed new general permit, for any revision of an existing general permit, and for renewal of an existing general permit.
- C. The Director shall publish notice of the proposed general permit once each week for two consecutive weeks in a newspaper of general circulation in each county and shall provide at least 30 days from the date of the first notice for public comment. The notice shall describe the following:
 1. The proposed permit;
 2. The category of sources that would be affected;
 3. The air contaminants which the Director expects to be emitted by a typical facility in the class and the class as a whole;
 4. The Director's proposed actions and effective date for the actions;
 5. Locations where documents relevant to the proposed permit will be available during normal business hours;
 6. The name, address, and telephone number of a person within the Department who may be contacted for further information;
 7. The address where any person may submit comments or request a public hearing and the date and time by which comments or a public hearing request are required to be received;
 8. The process by which sources may obtain authorization to operate under the general permit.
- D. A copy of the notice required by subsection (C), shall be sent to the Administrator through the appropriate regional office, and to all other state and local air pollution control agencies in the state. The notice shall also be sent to any other agency in the state having responsibility for implementing the procedures required under 40 CFR 51, I. For general permits under which operation may be authorized in lieu of Class I permits, the Director shall provide the proposed final permit to the Administrator after public and affected state review. No Class I permit shall be issued if the Administrator properly objects to its issuance in writing within 45 days from receipt of the proposed final permit and any necessary supporting information from the Director.

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- E. By no later than the date notice is first published under subsection (A), the Department shall make copies of the following materials available at a public location in each county and at each Department office:
1. The proposed general permit;
 2. The Department's analysis in support of the grant of the general permit;
 3. All other materials available to the Director that are relevant to the permit decision.
- F. Written comments to the Director shall include the name of the person and the person's agent or attorney and shall clearly set forth reasons why the general permit should or should not be issued pursuant to the criteria for issuance in A.R.S. §§ 49-426 and 49-427 and this Chapter.
- G. At the time a general permit is issued, the Director shall make available a response to all relevant comments on the proposed permit raised during the public comment period and during any requested public hearing. The response shall specify which provisions, if any, of the proposed permit have been changed and the reason for the changes. The Director shall also notify in writing any petitioner and each person who has submitted written comments on the proposed general permit or requested notice of the final permit decision.

Historical Note

Former Section R9-3-504 repealed, new Section R9-3-504 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-504 renumbered without change as Section R18-2-504 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-504 renumbered to R18-2-704; new Section R18-2-504 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-505. General Permit Renewal

- A. The Director shall review and may renew general permits every five years. A source's authorization to operate under a general permit shall coincide with the term of the general permit regardless of when the authorization began during the five-year period, except as provided in R18-2-510(C). In addition to the public notice required to issue a proposed permit under R18-2-504, the Director shall notify in writing all sources who have been granted, or who have applications pending for, authorization to operate under the permit. The written notice shall describe the source's duty to reapply and may include requests for information required under the proposed permit.
- B. At the time a general permit is renewed, the Director shall notify in writing all sources who were granted coverage under the previous permit and shall require them to submit a timely renewal application. For purposes of general permits, a timely application is one that is submitted within the time-frame specified by the Director in the written notification. Until such time that a timely application is submitted, the source shall continue to comply with the previously issued general permit coverage. Upon submittal of a timely application, the source shall comply with the renewed permit. Failure to submit a timely application terminates the source's right to operate.

Historical Note

Former Section R9-3-1007 renumbered effective January 13, 1976 (Supp. 76-1). Former Section R9-3-505 repealed, new Section R9-3-505 adopted effective May 14, 1979 (Supp. 79-1). Editorial corrections, subsection (B), paragraph (5), and subsection (D), paragraph (1), subparagraph (d) (Supp. 80-2). Amended effective July 9,

1980 (Supp. 80-4). Amended subsection (B) effective May 28, 1982 (Supp. 82-3). Amended subsection (B) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-505 renumbered without change as Section R18-2-505 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-505 renumbered to R18-2-705; new Section R18-2-505 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

R18-2-506. Relationship to Individual Permits

Any source covered under a general permit may request to be excluded from coverage by applying for an individual source permit. Coverage under the general permit shall terminate on the date the individual permit is issued.

Historical Note

Former Section R9-3-1008 renumbered effective January 13, 1976 (Supp. 76-1). Former Section R9-3-506 repealed, new Section R9-3-506 adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (C), paragraph (1) effective June 19, 1981 (Supp. 81-3). Former Section R9-3-506 renumbered without change as Section R18-2-506 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-506 renumbered to R18-2-706; new Section R18-2-506 adopted effective November 15, 1993 (Supp. 93-4).

R18-2-507. Repealed**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-507 renumbered without change as Section R18-2-507 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-507 renumbered to R18-2-707; new Section R18-2-507 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Repealed by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-508. Repealed**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (B) effective May 28, 1982 (Supp. 82-3). Amended subsection (B) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-508 renumbered without change as Section R18-2-508 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-508 renumbered to R18-2-708; new Section R18-2-508 adopted effective November 15, 1993 (Supp. 93-4). Repealed by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-509. General Permit Appeals

Any person who filed a comment on a proposed general permit as provided in R18-2-504 may appeal the terms and conditions of the general permit, as they apply to the facility class covered under a general permit, by filing an appeal with the Office of Administrative Hearings within 30 days after receipt of notice that the general permit has been issued.

Historical Note

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Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-509 renumbered without change as Section R18-2-509 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-509 renumbered to R18-2-709; new Section R18-2-509 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 12 A.A.R. 4698, effective February 3, 2007 (Supp. 06-4).

R18-2-510. Terminations of General Permits and Revocations of Authority to Operate under a General Permit

- A.** The Director may terminate a general permit at any time if:
1. The Director has determined that the emissions from the sources in the facility class cause or contribute to ambient air quality standard violations which are not adequately addressed by the requirements in the general permit, or
 2. The Director has determined that the terms and conditions of the general permit no longer meet the requirements of A.R.S. §§ 49-426 and 49-427.
- B.** The Director shall provide written notice to all sources operating under a general permit prior to termination of a general permit. Such notice shall include an explanation of the basis for the proposed action. Within 180 days of receipt of the notice of the expiration, termination or cancellation of any general permit, sources notified shall submit an application to the Director for an individual permit.
- C.** The Director may require a source authorized to operate under a general permit to apply for and obtain an individual source permit at any time if the source is not in compliance with the terms and conditions of the general permit.
- D.** If the Director revokes a source's authority to operate under a general permit pursuant to subsection (C), the Director shall notify the permittee by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the revocation of authority and a statement that the permittee is entitled to a hearing. A source previously authorized to operate under a general permit may operate under the terms of the general permit until the earlier of the date it submits a complete application for an individual permit, at which time it may operate under that application, or 180 days after receipt of the notice of revocation of authority to operate under the general permit.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended subsections (E)(3) and (E)(4) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-510 renumbered without change as Section R18-2-510 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-510 renumbered to R18-2-710; new Section R18-2-510 adopted effective November 15, 1993 (Supp. 93-4).

R18-2-511. Fees Related to General Permits

- A.** Permit Processing Fee. The owner or operator of a source that applies for authority to operate under a general permit shall pay to the Director \$500 with the submittal of each application. This fee applies to the owner or operator of any source who intends to continue operating under the authority of a general permit that has been proposed for renewal. This fee also applies to requests for new Authorizations to Operate (ATOs) for new equipment.
- B.** Administrative or Inspection Fee. The owner or operator of a source required to have a general permit, that has undergone initial startup by January 1, shall pay, for each calendar year,

the applicable administrative or inspection fee from the table below, by February 1 or 60 days after the Director mails the invoice, whichever is later.

General Permit Source Category	Administrative Fee
Class I Title V General Permits	Administrative fee for category from R18-2-326(C)
Class II Title V Small Source	\$750
Other Class II Title V General Permits	\$4,520
	Inspection Fee
Class II Non-Title V Crematories	\$1,500
Other Class II Non-Title V General Permits	\$3,020

Historical Note

Former Section R18-2-511 renumbered to R18-2-711; new Section R18-2-511 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 5670, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 10 A.A.R. 4767, effective November 4, 2004 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 4379, effective December 4, 2007 (Supp. 07-4).

R18-2-512. Changes to Facilities Granted Coverage under General Permits

- A.** This Section applies to changes made at a facility that has been granted coverage under a general permit.
- B.** Facility Changes that Require New Authorization to Operate. The following changes at a source that has been granted coverage under a general permit shall be made only after the source requests new authorization to operate from the Director:
1. Adding new emissions units that require new authorization to operate,
 2. Installing replacement emissions units that require authorization to operate.
- C.** Facility Changes that Do Not Require Authorization to Operate. The following changes at a source that has been granted coverage under a general permit shall be made only after the source provides notification to the Department:
1. Adding new emissions units that do not require authorization to operate,
 2. Installing a replacement emissions unit with a higher capacity that does not require authorization to operate,
 3. Adding or replacing air pollution control equipment.
- D.** A source that has been granted coverage under a general permit shall keep a record of any physical change or change in the method of operation that could affect emissions. The record shall include a description of the change and the date the change occurred.
- E.** For sources that submit a request or notification under subsections (B) or (C), the applicant shall provide information identifying and describing the source, its processes, and operating conditions in sufficient detail to allow the Director to determine continued qualification for, and to assure compliance with, the general permit. The Director shall act on a request for new authority to operate under a general permit as expeditiously as possible. The source may operate under the terms of the applicable general permit during that time.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective September 22, 1983 (Supp. 83-5). Former Sec-

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tion R9-3-512 renumbered without change as Section R18-2-512 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-712 effective November 15, 1993 (Supp. 93-4). New Section made by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-513. Portable Sources Covered under a General Permit

- A. This Section applies to sources that have been granted coverage under a general permit that allows for the operation of a source at more than one location.
- B. General permits developed by the Director for portable sources shall contain conditions that assure compliance with all applicable requirements at all authorized locations.
- C. Owners and operators that hold multiple coverages under the same general permit:
 1. Shall have separate coverage under the general permit for each location at which each portable source operates.
 2. Until the Director notifies permittees of the availability of a web portal under R18-2-503(E), may move equipment between portable sources without obtaining a new authorization to operate. At no time shall an owner or operator move equipment to a portable source if the move would cause emissions from the portable source to exceed emission limitations in the general permit. Equipment from a portable source covered by one general permit shall not be moved to a portable source covered by a different general permit, unless the owner or operator obtains a new authorization to operate under the general permit covering the new location.
 3. After the Director notifies permittees of the availability of a web portal under R18-2-503(E), must use the portal to obtain authorizations to operate for each location at which the equipment will operate.
- D. A portable source that will operate for the duration of its permit solely in one county that has established a local air pollution control program pursuant to A.R.S. § 49-479 shall obtain a permit from that county. A portable source with a county permit shall not operate in any other county. A portable source that has been granted coverage under a general permit that subsequently obtains a county permit shall request that the Director terminate the coverage under the general permit. Upon issuance of the county permit, the coverage under the general permit issued by the Director is no longer valid.
- E. A portable source which has a county permit but proposes to operate outside that county may obtain coverage under a general permit from the Director. A portable source that has a permit issued by a county and obtains coverage under a general permit issued by the Director shall request that the county terminate the permit. Upon issuance of coverage under a general permit by the Director, the county permit is no longer valid. Before commencing operation in the new county, the source shall notify the Director and the control officer who has jurisdiction in the county that includes the new location according to subsection (F).
- F. A portable source granted coverage under a general permit may be transferred from one location to another provided that the owner or operator of the portable source notifies the Director and any control officer who has jurisdiction over the geographic area that includes the new location of the transfer prior to the transfer. The notification required under this subsection (shall) include:
 1. A description of the equipment to be transferred including the permit number and as appropriate the Authorization-to-Operate number for each piece of equipment;

2. A description of the present location;
3. A description of the new location;
4. The date on which the equipment is to be moved;
5. The date on which operation of the equipment will begin at the new location;
6. A complete list of all equipment requiring authorization to operate that may be located at the new location; and
7. Revised emissions calculations demonstrating that the equipment at the new location continues to qualify for the general permit under which the portable source has coverage.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, subsection (A), paragraph (2) (Supp. 80-2). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective May 28, 1982 (Supp. 82-3). Amended subsection (A) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-513 renumbered without change as Section R18-2-513 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-713 effective November 15, 1993 (Supp. 93-4). New Section made by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-514. General Permit Compliance Certification

- A. A compliance certification submitted by the owner or operator of a stationary source covered by a general permit shall be on a form provided by the Director and shall include the following information:
 1. The source's name, mailing address, contact person and contact person phone number, permit number, compliance reporting period, and physical address and location, if different than the mailing address.
 2. A certification of truth, accuracy, and completeness signed by the facility's responsible officer.
 3. Process information for the source, including design capacity, operations schedule, hours of operation, and total production.
 4. Method of documenting compliance and the status of compliance with all recordkeeping, reporting, monitoring, and testing requirements and all emission limitations and standards imposed in the permit.
- B. Upon notification from the Director of the availability of a web portal to complete and submit a compliance certification, the owner or operator shall complete and submit all compliance certifications through the portal.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-514 renumbered without change as Section R18-2-514 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-714 effective November 14, 1993 (Supp. 93-4). New Section made by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-515. Minor NSR in General Permits

- A. A general permit may include emission standards designed to assure that a stationary source covered by the permit will comply with minor new source review under R18-2-334(C). The emission standards may consist of any combination of the following:

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1. Limits designed to assure that emissions from a stationary source that is a member of the class of facilities covered by the permit will not interfere with attainment or maintenance of a NAAQS.
2. Limits imposing reasonably available control technology.
- B. Except as provided in subsection (C), if a general permit includes emission standards under subsection (A), then any stationary source that is a member of the class of facilities covered by the permit or any minor NSR modification to such a source may comply with R18-2-334 by obtaining coverage under the permit.
- C. An owner or operator seeking coverage under a general permit in order to obtain authorization to construct or make a minor NSR modification to a stationary source shall instead apply for an individual permit, if the Department determines there is reason to believe the source or modification could interfere with attainment or maintenance of any national ambient air quality standard. In making this determination, the Department:
 1. Shall consider the factors in R18-2-334(E)(1) to (6).
 2. Shall consider whether the dispersion characteristics of the source are likely to result in higher ambient concentrations of a conventional pollutant than the modeling assumptions used to establish an emission standard under subsection (A)(1).
 3. May apply a screening model to the source's emissions.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Section R9-3-515 will be repealed and new Section R9-3-515 adopted effective following the adoption of Article 7. Nonferrous Smelter Orders, filed September 18, 1979 for public hearing (Supp. 79-5). Section R9-3-515 adopted effective May 14, 1979, amended effective October 2, 1979 (Supp. 79-5). Article 7. Nonferrous Smelter Orders adopted effective January 8, 1980. Section R9-3-515 filed September 18, 1979 for public hearing and effective following the adoption of Article 7 now amended and effective January 8, 1980 (Supp. 80-1). Amended as an emergency effective March 6, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-2). Emergency adoption effective March 6, 1980 now adopted and amended effective July 9, 1980. Amended subsection (C), paragraph (1) effective August 29, 1980 (Supp. 80-4). Amended as an emergency effective October 9, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former emergency adoption effective October 9, 1980, now adopted and amended effective June 19, 1981 (Supp. 81-3). Amended subsection (B), paragraph (1) effective February 2, 1982 (Supp. 82-1). Amended effective May 25, 1982 (Supp. 82-3). Amended subsections ((C)(3) and (C)(5) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-515 renumbered without change as Section R18-2-515 (Supp. 87-3). Section amended and subsections (C)(1)(h) through (C)(7) renumbered to R18-2-515.01 and subsections (C)(8) through (C)(9) renumbered to R18-2-515.02 effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-715 effective November 15, 1993 (Supp. 93-4). New Section made by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-515.01. Renumbered**Historical Note**

Section R18-2-515.01 renumbered from R18-2-515(C)(1)(h) through (C)(7) and amended effective Sep-

tember 26, 1990 (Supp. 90-3). Renumbered to R18-2-715.01 effective November 15, 1993 (Supp. 93-4).

R18-2-515.02. Renumbered**Historical Note**

R18-2-515.02 renumbered from R18-2-515(C)(8) through (C)(9) and amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-715.02 effective November 15, 1993 (Supp. 93-4).

R18-2-516. Renumbered**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4) Amended subsection (A) effective May 28, 1982 (Supp. 82-3). Amended subsection (A) effective September 22, 1983 (Supp. 83-4). Former Section R9-3-516 renumbered without change as Section R18-2-516 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-716 effective November 15, 1993 (Supp. 93-4).

R18-2-517. Renumbered**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, subsection (C), paragraph (1) (Supp. 80-1). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective May 28, 1982 (Supp. 82-3). Amended subsection (A) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-517 renumbered without change as Section R18-2-517 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-2). Renumbered to R18-2-717 effective November 15, 1993 (Supp. 93-4).

R18-2-518. Renumbered**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective May 28, 1982 (Supp. 82-3). Amended effective September 22, 1983 (Supp. 83-4). Former Section R9-3-518 renumbered without change as Section R18-2-518 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-718 effective November 15, 1993 (Supp. 93-4).

R18-2-519. Renumbered**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Editorial correction, subsection (A), paragraph (1) (Supp. 80-1). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-519 renumbered without change as Section R18-2-519 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-719 effective November 15, 1993 (Supp. 93-4).

R18-2-520. Renumbered**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, subsection (A), paragraph (1) (Supp. 80-2). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective May 28, 1982 (Supp. 82-3). Amended subsection (A) effective September 22, 1983

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(Supp. 83-5). Former Section R9-3-520 renumbered without change as Section R18-2-520 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-720 effective November 15, 1993 (Supp. 93-4).

R18-2-521. Renumbered**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective May 28, 1982 (Supp. 82-3). Amended subsection (A) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-521 renumbered without change as Section R18-2-521 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-721 effective November 15, 1993 (Supp. 93-4).

R18-2-522. Renumbered**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective May 28, 1982 (Supp. 82-3). Amended subsection (A) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-522 renumbered without change as Section R18-2-522 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-722 effective November 15, 1993 (Supp. 93-4).

R18-2-523. Renumbered**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-523 renumbered without change as Section R18-2-523 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-2). Renumbered to R18-2-723 effective November 15, 1993 (Supp. 93-4).

R18-2-524. Renumbered**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-524 renumbered without change as Section R18-2-524 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-724 effective November 15, 1993 (Supp. 93-4).

R18-2-525. Renumbered**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Editorial correction, subsection (B) (Supp. 79-6). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-525 renumbered without change as Section R18-2-525 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-725 effective November 15, 1993 (Supp. 93-4).

R18-2-526. Renumbered**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-526 renumbered without change as Section R18-2-526 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-726 effective November 15, 1993 (Supp. 93-4).

R18-2-527. Renumbered**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-527 renumbered without change as Section R18-2-527 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-727 effective November 15, 1993 (Supp. 93-4).

R18-2-528. Renumbered**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-528 renumbered without change as Section R18-2-528 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-728 effective November 15, 1993 (Supp. 93-4).

R18-2-529. Renumbered**Historical Note**

Adopted effective September 22, 1983 (Supp. 83-5). Former Section R9-3-529 renumbered without change as Section R18-2-529 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-729 effective November 15, 1993 (Supp. 93-4).

R18-2-530. Renumbered**Historical Note**

Adopted effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-730 effective November 15, 1993 (Supp. 93-4).

ARTICLE 6. EMISSIONS FROM EXISTING AND NEW NONPOINT SOURCES**R18-2-601. General**

For purposes of this Article, any source of air contaminants which due to lack of an identifiable emission point or plume cannot be considered a point source, shall be classified as a nonpoint source. In applying this criteria, such items as air-curtain destructors, heater-planners, and conveyor transfer points shall be considered to have identifiable plumes. Any affected facility subject to regulation under Article 7 of this Chapter or Title 18, Chapter 2, Article 9, shall not be subject to regulation under this Article.

Historical Note

Former Section R9-3-601 repealed, new Section R9-3-601 adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-601 renumbered without change as Section R18-2-601 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-601 renumbered to R18-2-801, new Section R18-2-601 renumbered from R18-2-401 and amended effective November 15, 1993 (Supp. 93-4). Section updated to reflect corrected citation reference (Supp. 08-1).

R18-2-602. Unlawful Open Burning

A. In addition to the definitions contained in A.R.S. § 49-501, in this Section:

1. "Agricultural burning" means burning vegetative materials related to producing and harvesting crops and raising animals for the purpose of marketing for profit, or providing a livelihood, but does not include burning of household waste or prohibited materials. A person may conduct agricultural burns in fields, piles, ditch banks, fence rows, or canal laterals for purposes such as weed control, waste disposal, disease and pest prevention, or site preparation.

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2. "Approved waste burner" means an incinerator constructed of fire resistant material with a cover or screen that is closed when in use, and has openings in the sides or top no greater than 1 inch in diameter.
 3. "Class I Area" means any one of the Arizona mandatory federal Class I areas defined in A.R.S. § 49-401.01.
 4. "Construction burning" means burning wood or vegetative material from land clearing, site preparation, or fabrication, erection, installation, demolition, or modification of any buildings or other land improvements, but does not include burning household waste or prohibited material.
 5. "Dangerous material" means any substance or combination of substances that is capable of causing bodily harm or property loss unless neutralized, consumed, or otherwise disposed of in a controlled and safe manner.
 6. "Delegated authority" means any of the following:
 - a. A county, city, town, air pollution control district, or fire district that has been delegated authority to issue open burning permits by the Director under A.R.S. § 49-501(E); or
 - b. A private fire protection service provider that has been assigned authority to issue open burning permits by one of the authorities in subsection (A)(6)(a).
 7. "Director" means the Director of the Department of Environmental Quality, or designee.
 8. "Emission reduction techniques" means methods for controlling emissions from open outdoor fires to minimize the amount of emissions output per unit of area burned.
 9. "Flue," as used in this Section, means any duct or passage for air or combustion gases, such as a stack or chimney.
 10. "Household waste" means any solid waste including garbage, rubbish, and sanitary waste from a septic tank that is generated from households including single and multiple family residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas, but does not include construction debris, landscaping rubble, or demolition debris.
 11. "Independent authority to permit fires" means the authority of a county to permit fires by a rule adopted under Arizona Revised Statutes, Title 49, Chapter 3, Article 3, and includes only Maricopa, Pima, and Pinal counties.
 12. "Open outdoor fire or open burning" means the combustion of material of any type, outdoors and in the open, where the products of combustion are not directed through a flue. Open outdoor fires include agricultural, residential, prescribed, and construction burning, and fires using air curtain destructors.
 13. "Prohibited materials" means nonpaper garbage from the processing, storage, service, or consumption of food; chemically treated wood; lead-painted wood; linoleum flooring, and composite counter-tops; tires; explosives or ammunition; oleanders; asphalt shingles; tar paper; plastic and rubber products, including bottles for household chemicals; plastic grocery and retail bags; waste petroleum products, such as waste crankcase oil, transmission oil, and oil filters; transformer oils; asbestos; batteries; anti-freeze; aerosol spray cans; electrical wire insulation; thermal insulation; polyester products; hazardous waste products such as paints, pesticides, cleaners and solvents, stains and varnishes, and other flammable liquids; plastic pesticide bags and containers; and hazardous material containers including those that contained lead, cadmium, mercury, or arsenic compounds.
 14. "Residential burning" means open burning of vegetative materials conducted by or for the occupants of residential dwellings, but does not include burning household waste or prohibited material.
 15. "Prescribed burning" has the same meaning as in R18-2-1501.
- B.** Unlawful open burning. Notwithstanding any other rule in this Chapter, a person shall not ignite, cause to be ignited, permit to be ignited, allow, or maintain any open outdoor fire in a county without independent authority to permit fires except as provided in A.R.S. § 49-501 and this Section.
- C.** Open outdoor fires exempt from a permit. The following fires do not require an open burning permit from the Director or a delegated authority:
1. Fires used only for:
 - a. Cooking of food,
 - b. Providing warmth for human beings,
 - c. Recreational purposes,
 - d. Branding of animals,
 - e. Orchard heaters for the purpose of frost protection in farming or nursery operations, and
 - f. The proper disposal of flags under 4 U.S.C. 1, § 8.
 2. Any fire set or permitted by any public officer in the performance of official duty, if the fire is set or permission given for the following purpose:
 - a. Control of an active wildfire; or
 - b. Instruction in the method of fighting fires, except that the person setting these fires must comply with the reporting requirements of subsection (D)(3)(f).
 3. Fire set by or permitted by the Director of Department of Agriculture for the purpose of disease and pest prevention in an organized, area-wide control of an epidemic or infestation affecting livestock or crops.
 4. Prescribed burns set by or assisted by the federal government or any of its departments, agencies, or agents, or the state or any of its agencies, departments, or political subdivisions, regulated under Article 15 of this Chapter.
- D.** Open outdoor fires requiring a permit.
1. The following open outdoor fires are allowed with an open burning permit from the Director or a delegated authority:
 - a. Construction burning;
 - b. Agricultural burning;
 - c. Residential burning;
 - d. Prescribed burns conducted on private lands without the assistance of a federal or state land manager as defined under R18-2-1501;
 - e. Any fire set or permitted by a public officer in the performance of official duty, if the fire is set or permission given for the purpose of weed abatement, or the prevention of a fire hazard, unless the fire is exempt from the permit requirement under subsection (C)(3);
 - f. Open outdoor fires of dangerous material under subsection (E);
 - g. Open outdoor fires of household waste under subsection (F); and
 - h. Open outdoor fires that use an air curtain destructor, as defined in R18-2-101.
 2. A person conducting an open outdoor fire in a county without independent authority to permit fires shall obtain a permit from the Director or a delegated authority unless exempted under subsection (C). Permits may be issued for a period not to exceed one year. A person shall obtain a permit by completing an ADEQ-approved application form.

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3. Open outdoor fire permits issued under this Section shall include:
 - a. A list of the materials that the permittee may burn under the permit;
 - b. A means of contacting the permittee authorized by the permit to set an open fire in the event that an order to extinguish the open outdoor fire is issued by the Director or the delegated authority;
 - c. A requirement that burns be conducted during the following periods, unless otherwise waived or directed by the Director on a specific day basis:
 - i. Year-round: ignite fire no earlier than one hour after sunrise; and
 - ii. Year-round: extinguish fire no later than two hours before sunset;
 - d. A requirement that the permittee conduct all open burning only during atmospheric conditions that:
 - i. Prevent dispersion of smoke into populated areas;
 - ii. Prevent visibility impairment on traveled roads or at airports that result in a safety hazard;
 - iii. Do not create a public nuisance or adversely affect public safety;
 - iv. Do not cause an adverse impact to visibility in a Class I area; and
 - v. Do not cause uncontrollable spreading of the fire;
 - e. A list of the types of emission reduction techniques that the permittee shall use to minimize fire emissions.;
 - f. A reporting requirement that the permittee shall meet by providing the following information in a format provided by the Director for each date open burning occurred, on either a daily basis on the day of the fire, or an annual basis in a report to the Director or delegated authority due on March 31 for the previous calendar year:
 - i. The date of each burn;
 - ii. The type and quantity of fuel burned for each date open burning occurred;
 - iii. The fire type, such as pile or pit, for each date open burning occurred; and
 - iv. For each date open burning occurred, the legal location, to the nearest section, or latitude and longitude, to the nearest degree minute, or street address for residential burns;
 - g. A requirement that the person conducting the open burn notify the local fire-fighting agency or private fire protection service provider, if the service provider is a delegated authority, before burning. If neither is in existence, the person conducting the burn shall notify the state forester.;
 - h. A requirement that the permittee start each open outdoor fire using items that do not cause the production of black smoke;
 - i. A requirement that the permittee attend the fire at all times until it is completely extinguished;
 - j. A requirement that the permittee provide fire extinguishing equipment on-site for the duration of the burn;
 - k. A requirement that the permittee ensure that a burning pit, burning pile, or approved waste burner be at least 50 feet from any structure;
 - l. A requirement that the permittee have a copy of the burn permit on-site during open burning;
 - m. A requirement that the permittee not conduct open burning when an air stagnation advisory, as issued by the National Weather Service, is in effect in the area of the burn or during periods when smoke can be expected to accumulate to the extent that it will significantly impair visibility in Class I areas;
 - n. A requirement that the permittee not conduct open burning when any stage air pollution episode is declared under R18-2-220;
 - o. A statement that the Director, or any other public officer, may order that the burn be extinguished or prohibit burning during periods of inadequate smoke dispersion, excessive visibility impairment, or extreme fire danger; and
 - p. A list of the activities prohibited and the criminal penalties provided under A.R.S. § 13-1706.
4. The Director or a delegated authority shall not issue an open burning permit under this Section:
 - a. That would allow burning prohibited materials other than under a permit for the burning of dangerous materials;
 - b. If the applicant has applied for a permit under this Section to burn a dangerous material which is also hazardous waste under 40 CFR 261, but does not have a permit to burn hazardous waste under 40 CFR 264, or is not an interim status facility allowed to burn hazardous waste under 40 CFR 265; or
 - c. If the burning would occur at a solid waste facility in violation of 40 CFR 258.24 and the Director has not issued a variance under A.R.S. § 49-763.01.
- E. Open outdoor fires of dangerous material. A fire set for the disposal of a dangerous material is allowed by the provisions of this Section, when the material is too dangerous to store and transport, and the Director has issued a permit for the fire. A permit issued under this subsection shall contain all provisions in subsection (D)(3) except for subsections (D)(3)(e) and (D)(3)(f). The Director shall permit fires for the disposal of dangerous materials only when no safe alternative method of disposal exists, and burning the materials does not result in the emission of hazardous or toxic substances either directly or as a product of combustion in amounts that will endanger health or safety.
- F. Open outdoor fires of household waste. An open outdoor fire for the disposal of household waste is allowed by provisions of this Section when permitted in writing by the Director or a delegated authority. A permit issued under this subsection shall contain all provisions in subsection (D)(3) except for subsections (D)(3)(e) and (D)(3)(f). The permittee shall conduct open outdoor fires of household waste in an approved waste burner and shall either:
 1. Burn household waste generated on-site on farms or ranches of 40 acres or more where no household waste collection or disposal service is available; or
 2. Burn household waste generated on-site where no household waste collection and disposal service is available and where the nearest other dwelling unit is at least 500 feet away.
- G. Permits issued by a delegated authority. The Director may delegate authority for the issuance of open burning permits to a county, city, town, air pollution control district, or fire district. A delegated authority may not issue a permit for its own open burning activity. The Director shall not delegate authority to issue permits to burn dangerous material under subsection (E). A county, city, town, air pollution control district, or fire district with delegated authority from the Director may assign that authority to one or more private fire protection service

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providers that perform fire protection services within the county, city, town, air pollution control district, or fire district. A private fire protection provider shall not directly or indirectly condition the issuance of open burning permits on the applicant being a customer. Permits issued under this subsection shall comply with the requirements in subsection (D)(3) and be in a format prescribed by the Director. Each delegated authority shall:

1. Maintain a copy of each permit issued for the previous five years available for inspection by the Director;
2. For each permit currently issued, have a means of contacting the person authorized by the permit to set an open fire if an order to extinguish open burning is issued; and
3. Annually submit to the Director by May 15 a record of daily burn activity, excluding household waste burn permits, on a form provided by the Director for the previous calendar year containing the information required in subsections (D)(3)(e) and (D)(3)(f).

- H. The Director shall hold an annual public meeting for interested parties to review operations of the open outdoor fire program and discuss emission reduction techniques.
- I. Nothing in this Section is intended to permit any practice that is a violation of any statute, ordinance, rule, or regulation.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Correction, subsection (C) repealed effective October 2, 1979, not shown (Supp. 80-1). Former Section R9-3-602 renumbered without change as Section R18-2-602 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-602 renumbered to R18-2-802, new Section R18-2-602 renumbered from R18-2-401 effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-603. Repealed**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-603 renumbered without change as Section R18-2-603 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-603 renumbered to R18-2-803, new Section R18-2-603 renumbered from R18-2-403 effective November 15, 1993 (Supp. 93-4). Repealed effective October 8, 1996 (Supp. 96-4).

R18-2-604. Open Areas, Dry Washes, or Riverbeds

- A. No person shall cause, suffer, allow, or permit a building or its appurtenances, or a building or subdivision site, or a driveway, or a parking area, or a vacant lot or sales lot, or an urban or suburban open area to be constructed, used, altered, repaired, demolished, cleared, or leveled, or the earth to be moved or excavated, without taking reasonable precautions to limit excessive amounts of particulate matter from becoming airborne. Dust and other types of air contaminants shall be kept to a minimum by good modern practices such as using an approved dust suppressant or adhesive soil stabilizer, paving, covering, landscaping, continuous wetting, detouring, barring access, or other acceptable means.
- B. No person shall cause, suffer, allow, or permit a vacant lot, or an urban or suburban open area, to be driven over or used by motor vehicles, trucks, cars, cycles, bikes, or buggies, or by animals such as horses, without taking reasonable precautions to limit excessive amounts of particulates from becoming airborne. Dust shall be kept to a minimum by using an approved

dust suppressant, or adhesive soil stabilizer, or by paving, or by barring access to the property, or by other acceptable means.

- C. No person shall operate a motor vehicle for recreational purposes in a dry wash, riverbed or open area in such a way as to cause or contribute to visible dust emissions which then cross property lines into a residential, recreational, institutional, educational, retail sales, hotel or business premises. For purposes of this subsection "motor vehicles" shall include, but not be limited to trucks, cars, cycles, bikes, buggies and 3-wheelers. Any person who violates the provisions of this subsection shall be subject to prosecution under A.R.S. § 49-463.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-604 renumbered without change as Section R18-2-604 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-604 renumbered to R18-2-804, new Section R18-2-604 renumbered from R18-2-404 and amended effective November 15, 1993 (Supp. 93-4).

R18-2-605. Roadways and Streets

- A. No person shall cause, suffer, allow or permit the use, repair, construction or reconstruction of a roadway or alley without taking reasonable precautions to prevent excessive amounts of particulate matter from becoming airborne. Dust and other particulates shall be kept to a minimum by employing temporary paving, dust suppressants, wetting down, detouring or by other reasonable means.
- B. No person shall cause, suffer, allow or permit transportation of materials likely to give rise to airborne dust without taking reasonable precautions, such as wetting, applying dust suppressants, or covering the load, to prevent particulate matter from becoming airborne. Earth or other material that is deposited by trucking or earth moving equipment shall be removed from paved streets by the person responsible for such deposits.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-605 renumbered without change as Section R18-2-605 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-605 renumbered to R18-2-805, new Section R18-2-605 renumbered from R18-2-405 effective November 15, 1993 (Supp. 93-4).

R18-2-606. Material Handling

No person shall cause, suffer, allow or permit crushing, screening, handling, transporting or conveying of materials or other operations likely to result in significant amounts of airborne dust without taking reasonable precautions, such as the use of spray bars, wetting agents, dust suppressants, covering the load, and hoods to prevent excessive amounts of particulate matter from becoming airborne.

Historical Note

Section R18-2-606 renumbered from R18-2-406 effective November 15, 1993 (Supp. 93-4).

R18-2-607. Storage Piles

- A. No person shall cause, suffer, allow, or permit organic or inorganic dust producing material to be stacked, piled, or otherwise stored without taking reasonable precautions such as chemical stabilization, wetting, or covering to prevent excessive amounts of particulate matter from becoming airborne.
- B. Stacking and reclaiming machinery utilized at storage piles shall be operated at all times with a minimum fall of material and in such manner, or with the use of spray bars and wetting

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agents, as to prevent excessive amounts of particulate matter from becoming airborne.

Historical Note

Section R18-2-607 renumbered from R18-2-407 effective November 15, 1993 (Supp. 93-4).

R18-2-608. Mineral Tailings

No person shall cause, suffer, allow, permit construction of, or otherwise own or operate, mineral tailing piles without taking reasonable precautions to prevent excessive amounts of particulate matter from becoming airborne. Reasonable precautions shall mean wetting, chemical stabilization, revegetation or such other measures as are approved by the Director.

Historical Note

Section R18-2-608 renumbered from R18-2-408, new Section R18-2-408 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 228, effective March 7, 2009 (Supp. 09-1).

R18-2-609. Agricultural Practices

A person shall not cause, suffer, allow, or permit the performance of agricultural practices outside the Phoenix and Yuma planning areas, as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210, including tilling of land and application of fertilizers without taking reasonable precautions to prevent excessive amounts of particulate matter from becoming airborne.

Historical Note

Section R18-2-609 renumbered from R18-2-409 effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 6 A.A.R. 2009, effective May 12, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 2210, effective July 18, 2005 (Supp. 05-2).

R18-2-610. Definitions for R18-2-610.01, R18-2-610.02, and R18-2-610.03

The definitions in R18-2-101 and the following definitions apply to R18-2-610.01, R18-2-610.02, and R18-2-610.03:

1. "Access restriction" means reducing PM emissions by reducing the number of trips driven on agricultural aprons and access roads by restricting or eliminating public access to noncropland or commercial farm roads with signs or physical obstruction at locations that effectively control access to the area.
2. "Aggregate cover" means reducing PM emissions and wind erosion and stabilizing soil by applying and maintaining gravel, concrete, recycled road base, caliche, or other similar material to noncropland or commercial farm roads. The aggregate should be clean, hard and durable, and should be applied and maintained to a depth sufficient to reduce PM emissions.
3. "Area A" means the area delineated according to A.R.S. § 49-541(1).
4. "Best management practice" (BMP) means a technique verified by scientific research, that on a case-by-case basis is practical, economically feasible, and effective in reducing PM emissions from a regulated agricultural activity.
5. "Cessation of Night Tilling" means the discontinuation of tillage from sunset to sunrise on a day identified by the Maricopa or Pinal County Dust Control Forecast as being high risk of dust generation.
6. "Chemical irrigation" means reducing a minimum of one ground operation across a commercial farm by applying a fertilizer, pesticide, or other agricultural chemical to cropland through an irrigation system, which reduces soil disturbance and increases efficiency of application.
7. "Chips/ mulches" means reducing PM emissions and soil movement and preserving soil moisture by applying and maintaining nontoxic chemical or organic dust suppressants to a depth sufficient to reduce PM emissions. Materials shall meet all specifications required by federal, state, or local water agencies, and is not prohibited for use by any applicable regulations.
8. "Combining tractor operations" means reducing soil compaction and a minimum of one tillage or ground operation across a commercial farm by using a tractor, implement, harvester, or other farming support vehicle to perform two or more tillage, cultivation, planting, or harvesting operations at the same time. If Equipment modification is also chosen as a BMP, and uses the same practices as described in this BMP, this action is considered one BMP.
9. "Commercial farm" means 10 or more contiguous acres of land used for agricultural purposes within the boundary of the Maricopa PM nonattainment area and Maricopa County portion of Area A, a PM nonattainment area designated after June 1, 2009 as stated in A.R.S. § 49-457(O)(1)(f), or the Pinal County PM Nonattainment Area.
10. "Commercial farm road" means a road that is unpaved, owned by a commercial farmer, and is used exclusively to service a commercial farm.
11. "Commercial farmer" means an individual, entity, or joint operation in general control of a commercial farm.
12. "Committee" means the Governor's Agricultural Best Management Practices Committee as established by A.R.S. § 49-457.
13. "Conservation Tillage" means a tillage system that reduces a minimum of three tillage operations. This system reduces soil and water loss by planting into existing plant stubble on the field after harvest as well as managing the stubble so that it remains intact during the planting season.
14. "Cover crop" means establishing cover crops that maintain a minimum of 60 percent ground cover. Native or volunteer vegetation that meets the minimum ground cover requirement is acceptable. Compliance shall be determined by the Line Transect Test Method, NRCS National Agronomy Manual, Subpart 503.51, Estimating Crop Residue Cover, amended through February 2011 (and no future editions).
15. "Critical area planting" means reducing PM₁₀ emissions and wind erosion by planting trees, shrubs, vines, grasses, or other vegetative cover on noncropland in order to maintain at least 60 percent ground cover. Compliance shall be determined by the Line Transect Test Method, NRCS National Agronomy Manual, Subpart 503.51, Estimating Crop Residue Cover, amended through February 2011 (and no future editions).
16. "Cropland" means land on a commercial farm that:
 - a. Is within the time-frame of final harvest to plant emergence, but does not include tillage activities;
 - b. Has been tilled in a prior year and is suitable for crop production, but is currently fallow; or
 - c. Is a turn-row.
17. "Cross-wind ridges" means stabilizing soil and reducing PM emissions and wind erosion by creating soil ridges in a commercial farm by tillage or planting operations. Ridges should be at least four inches in height, and be aligned as perpendicular as possible to the prevailing wind direction.

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18. "Dust Control Forecast" means a forecast, which shall identify a low, moderate or high risk of dust generation for the next five consecutive days and shall be issued by noon on each day the forecast is generated. When developing these forecasts, the Department shall consider all of the following:
 - a. Projected meteorological conditions, including:
 - i. Wind speed and direction,
 - ii. Stagnation,
 - iii. Recent precipitation, and
 - iv. Potential for precipitation;
 - b. Existing concentrations of air pollution at the time of the forecast; and
 - c. Historic air pollution concentrations that have been observed during meteorological conditions similar to those that are predicted to occur in the forecast.
19. "Equipment modification" means reducing PM emissions and soil erosion during tillage or ground operations by modifying and maintaining an existing piece of agricultural equipment, installing shielding equipment, modifying land planting and land leveling, matching the equipment to row spacing, or grafting to new varieties or technological improvements. If combining tractor operations is also chosen as a BMP, and uses the same practices as described in this BMP, this action is considered one BMP.
20. "Fallow Field" means an area of land that is routinely cultivated, planted and harvested and is unplanted for one or more growing seasons or planting cycles, but is intended to be placed back in agricultural production.
21. "Field Capacity" means the amount of water remaining in the soil two days after having been saturated and after free drainage has ceased.
22. "Forage Crop" means a product grown for consumption by any domestic animal.
23. "Genetically Modified" (GMO) means a living organism whose genetic material has been altered, changing one or more of its characteristics.
24. "GPS: Global Position Satellite System" means using a satellite navigation system on farm equipment to calculate position in the field.
25. "Green chop" means reducing soil compaction, soil disturbance and a minimum of one ground operation across a commercial farm by harvesting a Forage Crop without allowing it to dry in the field.
26. "Ground operation" means an agricultural operation that is not a tillage operation, which involves equipment passing across the field. A ground operation includes harvest activities. A pass through the field may be a subset of a ground operation.
27. "Harvest" means the time after planting up through harvest, including gathering mature crops from a commercial farm, as well as all actions taken immediately after crop removal, such as cooling, sorting, cleaning, and packing.
28. "Integrated Pest Management" means reducing soil compaction and a minimum of one ground operation across a commercial farm for spraying by using a combination of techniques including organic, conventional, and biological farming practices to suppress pest problems.
29. "Limited harvest activity" means performing no ground operations on a day identified by the Maricopa or Pinal County Dust Control Forecast to be high risk for dust generation.
30. "Limited tillage activity" means performing no tillage operations on a day identified by the Maricopa or Pinal County Dust Control Forecast to be high risk for dust generation.
31. "Maricopa PM nonattainment area" means the Phoenix planning area as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210.
32. "Multi-year crop" means reducing PM emissions from wind erosion and a minimum of one tillage and ground operation across a commercial farm, by protecting the soil surface by growing a crop, pasture, or orchard that is grown, or will be grown, on a continuous basis for more than one year.
33. "Noncropland" means any commercial farm land that:
 - a. Is no longer used for agricultural production;
 - b. Is no longer suitable for production of crops;
 - c. Is subject to a restrictive easement or contract that prohibits use for the production of crops; or
 - d. Includes a ditch, or ditch bank, equipment yard, storage yard, or well head.
34. "NRCS" means the Natural Resource Conservation Service.
35. "Organic material cover" means reducing PM emissions and wind erosion and preserving soil moisture by applying and maintaining cover material such as animal waste or plant residue, to a soil surface to reduce soil movement. Material shall be evenly applied and maintained to a depth sufficient to reduce PM emissions and coverage should be a minimum of 70 percent.
36. "Permanent cover" means reducing PM emissions and wind erosion by maintaining a long-term perennial vegetative cover on cropland that is temporarily not producing a major crop. Perennial species such as grasses and/or legumes shall be used to establish at least 60 percent cover. Compliance shall be determined by the Line Transect Test Method, NRCS National Agronomy Manual, Subpart 503.51, Estimating Crop Residue Cover, amended through February 2011 (and no future editions).
37. "Pinal County PM Nonattainment Area" means the West Pinal PM₁₀ planning area and the West Central PM_{2.5} planning area, as defined in 40 CFR 81.303, and incorporated by reference in R18-2-210.
38. "Plant stubble" means stubble on the soil surface, which insulates soil to reduce evaporation of moisture, and also protects the soil from wind and water erosion.
39. "Planting based on soil moisture" means reducing PM emissions and wind erosion by applying water or having enough moisture in the soil to germinate the seed prior to planting. Soil must have a minimum soil moisture content of 60% of field capacity at planting depth. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions).
40. "PM" includes both particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR 50 Appendix L, or by an equivalent method designated according to 40 CFR 53; and particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method contained within 40 CFR 50 Appendix J or by an equivalent method designated in accordance with 40 CFR 53, as incorporated by reference in Appendix 2.
41. "Precision Farming" means reducing the number of passes across a commercial farm by at least 12 inches per pass by using GPS to precisely guide farm equipment in the field.

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42. "Reduce vehicle speed" means reducing PM emissions and soil erosion from the operation of farm vehicles or farm equipment on noncropland or commercial farm roads at speeds not to exceed 15 mph. This can be achieved through installation of engine speed governors, signage, or speed control devices.
43. "Reduced harvest activity" means reducing soil disturbance, soil and water loss, and the number of mechanical harvest passes by a minimum of one ground operation across a commercial farm, by means other than equipment modification or combining tractor operations.
44. "Reduced tillage system" means reducing soil disturbance, soil and water loss, by using a single piece of equipment that reduces a minimum of three tillage operations, by means other than equipment modification or combining tractor operations.
45. "Regulated agricultural activity" means a regulated agricultural activity as defined in A.R.S. § 49-457(O)(1)(a) through (O)(1)(d).
46. "Regulated area" means the regulated area as defined in A.R.S. § 49-457(O)(6).
47. "Residue management" means reducing PM emissions and wind erosion by maintaining a minimum of 60 percent ground cover of crop and other plant residues on a soil surface between the time of harvest of one crop and the commencement of tillage for a new crop. Compliance shall be determined by the Line Transect Test Method, NRCS National Agronomy Manual, Subpart 503.51, Estimating Crop Residue Cover, amended through February 2011 (and no future editions).
48. "Sequential cropping" means reducing PM emissions and wind erosion by growing crops in a sequence or close rotation that limits the amount of time bare soil is exposed on a commercial farm to 30 days or less.
49. "Shuttle System/Larger Carrier" means reducing one out of every four trips across a commercial farm by using multiple or larger bins/trailers to haul commodity from the field.
50. "Significant Agricultural Earth Moving Activities" means either leveling activities conducted on a commercial farm that disturb the soil more than 4 inches below the surface, or the creation, maintenance and relocation of: ditches, canals, ponds, irrigation lines, tailwater recovery systems (agricultural sumps) and other water conveyances, not to include activities performed on cropland for tillage, ground operations or harvest.
51. "Silt content test method" means the test method as described in Appendix 2.
52. "Stabilization of soil prior to plant emergence" means reducing PM emissions by applying water to soil prior to crop emergence in order to cause the soil to form a visible crust.
53. "Surface roughening" means reducing PM emissions or wind erosion by manipulating a soil surface by means such as rough discing or tillage in order to produce or maintain clods on the land surface. Compliance shall be determined by NRCS Practice Code 609, Surface Roughening, amended through November 2008 (and no future editions).
54. "Synthetic particulate suppressant" means reducing PM emissions and wind erosion by providing a stabilized soil surface on noncropland or commercial farm roads with a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, or polyacrylamide that is used to control particulate matter.
55. "Tillage" means any mechanical practice that physically disturbs the soil, and includes preparation for planting, such as plowing, ripping, or discing.
56. "Tillage based on soil moisture" means reducing PM emissions by irrigating fields to the depth of the proposed cut prior to soil disturbances or conducting tillage to coincide with precipitation. Soil must have a minimum soil moisture content of 40-60% of field capacity at planting depth. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions).
57. "Timing of a tillage operation" means reducing wind erosion and PM emissions by performing tillage operations that minimize the amount of time within 45 days.
58. "Tillage operation" means an agricultural operation that mechanically manipulates the soil for the enhancement of crop production. Examples include discing or bedding. A pass through the field may be a subset of a tillage operation.
59. "Track-out control system" means minimizing any and all material that adheres to and agglomerates on all vehicles and equipment from noncropland or commercial farm roads or and falls onto paved public roads or shoulders to paved public roads by using a device or system to remove mud or soil from a vehicle or equipment before the vehicle enters a paved public road. Devices such as a grizzly, a gravel pad or a wheel wash system can be used.
60. "Transgenic Crops" means reducing a minimum of one tillage or ground operation, the number of chemical spray applications, or soil disturbances by using plants that are genetically modified.
61. "Transplanting" means reducing a minimum of one ground operation across a commercial farm and minimizing soil disturbance by utilizing plants already in a growth state as compared to seeding.
62. "Unpaved vehicle or equipment traffic area" means any area of noncropland that is used for the fueling, servicing, receiving, transfer, parking or storing of equipment or vehicles.
63. "VDT" (Vehicle trips per day) means trips per day made by one vehicle, in one direction.
64. "Watering" means reducing PM emissions and wind erosion by applying water to noncropland or commercial farm road bare soil surfaces during periods of high traffic until the surfaces are visibly moist.
65. "Watering on a high risk day" means reducing PM emissions and wind erosion by applying water to commercial farm road bare soil surfaces until the surfaces are visibly moist, on a day forecast to be high risk for dust generation by the Maricopa or Pinal County Dust Control Forecast.
66. "Wind barrier" means reducing PM emissions and wind erosion by constructing a fence or structure, or providing a woody vegetative barrier by planting a row of trees or shrubs, perpendicular or across the prevailing wind direction to reduce wind speed by changing the pattern of air flow over the land surface. For fences and structures, the wind barrier shall have a density of no less than 50% and the height of the wind barrier must be proportionate to the downwind protected area. The downwind protected area is considered ten times the height of the wind barrier. For vegetative barriers, compliance shall be determined by NRCS Conservation Practice Standard, Code 380, Windbreak/Shelterbelt Establishment, amended through August 21, 2009 (and no future editions).

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Former Section R18-2-610 renumbered to R18-2-612; new Section R18-2-610 adopted by final rulemaking at 6 A.A.R. 2009, effective May 12, 2000 (Supp. 00-2).

Amended by exempt rulemaking at 13 A.A.R. 4326, effective November 14, 2007 (Supp. 07-4). Amended by exempt rulemaking at 18 A.A.R. 137, effective December 29, 2011 (Supp. 11-4). Subsection (A) corrected at the request of the Department, Office File No. M12-133, filed April 5, 2012 (Supp. 11-4). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 27 A.A.R. 2747 (November 26, 2021), with an immediate effective date of November 3, 2021 (Supp. 21-4).

R18-2-610.01. Agricultural PM General Permit for Crop Operations; Maricopa County PM Nonattainment Area

- A.** A commercial farmer within the Maricopa County PM Nonattainment Area shall implement at least two best management practices from each category to reduce PM emissions.
- B.** A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions during tillage, harvest or ground operation activities:
 1. Chemical irrigation,
 2. Combining tractor operations,
 3. Equipment modification,
 4. Green Chop,
 5. Integrated Pest Management,
 6. Limited harvest activity,
 7. Limited tillage activity,
 8. Multi-year crop,
 9. Cessation of Night Tilling,
 10. Planting based on soil moisture,
 11. Precision Farming,
 12. Reduced harvest activity,
 13. Reduced tillage system,
 14. Tillage based on soil moisture,
 15. Timing of a tillage operation,
 16. Transgenic Crops,
 17. Transplanting,
 18. Shuttle System/Larger Carrier, or
 19. Conservation Tillage.
- C.** A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions from noncropland and commercial farm roads:
 1. Access restriction,
 2. Aggregate cover,
 3. Wind barrier,
 4. Critical area planting,
 5. Organic material cover,
 6. Reduce vehicle speed,
 7. Synthetic particulate suppressant,
 8. Track-out control system, or
 9. Watering.
- D.** A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions from cropland:
 1. Wind barrier,
 2. Cover crop,
 3. Cross-wind ridges,
 4. Chips/mulches,
 5. Multi-year crop,
 6. Permanent cover,
 7. Stabilization of soil prior to plant emergence,
 8. Residue management,
 9. Sequential cropping, or
 10. Surface roughening.
- E.** A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions when conducting Significant Agricultural Earth Moving Activities as defined in R18-2-610:
 1. Apply water prior to conducting Significant Agricultural Earth Moving Activities and/or time Significant Agricultural Earth Moving Activities to coincide with precipitation. Soil must have a minimum soil moisture content of 50% of field capacity. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions);
 2. Apply water during Significant Agricultural Earth Moving Activities. Soil must have a minimum soil moisture content of 30% of field capacity. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions);
 3. Limit activities on a day identified by the Maricopa or Pinal County Dust Control Forecast to be high risk for dust generation; or
 4. Conduct Significant Agricultural Earth Moving Activities in a manner to reduce a minimum of one ground operation across a commercial farm by using equipment that is the most efficient means of moving the soil.
- F.** From and after December 31, 2015, a commercial farmer who engages in a regulated agricultural activity shall complete and maintain a Best Management Practices Program General Permit Record Form demonstrating compliance with this Section. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the commercial farmer. The Best Management Practice Program General Permit Record Form shall include the following information:
 1. The name of the commercial farmer, signature, and date signed;
 2. The mailing address or physical address of the commercial farm; and
 3. The best management practices selected for tillage, harvest, and ground operation activities, cropland, noncropland and commercial farm roads, and significant earth moving activities (if applicable).
- G.** Records of any changes to the Best Management Practices Program General Permit Record Form shall be kept by the commercial farmer onsite and made available for review by the Director within two business days of notice to the commercial farmer.
- H.** A person may develop different practices to control PM emissions not contained in subsections (B), (C), (D), or (E) and may submit such practices that are proven effective through on-farm demonstration trials to the Committee. The proposed new practices shall not become effective unless submitted as described in A.R.S. § 49-457(L).
- I.** A commercial farmer shall maintain a record demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice.
- J.** The Director shall not assess a fee to a commercial farmer for coverage under the agricultural PM₁₀ general permit.

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- K. A commercial farmer shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- L. The Director shall document noncompliance with this Section before issuing a compliance order.
- M. A commercial farmer who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).

Historical Note

New Section made by exempt rulemaking at 18 A.A.R. 137, effective December 29, 2011 (Supp. 11-4).
 Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

R18-2-610.02. Agricultural PM General Permit for Crop Operations; Moderate PM Nonattainment Areas, Designated After June 1, 2009

- A. A commercial farmer within a PM Moderate Nonattainment Area, designated after June 1, 2009, shall implement at least one best management practice from each category to reduce PM emissions.
- B. A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions during tillage, harvest and ground operation activities:
 1. Chemical irrigation,
 2. Combining tractor operations,
 3. Equipment modification,
 4. Green Chop,
 5. Integrated Pest Management,
 6. Limited harvest activity,
 7. Limited tillage activity,
 8. Multi-year crop,
 9. Cessation of Night Tilling,
 10. Planting based on soil moisture,
 11. Precision Farming,
 12. Reduced harvest activity,
 13. Reduced tillage system,
 14. Tillage based on soil moisture,
 15. Timing of a tillage operation,
 16. Transgenic Crops,
 17. Transplanting, or
 18. Shuttle System/Larger Carrier, or
 19. Conservation Tillage.
- C. A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions from noncropland and commercial farm roads:
 1. Access restriction,
 2. Aggregate cover,
 3. Wind barrier,
 4. Critical area planting,
 5. Organic material cover,
 6. Reduce vehicle speed,
 7. Synthetic particulate suppressant,
 8. Track-out control system, or
 9. Watering.
- D. A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions from cropland:
 1. Wind barrier,
 2. Cover crop,
 3. Cross-wind ridges,
 4. Chips/mulches,
 5. Multi-year crop,
 6. Permanent cover,
 7. Stabilization of soil prior to plant emergence,
 8. Residue management,
 9. Sequential cropping, or
 10. Surface roughening.
- E. A commercial farmer shall implement from the following best management practices, as described in subsection (A), when conducting Significant Agricultural Earth Moving Activities as defined in R18-2-610:
 1. Apply water prior to conducting Significant Agricultural Earth Moving Activities and/or time Significant Agricultural Earth Moving Activities to coincide with precipitation. Soil must have a minimum soil moisture content of 50% of field capacity. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions);
 2. Apply water during Significant Agricultural Earth Moving Activities. Soil must have a minimum soil moisture content of 30% of field capacity. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions);
 3. Limit activities on a day identified by the Maricopa or Pinal County Dust Control Forecast to be high risk for dust generation; or
 4. Conduct Significant Agricultural Earth Moving Activities in a manner to reduce a minimum of one ground operation across a commercial farm by using equipment that is the most efficient means of moving the soil.
- F. From and after December 31, 2015, a commercial farmer who engages in a regulated agricultural activity shall complete and maintain a Best Management Practices Program General Permit Record Form demonstrating compliance with this Section. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the commercial farmer. The Best Management Practice Program General Permit Record Form shall include the following information:
 1. The name of the commercial farmer, signature, and date signed;
 2. The mailing address or physical address of the commercial farm; and
 3. The best management practice selected for tillage, harvest and ground operation activities, cropland, noncropland and commercial farm roads, and significant earth moving activities (if applicable).
- G. Records of any changes to the Best Management Practices shall be noted on the Best Management Practices Program General Permit Record Form and shall be kept by the commercial farmer onsite and made available for review by the Director within two business days of notice to the commercial farmer.
- H. A person may develop different practices to control PM emissions not contained in subsections (B), (C), (D), or (E) and may submit such practices that are proven effective through on-farm demonstration trials to the Committee. The proposed new practices shall not become effective unless submitted as described in A.R.S. § 49-457(L).
- I. A commercial farmer shall maintain a record demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice.

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- J. The Director shall not assess a fee to a commercial farmer for coverage under the agricultural PM general permit.
- K. A commercial farmer shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- L. The Director shall document noncompliance with this Section before issuing a compliance order.
- M. A commercial farmer who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).

Historical Note

New Section made by exempt rulemaking pursuant to
Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective
July 2, 2015 (Supp. 15-3).

R18-2-610.03. Agricultural PM General Permit for Crop Operations; Pinal County PM Nonattainment Area

- A. On the day before and during the day that is forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, a commercial farmer shall ensure implementation of best management practices as described in subsections (B)(1)(b), (B)(2)(b), (B)(3)(b), (B)(4)(b), and (B)(5)(b).
- B. On all days, a commercial farmer shall implement at least two best management practices from each category to reduce PM emissions, as described in subsections (1)(a), (2)(a), (3)(a), (4)(a), (5)(a), and (6). If a commercial farmer implements the Conservation tillage or Reduced tillage system best management practice for the tillage category, they do not have to implement a best management practice from the subsections (2)(a), (2)(b), (5)(a) and (5)(b).
 - 1. Tillage:
 - a. A commercial farmer shall implement at least two of the following:
 - i. Combining tractor operations,
 - ii. Equipment modification,
 - iii. Multi-year crop,
 - iv. Cessation of night tilling,
 - v. Planting based on soil moisture,
 - vi. Precision farming,
 - vii. Tillage based on soil moisture,
 - viii. Timing of a tillage operation,
 - ix. Transgenic crops,
 - x. Transplanting,
 - xi. Reduced tillage system, or
 - xii. Conservation tillage.
 - b. Unless choosing limited tillage activity (subsection iv, below), on the day before and during the day that is forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, a commercial farmer shall ensure implementation of at least one of the following:
 - i. Multi-year crop,
 - ii. Planting based on soil moisture,
 - iii. Tillage based on soil moisture,
 - iv. Limited tillage activity,
 - v. Reduced tillage system, or
 - vi. Conservation tillage.
 - 2. Ground Operations and Harvest:
 - a. A commercial farmer shall implement at least two of the following:
 - i. Combining tractor operations,
 - ii. Equipment modification,
 - iii. Chemical irrigation,
 - iv. Green chop,
 - v. Integrated pest management,
 - vi. Multi-year crop,
 - vii. Precision farming,
 - viii. Reduced harvest activity,
 - ix. Transgenic crops, or
 - x. Shuttle System/Larger Carrier.
 - b. Unless choosing limited harvest activity in subsection (iv), on the day before and during the day that is forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, a commercial farmer shall ensure implementation of at least one of the following:
 - i. Green chop,
 - ii. Integrated pest management,
 - iii. Multi-year crop, or
 - iv. Limited harvest activity.
- 3. Noncropland:
 - a. A commercial farmer shall implement at least two of the following best management practices:
 - i. Access restriction,
 - ii. Aggregate cover,
 - iii. Wind barrier,
 - iv. Critical area planting,
 - v. Organic material cover,
 - vi. Reduce vehicle speed,
 - vii. Synthetic particulate suppressant, or
 - viii. Watering.
 - b. Unless choosing watering on a high risk day in subsection (vi), on the day before and during a day forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, on a noncropland area that experiences more than 20 VDT from two or more axle vehicles, commercial farmer shall ensure implementation of at least one of the following best management practices:
 - i. Aggregate cover,
 - ii. Wind barrier,
 - iii. Critical area planting,
 - iv. Organic material cover,
 - v. Synthetic particulate suppressant, or
 - vi. Watering on a high risk day.
 - c. On each day that traffic accounts for 50 or more vehicle daily trips, or 20 or more vehicle daily trips with three or more axels, within an unpaved vehicle or equipment traffic area, the opacity of emissions shall be limited to no more than 20% measured according to 40 CFR 60, Appendix A, Reference Method 9.
- 4. Commercial farm roads:
 - a. A commercial farmer shall implement at least two of the following best management practices:
 - i. Access restriction,
 - ii. Reduce vehicle speed,
 - iii. Track-out control system,
 - iv. Aggregate cover,
 - v. Synthetic particulate suppressant,
 - vi. Watering, or
 - vii. Organic material cover.
 - b. Unless choosing watering on a high risk day in subsection (vi), on the day before and during a day forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, on a road that experiences more than 20 VDT from two or more axle vehicles, a commercial farmer shall ensure implementation of at least one of the following best management practices:
 - i. Aggregate cover,
 - ii. Synthetic particulate suppressant,

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- iii. Wind barrier,
 - iv. Organic material cover,
 - v. Roads are stabilized as determined by the silt content test method,
 - vi. Watering on a high risk day.
- 5. Cropland:
 - a. A commercial farmer shall implement at least two of the following best management practices, one from subsections (i) through (vii), and one from subsections (viii) through (xi), to reduce PM emissions from cropland:
 - i. Wind barrier,
 - ii. Cover crop,
 - iii. Cross-wind ridges,
 - iv. Chips/mulches,
 - v. Sequential cropping,
 - vi. Residue management,
 - vii. Surface roughening,
 - viii. Multi-year crop,
 - ix. Permanent cover, or
 - x. Stabilization of soil prior to plant emergence.
 - b. On the day before and during the day that is forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, a commercial farmer shall ensure implementation of at least one of the following:
 - i. Wind barrier,
 - ii. Cover crop,
 - iii. Cross-wind ridges,
 - iv. Chips/mulches,
 - v. Surface roughening,
 - vi. Multi-year crop,
 - vii. Permanent cover,
 - viii. Stabilization of soil prior to plant emergence, or
 - ix. Residue management.
- 6. Significant Agricultural Earth Moving Activities:
 - a. Apply water prior to conducting Significant Agricultural Earth Moving Activities and/or time Significant Agricultural Earth Moving Activities to coincide with precipitation. Soil must have a minimum soil moisture content of 50% of field capacity. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions);
 - b. Apply water during Significant Agricultural Earth Moving Activities. Soil must have a minimum soil moisture content of 30% of field capacity. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions);
 - c. Limit activities on a day identified by the Maricopa or Pinal County Dust Control Forecast to be high risk for dust generation; or
 - d. Conduct Significant Agricultural Earth Moving Activities in a manner to reduce a minimum of one ground operation across a commercial farm by using equipment that is the most efficient means of moving the soil.
- C. From and after December 31, 2015, a commercial farmer who engages in a regulated agricultural activity shall complete a Best Management Practices Program General Permit Record Form demonstrating compliance with this rule. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the commercial farmer. The Best Management Practice Program General Permit Record Form shall include the following information:
 - 1. The name of the commercial farmer, signature, and date signed.
 - 2. The mailing address or physical address of the commercial farm; and
 - 3. The following information for each best management practice selected for tillage, ground operations and harvest, cropland, noncropland, commercial farm roads, and significant earth moving activities (if applicable); and
 - 4. Any additional best management practices selected for high risk days as predicted by the Pinal County Dust Control Forecast.
- D. Beginning in calendar year 2017, and no more than once every subsequent three calendar years, the Director, in conjunction with the Arizona Department of Agriculture, shall provide the commercial farmer with a Best Management Practices Program Three-year Survey. The commercial farmer shall complete the Survey with data from the preceding calendar year and submit the Survey to the Arizona Department of Agriculture (ADA) by January 31, 2018, and every three years thereafter. The Survey information submitted to the ADA shall be compiled by the ADA without reference to a commercial farmer's name, shall aggregate the data from the Surveys received, and be submitted to the Department. The Three-year Survey shall include the following information:
 - 1. The name, business address, and phone number of the commercial farmer responsible for the preparation and implementation of the best management practices;
 - 2. The signature of the commercial farmer and the date the form was signed;
 - 3. The acreage of each crop type planted/growing during the calendar year that the survey is conducted;
 - 4. The total miles of commercial farm roads at the commercial farm;
 - 5. The total acreage of the noncropland at the commercial farm;
 - 6. The best management practices selected for tillage, ground operations and harvest, cropland, noncropland, commercial farm roads, and significant earth moving activities (if applicable); and
 - 7. Any additional best management practices selected for high risk days as predicted by the Pinal County Dust Control Forecast.
- E. Records of any changes to the Best Management Practices shall be noted on the Best Management Practices Program General Permit Record Form and shall be kept by the commercial farmer onsite and made available for review by the Director within two business days of notice to the commercial farmer.
- F. A person may develop different practices to control PM emissions not contained in subsections (B)(1) through (B)(6) and may submit such practices that are proven effective through on-farm demonstration trials to the Committee.
- G. A commercial farmer shall maintain a record demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice.
- H. The Director shall not assess a fee to a commercial farmer for coverage under the agricultural PM general permit.
- I. A commercial farmer shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.

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- J. The Director shall document noncompliance with this Section before issuing a compliance order.
- K. A commercial farmer who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(J), (K), and (L).

Historical Note

New Section made by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 27 A.A.R. 2747 (November 26, 2021), with an immediate effective date of November 3, 2021 (Supp. 21-4).

R18-2-611. Definitions for R18-2-611.01, R18-2-611.02, and R18-2-611.03

The definitions in R18-2-101 and the following definitions apply to R18-2-611.01, R18-2-611.02, and R18-611.03:

1. The following definitions apply to a commercial dairy operation, a commercial beef feedlot, a commercial poultry facility, and commercial swine facility:
 - a. "Animal waste handling and transporting" means the processes by which any animal excretions and mixtures containing animal excretions are collected and transported.
 - b. "Arenas, corrals and pens" means areas where animals are confined for the purposes of, but not limited to, feeding, displaying, safety, racing, exercising, or husbandry.
 - c. "Commercial animal operation" means a commercial dairy operation, a commercial beef feedlot, a commercial poultry facility, and a commercial swine facility, as defined in this Section.
 - d. "Commercial animal operator" means an individual, entity, or joint operation in general control of a commercial animal operation.
 - e. "Dust Control Forecast" means a forecast, which shall identify a low, moderate or high risk of dust generation for the next five consecutive days and shall be issued by noon on each day the forecast is generated. When developing these forecasts, the Department shall consider all of the following:
 - i. Projected meteorological conditions, including:
 - (1) Wind speed and direction,
 - (2) Stagnation,
 - (3) Recent precipitation, and
 - (4) Potential for precipitation;
 - ii. Existing concentrations of air pollution at the time of the forecast; and
 - iii. Historic air pollution concentrations that have been observed during meteorological conditions similar to those that are predicted to occur in the forecast.
 - f. "High traffic areas" means areas that experience more than 20 VDT from two or more axle vehicles.
 - g. "Maricopa PM nonattainment area" means the Phoenix planning area as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210.
 - h. "Paved Public Road" means any paved roadways that are open to public travel and maintained by a City, County, State, or Federal entities.
 - i. "Pinal County PM Nonattainment Area" means the West Pinal PM₁₀ planning area and the West Central PM_{2.5} planning area, as defined in 40 CFR 81.303, and incorporated by reference in R18-2-210.
 - j. "PM" includes both particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR 50 Appendix L, or by an equivalent method designated according to 40 CFR 53; and particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method contained within 40 CFR 50, Appendix J or by an equivalent method designated in accordance with 40 CFR 53, as incorporated by reference in Appendix 2.
 - k. "Regulated agricultural activity" means a regulated agricultural activity as defined in A.R.S. § 49-457(O)(5).
 - l. "Regulated area" means the regulated area as defined in A.R.S. § 49-457(O)(6).
 - m. "Track-out control device" means minimizing any and all material that adheres to and agglomerates on all vehicles and equipment from unpaved access connections and falls onto paved public roads or shoulders to paved public roads by using a device or system to remove mud or soil from a vehicle or equipment before the vehicle enters a paved public road. Devices such as a grizzly, a gravel pad or a wheel wash system can be used.
 - n. "Unpaved access connections" means any unpaved road connection which connects to a paved public road.
 - o. "Unpaved roads or feed lanes" means roads and feed lanes that are unpaved, owned by a commercial animal operator, and used exclusively to service a commercial animal operation.
 - p. "Unpaved vehicle or equipment traffic area" means any area that is used for the fueling, servicing, receiving, transfer, parking or storing of equipment or vehicles.
 - q. "VDT" (Vehicle trips per day) means trips per day made by one vehicle, in one direction.
2. The following definitions apply to a commercial dairy operation:
 - a. "Aggregate cover" means reducing PM emissions, wind erosion and stabilizing soil by applying and maintaining gravel, concrete, recycled road base, caliche, or other similar material to unpaved roads or feed lanes. The aggregate should be clean, hard and durable, and should be applied and maintained to a minimum of three inches deep.
 - b. "Apply a fibrous layer" means reducing PM emissions and soil movement, and preserving soil moisture by spreading shredded or deconstructed plant materials to cover loose soil in high animal traffic areas. Material shall be consistently applied to a minimum depth of two inches above the soil surface and coverage should be a minimum of 70 percent.
 - c. "Bunkers" means below ground level storage systems for storing large amount of silage, which is covered with a plastic tarp.
 - d. "Calves" means young dairy stock under two months of age.
 - e. "Cement cattle walkways to milk barn" means reducing PM emissions by fencing pathways from the corrals to the milking barn, restricting dairy cattle to surfaces with concrete floors.
 - f. "Commercial dairy operation" means a dairy operation:
 - i. With more than 150 dairy cattle within the boundary of the Maricopa PM nonattainment area and Maricopa County portion of Area A or

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- a PM nonattainment area designated after June 1, 2009, or
 - ii. With more than 50 dairy cattle within the boundary of the Pinal County PM Nonattainment Area.
 - g. "Cover manure hauling trucks" means reducing PM emissions by completely covering the top of the loaded area.
 - h. "Covers for silage" means reducing PM emissions and wind erosion by using large plastic tarps to completely cover silage.
 - i. "Do not run cattle" means reducing PM emissions by walking dairy cattle to the milking barn.
 - j. "Feed higher moisture feed to dairy cattle" means reducing PM emissions by feeding dairy cattle one or any combination of the following:
 - i. Add water to ration mix to achieve a 20% minimum moisture level,
 - ii. Add molasses or tallow to ration mix at a minimum of 1%,
 - iii. Add silage, or
 - iv. Add green chop.
 - k. "Feed green chop" means feeding high moisture feed that contains at least 30% moisture directly to dairy cattle.
 - l. "Groom manure surface" means reducing PM emissions and wind erosion by:
 - i. Flushing or vacuuming lanes daily,
 - ii. Scraping and harrowing pens on a weekly basis, and
 - iii. Removing manure every four months with equipment that leaves an even corral surface of compacted manure on top of the soil.
 - m. "Hutches" means raised, roofed enclosures that protect the calves from the elements.
 - n. "Pile manure between cleanings" means reducing PM emissions by collecting loose surface materials within the confines of the surface area of the occupied feed pen every two weeks.
 - o. "Provide cooling in corral" means reducing PM emissions by using cooling systems under the corral shades to reduce the ambient air temperature, thereby increasing stocking density in the cool areas of the corrals.
 - p. "Provide shade in corral" means reducing PM emissions by increasing stocking density and reducing animal movement by using a permanent structure, which provides at least 16 square feet per animal of shaded pen surface.
 - q. "Push equipment" means manure harvesting equipment pushed in front of a tractor.
 - r. "Silage" means fermented, high-moisture fodder that can be fed to ruminants, such as cattle and sheep; usually made from grass crops including corn, sorghum or other cereals, by using the entire green plant.
 - s. "Store and maintain feed stock" means reducing PM emissions and wind erosion by storing feed stock in a covered area where the commodity is surrounded on at least three sides by a structure.
 - t. "Synthetic particulate suppressant" means reducing PM emissions and wind erosion by providing a stabilized soil surface on a commercial dairy operation with a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, or polyacrylamide that is used to control particulate matter.
 - u. "Use drag equipment to maintain pens" means reducing PM emissions by using manure equipment pulled behind a tractor instead of using push equipment, which avoids dust accumulation in floor depressions.
 - v. "Use free stall housing" means reducing PM emissions by enclosing one cow per stall, which are outfitted with concrete floors.
 - w. "Water misting systems" means reducing PM emissions from dry manure by using systems that project a cloud of very small water particles onto the manure surface, keeping the surface visibly moist.
 - x. "Wind barrier" means reducing PM₁₀ emissions and wind erosion by constructing a fence or structure, or providing a woody vegetative barrier by planting a row of trees or shrubs, perpendicular or across the prevailing wind direction to reduce wind speed by changing the pattern of air flow over the land surface. For fences and structures, the wind barrier shall have a density of no less than 50% and the height of the wind barrier must be proportionate to the downwind protected area. The downwind protected area is considered ten times the height of the wind barrier. For vegetative barriers, compliance shall be determined by NRCS Conservation Practice Standard, Code 380, Windbreak/Shelterbelt Establishment, amended through August 21, 2009 (and no future editions).
3. The following definitions apply to a commercial beef cattle feedlot:
- a. "Add moisture to pen surface" means reducing PM emissions and wind erosion by applying at least three to six gallons of water per head/per day in pens occupied by beef cattle.
 - b. "Add molasses or tallow to feed" means reducing PM emissions by adding molasses or tallow so that it equals three percent of the total ration.
 - c. "Aggregate cover" means reducing PM emissions, wind erosion and stabilizing soil by applying and maintaining gravel, concrete, recycled road base, caliche, or other similar material to unpaved roads or feed lanes. The aggregate should be clean, hard and durable, and should be applied and maintained to a minimum of three inches deep.
 - d. "Apply a fibrous layer in working areas" means reducing PM emissions and soil movement, and preserving soil moisture by spreading shredded or deconstructed plant materials to cover loose soil in high animal traffic areas. Material shall be consistently applied to a minimum depth of two inches above the soil surface and coverage should be a minimum of 70%.
 - e. "Bulk materials" means reducing PM emissions by using a closed conveyor system instead of vehicular means to move grain or other.
 - f. "Commercial beef cattle feedlot" means a beef cattle feedlot:
 - i. With more than 500 beef cattle within the boundary of the Maricopa PM nonattainment area and Maricopa County portion of Area A or a PM nonattainment area designated after June 1, 2009, or
 - ii. With more than 50 beef cattle within the Pinal County PM Nonattainment Area.

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- g. "Concrete apron" means reducing PM emissions by using solidly formed concrete surface, at least 4 inches thick on top of the soil surface, inside the feed pen for 8 feet approaching the feed bunk or water trough.
 - h. "Control cattle during movements" means reducing PM emissions by suppressing the animal's ability to run by driving them forward while intruding on their "flight zones" or restraining the animal's movement.
 - i. "Cover manure hauling trucks" means reducing PM emissions by completely covering the top of the loaded area.
 - j. "Feed higher moisture feed to beef cattle" means reducing PM emissions by feeding beef cattle feed that contains at least 30% moisture.
 - k. "Frequent manure removal" means reducing PM emissions and wind erosion by harvesting loose manure on top of the pen surface at least once every six months.
 - l. "Pile manure between cleanings" means reducing PM emissions by collecting loose manure surface materials, by scraping or pushing, within the confines of the surface area of the occupied feed pen at least four times per year.
 - m. "Provide shade in corral" means reducing PM emissions by increasing stocking density and reducing animal movement by using a permanent structure, which provides at least 16 square feet per animal of shaded pen surface.
 - n. "Push equipment" means manure harvesting equipment pushed in front of a tractor.
 - o. "Store and maintain feed stock" means reducing PM emissions and wind erosion by storing feed stock in a covered area where the commodity is surrounded on at least three sides by a structure.
 - p. "Synthetic particulate suppressant" means reducing PM emissions and wind erosion by providing a stabilized soil surface on a commercial beef feedlot with a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, or polyacrylamide that is used to control particulate matter.
 - q. "Use drag equipment to maintain pens" means reducing PM emissions by using manure harvesting equipment pulled behind a tractor instead of using push equipment, which avoids dust accumulation in floor depressions.
 - r. "Wind barrier" means reducing PM₁₀ emissions and wind erosion by constructing a fence or structure, or providing a woody vegetative barrier by planting a row of trees or shrubs, perpendicular or across the prevailing wind direction to reduce wind speed by changing the pattern of air flow over the land surface. For fences and structures, the wind barrier shall have a density of no less than 50% and the height of the wind barrier must be proportionate to the downwind protected area. The downwind protected area is considered ten times the height of the wind barrier. For vegetative barriers, compliance shall be determined by NRCS Conservation Practice Standard, Code 380, Windbreak/Shelterbelt Establishment, amended through August 21, 2009 (and no future editions).
4. The following definitions apply to a commercial poultry facility:
- a. "Add moisture through ventilation systems" means reducing PM emissions by using a ventilation system that is designed to allow stock to maintain their normal body temperature without difficulty while maintaining a minimum of 20% moisture in the air within the housing system to bind small particles to larger particles.
 - b. "Add oil and/or moisture to the feed" means reducing PM emissions by adding a minimum of 1% edible oil and/or moisture to feed rations to bind small particles to larger particles.
 - c. "Aggregate cover" means reducing PM emissions, wind erosion and stabilizing soil by applying and maintaining gravel, concrete, recycled road base, caliche, or other similar material to unpaved roads or feed lanes. The aggregate should be clean, hard and durable, and should be applied and maintained to a minimum of 3 inches deep.
 - d. "Clean aisles between cage rows" means reducing PM emissions by cleaning the aisles between cage rows at least twice every 14 days to prevent dried manure, spilled feed, and debris accumulation.
 - e. "Clean fans, louvers, and soffit inlets in a commercial poultry facility" means reducing PM emissions by cleaning fans, louvers, and soffit inlets when the facility is empty between depopulating and populating the facility.
 - f. "Clean floors and walls in a commercial poultry facility" means reducing PM emissions by cleaning floors and walls to prevent dried manure, spilled feed, and debris accumulation when the facility is empty between depopulating and populating the facility.
 - g. "Commercial poultry facility" means a poultry operation with more than 25,000 egg laying hens within the boundary of the Maricopa PM nonattainment area and Maricopa County portion of Area A, a PM nonattainment area designated after June 1, 2009, as stated in A.R.S. § 49-457(O)(1)(f), or the Pinal County PM Nonattainment Area.
 - h. "Control vegetation on building exteriors" means reducing PM emissions by removing, cutting, or trimming vegetation that accumulates PM and restricts ventilation of the building, so as to leave approximately 3 feet between the vegetation and building.
 - i. "Enclose transfer points" means reducing PM emissions by enclosing the points of transfer between the enclosed, weatherproof storage structure and the enclosed feed distribution system, which reduce air contact with the feed rations during feed conveyance.
 - j. "House in fully enclosed ventilated buildings" means reducing PM emissions by utilizing fully enclosed buildings with sufficient ventilation.
 - k. "Maintain moisture in manure solids" means reducing PM emissions by maintaining a moisture content of a minimum of 15% in the solids sufficient to bind small particles to larger particles.
 - l. "Minimize drop distance" means reducing PM emissions by designing the feed distribution system so that the distance the feed ration drops from the feed distribution system into feeders is approximately 1 foot or less, which reduces air contact with the feed rations during feed conveyance.

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- m. "Poultry" means any domesticated bird including chickens, turkeys, ducks, geese, guineas, ratites and squabs.
 - n. "Remove spilled feed" means reducing PM emissions by removing spilled feed from the housing facility at least once every 14 days.
 - o. "Stack separated manure solids" means reducing PM emissions and wind erosion by reducing the amount of exposed surface area of manure solids.
 - p. "Store feed" means reducing PM emissions by storing feed in a structure that is enclosed and weather-proof, which reduces air contact with the feed rations during feed storage.
 - q. "Synthetic particulate suppressant" means reducing PM emissions and wind erosion by providing a stabilized soil surface on a commercial poultry operation with a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, or polyacrylamide that is used to control particulate matter.
 - r. "Use enclosed feed distribution system" means reducing PM emissions by using an enclosed feed conveyance system that distributes feed rations throughout the housing facility, which reduces air contact with the feed rations during feed conveyance.
 - s. "Use a flexible discharge spout" means reducing PM emissions and wind erosion at the time of bulk feed deliveries to the housing units by using a flexible discharge spout on the end of the feed truck transfer auger.
 - t. "Use no bedding in the production facility" means reducing PM emissions by not using bedding such as wood shavings, sawdust, peanut hulls, straw, or other organic material.
 - u. "Use of a rotary dryer to dry manure waste" means reducing PM₁₀ emissions by drying the manure waste in a rotary dryer fitted with a baghouse or wet scrubber. A commercial poultry facility using a rotary dryer must comply with all of the following:
 - i. Install, maintain, and operate the baghouse or wet scrubber in a manner consistent with the manufacturer's specifications at all times the rotary dryer is operated. The manufacturer specifications must be available on site upon request.
 - ii. Conduct monthly observations using EPA Method 22 on the control equipment to ensure proper operation. If improper operation is observed through EPA Method 22, the dryer must stop immediately and the equipment repaired before resuming operations.
 - iii. For baghouses, conduct an annual black light inspection of the bags to detect broken or leaking bags. If broken or leaking bags are detected it must be repaired or replaced immediately.
 - iv. Maintain a record of all repair activity required under (ii) and (iii) that must be made available within two days of Director's request for inspection.
5. The following definitions apply to a commercial swine facility:
- a. "Add oil and/or moisture to the feed" means reducing PM emissions by adding a minimum of 0.5% edible oil and/or moisture to feed rations to bind small particles to larger particles.
 - b. "Add moisture through ventilation systems" means reducing PM emissions by using a ventilation system that is designed to allow stock to maintain their normal body temperature without difficulty while maintaining minimum of 15% moisture in the air within the housing system to bind small particles to larger particles.
 - c. "Aggregate cover" means reducing PM emissions, wind erosion and stabilizing soil by applying and maintaining gravel, concrete, recycled road base, caliche, or other similar material to unpaved roads or feed lanes. The aggregate should be clean, hard and durable, and should be applied and maintained to a minimum of three inches deep.
 - d. "Clean aisles between pens and stalls" means reducing PM emissions by cleaning the aisles between pens and stalls at least twice every 14 days to prevent dried manure, spilled feed, and debris accumulation.
 - e. "Clean fans, louvers, and soffit inlets in a commercial swine facility" means reducing PM emissions by cleaning fans, louvers, and soffit inlets between transfer of animal groups, but in any case, at least every six months.
 - f. "Clean pens, floors and walls in a commercial swine facility" means reducing PM emissions by cleaning pens, floors, and walls between transfer of animal groups to prevent dried manure, spilled feed, and debris accumulation, but in any case, at least every six months.
 - g. "Commercial swine facility" means a swine operation with more than 50 animal units for more than 30 consecutive days within the boundary of the Maricopa PM nonattainment area and Maricopa County portion of Area A, a PM nonattainment area designated after June 1, 2009 as stated in A.R.S. § 49-457(O)(1)(f), or the Pinal County PM Nonattainment Area. One thousand pounds equals one animal unit.
 - h. "Control vegetation on building exteriors" means reducing PM emissions by removing, cutting, or trimming vegetation that accumulates PM and restricts ventilation of the building, so as to leave approximately 3 feet between the vegetation and the building.
 - i. "Enclose transfer points" means reducing PM emissions by enclosing the points of transfer between the enclosed, weatherproof storage structure and the enclosed feed distribution system, which reduces air contact with the feed rations during feed conveyance.
 - j. "House in fully enclosed ventilated buildings" means reducing PM emissions by utilizing fully enclosed buildings with sufficient ventilation.
 - k. "Lagoon" means a liquid manure storage and treatment pond.
 - l. "Maintain moisture in manure solids" means reducing PM₁₀ emissions by maintaining a minimum moisture content of 10% in the solids sufficient to bind small particles to larger particles.
 - m. "Minimize drop distance" means reducing PM emissions by designing the feed distribution system so that the distance the feed ration drops from the feed distribution system into feeders is 3 feet or less,

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which reduces air contact with the feed rations during feed conveyance.

- n. "Remove spilled feed" means reducing PM emissions by removing spilled feed from the housing facility at least once every 14 days.
- o. "Slatted flooring" means reducing PM emissions by using flooring that is a slotted concrete or wire-mesh floor set above a liquid manure collection pit, which allows the excrement to fall through the flooring into the liquid pit below, which prevents solids build-up. Slats 4 to 8 inches wide with spacing of about 1 inch in between are recommended.
- p. "Sloped concrete flooring" means reducing PM emissions by pouring concrete with a minimum of 0.25% grade inside of the barns which provides drainage and easier cleaning of floor areas.
- q. "Stack separated manure solids" means reducing PM emissions and wind erosion by reducing the amount of exposed surface area of manure solids.
- r. "Store feed" means reducing PM emissions by storing feed in a structure that is enclosed and weather-proof, which reduces air contact with the feed rations during feed storage.
- s. "Store separated manure solids" means reducing PM emissions by storing manure solids in a wind-blocked area behind a wall, structure, or area with natural wind protection to minimize blowing air movement over the manure stack.
- t. "Synthetic particulate suppressant" means reducing PM emissions and wind erosion by providing a stabilized soil surface on a commercial swine operation with a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, or polyacrylamide that is used to control particulate matter.
- u. "Use a flexible discharge spout" means reducing PM emissions and wind erosion at the time of bulk feed deliveries to the housing units by using a flexible discharge spout on the end of the feed truck transfer auger.
- v. "Use enclosed feed distribution system" means reducing PM emissions by using an enclosed feed conveyance system that distributes feed rations throughout the housing facility, which reduces air contact with the feed rations during the feed conveyance.
- w. "Use no bedding in the production facility" means reducing PM emissions by not using bedding such as wood shavings, sawdust, peanut hulls, straw, or other organic material.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2009, effective May 12, 2000 (Supp. 00-2). Amended by exempt rulemaking at 13 A.A.R. 4326, effective November 14, 2007 (Supp. 07-4). Section repealed; new Section made by exempt rulemaking at 18 A.A.R. 137, effective December 29, 2011 (Supp. 11-4). Subsection (2)(a) corrected at request of the Department, Office File No. M12-133, filed April 5, 2012 (Supp. 11-4). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 22 A.A.R. 987, effective April 5, 2016 (Supp. 16-2). Amended by final exempt rulemaking at 27 A.A.R. 2747 (November 26, 2021), with an immediate effective date of November 3, 2021 (Supp. 21-4).

R18-2-611.01. Agricultural PM General Permit for Animal Operations; Maricopa County Serious PM Nonattainment Areas

- A. A commercial animal operator within a Serious PM Nonattainment Area shall implement at least two best management practices from each category to reduce PM emissions.
- B. A commercial dairy operation shall implement the following best management practices, as described in subsection (A), from each of the following categories:
 - 1. Arenas, Corrals, and Pens:
 - a. Use free stall housing,
 - b. Provide shade in corral,
 - c. Provide cooling in corral,
 - d. Cement cattle walkways to milk barn,
 - e. Groom manure surface,
 - f. Water misting systems,
 - g. Use drag equipment to maintain pens,
 - h. Pile manure between cleanings,
 - i. Feed green chop,
 - j. Keep calves in barns or hutches,
 - k. Do not run cattle,
 - l. Apply a fibrous layer, or
 - m. Wind barrier.
 - 2. Animal Waste (and Feed) Handling and Transporting:
 - a. Feed higher moisture feed to dairy cattle,
 - b. Store and maintain feed stock,
 - c. Covers for silage,
 - d. Store silage in bunkers,
 - e. Cover manure hauling trucks, or
 - f. Do not load manure trucks with dry manure when wind exceeds 15 mph.
 - 3. Unpaved Access Connections:
 - a. Install signage to limit vehicle speed to 15 mph,
 - b. Install speed control devices,
 - c. Restrict access to through traffic,
 - d. Install and maintain a track-out control device,
 - e. Apply and maintain pavement in high traffic areas,
 - f. Apply and maintain aggregate cover,
 - g. Apply and maintain synthetic particulate suppressant, or
 - h. Apply and maintain water as a dust suppressant.
 - 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed truck to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict access to through traffic,
 - e. Apply and maintain pavement in high traffic areas,
 - f. Apply and maintain aggregate cover,
 - g. Apply and maintain synthetic particulate suppressant,
 - h. Apply and maintain water as a dust suppressant,
 - i. Use appropriate vehicles such as electric carts or small utility vehicles instead of trucks, or
 - j. Apply and maintain pavement or cement feed lanes.
- C. A commercial beef cattle feedlot shall implement the following best management practices, as described in subsection (A), from each of the following categories:
 - 1. Arenas, Corrals, and Pens:
 - a. Concrete aprons,
 - b. Provide shade in corral,
 - c. Add moisture to pen surface,
 - d. Manure removal,
 - e. Pile manure between cleanings,
 - f. Feed higher moisture feed to beef cattle,
 - g. Control cattle during movements,

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- h. Use drag equipment to maintain pens,
- i. Apply a fibrous layer, or
- j. Wind barrier.
- 2. Animal Waste (and Feed) Handling and Transporting:
 - a. Feed higher moisture feed to beef cattle,
 - b. Add molasses or tallow to feed,
 - c. Store and maintain feed stock,
 - d. Bulk materials,
 - e. Use drag equipment to maintain pens,
 - f. Cover manure hauling trucks, or
 - g. Do not load manure when wind exceeds 15 mph.
- 3. Unpaved Access Connections:
 - a. Install and maintain a track-out control device,
 - b. Apply and maintain pavement in high traffic areas,
 - c. Apply and maintain aggregate cover,
 - d. Apply and maintain synthetic particulate suppressant, or
 - e. Apply and maintain water as a dust suppressant.
- 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed truck to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict access to through traffic,
 - e. Apply and maintain pavement in high traffic areas,
 - f. Apply and maintain aggregate cover,
 - g. Apply and maintain synthetic particulate suppressant,
 - h. Apply and maintain water as a dust suppressant, or
 - i. Apply and maintain oil on roads or feed lanes.
- D. A commercial poultry facility shall implement the following best management practices, as described in subsection (A), from each of the following categories:
 - 1. Arenas, Corrals, and Pens (Housing):
 - a. Clean fans, louvers, and soffit inlets in a commercial poultry facility,
 - b. Use no bedding,
 - c. Control vegetation on building exteriors,
 - d. Add moisture through ventilation systems, or
 - e. House in fully enclosed ventilated buildings.
 - 2. Animal Waste (and Feed) Handling and Transporting:
 - a. Remove spilled feed,
 - b. Store feed,
 - c. Add oil and/or moisture to the feed,
 - d. Use enclosed feed distribution system,
 - e. Use flexible discharge spout,
 - f. Minimize drop distance,
 - g. Enclose transfer points,
 - h. Clean floors and walls in a commercial poultry facility,
 - i. Clean aisles between cage rows,
 - j. Stack separated manure solids,
 - k. Maintain moisture in manure solids, or
 - l. Use of a rotary dryer to dry manure waste.
 - 3. Unpaved Access Connections:
 - a. Install speed control devices,
 - b. Restrict traffic access,
 - c. Install and maintain a track-out control system, or
 - d. Install signage to limit vehicle speed to 15 mph.
 - 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed trucks to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict traffic access,
 - e. Apply and maintain aggregate cover,
- E. A commercial swine facility shall implement the following best management practices, as described in subsection (A), from each of the following categories:
 - 1. Arenas, Corrals, and Pens (Housing):
 - a. House in fully enclosed ventilated buildings,
 - b. Use no bedding,
 - c. Use a slatted floor system,
 - d. Use sloped concrete flooring,
 - e. Clean fans, louvers, and soffit inlets in a commercial swine facility,
 - f. Control vegetation on building exteriors, or
 - g. Add moisture through ventilation systems.
 - 2. Animal Waste (and Feed) Handling and Transporting:
 - a. Remove spilled feed,
 - b. Store feed,
 - c. Add oil and/or moisture to feed,
 - d. Use enclosed feed distribution system,
 - e. Use flexible discharge spout,
 - f. Minimize drop distance,
 - g. Enclose transfer points,
 - h. Clean pens, floors, and walls in a commercial swine facility,
 - i. Clean aisles between pens and stalls,
 - j. Store separated manure solids in a wind-blocked area,
 - k. Stack separated manure solids,
 - l. Maintain moisture in manure solids, or
 - m. Maintain liquid lagoon level.
 - 3. Unpaved Access Connections:
 - a. Install speed control devices,
 - b. Restrict traffic access,
 - c. Install and maintain a track-out control system,
 - d. Install signage to limit vehicle speed to 15 mph.
 - 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed trucks to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict traffic access,
 - e. Apply and maintain aggregate cover,
 - f. Apply and maintain synthetic particulate suppressant,
 - g. Apply and maintain water,
 - h. Apply and maintain oil on roads or feed lanes, or
 - i. Wind barrier.
- F. From and after December 31, 2015, a commercial animal operator who engages in a regulated agricultural activity shall complete a Best Management Practices Program General Permit Record Form. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the commercial animal operator. The Best Management Practice Program General Permit Record form shall include the following information:
 - 1. The name of the commercial animal operator, signature, and date signed,
 - 2. The mailing address or physical address of the commercial animal operation, and
 - 3. The best management practices selected for Arenas, Corrals, and Pens, Animal Waste Handling and Transporting,

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Unpaved Access Connections, and Unpaved Roads or Feed Lanes.

- G. Beginning January 1, 2016, a commercial animal operator shall maintain records demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice and any changes to the best management practices. Records shall be kept by the commercial animal operator onsite and made available for review by the Director within two business days of notice to the commercial animal operator.
- H. A person may develop different practices not contained in subsection (B), (C), (D), or (E), that reduce PM and may submit such practices that are proven effective through on-operation demonstration trials to the Committee.
- I. The Director shall not assess a fee to a commercial animal operator for coverage under the Best Management Practice Program General Permit Record Form.
- J. A commercial animal operator shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- K. The Director shall document noncompliance with this Section before issuing a compliance order.
- L. A commercial animal operator who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).

Historical Note

New Section made by exempt rulemaking at 18 A.A.R. 137, effective December 29, 2011 (Supp. 11-4).
Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 22 A.A.R. 987, effective April 5, 2016 (Supp. 16-2).

R18-2-611.02. Agricultural PM General Permit for Animal Operations; Moderate PM Nonattainment Areas Designated After June 1, 2009, Except Pinal County PM Nonattainment Area

- A. A commercial animal operator within a Moderate PM Nonattainment Area, designated after June 1, 2009, shall implement at least one best management practice from each category to reduce PM emissions.
- B. A commercial dairy operation shall implement the following best management practices, as described in subsection (A), from each of the following categories:
 - 1. Arenas, Corrals, and Pens:
 - a. Use free stall housing,
 - b. Provide shade in corral,
 - c. Provide cooling in corral,
 - d. Cement cattle walkways to milk barn,
 - e. Groom manure surface,
 - f. Water misting systems,
 - g. Use drag equipment to maintain pens,
 - h. Pile manure between cleanings,
 - i. Feed green chop,
 - j. Keep calves in barns or hutches,
 - k. Do not run cattle,
 - l. Apply a fibrous layer, or
 - m. Wind barrier.
 - 2. Animal Waste (and Feed) Handling and Transporting:
 - a. Feed higher moisture feed to dairy cattle,
 - b. Store and maintain feed stock,
 - c. Covers for silage,
 - d. Store silage in bunkers,
 - e. Cover manure hauling trucks, or

- f. Do not load manure trucks with dry manure when wind exceeds 15 mph.
- 3. Unpaved Access Connections:
 - a. Install signage to limit vehicle speed to 15 mph,
 - b. Install speed control devices,
 - c. Restrict access to through traffic,
 - d. Install and maintain a track-out control device,
 - e. Apply and maintain pavement in high traffic areas,
 - f. Apply and maintain aggregate cover,
 - g. Apply and maintain synthetic particulate suppressant, or
 - h. Apply and maintain water as a dust suppressant.
- 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed truck to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict access to through traffic,
 - e. Apply and maintain pavement in high traffic areas,
 - f. Apply and maintain aggregate cover,
 - g. Apply and maintain synthetic particulate suppressant,
 - h. Apply and maintain water as a dust suppressant,
 - i. Use appropriate vehicles such as electric carts or small utility vehicles instead of trucks, or
 - j. Apply and maintain pavement or cement feed lanes.
- C. A commercial beef cattle feedlot shall implement the following best management practices, as described in subsection (A), from each of the following categories:
 - 1. Arenas, Corrals, and Pens:
 - a. Concrete aprons,
 - b. Provide shade in corral,
 - c. Add moisture to pen surface,
 - d. Manure removal,
 - e. Pile manure between cleanings,
 - f. Feed higher moisture feed to beef cattle,
 - g. Control cattle during movements,
 - h. Use drag equipment to maintain pens,
 - i. Apply a fibrous layer, or
 - j. Wind barrier.
 - 2. Animal Waste (and Feed) Handling and Transporting:
 - a. Feed higher moisture feed to beef cattle,
 - b. Add molasses or tallow to feed,
 - c. Store and maintain feed stock,
 - d. Bulk materials,
 - e. Use drag equipment to maintain pens,
 - f. Cover manure hauling trucks, or
 - g. Do not load manure when wind exceeds 15 mph.
 - 3. Unpaved Access Connections:
 - a. Install and maintain a track-out control device,
 - b. Apply and maintain pavement in high traffic areas,
 - c. Apply and maintain aggregate cover,
 - d. Apply and maintain synthetic particulate suppressant, or
 - e. Apply and maintain water as a dust suppressant.
 - 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed truck to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict access to through traffic,
 - e. Apply and maintain pavement in high traffic areas,
 - f. Apply and maintain aggregate cover,
 - g. Apply and maintain synthetic particulate suppressant,
 - h. Apply and maintain water as a dust suppressant, or

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- i. Apply and maintain oil on roads or feed lanes.
- D. A commercial poultry facility shall implement the following best management practices, as described in subsection (A), from each of the following categories:
 - 1. Arenas, Corrals, and Pens (Housing):
 - a. Clean fans, louvers, and soffit inlets in a commercial poultry facility,
 - b. Use no bedding,
 - c. Control vegetation on building exteriors;
 - d. Add moisture through ventilation systems, or
 - e. House in fully enclosed ventilated buildings.
 - 2. Animal Waste (and Feed) Handling and Transporting:
 - a. Remove spilled feed,
 - b. Store feed,
 - c. Add oil and/or moisture to the feed,
 - d. Use enclosed feed distribution system,
 - e. Use flexible discharge spout,
 - f. Minimize drop distance,
 - g. Enclose transfer points,
 - h. Clean floors and walls in a commercial poultry facility,
 - i. Clean aisles between cage rows,
 - j. Stack separated manure solids, or
 - k. Maintain moisture in manure solids.
 - 3. Unpaved Access Connections:
 - a. Install speed control devices,
 - b. Restrict traffic access,
 - c. Install and maintain a track-out control system, or
 - d. Install signage to limit vehicle speed to 15 mph.
 - 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed trucks to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict traffic access,
 - e. Apply and maintain aggregate cover,
 - f. Apply and maintain synthetic particulate suppressant,
 - g. Apply and maintain water, or
 - h. Apply and maintain oil on roads or feed lanes.
- E. A commercial swine facility shall implement the following best management practices, as described in subsection (A), from each of the following categories:
 - 1. Arenas, Corrals, and Pens (Housing):
 - a. House in fully enclosed ventilated buildings,
 - b. Use no bedding,
 - c. Use a slatted floor system,
 - d. Use sloped concrete flooring,
 - e. Clean fans, louvers, and soffit inlets in a commercial swine facility,
 - f. Control vegetation on building exteriors, or
 - g. Add moisture through ventilation systems.
 - 2. Animal Waste (and Feed) Handling and Transporting:
 - a. Remove spilled feed,
 - b. Store feed,
 - c. Add oil and/or moisture to feed,
 - d. Use enclosed feed distribution system,
 - e. Use flexible discharge spout,
 - f. Minimize drop distance,
 - g. Enclose transfer points,
 - h. Clean pens, floors, and walls in a commercial swine facility,
 - i. Clean aisles between pens and stalls,
 - j. Store separated manure solids in a wind-blocked area,
 - k. Stack separated manure solids,
 - l. Maintain moisture in manure solids, or
 - m. Maintain liquid lagoon level.
 - 3. Unpaved Access Connections:
 - a. Install speed control devices,
 - b. Restrict traffic access,
 - c. Install and maintain a track-out control system,
 - d. Install signage to limit vehicle speed to 15 mph.
 - 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed trucks to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict traffic access,
 - e. Apply and maintain aggregate cover,
 - f. Apply and maintain synthetic particulate suppressant,
 - g. Apply and maintain water,
 - h. Apply and maintain oil on roads or feed lanes, or
 - i. Wind barrier.
- F. From and after December 31, 2015, a commercial animal operator who engages in a regulated agricultural activity shall complete a Best Management Practices Program General Permit Record Form. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the commercial animal operator. The Best Management Practices Program General Permit Record Form shall include the following information:
 - 1. The name of the commercial animal operator, signature, and date signed,
 - 2. The mailing address or physical address of the commercial animal operation, and
 - 3. The best management practices selected for Arenas, Corrals, and Pens, Animal Waste Handling and Transporting, Unpaved Access Connections, and Unpaved Roads or Feed Lanes.
- G. Beginning January 1, 2016, a commercial animal operator shall maintain records demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice and any changes to the best management practices. Records shall be kept by the commercial animal operator onsite and made available for review by the Director within two business days of notice to the commercial animal operator.
- H. A person may develop different practices not contained in subsection (B), (C), (D), or (F) that reduce PM and may submit such practices that are proven effective through on-operation demonstration trials to the Committee. The new best management practices shall not become effective unless submitted as described in A.R.S. § 49-457(L).
- I. The Director shall not assess a fee to a commercial animal operator for coverage under the agricultural PM general permit.
- J. A commercial animal operator shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- K. The Director shall document noncompliance with this Section before issuing a compliance order.
- L. A commercial animal operator who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).

Historical Note

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New Section made by exempt rulemaking pursuant to
Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective
July 2, 2015 (Supp. 15-3).

R18-2-611.03. Agricultural PM General Permit for Animal Operations; Pinal County PM Nonattainment Area

- A.** A commercial animal operator within the Pinal County PM Nonattainment Area shall implement at least one best management practice from each of the categories identified in subsection (D)(5) and (E)(5) and two best management practices from each of the other categories to reduce PM emissions.
- B.** In addition to subsection (A), on the day that is forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, commercial dairy operations within the Pinal County PM Nonattainment Area shall apply and maintain one of the four following BMPs on unpaved roads that experience more than 20 VDT from two or more axle vehicles:
1. Apply and maintain pavement in high traffic areas,
 2. Apply and maintain aggregate cover,
 3. Apply and maintain synthetic particulate suppressant, or
 4. Apply and maintain water as a dust suppressant.
- C.** In addition to subsection (A), commercial beef feedlots within the Pinal County PM Nonattainment Area, shall add water to pen surface, as defined in R18-2-611(3)(a), on the day that is forecast to be high risk for dust generation by the Pinal County Dust Control Forecast.
- D.** A commercial dairy operation shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens:
 - a. Use free stall housing,
 - b. Provide shade in corral,
 - c. Provide cooling in corral,
 - d. Cement cattle walkways to milk barn,
 - e. Groom manure surface,
 - f. Water misting systems,
 - g. Use drag equipment to maintain pens,
 - h. Pile manure between cleanings,
 - i. Feed green chop,
 - j. Keep calves in barns or hutches,
 - k. Do not run cattle,
 - l. Apply a fibrous layer, or
 - m. Wind barrier.
 2. Animal Waste (and Feed) Handling and Transporting:
 - a. Feed higher moisture feed to dairy cattle,
 - b. Store and maintain feed stock,
 - c. Covers for silage,
 - d. Store silage in bunkers,
 - e. Cover manure hauling trucks, or
 - f. Do not load manure trucks with dry manure when wind exceeds 15 mph.
 3. Unpaved Access Connections:
 - a. Install signage to limit vehicle speed to 15 mph,
 - b. Install speed control devices,
 - c. Restrict access to through traffic,
 - d. Install and maintain a track-out control device,
 - e. Apply and maintain pavement in high traffic areas,
 - f. Apply and maintain aggregate cover,
 - g. Apply and maintain synthetic particulate suppressant, or
 - h. Apply and maintain water as a dust suppressant.
 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed truck to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict access to through traffic,
 5. Unpaved Vehicle or Equipment Traffic Area:
 - a. Apply and maintain aggregate cover,
 - b. Apply and maintain synthetic particulate suppressant,
 - c. Apply and maintain water as a dust suppressant, or
 - d. Use appropriate vehicles such as electric carts or small utility vehicles instead of trucks.
- E.** A commercial beef cattle feedlot shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens:
 - a. Concrete aprons,
 - b. Provide shade in corral,
 - c. Add water to pen surface,
 - d. Manure removal,
 - e. Pile manure between cleanings,
 - f. Feed higher moisture feed to beef cattle,
 - g. Control cattle during movements,
 - h. Use drag equipment to maintain pens,
 - i. Apply a fibrous layer, or
 - j. Wind barrier.
 2. Animal Waste (and Feed) Handling and Transporting:
 - a. Feed higher moisture feed to beef cattle;
 - b. Add molasses or tallow to feed,
 - c. Store and maintain feed stock,
 - d. Bulk materials,
 - e. Use drag equipment to maintain pens,
 - f. Cover manure hauling trucks, or
 - g. Do not load manure when wind exceeds 15 mph.
 3. Unpaved Access Connections:
 - a. Install and maintain a track-out control device,
 - b. Apply and maintain pavement in high traffic areas,
 - c. Apply and maintain aggregate cover,
 - d. Apply and maintain synthetic particulate suppressant, or
 - e. Apply and maintain water as a dust suppressant.
 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed truck to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict access to through traffic,
 - e. Apply and maintain pavement in high traffic areas,
 - f. Apply and maintain aggregate cover,
 - g. Apply and maintain synthetic particulate suppressant,
 - h. Apply and maintain water as a dust suppressant, or
 - i. Apply and maintain oil on roads or feed lanes.
 5. Unpaved Vehicle or Equipment Traffic Area:
 - a. Apply and maintain aggregate cover,
 - b. Apply and maintain synthetic particulate suppressant,
 - c. Apply and maintain water as a dust suppressant, or
 - d. Use appropriate vehicles such as electric carts or small utility vehicles instead of trucks.
- F.** A commercial poultry facility shall implement the following best management practices, as described in subsection (A), from each of the following categories:
- e. Apply and maintain pavement in high traffic areas,
 - f. Apply and maintain aggregate cover,
 - g. Apply and maintain synthetic particulate suppressant,
 - h. Apply and maintain water as a dust suppressant,
 - i. Use appropriate vehicles such as electric carts or small utility vehicles instead of trucks, or
 - j. Apply and maintain pavement or cement feed lanes.

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1. Arenas, Corrals, and Pens (Housing):
 - a. Clean fans, louvers, and soffit inlets in a commercial poultry facility,
 - b. Use no bedding,
 - c. Control vegetation on building exteriors,
 - d. Add moisture through ventilation systems, or
 - e. House in fully enclosed ventilated buildings.
 2. Animal Waste (and Feed) Handling and Transporting:
 - a. Remove spilled feed,
 - b. Store feed,
 - c. Add oil and/or moisture to the feed,
 - d. Use enclosed feed distribution system,
 - e. Use flexible discharge spout,
 - f. Minimize drop distance,
 - g. Enclose transfer points,
 - h. Clean floors and walls in a commercial poultry facility,
 - i. Clean aisles between cage rows,
 - j. Stack separated manure solids, or
 - k. Maintain moisture in manure solids.
 3. Unpaved Access Connections:
 - a. Install speed control devices,
 - b. Restrict traffic access,
 - c. Install and maintain a track-out control system, or
 - d. Install signage to limit vehicle speed to 15 mph.
 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed trucks to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict traffic access,
 - e. Apply and maintain aggregate cover,
 - f. Apply and maintain synthetic particulate suppressant,
 - g. Apply and maintain water, or
 - h. Apply and maintain oil on roads or feed lanes.
- G.** A commercial swine facility shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens (Housing):
 - a. House in fully enclosed ventilated buildings,
 - b. Use no bedding,
 - c. Use a slatted floor system,
 - d. Use sloped concrete flooring,
 - e. Clean fans, louvers, and soffit inlets in a commercial swine facility,
 - f. Control vegetation on building exteriors, or
 - g. Add moisture through ventilation systems.
 2. Animal Waste (and Feed) Handling and Transporting:
 - a. Remove spilled feed,
 - b. Store feed,
 - c. Add oil and/or moisture to feed,
 - d. Use enclosed feed distribution system,
 - e. Use flexible discharge spout,
 - f. Minimize drop distance,
 - g. Enclose transfer points,
 - h. Clean pens, floors, and walls in a commercial swine facility,
 - i. Clean aisles between pens and stalls,
 - j. Store separated manure solids in a wind-blocked area,
 - k. Stack separated manure solids,
 - l. Maintain moisture in manure solids, or
 - m. Maintain liquid lagoon level.
 3. Unpaved Access Connections:
 - a. Install speed control devices,
 - b. Restrict traffic access,
 - c. Install and maintain a track-out control system,
 - d. Install signage to limit vehicle speed to 15 mph.
- 4. Unpaved Roads or Feed Lanes:**
- a. Install engine speed governors on feed trucks to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict traffic access,
 - e. Apply and maintain aggregate cover,
 - f. Apply and maintain synthetic particulate suppressant,
 - g. Apply and maintain water,
 - h. Apply and maintain oil on roads or feed lanes, or
 - i. Wind barrier.
- H.** From and after December 31, 2015, a commercial animal operator who engages in a regulated agricultural activity shall complete a Best Management Practices Program General Permit Record Form. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the commercial animal operator. The Best Management Practices Program General Permit Record Form shall include the following information:
1. The name of the commercial animal operator, signature, and date signed,
 2. The mailing address or physical address of the commercial animal operation, and
 3. The best management practices selected for Arenas, Corrals, and Pens, Animal Waste Handling and Transporting, Unpaved Access Connections, and Unpaved Roads or Feed Lanes.
- I.** Beginning in calendar year 2017, and no more than once every subsequent three calendar years, the Director shall provide the commercial animal operator with a Best Management Practices Program Three-year Survey. The commercial animal operator shall complete the Survey with data from the preceding calendar year and submit the Survey to the Arizona Department of Agriculture (ADA) by January 31, 2018, and every three years thereafter. The Survey information submitted to the ADA shall be compiled by the ADA in a format that does not refer to a commercial animal operator's name, shall aggregate the data from the Surveys received, and be submitted to the Department. The Three-year Survey shall include the following information:
1. The name, business address, and phone number of the commercial farmer responsible for the preparation and implementation of the best management practices;
 2. The signature of the commercial farmer and the date the form was signed;
 3. The number of animals in a commercial dairy operation, beef cattle feed lot, poultry facility or swine facility;
 4. The total miles of unpaved roads at the commercial dairy operation, beef cattle feed lot, poultry facility or swine facility;
 5. The total acreage of the unpaved access connections and equipment areas at the commercial dairy operation, beef cattle feed lot, poultry facility or swine facility;
 6. The best management practices selected for each category; and
 7. For commercial dairy operations and beef cattle feedlots, an acknowledgment that water was applied on the day of a high risk day as predicted by the Pinal County Dust Control Forecast.

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- J. Beginning January 1, 2016, a commercial animal operator shall maintain records demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice and any changes to the best management practices. Records shall be kept by the commercial animal operator onsite and made available for review by the Director within two business days of notice to the commercial animal operator.
- K. A person may develop different practices not contained in subsections (D), (E), (F), or (G) that reduce PM and may submit such practices that are proven effective through on-operation demonstration trials to the Committee.
- L. The Director shall not assess a fee to a commercial animal operator for coverage under the agricultural PM general permit.
- M. A commercial animal operator shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- N. The Director shall document noncompliance with this Section before issuing a compliance order.
- O. A commercial animal operator who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(J), (K), and (L).

Historical Note

New Section made by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 27 A.A.R. 2747 (November 26, 2021), with an immediate effective date of November 3, 2021 (Supp. 21-4).

R18-2-612. Definitions for R18-2-612.01

The definitions in R18-2-101 and the following definitions apply to R18-2-612.01:

1. "Access restriction" means reducing PM emission by reducing the number of trips driven on unpaved operation and maintenance and unpaved utility roads by restricting or eliminating public access by the use of signs or physical obstruction at locations that effectively control access to roads.
2. "Aggregate cover" means reducing PM emissions, wind erosion and stabilizing soil by applying and maintaining gravel, concrete, recycled road base, caliche, or other similar material to unpaved roads. The aggregate should be clean, hard and durable, and should be applied a depth sufficient to create soil stabilization in accordance with material specifications. A minimum depth of three inches is the standard in the absence of such specifications.
3. "Apply and maintain water" means reducing PM emissions and wind erosion by applying water to bare soil surfaces until the surfaces are visibly moist.
4. "Best management practice" means a technique verified by scientific research, that on a case-by-case basis is practical, economically feasible, and effective in reducing PM emissions from a regulated agricultural activity.
5. "Biological control of aquatic weeds" means reducing at least one trip, or to one trip if only one trip is needed, per treatment, made by vehicles for the purposes of removing aquatic weeds from canals by using fish, and other biologic means, within the canal through the use of to control the growth of aquatic weeds that reduce operating capacities and create debris that causes other operational issues.
6. "Canals" means facilities constructed for the sole purpose of the control, conveyance, and delivery of water. These facilities may be either open earthen channels, lined or unlined, or buried pipelines, which are used to convey water uphill and under obstructions, such as roadways and wash and river channels. These facilities include, but are not limited to, gate, inlet, outlet, safety, and measuring structures required to control water along the canals and deliver water to irrigation district customers, as well as compacted earthen banks constructed to protect these facilities from storm runoff events.
7. "Committee" means the Governor's Agricultural Best Management Practices Committee.
8. "Debris" means trash, rubble, and other non-soil materials.
9. "Dredge canals" means reducing PM emissions by mechanically removing muck, debris, and other foreign objects from canals while material is still wet or damp.
10. "Dust Control Forecast" means a forecast, which shall identify a low, moderate or high risk of dust generation for the next five consecutive days and shall be issued by noon on each day the forecast is generated. When developing these forecasts, the Department shall consider all of the following:
 - a. Projected meteorological conditions, including:
 - i. Wind speed and direction,
 - ii. Stagnation,
 - iii. Recent precipitation, and
 - iv. Potential for precipitation;
 - b. Existing concentrations of air pollution at the time of the forecast; and
 - c. Historic air pollution concentrations that have been observed during meteorological conditions similar to those that are predicted to occur in the forecast.
11. "Earth materials" means natural materials covering the ground surface, which includes, but are not limited to, dirt, rocks, or soil.
12. "Grading roadways" means mechanically smoothing and compacting the roadway surface.
13. "Irrigation District" means a political subdivision, governed by A.R.S. Title 48, Chapter 19.
14. "Limit activity" means performing only critical operational or emergency activity on a day forecast to be high risk for dust generation as forecasted by the Pinal County Dust Control Forecast.
15. "Major earth moving activities" means the mechanical movement of earth materials to reconstruct, relocate, reshape, reconfigure canals, including operation and maintenance roads and utility access roads.
16. "Maricopa PM nonattainment area" means the Phoenix planning area as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210.
17. "Minor earth moving activities" means the mechanical movement of earth materials to repair and maintain the existing configuration, location, bank slopes, or inclines of canals.
18. "Muck" means water that is saturated with mud, dirt, and soil, which accumulates over time along the bottom of canals.
19. "Paved Public Road" means any paved roadways that are open to public travel and maintained by a City, County, or the State.
20. "Pinal County PM Nonattainment Area" means the West Pinal PM₁₀ planning area and the West Central PM_{2.5} planning area, as defined in 40 CFR 81.303, and incorporated by reference in R18-2-210.
21. "PM" includes both particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5

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micrometers as measured by a reference method based on 40 CFR 50 Appendix L, or by an equivalent method designated according to 40 CFR 53; and particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method contained within 40 CFR 50, Appendix J or by an equivalent method designated in accordance with 40 CFR 53, as incorporated by reference in Appendix 2.

22. "Reduce vehicle speed" means reducing PM emissions and soil erosion from the use of vehicles owned or operated by the irrigation district on unpaved operation, maintenance, and utility access roads, at speeds not to exceed 25 mph. This can be achieved through worker behavior modifications, signage, or any other necessary means.
23. "Regulated agricultural activity" means activities of an irrigation district, which affects those lands and facilities that are under the jurisdiction and control of an irrigation district, as described in A.R.S. §§ 49-457(P)(1)(f) and 49-457(P)(5)(b).
24. "Regulated area" means a regulated area as defined in A.R.S. § 49-457(P)(6)(c).
25. "Sediment" means muck that has dried after removal from canals.
26. "Supervisory control system" means a system that allows the irrigation district to control operational structures from a remote computer location in order to reduce at least one trip made by vehicles to access structures for operational purposes.
27. "Synthetic or natural particulate suppressant" means reducing PM emissions and wind erosion by providing a stabilized soil surface with organic material, such as muck, animal waste or biosolids, or with a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, or polyacrylamide.
28. "Track-out control system" means minimizing any and all material that adheres to and agglomerates on all vehicles and equipment and falls onto paved public roads or shoulders to paved public roads by using a device or system to remove mud or soil from a vehicle or equipment before the vehicle enters a paved public road. Devices such as a grizzly, a gravel pad or a wheel wash system can be used.
29. "Unauthorized use" means any travel or access by non-district personnel in non-district vehicles along roadways under the control of an irrigation district without the permission of the irrigation district.
30. "Unpaved operation and maintenance roads" means unpaved roadways that lay adjacent to canals, which provide access for irrigation district personnel and equipment for direct operation and maintenance of canals, and are under the control of the irrigation district.
31. "Unpaved utility access roads" means unpaved roadways used to provide access to canals, and also includes office and shop facilities, equipment yards, staging areas and other lands under the control of the irrigation district.
32. "Weed management" means reducing at least one trip made by vehicles for the purposes of removing weeds by using a combination of techniques, including organic, chemical, or biological means, to control weeds along canal banks and land surfaces not used for conveying water, excluding unpaved roadways.
33. "Wind barrier" means reducing PM₁₀ emissions and wind erosion by constructing a fence or structure, or providing a woody vegetative barrier by planting a row of trees or shrubs, perpendicular or across the prevailing wind direc-

tion to reduce wind speed by changing the pattern of air flow over the land surface. For fences and structures, the wind barrier shall have a density of no less than 50% and the height of the wind barrier must be proportionate to the downwind protected area. The downwind protected area is considered ten times the height of the wind barrier. For vegetative barriers, compliance shall be determined by NRCS Conservation Practice Standard, Code 380, Wind-break/Shelterbelt Establishment, amended through August 21, 2009 (and no future editions).

Historical Note

New Section R18-2-612 renumbered from R18-2-610 at 6 A.A.R. 2009, effective May 12, 2000 (Supp. 00-2). Former Section R18-2-612 renumbered to R18-2-614; new Section R18-2-612 made by final rulemaking at 11 A.A.R. 2210, effective July 18, 2005 (Supp. 05-2). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

R18-2-612.01. Agricultural PM General Permit For Irrigation Districts; PM Nonattainment Areas Designated After June 1, 2009

- A. An irrigation district within a PM Nonattainment Area, designated after June 1, 2009, shall implement at least one best management practice from each of the following categories to reduce PM emissions:
 1. Unpaved operation and maintenance roads:
 - a. Access restriction,
 - b. Apply and maintain aggregate cover,
 - c. Install supervisory control system to limit vehicle travel,
 - d. Limit activity,
 - e. Install signage to limit vehicle speed to 25 mph,
 - f. Post warning signs for unauthorized use at point of entry to roads,
 - g. Reduce vehicle speed,
 - h. Install and maintain a track-out control system,
 - i. Apply and maintain synthetic or natural particulate suppressant,
 - j. Apply and maintain water before, during, and after major and minor earth moving activities,
 - k. Apply and maintain water when grading roadways,
 - l. Use paved non-district or paved public roads to access structures, or
 - m. Install wind barriers.
 2. Canals:
 - a. Dredge canals while muck or debris is still wet,
 - b. Dispose of muck or debris while still damp,
 - c. Weed management,
 - d. Biological control of aquatic weeds, or
 - e. Apply and maintain water before, during and after major and minor earth moving activities.
 3. Unpaved utility access roads:
 - a. Access restriction,
 - b. Apply and maintain aggregate cover,
 - c. Limit activity,
 - d. Install signage to limit vehicle speed to 25 mph,
 - e. Post warning signs for unauthorized use at points of entry to roads,
 - f. Reduce vehicle speed,
 - g. Install and maintain a track-out control system,
 - h. Apply and maintain pavement,
 - i. Apply and maintain synthetic or natural particulate suppressant,

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- j. Apply and maintain water before, during and after major and minor earth moving activities,
 - k. Apply and maintain water when grading roadways,
 - l. Use paved non-district or paved public roads to access structures, or
 - m. Install wind barriers.
- B. From and after December 31, 2015, an irrigation district engaged in a regulated agricultural activity shall complete a Best Management Practices Program General Permit Record Form. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the irrigation district. The Best Management Practice Program General Permit Record form shall include the following information:
 - 1. The name, business address, and the irrigation district representative responsible for the preparation and implementation of the best management practices;
 - 2. The signature of the irrigation district representative and the date the form was signed; and
 - 3. The best management practice selected for unpaved operation and utility roads, canals, and unpaved utility access roads.
- C. Beginning in calendar year 2017, and no more than once every subsequent three calendar years, the Director, in conjunction with the Arizona Department of Agriculture, shall provide the irrigation district with a Best Management Practices Program Three-year Survey. The irrigation district shall complete the Survey with data from the preceding calendar year and submit the Survey to the Arizona Department of Agriculture (ADA) by January 31, 2018, and every three years thereafter. The Survey information submitted to the ADA shall be compiled by the ADA then be submitted to the Department. The Three-year Survey shall include the following information:
 - 1. The name, business address, and phone number of the irrigation district representative responsible for the preparation and implementation of the best management practices;
 - 2. The signature of the irrigation district representative and the date the form was signed;
 - 3. The total miles of canals that the irrigation district controls;
 - 4. The total miles of unpaved operation and maintenance roads;
 - 5. The total miles of the unpaved utility access roads; and
 - 6. The best management practices selected for unpaved operation and utility roads, canals, and unpaved utility access roads.
- D. Records of any changes to those Best Management Practices shall be noted on the Best Management Practices Program General Permit Record Form and shall be kept by the irrigation district onsite and made available for review by the Director within two business days of notice to the irrigation district by the Department.
- E. An irrigation district may develop different practices not contained in either of the categories of subsections (A)(1), (A)(2), or (A)(3) that reduce PM and may submit such practices that are proven effective through in-district trials. The proposed new practices shall not become effective unless submitted as described in A.R.S. § 49-457(L).
- F. An irrigation district shall maintain a record demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice.
- G. The Director shall not assess a fee to an irrigation district for coverage under the agricultural PM general permit.
- H. An irrigation district shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- I. The Director shall document noncompliance with this Section before issuing a compliance order.
- J. An irrigation district that is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).

Historical Note

New Section made by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

R18-2-613. Definitions for R18-2-613.01

- 1. "Access restriction" means restricting or eliminating public access to noncropland with signs or physical obstruction.
- 2. "Aggregate cover" means gravel, concrete, recycled road base, caliche, or other similar material applied to noncropland.
- 3. "Artificial wind barrier" means a physical barrier to the wind.
- 4. "Bed row spacing" means increasing or decreasing the size of a planting bed area to reduce the number of passes and soil disturbance by increasing plant density.
- 5. "Best management practice" means a technique verified by scientific research, that on a case-by-case basis is practical, economically feasible, and effective in reducing PM₁₀ emissions from a regulated agricultural activity.
- 6. "Chemical irrigation" means applying a fertilizer, pesticide, or other agricultural chemical to cropland through an irrigation system.
- 7. "Combining tractor operations" means performing two or more tillage, cultivation, planting, or harvesting operations with a single tractor or harvester pass.
- 8. "Commercial farm" means 10 or more contiguous acres of land used for agricultural purposes within the boundary of the Yuma PM₁₀ nonattainment area.
- 9. "Commercial farmer" means an individual, entity, or joint operation in general control of a commercial farm.
- 10. "Conservation irrigation" means the use of drips, sprinklers, or underground lines to conserve water, and to reduce the weed population, the need for tillage, and soil compaction.
- 11. "Conservation tillage" means types of tillage that reduce the number of passes and the amount of soil disturbance.
- 12. "Cover crop" means plants or a green manure crop grown for seasonal soil protection or soil improvement.
- 13. "Critical area planting" means using trees, shrubs, vines, grasses, or other vegetative cover on noncropland.
- 14. "Cropland" means land on a commercial farm that:
 - a. Is within the time-frame of final harvest to plant emergence;
 - b. Has been tilled in a prior year and is suitable for crop production, but is currently fallow; or
 - c. Is a turn-row.
- 15. "Cross-wind ridges" means soil ridges formed by a tillage operation.
- 16. "Cross-wind strip-cropping" means planting strips of alternating crops within the same field.
- 17. "Cross-wind vegetative strips" means herbaceous cover established in one or more strips within the same field.
- 18. "Equipment modification" means modifying agricultural equipment to prevent or reduce particulate matter generation from cropland.

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19. "Limited activity during a high-wind event" means performing no tillage or soil preparation activity when the measured wind speed at 6 feet in height is more than 25 mph at the commercial farm site.
20. "Manure application" means applying animal waste or biosolids to a soil surface.
21. "Mulching" means applying plant residue or other material that is not produced onsite to a soil surface.
22. "Multi-year crop" means a crop, pasture, or orchard that is grown, or will be grown, on a continuous basis for more than one year.
23. "Night farming" means performing regulated agricultural activities at night when moisture levels are higher and winds are lighter.
24. "Noncropland" means any commercial farmland that:
 - a. Is no longer used for agricultural production;
 - b. Is no longer suitable for production of crops;
 - c. Is subject to a restrictive easement or contract that prohibits use for the production of crops; or
 - d. Includes a private farm road, ditch, ditch bank, equipment yard, storage yard, or well head.
25. "Permanent cover" means a perennial vegetative cover on cropland.
26. "Planting based on soil moisture" means applying water to soil before performing planting operations.
27. "Precision farming" means use of satellite navigation to calculate position in the field, to reduce overlap during field operations, and allow operations to occur during nighttime and inclement weather, thus generating less PM₁₀.
28. "Reduce vehicle speed" means operating farm vehicles or farm equipment on unpaved farm roads at speeds not to exceed 20 mph.
29. "Reduced harvest activity" means reducing the number of harvest passes using a mechanized method to cut and remove crops from a field.
30. "Regulated agricultural activity" means a commercial farming practice that may produce PM₁₀ within the Yuma PM₁₀ nonattainment area.
31. "Residue management" means managing the amount and distribution of crop and other plant residues on a soil surface.
32. "Sequential cropping" means growing crops in a sequence that minimizes the amount of time bare soil is exposed on a field.
33. "Surface roughening" means manipulating a soil surface to produce or maintain clods.
34. "Synthetic particulate suppressant" means a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, and polyacrylamide, an emulsion of a petroleum product, and an enzyme product that is used to control particulate matter.
35. "Tillage and harvest" means any mechanical practice that physically disturbs cropland or crops on a commercial farm.
36. "Tillage based on soil moisture" means applying water to soil before or during tillage, or delaying tillage to coincide with precipitation.
37. "Timing of a tillage operation" means performing tillage operations at a time that will minimize the soil's susceptibility to generate PM₁₀.
38. "Transgenic crops" means the use of genetically modified crops such as "herbicide ready" crops, which reduces the need for tillage or cultivation operations, and reduces soil disturbance.
39. "Track-out control system" means a device to remove mud or soil from a vehicle before the vehicle enters a paved public road.
40. "Tree, shrub, or windbreak planting" means providing a woody vegetative barrier to the wind.
41. "Watering" means applying water to noncropland.
42. "Yuma PM₁₀ nonattainment area" means the Yuma PM₁₀ planning area as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2210, effective July 18, 2005 (Supp. 05-2). Section R18-2-313 renumbered to R18-2-313.01; new Section made by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

R18-2-613.01. Yuma PM₁₀ Nonattainment Area; Agricultural Best Management Practices

- A. A commercial farmer shall comply with this Section by August 1, 2005.
- B. A commercial farmer who begins a regulated agricultural activity after August 1, 2005, shall comply with this Section within 60 days after beginning the regulated agricultural activity.
- C. A commercial farmer shall implement at least one of the best management practices from each of the following categories at each commercial farm:
 1. Tillage and harvest, subsection (E);
 2. Noncropland, subsection (F); and
 3. Cropland, subsection (G).
- D. A commercial farmer shall ensure that the implementation of each selected best management practice does not violate any other local, state, or federal law.
- E. A commercial farmer shall implement at least one of the following best management practices to reduce PM₁₀ emissions from tillage and harvest:
 1. Bed row spacing,
 2. Chemical irrigation,
 3. Combining tractor operations,
 4. Conservation irrigation,
 5. Conservation tillage,
 6. Equipment modification,
 7. Limited activity during a high-wind event,
 8. Multi-year crop,
 9. Night farming,
 10. Planting based on soil moisture,
 11. Precision farming,
 12. Reduced harvest activity,
 13. Tillage based on soil moisture,
 14. Timing of a tillage operation, or
 15. Transgenic crops.
- F. A commercial farmer shall implement at least one of the following best management practices to reduce PM₁₀ emissions from noncropland:
 1. Access restriction;
 2. Aggregate cover;
 3. Artificial wind barrier;
 4. Critical area planting;
 5. Manure application;
 6. Reduce vehicle speed;
 7. Synthetic particulate suppressant;
 8. Track-out control system;
 9. Tree, shrub, or windbreak planting; or
 10. Watering.

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- G.** A commercial farmer shall implement at least one of the following best management practices to reduce PM₁₀ emissions from cropland:
1. Artificial wind barrier;
 2. Cover crop;
 3. Cross-wind ridges;
 4. Cross-wind strip-cropping;
 5. Cross-wind vegetative strips;
 6. Manure application;
 7. Mulching;
 8. Multi-year crop;
 9. Permanent cover;
 10. Planting based on soil moisture;
 11. Precision farming;
 12. Residue management;
 13. Sequential cropping;
 14. Surface roughening; or
 15. Tree, shrub, or windbreak planting.
- H.** A person may develop different practices not contained in subsections (E), (F), or (G) that reduce PM₁₀. A person may submit practices that are proven effective through demonstration trials to the Director. The Director shall review the submitted practices.
- I.** A commercial farmer shall maintain records demonstrating compliance with this Section. The commercial farmer shall provide the records to the Director within two business days of written notice to the commercial farmer. The records shall contain:
1. The name of the commercial farmer,
 2. The mailing address or physical location of the commercial farm, and
 3. The best management practices selected for tillage and harvest, noncropland, and cropland by the commercial farmer, and the date each best management practice was implemented.

Historical Note

New Section R18-2-313.01 renumbered from Section R18-2-313 by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

R18-2-614. Evaluation of Nonpoint Source Emissions

Opacity of an emission from any nonpoint source shall not be greater than 40% measured according to the 40 CFR 60, Appendix A, Reference Method 9. An open fire permitted under R18-2-602 or regulated under Article 15 is exempt from this requirement.

Historical Note

Section R18-2-614 renumbered from R18-2-612; amended by final rulemaking at 11 A.A.R. 2210, effective July 18, 2005 (Supp. 05-2). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

ARTICLE 7. EXISTING STATIONARY SOURCE PERFORMANCE STANDARDS**R18-2-701. Definitions**

For purposes of this Article:

1. "Acid mist" means sulfuric acid mist as measured in the Arizona Testing Manual and 40 CFR 60, Appendix A.
2. "Architectural coating" means a coating used commercially or industrially for residential, commercial or industrial buildings and their appurtenances, structural steel, and other fabrications such as storage tanks, bridges, beams and girders.
3. "Asphalt concrete plant" means any facility used to manufacture asphalt concrete by heating and drying aggregate

and mixing with asphalt cements. This is limited to facilities, including drum dryer plants that introduce asphalt into the dryer, which employ two or more of the following processes:

- a. A dryer.
 - b. Systems for screening, handling, storing, and weighing hot aggregate.
 - c. Systems for loading, transferring, and storing mineral filler.
 - d. Systems for mixing asphalt concrete.
 - e. The loading, transferring, and storage systems associated with emission control systems.
4. "Black liquor" means waste liquor from the brown stock washer and spent cooking liquor which have been concentrated in the multiple-effect evaporator system.
 5. "Calcine" means the solid materials produced by a lime plant.
 6. "Coal" means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite by the ASTM Method D388-05 "Standard Classification of Coals by Rank" and coal refuse. Synthetic fuels derived from coal for the purpose of creating useful heat including but not limited to, coal derived gases (not meeting the definition of natural gas), solvent-refined coal, coal-oil mixtures, and coal-water mixtures, are considered "coal" for the purposes of this subpart.
 7. "Coal refuse" means any by-product of coal mining, physical coal cleaning, and coal preparation operations (e.g., culm, gob, etc.) containing coal, matrix material, clay, and other organic and inorganic material with an ash content greater than 50 percent (by weight) and a heating value less than 13,900 kilojoules per kilogram (6,000 Btu per pound) on a dry basis.
 8. "Concentrate" means enriched copper ore recovered from the froth flotation process.
 9. "Concentrate dryer" means any facility in which a copper sulfide ore concentrate charge is heated in the presence of air to eliminate a portion of the moisture from the charge, provided less than 5% of the sulfur contained in the charge is eliminated in the facility.
 10. "Concentrate roaster" means any facility in which a copper sulfide ore concentrate is heated in the presence of air to eliminate 5% or more of the sulfur contained in the charge.
 11. "Condensate stripper system" means a column, and associated condensers, used to strip, with air or steam, TRS compounds from condensate streams from various processes within a kraft pulp mill.
 12. "Control device" means the air pollution control equipment used to remove particulate matter or gases generated by a process source from the effluent gas stream.
 13. "Converter" means any vessel to which copper matte is charged and oxidized to copper.
 14. "Electric generating plant" means all electric generating units located at a stationary source.
 15. "Electric generating unit" means a combustion unit of more than 25 megawatts electric that serves a generator that produces electricity for sale and that burns coal for more than 10.0 percent of the average annual heat input during any three consecutive calendar years or for more than 15.0 percent of the annual heat input during any one calendar year. A unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electric output to any utility power distribution system for sale is considered an electric generating unit.

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16. "Existing source" means any source which does not have an applicable new source performance standard under Article 9 of this Chapter.
17. "Facility" means an identifiable piece of stationary process equipment along with all associated air pollution equipment.
18. "Federal mercury standards" means the emissions limits, monitoring, testing, recordkeeping, reporting and notification requirements applicable or relating to emissions of mercury from electric generating units under 40 CFR Part 63, Subpart UUUUU.
19. "Fugitive dust" means fugitive emissions of particulate matter.
20. "High sulfur oil" means fuel oil containing 0.90% or more by weight of sulfur.
21. "Inlet mercury" means the average concentration of mercury in the coal burned at an electric generating unit, as determined by ASTM methods, EPA-approved methods or alternative methods approved by the Director.
22. "Lime kiln" means a unit used to calcinate lime rock or kraft pulp mill lime mud, which consists primarily of calcium carbonate, into quicklime, which is calcium oxide.
23. "Low sulfur oil" means fuel oil containing less than 0.90% by weight of sulfur.
24. "Matte" means a metallic sulfide made by smelting copper sulfide ore concentrate or the roasted product of copper sulfide ores.
25. "Mercury" means mercury or mercury compounds in either a gaseous or particulate form.
26. "Miscellaneous metal parts and products" for purposes of industrial coating include all of the following:
 - a. Large farm machinery, such as harvesting, fertilizing and planting machines, tractors, and combines;
 - b. Small farm machinery, such as lawn and garden tractors, lawn mowers, and rototillers;
 - c. Small appliances, such as fans, mixers, blenders, crock pots, dehumidifiers, and vacuum cleaners;
 - d. Commercial machinery, such as office equipment, computers and auxiliary equipment, typewriters, calculators, and vending machines;
 - e. Industrial machinery, such as pumps, compressors, conveyor components, fans, blowers, and transformers;
 - f. Fabricated metal products, such as metal-covered doors and frames;
 - g. Any other industrial category which coats metal parts or products under the Code in the "Standard Industrial Classification Manual, 1987" of Major Group 33 (primary metal industries), Major Group 34 (fabricated metal products), Major Group 35 (non-electric machinery), Major Group 36 (electrical machinery), Major Group 37 (transportation equipment), Major Group 38 (miscellaneous instruments), and Major Group 39 (miscellaneous manufacturing industries), except all of the following:
 - i. Automobiles and light-duty trucks;
 - ii. Metal cans;
 - iii. Flat metal sheets and strips in the form of rolls or coils;
 - iv. Magnet wire for use in electrical machinery;
 - v. Metal furniture;
 - vi. Large appliances;
 - vii. Exterior of airplanes;
 - viii. Automobile refinishing;
 - ix. Customized top coating of automobiles and trucks, if production is less than 35 vehicles per day;
 - x. Exterior of marine vessels.
27. "Multiple-effect evaporator system" means the multiple-effect evaporators and associated condenser and hotwell used to concentrate the spent cooking liquid that is separated from the pulp.
28. "Neutral sulfite semichemical pulping" means any operation in which pulp is produced from wood by cooking or digesting wood chips in a solution of sodium sulfite and sodium bicarbonate, followed by mechanical defibrating or grinding.
29. "Petroleum liquids" means petroleum, condensate, and any finished or intermediate products manufactured in a petroleum refinery but does not mean Number 2 through Number 6 fuel oils as specified in ASTM D396-90a (Specification for Fuel Oils), gas turbine fuel oils Numbers 2-GT through 4-GT as specified in ASTM D2880-90a (Specification for Gas Turbine Fuel Oils), or diesel fuel oils Numbers 2-D and 4-D as specified in ASTM D975-90 (Specification for Diesel Fuel Oils).
30. "Potential electric output capacity" means 33% of a unit's maximum design heat input, divided by 3,413 Btu per kilowatt-hour, divided by 1,000 kilowatt-hours per megawatt-hour, and multiplied by 8,760 hours per year.
31. "Process source" means the last operation or process which produces an air contaminant resulting from either:
 - a. The separation of the air contaminants from the process material, or
 - b. The conversion of constituents of the process materials into air contaminants which is not an air pollution abatement operation.
32. "Process weight" means the total weight of all materials introduced into a process source, including fuels, where these contribute to pollution generated by the process.
33. "Process weight rate" means a rate established pursuant to R18-2-702(E).
34. "Recovery furnace" means the unit, including the direct-contact evaporator for a conventional furnace, used for burning black liquor to recover chemicals consisting primarily of sodium carbonate and sodium sulfide.
35. "Reid vapor pressure" means the absolute vapor pressure of volatile crude oil and volatile non-viscous petroleum liquids, except liquified petroleum gases, as determined by ASTM D-323-90 (Test Method for Vapor Pressure of Petroleum Products) (Reid Method).
36. "Reverbatory smelting furnace" means any vessel in which the smelting of copper sulfide ore concentrates or calcines is performed and in which the heat necessary for smelting is provided primarily by combustion of a fossil fuel.
37. "Rotary lime kiln" means a unit with an included rotary drum which is used to produce a lime product from limestone by calcination.
38. "Slag" means fused and vitrified matter separated during the reduction of a metal from its ore.
39. "Smelt dissolving tank" means a vessel used for dissolving the smelt collected from the kraft mill recovery furnace.
40. "Smelter feed" means all materials utilized in the operation of a copper smelter, including metals or concentrates, fuels and chemical reagents, calculated as the aggregate sulfur content of all fuels and other feed materials whose products of combustion and gaseous by-products are emitted to the atmosphere.

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41. "Smelting" means processing techniques for the smelting of a copper sulfide ore concentrate or calcine charge leading to the formation of separate layers of molten slag, molten copper, or copper matte.
42. "Smelting furnace" means any vessel in which the smelting of copper sulfide ore concentrates or calcines is performed and in which the heat necessary for smelting is provided by an electric current, rapid oxidation of a portion of the sulfur contained in the concentrate as it passes through an oxidizing atmosphere, or the combustion of a fossil fuel.
43. "Standard conditions" means a temperature of 293K (68°F or 20°C) and a pressure of 101.3 kilopascals (29.92 in. Hg or 1013.25 mb).
44. "Supplementary control system" (SCS) means a system by which sulfur dioxide emissions are curtailed during periods when meteorological conditions conducive to ground-level concentrations in excess of ambient air quality standards for sulfur dioxide either exist or are anticipated.
45. "Vapor pressure" means the pressure exerted by the gaseous form of a substance in equilibrium with its liquid or solid form.

Historical Note

Former Section R18-2-701 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-701 renumbered from R18-2-501 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 12 A.A.R. 4701, effective January 29, 2007 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 21 A.A.R. 711, effective June 30, 2015 (Supp. 15-2).

R18-2-702. General Provisions

- A. The provisions of this Article shall only apply to a source that is all of the following:
 1. An existing source, as defined in R18-2-101;
 2. A point source. For the purposes of this Section, "point source" means a source of air contaminants that has an identifiable plume or emissions point; and
 3. A stationary source, as defined in R18-2-101.
- B. Except as otherwise provided in this Chapter relating to specific types of sources, the opacity of any plume or effluent, from a source described in subsection (A), as determined by Reference Method 9 in 40 CFR 60, Appendix A, shall not be:
 1. Greater than 20% in an area that is nonattainment or maintenance for any particulate matter standard, unless an alternative opacity limit is approved by the Director and the Administrator as provided in subsections (D) and (E), after February 2, 2004;
 2. Greater than 40% in an area that is attainment or unclassifiable for each particulate matter standard; and
 3. After April 23, 2006, greater than 20% in any area that is attainment or unclassifiable for each particulate matter standard except as provided in subsections (D) and (E).
- C. If the presence of uncombined water is the only reason for an exceedance of any visible emissions requirement in this Article, the exceedance shall not constitute a violation of the applicable opacity limit.
- D. A person owning or operating a source may petition the Director for an alternative applicable opacity limit. The petition shall be submitted to ADEQ by May 15, 2004.
 1. The petition shall contain:
 - a. Documentation that the affected facility and any associated air pollution control equipment are incapable of being adjusted or operated to meet the applicable opacity standard. This includes:
 - i. Relevant information on the process operating conditions and the control devices operating conditions during the opacity or stack tests;
 - ii. A detailed statement or report demonstrating that the source investigated all practicable means of reducing opacity and utilized control technology that is reasonably available considering technical and economic feasibility; and
 - iii. An explanation why the source cannot meet the present opacity limit although it is in compliance with the applicable particulate mass emission rule.
 - b. If there is an opacity monitor, any certification and audit reports required by all applicable subparts in 40 CFR 60 and in Appendix B, Performance Specification 1.
 - c. A verification by a responsible official of the source of the truth, accuracy, and completeness of the petition. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.
2. If the unit for which the alternative opacity standard is being applied is subject to a stack test, the petition shall also include:
 - a. Documentation that the source conducted concurrent EPA Reference Method stack testing and visible emissions readings or is utilizing a continuous opacity monitor. The particulate mass emission test results shall clearly demonstrate compliance with the applicable particulate mass emission limitation by being at least 10% below that limit. For multiple units that are normally operated together and whose emissions vent through a single stack, the source shall conduct simultaneous particulate testing of each unit. Each control device shall be in good operating condition and operated consistent with good practices for minimizing emissions.
 - b. Evidence that the source conducted the stack tests according to R18-2-312, and that they were witnessed by the Director or the Director's agent or representative.
 - c. Evidence that the affected facility and any associated air pollution control equipment were operated and maintained to the maximum extent practicable to minimize the opacity of emissions during the stack tests.
3. If the source for which the alternative opacity standard is being applied is located in a nonattainment area, the petitioner shall include all the information listed in subsections (D)(1) and (D)(2), and in addition:
 - a. In subsection (D)(1)(a)(ii), the detailed statement or report shall demonstrate that the alternative opacity limit fulfills the Clean Air Act requirement for reasonably available control technology; and
 - b. In subsection (D)(2)(b), the stack tests shall be conducted with an opportunity for the Administrator or the Administrator's agent or representative to be present.
- E. If the Director receives a petition under subsection (D) the Director shall approve or deny the petition as provided below by October 15, 2004:
 1. If the petition is approved under subsection (D)(1) or (D)(2), the Director shall include an alternative opacity

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limit in a proposed significant permit revision for the source under R18-2-320 and R18-2-330. The proposed alternative opacity limit shall be set at a value that has been demonstrated during, and not extrapolated from, testing, except that an alternative opacity limit under this Section shall not be greater than 40%. For multiple units that are normally operated together and whose emissions vent through a single stack, any new alternative opacity limit shall reflect the opacity level at the common stack exit, and not individual in-duct opacity levels.

2. If the petition is approved under subsection (D)(3), the Director shall include an alternative opacity limit in a proposed revision to the applicable implementation plan, and submit the proposed revision to EPA for review and approval. The proposed alternative opacity limit shall be set at a value that has been demonstrated during, and not extrapolated from, testing, except that the alternative opacity limit shall not be greater than 40%.
 3. If the petition is denied, the source shall either comply with the 20% opacity limit or apply for a significant permit revision to incorporate a compliance schedule under R18-2-309(5)(c)(iii) by April 23, 2006.
 4. A source does not have to petition for an alternative opacity limit under subsection (D) to enter into a revised compliance schedule under R18-2-309(5)(c).
- F. The Director, Administrator, source owner or operator, inspector or other interested party shall determine the process weight rate, as used in this Article, as follows:
1. For continuous or long run, steady-state process sources, the process weight rate is the total process weight for the entire period of continuous operation, or for a typical portion of that period, divided by the number of hours of the period, or portion of hours of that period.
 2. For cyclical or batch process sources, the process weight rate is the total process weight for a period which covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during the period.

Historical Note

Former Section R18-2-702 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-702 renumbered from R18-2-502 and amended effective November 15, 1993 (Supp. 93-4). Amended by exempt rulemaking at 9 A.A.R. 5550, effective February 3, 2004 (Supp. 03-4).

R18-2-703. Standards of Performance for Existing Fossil-fuel Fired Steam Generators and General Fuel-burning Equipment**A.** This Section applies to the following:

1. Installations in which fuel is burned for the primary purpose of producing power, steam, hot water, hot air or other liquids, gases or solids and in the course of doing so the products of combustion do not come into direct contact with process materials. When any products or by-products of a manufacturing process are burned for the same purpose or in conjunction with any fuel, the same maximum emission limitation shall apply, except for wood waste burners as regulated under R18-2-704.
2. All fossil-fuel fired steam generating units or general fuel burning equipment which are greater than or equal to 73 megawatts capacity.

B. For purposes of this Section, the heat input shall be the aggregate heat content of all fuels whose products of combustion pass through a stack or other outlet. The heat content of solid fuel shall be determined in accordance with R18-2-311. Com-

pliance tests shall be conducted during operation at the nominal rated capacity of each unit.

C. No person shall cause, allow or permit the emission of particulate matter in excess of the amounts calculated by one of the following equations:

1. For equipment having a heat input rate of 4200 million Btu per hour or less, the maximum allowable emissions shall be determined by the following equation:

$$E = 1.02Q^{0.769}$$

where:

E = the maximum allowable particulate emissions rate in pounds-mass per hour.

Q = the heat input in million Btu per hour.

2. For equipment having a heat input rate greater than 4200 million Btu per hour, the maximum allowable emissions shall be determined by the following equation:

$$E = 17.0Q^{0.432}$$

where "E" and "Q" have the same meaning as in subsection (C)(1).

D. Actual values shall be calculated from the applicable equations and rounded off to two decimal places.**E.** When low sulfur oil is fired:

1. Existing fuel-burning equipment or steam-power generating installations which commenced construction or a major modification prior to May 30, 1972, shall not emit more than 1.0 pounds sulfur dioxide maximum three-hour average, per million Btu (430 nanograms per joule) heat input.
2. Existing fuel-burning equipment or steam-power generating installations which commenced construction or a major modification after May 30, 1972, shall not emit more than 0.80 pounds of sulfur dioxide maximum three-hour average per million Btu (340 nanograms per joule) heat input.

F. When high sulfur oil is fired, all existing steam-power generating and general fuel-burning installations which are subject to the provisions of this Section shall not emit more than 2.2 pounds of sulfur dioxide maximum three-hour average per million Btu (946 nanograms per joule) heat input.**G.** When solid fuel is fired:

1. Existing general fuel-burning equipment and steam-power generating installations which commenced construction or a major modification prior to May 30, 1972, shall not emit more than 1.0 pounds of sulfur dioxide maximum three-hour average, per million Btu (430 nanograms per joule) heat input.
2. Existing general fuel-burning equipment and steam-power generating installations which commenced construction or a major modification after May 30, 1972, shall not emit more than 0.80 pounds of sulfur dioxide, maximum three-hour average, per million Btu (340 nanograms per joule) heat input.

H. Any permit issued for the operation of an existing source, or any renewal or modification of such a permit, shall include a condition prohibiting the use of high sulfur oil by the permittee, unless the applicant demonstrates to the satisfaction of the Director that sufficient quantities of low sulfur oil are not available for use by the source and that it has adequate facilities and contingency plans to ensure that the sulfur dioxide ambient air quality standards set forth in R18-2-202 will not be violated.

1. The terms of the permit may authorize the use of high sulfur oil under such conditions as are justified.
2. In cases where the permittee is authorized to use high sulfur oil, it shall submit to the Department monthly reports detailing its efforts to obtain low sulfur oil.

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3. When the conditions justifying the use of high sulfur oil no longer exists, the permit shall be modified accordingly.
4. Nothing in this Section shall be construed as allowing the use of a supplementary control system or other form of dispersion technology.
- I. Existing steam-power generating installations which commenced construction or a major modification after May 30, 1972, shall not emit nitrogen oxides in excess of the following amounts:
 1. 0.20 pounds of nitrogen oxides, maximum three-hour average, calculated as nitrogen dioxide, per million Btu heat input when gaseous fossil fuel is fired.
 2. 0.30 pounds of nitrogen oxides, maximum three-hour average, calculated as nitrogen dioxide, per million Btu heat input when liquid fossil fuel is fired.
 3. 0.70 pounds of nitrogen oxides, maximum three-hour average, calculated as nitrogen dioxide, per million Btu heat input when solid fossil fuel is fired.
- J. Emission and fuel monitoring systems, where deemed necessary by the Director for sources subject to the provisions of this Section shall, conform to the requirements of R18-2-313.
- K. The applicable reference methods given in the Appendices to 40 CFR 60 shall be used to determine compliance with the standards as prescribed in subsections (C) through (G) and (I). All tests shall be run at the heat input calculated under subsection (B).
- a. For a period once each day for the purpose of building a new fire but not to exceed 60 minutes, and
- b. For an upset of operations not to exceed three minutes in any 60-minute period.
- E. The owner or operator of any incinerator subject to the provisions of this Section shall record the daily charging rates and hours of operation.
- F. The test methods and procedures required by this Section are as follows:
 1. The reference methods in 40 CFR 60, Appendix A, shall be used to determine compliance with the standards prescribed in subsection (B) as follows:
 - a. Method 5 for the concentration of particulate matter and the associated moisture content;
 - b. Method 1 for sample and velocity traverses;
 - c. Method 2 for velocity and volumetric flow rate;
 - d. Method 3 for gas analysis and calculation of excess air, using the integrated sampling technique.
 2. For Method 5, the sampling time for each run shall be at least 60 minutes and the minimum sample volume shall be 0.85 dscm (30.0 dscf) except that smaller sampling times or sample volumes, when necessitated by process variables or other factors, may be approved by the Director.

Historical Note

Former Section R18-2-703 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-703 renumbered from R18-2-503 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 13 A.A.R. 2157, effective August 4, 2007 (Supp. 07-2). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).

R18-2-704. Standards of Performance for Incinerators

- A. No person shall cause, allow or permit to be emitted into the atmosphere, from any type of incinerator, smoke, fumes, gases, particulate matter or other gas-borne material which exceeds 20% opacity except during the times specified in subsection (D).
- B. No person shall cause, allow or permit the discharge of particulate matter into the atmosphere in any one hour from any incinerator, in excess of the following limits:
 1. For multiple chamber incinerators, controlled atmosphere incinerators, fume incinerators, afterburners or other unspecified types of incinerators, emissions shall not exceed 0.1 grain per cubic foot, based on dry flue gas at standard conditions, corrected to 12% carbon dioxide.
 2. For wood waste burners other than air curtain destructors, emissions discharged from the stack or burner top opening shall not exceed 0.2 grain per cubic foot, based on dry flue gas at standard conditions, corrected to 12% carbon dioxide.
- C. Air curtain destructors shall not be used within 500 feet of the nearest dwelling.
- D. Incinerators shall be exempt from the opacity and emission requirements described in subsections (A) and (B) as follows:
 1. For multiple chamber incinerators, controlled atmosphere incinerators, fume incinerators, afterburners or other unspecified types of incinerators, such exemption shall be for not more than 30 seconds in any 60-minute period.
 2. Wood waste burners shall be exempt both:

Historical Note

Former Section R18-2-704 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-704 renumbered from R18-2-504 effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 13 A.A.R. 2157, effective August 4, 2007 (Supp. 07-2).

R18-2-705. Standards of Performance for Existing Portland Cement Plants

- A. The provisions of this Section are applicable to the following affected facilities in portland cement plants: kiln, clinker cooler, raw mill system, finish mill system, raw mill dryer, raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging and bulk loading and unloading systems.
- B. No person shall cause, allow or permit the discharge of particulate matter from any identifiable process source within any existing cement plant subject to the provisions of this Section which exceeds the amounts calculated by one of the following equations:
 1. For process sources having a process weight rate of 60,000 pounds per hour (30 tons per hour) or less, the maximum allowable emissions shall be determined by the following equation:

$$E = 4.10P^{0.67}$$
 where:
 E = the maximum allowable particulate emissions rate in pounds-mass per hour.
 P = the process weight rate in tons-mass per hour.
 2. For process sources having a process weight rate greater than 60,000 pounds per hour (30 tons per hour), the maximum allowable emissions shall be determined by the following equation:

$$E = 55.0P^{0.11-40}$$
 where "E" and "P" are defined as indicated in subsection (B)(1).
- C. No process source within any portland cement plant shall exceed 20% opacity.
- D. No person shall cause, allow or permit discharge into the atmosphere of an amount in excess of 6 pounds of sulfur

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oxides, calculated as sulfur dioxide, per ton cement kiln feed from cement plants subject to the provisions of this Section.

- E. The owner or operator of any portland cement plant subject to the provisions of this Section shall record the daily production rates and the kiln feed rates.
- F. The test methods and procedures required by this Section are as follows:
 1. The reference methods in 40 CFR 60, Appendix A, except as provided for in R18-2-312 shall be used to determine compliance with the standards prescribed in subsection (B) as follows:
 - a. Method 5 for the concentration of particulate matter and the associated moisture content;
 - b. Method 1 for sample and velocity traverses;
 - c. Method 2 for velocity and volumetric flow rate;
 - d. Method 3 for gas analysis.
 2. For Method 5, the minimum sampling time and minimum sample volume for each run except when process variables or other factors justifying otherwise to the satisfaction of the Director, shall be as follows:
 - a. 60 minutes and 0.85 dscm (30.0 dscf) for the kiln,
 - b. 60 minutes and 1.15 dscm (40.6 dscf) for the clinker cooler.
 3. Total kiln feed rate, except fuels, expressed in metric tons per hour on a dry basis, shall be both:
 - a. Determined during each testing period by suitable methods; and
 - b. Confirmed by a material balance over the production system.
 4. For each run, particulate matter emissions, expressed in g/metric ton of kiln feed, shall be determined by dividing the emission rate in g/hr by the kiln feed rate. The emission rate shall be determined by the equation, $g/hr = Q_s \times c$, where Q_s = volumetric flow rate of the total effluent in dscm/hr as determined in accordance with subsection (F)(1)(c), and c = particulate concentration in g/dscm as determined in accordance with subsection (F)(1)(a).

Historical Note

Former Section R18-2-705 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-705 renumbered from R18-2-505 effective November 15, 1993 (Supp. 93-4).

R18-2-706. Standards of Performance for Existing Nitric Acid Plants

- A. No person shall cause, allow or permit discharge from any nitric acid plant producing weak nitric acid, which is either:
 1. 30 to 70% in strength by either the increased pressure or atmospheric pressure process, or
 2. More than 1.5 kg of total oxides of nitrogen per metric ton (3.0 lbs/ton) of acid produced expressed as nitrogen dioxide.
- B. The opacity of any plume subject to the provisions of this Section shall not exceed 10%.
- C. A continuous monitoring system for the measurement of nitrogen oxides shall be installed, calibrated, maintained and operated by the owner or operator, in accordance with Section R18-2-313.
- D. The test methods and procedures required by this Section are as follows:
 1. The reference methods in 40 CFR 60, Appendix A shall be used to determine compliance with the standard prescribed in subsection (A) as follows:
 - a. Method 7 for the concentration of NO_x ;
 - b. Method 1 for sample and velocity traverses;
 - c. Method 2 for velocity and volumetric flow rate;

- d. Method 3 for gas analysis.
- 2. For Method 7, the sample site shall be selected according to Method 1 and the sampling point shall be the centroid of the stack or duct or at a point no closer to the walls than 1 m (3.28 ft.). Each run shall consist of at least four grab samples taken at approximately 15-minute intervals. The arithmetic mean of the samples shall constitute the run value. A velocity traverse shall be performed once per run.
- 3. Acid production rate, expressed in metric tons per hour of 100% nitric acid, shall be both:
 - a. Determined during each testing period by suitable methods, and
 - b. Confirmed by a material balance over the production system.
- 4. For each run, nitrogen oxides, expressed in g/metric ton of 100% nitric acid, shall be determined by dividing the emission rate in g/hr by the acid production rate. The emission rate shall be determined by the equation:

$$g/hr = Q_s \times c$$
 where Q_s = volumetric flow rate of the effluent in dscm/hr, as determined in accordance with subsection (D)(1)(c), and c = NO_x concentration in g/dscm, as determined in accordance with subsection (D)(1)(a).

Historical Note

Former Section R18-2-706 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-706 renumbered from R18-2-506 effective November 15, 1993 (Supp. 93-4).

R18-2-707. Standards of Performance for Existing Sulfuric Acid Plants

- A. Facilities that produce sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, organic sulfide and mercaptans or acid sludge shall not discharge into the atmosphere:
 1. Greater than 2 kg of sulfur dioxide per metric ton (4 lbs/ton) of sulfuric acid produced (calculated as 100% H_2SO_4), or
 2. Greater than 0.075 kg of sulfuric acid mist per metric ton (0.15 lbs/ton) or sulfuric acid produced (calculated as 100% H_2SO_4).
- B. This Section shall not apply to metallurgical plants or other facilities where conversion to sulfuric acid is utilized as a means of controlling emissions to the atmosphere of sulfur dioxide or other sulfur compounds.
- C. A continuous monitoring system for the measurement of sulfur dioxide shall be installed, calibrated, maintained and operated by the owner or operator, in accordance with R18-2-313.
- D. The test methods and procedures required by this Section are as follows:
 1. The reference methods in 40 CFR 60, Appendix A shall be used to determine compliance with standards prescribed in subsection (A) as follows:
 - a. Method 8 for concentration of SO_2 and acid mist;
 - b. Method 1 for sample and velocity traverses;
 - c. Method 2 for velocity and volumetric flow rate;
 - d. Method 3 for gas analysis.
 2. The moisture content can be considered to be zero. For Method 8 the sampling time for each run shall be at least 60 minutes and the minimum sample volume shall be 1.15 dscm (40.6 dscf) except that smaller sampling times or sample volumes, when necessitated by process variables or other factors, may be approved by the Director.

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3. Acid production rate, expressed in metric tons per hour of 100% H₂SO₄, shall be both:
 - a. Determined during each testing period by suitable methods, and
 - b. Confirmed by a material balance over the production system.
4. Acid mist and sulfur dioxide emissions, expressed in g/metric ton of 100% H₂SO₄, shall be determined by dividing the emission rate in g/hr by the acid production rate. The emission rate shall be determined by the equation, g/hr-Q_s x c, where Q_s = volumetric flow rate of the effluent in dscm/hr as determined in accordance with subsection (D)(1)(c), and c = acid mist and SO₂ concentrations in g/dscm as determined in accordance with subsection (D)(1)(a).

Historical Note

Former Section R18-2-707 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-707 renumbered from R18-2-507 effective November 15, 1993 (Supp. 93-4).

R18-2-708. Standards of Performance for Existing Asphalt Concrete Plants

- A. Fixed asphalt concrete plants and portable asphalt concrete plants shall meet the standards set forth in this Section.
- B. No person shall cause, allow or permit the discharge of particulate matter into the atmosphere in any one hour from any existing asphalt concrete plant in total quantities in excess of the amounts calculated by one of the following equations:
 1. For process sources having a process weight rate of 60,000 pounds per hour (30 tons per hour) or less, the maximum allowable emissions shall be determined by the following equation:

$$E = 4.10P^{0.67}$$
 where:
 E = the maximum allowable particulate emission rate in pounds-mass per hour.
 P = the process weight rate in tons-mass per hour.
 2. For process sources having a process weight rate greater than 60,000 pounds per hour (30 tons per hour), the maximum allowable emissions shall be determined by the following equation:

$$E = 55.0P^{0.11-40}$$
 where "E" and "P" are defined as indicated in subsection (B)(1).
- C. Actual values shall be calculated from the applicable equations and rounded off to two decimal places.
- D. For purposes of this Section, the total process weight from all similar units employing a similar type process shall be used in determining the maximum allowable emission of particulate matter.
- E. Liquid fuel containing greater than 0.9% sulfur by weight shall not be utilized for asphalt concrete plants subject to this Section.
- F. Solid fuel containing greater than 0.5% sulfur by weight shall not be utilized for asphalt concrete plants subject to this Section.
- G. The test methods and procedures required under this Section are:
 1. The referenced methods given in 40 CFR 60, Appendix A, as incorporated by reference in Appendix 2 of this Chapter, shall be used to determine compliance with the standards prescribed in subsection (B).
 - a. Method 5 for the concentration of particulate matter and the associated moisture content,
 - b. Method 1 for sample and velocity traverses,

- c. Method 2 for velocity and volumetric flow rate,
- d. Method 3 for gas analysis.
2. For Method 5, the sampling time for each run shall be at least 60 minutes and the sampling rate shall be at least 0.9 dscm/hr (0.53 dscf/min) except that shorter sampling times, when necessitated by process variables or other factors, may be approved by the Director.
3. Percent sulfur in liquid fuel shall be determined by ASTM method D-129-91 (Test Method for Sulfur in Petroleum Products) (General Bomb Method), and the percent sulfur in solid fuel shall be determined by ASTM method D-3177-89 (Test Method for Total Sulfur in the Analysis Sample of Coal and Coke).

Historical Note

Former Section R18-2-708 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-708 renumbered from R18-2-508 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).

R18-2-709. Expired**Historical Note**

Former Section R18-2-709 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-709 renumbered from R18-2-509 and amended effective November 15, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 15, effective September 30, 2015 (Supp. 15-4).

R18-2-710. Standards of Performance for Existing Storage Vessels for Petroleum Liquids

- A. No person shall place, store or hold in any reservoir, stationary tank or other container having a capacity of 40,000 (151,400 liters) or more gallons any petroleum liquid having a vapor pressure of 1.5 pounds per square inch absolute or greater under actual storage conditions, unless such tank, reservoir or other container is a pressure tank maintaining working pressure sufficient at all times to prevent hydrocarbon vapor or gas loss to the atmosphere, or is equipped with one of the following vapor loss control devices, properly installed, in good working order and in operation:
 1. A floating roof consisting of a pontoon type double-deck type roof resting on the surface of the liquid contents and equipped with a closure seal to close the space between the roof eave and tank wall and a vapor balloon or vapor dome, designed in accordance with accepted standards of the petroleum industry. The control equipment shall not be used if the petroleum liquid has a vapor pressure of 12 pounds per square inch absolute or greater under actual storage conditions.
 - a. All tank gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place.
 - b. There shall be no visible holes, tears, or other openings in the seal or any seal fabric. Where applicable, all openings except drains shall be equipped with a cover, seal, or lid. The cover, seal, or lid shall be in a closed position at all times, except when the device is in actual use.
 - c. Automatic bleeder vents shall be closed at all times, except when the roof is floated off or landed on the roof leg supports.
 - d. Rim vents, if provided, shall be set to open when the roof is being floated off the roof leg supports, or at the manufacturer's recommended setting.

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2. Other equipment proven to be of equal efficiency for preventing discharge of hydrocarbon gases and vapors to the atmosphere.
- B.** Any other petroleum liquid storage tank shall be equipped with a submerged filling device, or acceptable equivalent, for the control of hydrocarbon emissions.
- C.** All facilities for dock loading of petroleum products, having a vapor pressure of 1.5 pounds per square inch absolute or greater at loading pressure, shall provide for submerged filling or acceptable equivalent for control of hydrocarbon emissions.
- D.** All pumps and compressors which handle volatile organic compounds shall be equipped with mechanical seals or other equipment of equal efficiency to prevent the release of organic contaminants into the atmosphere.
- E.** The monitoring of operations required by this Section is as follows:
1. The owner or operator of any petroleum liquid storage vessel to which this Section applies shall for each such storage vessel maintain a file of each type of petroleum liquid stored, of the typical Reid vapor pressure of each type of petroleum liquid stored and of dates of storage. Dates on which the storage vessel is empty shall be shown.
 2. The owner or operator of any petroleum liquid storage vessel to which this Section applies shall for such storage vessel determine and record the average monthly storage temperature and true vapor pressure of the petroleum liquid stored at such temperature if either:
 - a. The petroleum liquid has a true vapor pressure, as stored, greater than 26 mm Hg (0.5 psia) but less than 78 mm Hg (1.5 psia) and is stored in a storage vessel other than one equipped with a floating roof, a vapor recovery system or their equivalents; or
 - b. The petroleum liquid has a true vapor pressure, as stored, greater than 470 mm Hg (9.1 psia) and is stored in a storage vessel other than one equipped with a vapor recovery system or its equivalent.
 3. The average monthly storage temperature shall be an arithmetic average calculated for each calendar month, or portion thereof, if storage is for less than a month, from bulk liquid storage temperatures determined at least once every seven days.
 4. The true vapor pressure shall be determined by the procedures in American Petroleum Institute Bulletin 2517, amended as of February 1980 (and no future editions), which is incorporated herein by reference and on file with the Office of the Secretary of State. This procedure is dependent upon determination of the storage temperature and the Reid vapor pressure, which requires sampling of the petroleum liquids in the storage vessels. Unless the Director requires in specific cases that the stored petroleum liquid be sampled, the true vapor pressure may be determined by using the average monthly storage temperature and the typical Reid vapor pressure. For those liquids for which certified specifications limiting the Reid vapor pressure exist, the Reid vapor pressure may be used. For other liquids, supporting analytical data must be made available upon request to the Director when typical Reid vapor pressure is used.

Historical Note

Section R18-2-710 renumbered from R18-2-510 effective November 15, 1993 (Supp. 93-4).

R18-2-711. Expired**Historical Note**

Section R18-2-711 renumbered from R18-2-511 effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 15, effective September 30, 2015 (Supp. 15-4).

R18-2-712. Expired**Historical Note**

Section R18-2-712 renumbered from R18-2-512 effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 15, effective September 30, 2015 (Supp. 15-4).

R18-2-713. Expired**Historical Note**

Section R18-2-713 renumbered from R18-2-513 effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 15, effective September 30, 2015 (Supp. 15-4).

R18-2-714. Standards of Performance for Existing Sewage Treatment Plants

- A.** No person shall cause, allow or permit to be emitted into the atmosphere, from any municipal sewage treatment plant sludge incinerator:
1. Smoke, fumes, gases, particulate matter or other gas-borne material which exceeds 20% opacity for more than 30 seconds in any 60-minute period.
 2. Particulate matter in concentrations in excess of 0.1 grain per cubic foot, based on dry flue gas at standard conditions, corrected to 12% carbon dioxide.
- B.** The owner or operator of any sludge incinerator subject to the provisions of this Section shall monitor operations by doing all of the following:
1. Install, calibrate, maintain and operate a flow measuring device which can be used to determine either the mass or volume of sludge charged to the incinerator. The flow measuring device shall have an accuracy of $\pm 5\%$ over its operating range.
 2. Provide access to the sludge charged so that a well-mixed representative grab sample of the sludge can be obtained.
 3. Install, calibrate, maintain and operate a weighing device for determining the mass of any municipal solid waste charged to the incinerator when sewage sludge and municipal solid wastes are incinerated together. The weighing device shall have an accuracy of $\pm 5\%$ over its operating range.
- C.** The test methods and procedures required by this Section are as follows:
1. The reference methods set forth in 40 CFR 60, Appendix A shall be used to determine compliance with the standards prescribed in subsection (A) as follows:
 - a. Method 5 for concentration of particulate matter and associated moisture content;
 - b. Method 1 for sample and velocity traverses;
 - c. Method 2 for volumetric flow rate; and
 - d. Method 3 for gas analysis.
 2. For Method 5, the sampling time for each run shall be at least 60 minutes and the sampling rate shall be at least 0.015 dscm/min (0.53 dscf/min), except that shorter sam-

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pling times, when necessitated by process variables or other factors, may be approved by the Director.

Historical Note

Section R18-2-714 renumbered from R18-2-514 effective November 15, 1993 (Supp. 93-4).

R18-2-715. Standards of Performance for Existing Primary Copper Smelters; Site-specific Requirements

A. No owner or operator of a primary copper smelter shall cause, allow or permit the discharge of particulate matter into the atmosphere from any process in total quantities in excess of the amount calculated by one of the following equations:

1. For process sources having a process weight rate of 60,000 pounds per hour (30 tons per hour) or less, the maximum allowable emissions shall be determined by the following equation:

$$E = 4.10P^{0.67}$$

where

E = the maximum allowable particulate emissions rate in pounds-mass per hour.

P = the process weight rate in tons-mass per hour.

2. For process sources having a process weight rate greater than 60,000 pounds per hour (30 tons per hour), the maximum allowable emissions shall be determined by the following equation:

$$E = 55.0P^{0.11-40}$$

where "E" and "P" are defined as indicated in subsection (A)(1).

B. Actual values shall be calculated from the applicable equations and rounded off to two decimal places.

C. For purposes of this Section, the total process weight from all similar units employing a similar type process shall be used in determining the maximum allowable emission of particulate matter for that process.

D. The opacity of emissions subject to the provisions of this Section shall not exceed 20%.

E. The reference methods set forth in the Arizona Testing Manual and 40 CFR 60, Appendix A, as incorporated by reference in Appendix 2 of this Chapter, shall be used to determine compliance with the standards prescribed in this Section as follows:

1. Method A1 or Reference Method 5 for concentration of particulate matter and associated moisture content,
2. Reference Method 1 for sample and velocity traverses,
3. Reference Method 2 for volumetric flow rate,
4. Reference Method 3 for gas analysis.

F. Except as provided in a consent decree or a delayed compliance order, the owner or operator of any primary copper smelter shall not discharge or cause the discharge of sulfur dioxide into the atmosphere from any stack required to be monitored by R18-2-715.01(K) in excess of the following:

1. For the copper smelter located near Hayden, Arizona at latitude 33°0'29"N and longitude 110°47'17" W:
 - a. Annual average emissions, as calculated under R18-2-715.01(C), shall not exceed 6,882 pounds per hour.
 - b. The number of three-hour average emissions, as calculated under R18-2-715.01(C), shall not exceed n cumulative occurrences in excess of E, the emission level, shown in the following table in any compliance period as defined in R18-2-715.01(J):

n, Cumulative Occurrences	E, (lb/hr)
0	24,641
1	22,971

2	21,705
4	20,322
7	19,387
12	18,739
20	17,656
32	16,988
48	16,358
68	15,808
94	15,090
130	14,423
180	13,777
245	13,212
330	12,664
435	12,129
560	11,621
710	11,165
890	10,660
1100	10,205
1340	9,748
1610	9,319
1910	8,953
2240	8,556

2. For the copper smelter located near Miami, Arizona at latitude 33°24'50"N and longitude 110°51'25"W:

- a. Annual average emissions, as calculated under R18-2-715.01(C), shall not exceed 604 pounds per hour.
- b. The number of three-hour average emissions, as calculated under R18-2-715.01(C), shall not exceed n cumulative occurrences in excess of E, the emission level, shown in the following table in any compliance period as defined in R18-2-715.01(J):

n, Cumulative Occurrences	E, (lb/hr)
0	8678
1	7158
2	5903
4	4575
7	4074
12	3479
20	3017
32	2573
48	2111
68	1703
94	1461
130	1274
180	1145
245	1064
330	1015
435	968
560	933
710	896

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890	862
1100	828
1340	797
1610	765
1910	739
2240	712

- G.** Except as provided in a consent decree or a delayed compliance order, for the copper smelter located near Hayden, Arizona at latitude 33°0'29"N and longitude 110°47'17"W, annual average fugitive emissions calculated under R18-2-715.01(T) shall not exceed 295 pounds per hour.
- H.** In addition to the limits in subsection (F)(3), except as provided in a consent decree or a delayed compliance order, the owner or operator of the copper smelter located near Miami, Arizona at latitude 33°24'50"N and longitude 110°51'25"W shall not discharge or cause the discharge of sulfur dioxide into the atmosphere from combined stack and fugitive emissions units in excess of the 2420 pounds per hour annual average calculated under R18-2-715.01(U).
- I.** The owner and operator of the copper smelter located near Hayden, Arizona at the latitude and longitude provided in R18-2-715(F)(1) shall comply with Section R18-2-715(F)(1) and R18-2-715(G) until the effective date of R18-2-B1302 as determined by R18-2-B1302(A)(2). The owner and operator of the copper smelter located near Miami, Arizona at the latitude and longitude provided in R18-2-715(F)(2) shall comply with Section R18-2-715(F)(2) and R18-2-715(H) until the effective date of R18-2-C1302 as determined by R18-2-C1302(A)(2).

Historical Note

Section R18-2-715 renumbered from R18-2-515 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 575, effective January 15, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3365, effective July 18, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 2157, effective August 4, 2007 (Supp. 07-2). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1). Amended by final rulemaking at 23 A.A.R. 767, effective May 7, 2017, (Supp. 17-1).

R18-2-715.01. Standards of Performance for Existing Primary Copper Smelters; Compliance and Monitoring

- A.** The cumulative occurrence and emission limits in R18-2-715(F) apply to the total of sulfur dioxide emissions from the smelter processing units and sulfur dioxide control and removal equipment, but not uncaptured fugitive emissions or emissions due solely to the use of fuel for space heating or steam generation.
- B.** The owner or operator shall include periods of malfunction, startup, shutdown or other upset conditions when determining compliance with the cumulative occurrence or annual average emission limits in R18-2-715(F), (G), or (H).
- C.** The owner or operator shall determine compliance with the cumulative occurrence and emission limits contained in R18-2-715(F) as follows:
1. The owner or operator shall calculate annual average emissions at the end of each day by averaging the emissions for all hours measured during the compliance period defined in subsection (J) ending on that day. An annual emissions average in excess of the allowable annual average emission limit is a violation of R18-2-715(F) if either:
 - a. The annual average is greater than the annual average computed for the preceding day; or
 - b. The annual averages computed for the five preceding days all exceed the allowable annual average emission limit.
 2. The owner or operator shall calculate a three-hour emissions average at the end of each clock hour by averaging the hourly emissions for the preceding three consecutive hours provided each hour was measured according to the requirements in subsection (K).
- D.** For purposes of this Section, the compliance date, unless otherwise provided in a consent decree or a delayed compliance order, shall be January 14, 1986, except that:
1. The compliance date for the cumulative occurrence and emissions limits in R18-2-715(F)(1) and R18-2-715(G) is January 15, 2002, and
 2. The compliance date for the cumulative occurrence and emissions limits in R18-2-715(F)(2), (F)(3), (G), and (H) is the effective date of this rule.
- E.** For purposes of subsection (C), a three-hour emissions average in excess of an emission level E violates the associated cumulative occurrence limit n listed in R18-2-715(F) if:
1. The number of all three-hour emissions averages calculated during the compliance period in excess of that emission level exceeds the cumulative occurrence limit associated with the emission level; and
 2. The average is calculated during the last operating day of the compliance period being reported.
- F.** A three-hour emissions average only violates the cumulative occurrence limit n of an emission level E on the day containing the last hour in the average.
- G.** Multiple violations of the same cumulative occurrence limit on the same day and violations of different cumulative occurrence limits on the same day constitute a single violation of R18-2-715(F).
- H.** The violation of any cumulative occurrence limit and an annual average emission limit on the same day constitutes only a single violation of the requirements of R18-2-715(F).
- I.** Multiple violations of a cumulative occurrence limit by different three-hour emissions averages containing any common hour constitutes a single violation of R18-2-715(F).
- J.** To determine compliance with subsections (C) through (I), the compliance period consists of the 365 calendar days immediately preceding the end of each day of the month being reported unless that period includes less than 300 operating days, in which case the number of days preceding the last day of the compliance period shall be increased until the compliance period contains 300 operating days. For purposes of this Section, an operating day is any day on which sulfur-containing feed is introduced into the smelting process.
- K.** To determine compliance with R18-2-715(F) or (H), the owner or operator of any smelter subject to R18-2-715(F) or (H) shall install, calibrate, maintain, and operate a measurement system for continuously monitoring sulfur dioxide concentrations and stack gas volumetric flow rates in each stack that could emit five percent or more of the allowable annual average sulfur dioxide emissions from the smelter.
1. The owner or operator shall continuously monitor sulfur dioxide concentrations and stack gas volumetric flow rates in the outlet of each piece of sulfur dioxide control equipment.
 2. The owner or operator shall continuously monitor captured fugitive emissions for sulfur dioxide concentrations and stack gas volumetric flow rates and include these emissions as part of total plant emissions when determin-

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- ing compliance with the cumulative occurrence and emission limits in R18-2-715(F) and (H).
3. If the owner or operator demonstrates to the Director that measurement of stack gas volumetric flow in the outlet of any particular piece of sulfur dioxide control equipment would yield inaccurate results once operational or would be technologically infeasible, then the Director may allow measurement of the flow rate at an alternative sampling point.
 4. For purposes of this subsection, continuous monitoring means the taking and recording of at least one measurement of sulfur dioxide concentration and stack gas flow rate reading from the effluent of each affected stack, outlet, or other approved measurement location in each 15-minute period. Fifteen-minute periods start at the beginning of each clock hour, and run consecutively. An hour of smelter emissions is considered continuously monitored if the emissions from all monitored stacks, outlets, or other approved measurement locations are measured for at least 45 minutes of any hour according to the requirements of this subsection.
 5. The owner or operator shall demonstrate that the continuous monitoring system meets all of the following requirements:
 - a. The sulfur dioxide continuous emission monitoring system installed and operated under this Section meets the requirements of 40 CFR 60, Appendix B, Performance Specification 6.
 - b. The sulfur dioxide continuous emission monitoring system installed and operated under this Section meets the quality assurance requirements of 40 CFR 60, Appendix F.
 - c. The owner or operator shall notify the Director in writing at least 30 days in advance of the start of relative accuracy test audit (RATA) procedures performed on the continuous monitoring system.
 - d. The Director shall approve the location of all sampling points for monitoring sulfur dioxide concentrations and stack gas volumetric flow rates in writing before installation and operation of measurement instruments.
 - e. The measurement system installed and used under this subsection is subject to the manufacturer's recommended zero adjustment and calibration procedures at least once per 24-hour operating period unless the manufacturer specifies or recommends calibration at shorter intervals, in which case specifications or recommendations shall be followed. The owner or operator shall make available a record of these procedures that clearly shows instrument readings before and after zero adjustment and calibration.
 - L. The owner or operator of a smelter subject to this Section shall measure at least 95 percent of the hours during which emissions occurred in any month.
 - M. Failure of the owner or operator of a smelter subject to this Section to measure any 12 consecutive hours of emissions according to the requirements of subsection (K) or (S) is a violation of this Section.
 - N. The owner or operator of any smelter subject to this Section shall maintain on hand and ready for immediate installation sufficient spare parts or duplicate systems for the continuous monitoring equipment required by this Section to allow for the replacement within six hours of any monitoring equipment part that fails or malfunctions during operation.
 - O. To determine total overall emissions, the owner or operator of any smelter subject to this Section shall perform material balances for sulfur according to the procedures prescribed by Appendix 8 of this Chapter.
 - P. The owner or operator of any smelter subject to this Section shall maintain a record of all average hourly emissions measurements and all calculated average monthly emissions required by this Section. The record of the emissions shall be retained for at least five years following the date of measurement or calculation. The owner or operator shall record the measurement or calculation results as pounds per hour of sulfur dioxide. The owner or operator shall summarize the following data monthly and submit the summary to the Director within 20 days after the end of each month:
 1. For all periods described in subsection (C) and (R), the annual average emissions as calculated at the end of each day of the month;
 2. The total number of hourly periods during the month in which measurements were not taken and the reason for loss of measurement for each period;
 3. The number of three-hour emissions averages that exceeded each of the applicable emissions levels listed in R18-2-715(F) and (G) for the compliance periods ending on each day of the month being reported;
 4. The date on which a cumulative occurrence limit listed in R18-2-715(F) or (G) was exceeded if the exceedance occurred during the month being reported; and
 5. For all periods described in subsection (T) and (U), the annual average emissions as calculated at the end of the last day of each month.
 - Q. An owner or operator shall install instrumentation to monitor each point in the smelter facility where a means exists to bypass the sulfur removal equipment, to detect and record all periods that the bypass is in operation. An owner or operator of a copper smelter shall report to the Director, not later than the 15th day of each month, the recorded information required by this Section, including an explanation for the necessity of the use of the bypass.
 - R. The owner or operator shall determine compliance with the cumulative occurrence and fugitive emission limits contained in R18-2-715(G) as follows:
 1. The owner or operator shall calculate annual average emissions at the end of each day by averaging the emissions for all hours measured during the compliance period, as defined in subsection (R)(8), ending on that day. An annual emissions average in excess of the allowable annual average emission limit is a violation of R18-2-715(G) if either:
 - a. The annual average is greater than the annual average computed for the preceding day; or
 - b. The annual averages computed for the five preceding days all exceed the allowable annual average emission limit.
 2. The owner or operator shall calculate a three-hour emissions average at the end of each clock hour by averaging the hourly emissions for the preceding three consecutive hours provided each hour was measured according to the requirements contained in subsection (S).
 3. For purposes of subsection (R)(2), a three-hour emissions average in excess of an emission level E_f violates the associated cumulative occurrence limit listed in R18-2-715(G) if:
 - a. The number of all three-hour emissions averages calculated during the compliance period in excess of that emission level exceeds the cumulative occurrence limit associated with the emission level; and

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- b. The average is calculated during the last operating day of the compliance period being reported.
4. A three-hour emissions average only violates the cumulative occurrence limit n of an emission level E_f on the day containing the last hour in the average.
 5. Multiple violations of the same cumulative occurrence limit on the same day and violations of different cumulative occurrence limits on the same day constitute a single violation of R18-2-715(G).
 6. The violation of any cumulative occurrence limit and an annual average emission limit on the same day constitutes only a single violation of the requirements of R18-2-715(G).
 7. Multiple violations of a cumulative occurrence limit by different three-hour emissions averages containing any common hour constitutes a single violation of R18-2-715(G).
 8. To determine compliance with subsections (R)(1) through (7), the compliance period consists of the 365 calendar days immediately preceding the end of each day of the month being reported unless that period includes less than 300 operating days, in which case the number of days preceding the last day of the compliance period shall be increased until the compliance period contains 300 operating days. For purposes of this Section, an operating day is any day on which sulfur-containing feed is introduced into the smelting process.
- S. To determine compliance with R18-2-715(G), the owner or operator of the smelter subject to R18-2-715(G) shall install, calibrate, maintain, and operate a measurement system for continuously monitoring sulfur dioxide concentrations of the converter roof fugitive emissions.
1. For purposes of this subsection, continuous monitoring means the taking and recording of at least one measurement of sulfur dioxide concentration from an approved measurement location in each 15-minute period. Fifteen-minute periods start at the beginning of each clock hour, and run consecutively. An hour of smelter emissions is considered continuously monitored if the emissions from all approved measurement locations are measured for at least 45 minutes of any hour according to the requirements of this subsection.
 2. The owner or operator of a smelter subject to the requirements of this subsection shall conduct quality assurance procedures on the continuous monitoring system according to the methods in 40 CFR 60, Appendix F, except that an annual relative accuracy test audit (RATA) is not required.
- T. The emission limit in R18-2-715(G) applies to the total of uncaptured fugitive sulfur dioxide emissions from the smelter processing units and sulfur dioxide control and removal equipment, but not emissions due solely to the use of fuel for space heating or steam generation. The owner or operator shall determine compliance with the emission limit contained in R18-2-715(G) as follows:
1. The owner or operator shall calculate annual average fugitive emissions at the end of the last day of each month by averaging the monthly emissions for the previous 12-month period ending on that day. To determine monthly fugitive emissions, the owner or operator shall perform material balances for sulfur according to the sulfur balance procedures prescribed in Appendix 8 of this Chapter.
 2. An annual emissions average in excess of the allowable annual average emission limit violates R18-2-715(G) if the fugitive annual average computed at the end of each month exceeds the allowable annual average emission limit.
- U. The emission limit in R18-2-715(H) applies to the total of stack and uncaptured fugitive sulfur dioxide emissions from the smelter processing units and sulfur dioxide control and removal equipment, but not emissions due solely to the use of fuel for space heating or steam generation. The owner or operator shall determine compliance with the emission limit contained in R18-2-715(H) as follows:
1. The owner or operator shall calculate annual average stack emissions at the end of the last day of each month by averaging the emissions for all hours measured during the previous 12-month period ending on that day according to the requirements contained in subsection (K).
 2. The owner or operator shall calculate annual average fugitive emissions at the end of the last day of each month by averaging the monthly emissions for the previous 12-month period ending on that day. To determine monthly fugitive emissions, the owner or operator shall perform material balances for sulfur according to the sulfur balance procedures prescribed in Appendix 8 of this Chapter.
 3. An annual emissions average in excess of the allowable annual average emission limit violates R18-2-715(H) if the total of the stack and fugitive annual averages computed at the end of each month exceeds the allowable annual average emission limit.
- V. The owner and operator of the copper smelter located near Hayden, Arizona at the latitude and longitude provided in R18-2-715(F)(1) shall comply with Section R18-2-715.01 until the effective date of R18-2-B1302 as determined by R18-2-B1302(A)(2). The owner and operator of the copper smelter located near Miami, Arizona at the latitude and longitude provided in R18-2-715(F)(2) shall comply with Section R18-2-715.01 until the effective date of R18-2-C1302 as determined by R18-2-C1302(A)(2).

Historical Note

Section R18-2-715.01 renumbered from R18-2-515.01 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 575, effective January 15, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3365, effective July 18, 2002 (Supp. 02-3). Amended by final rulemaking at 23 A.A.R. 767, effective May 7, 2017, (Supp. 17-1).

R18-2-715.02. Standards of Performance for Existing Primary Copper Smelters; Fugitive Emissions

- A. For purposes of this Section, the compliance date, unless otherwise provided in a consent decree or a delayed compliance order, shall be January 14, 1986.
- B. No later than 24 months before the compliance date, the owner or operator of a smelter subject to R18-2-715 shall submit to the Director the results of an evaluation of the fugitive emissions from the smelter. The evaluation results shall contain all of the following information:
1. A measurement or accurate estimate of total fugitive emissions from the smelter during typical operations, including planned start-up and shutdown. The measurement or estimate shall contain the amount of both average short-term (24 hours) and average long-term (monthly) fugitive emissions from the smelter. The evaluation plan shall be approved in advance by the Department and shall specify the method used to determine the fugitive emission amounts, including the conditions determined to be "typical operations" for the smelter.

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2. A measurement or accurate estimate of the relative proportion, expressed as a percentage, of total fugitive emissions during typical operations, including planned start-up and shutdown, produced by any of the following smelter processes:
 - a. Roaster or dryer operation;
 - b. Calcine or dried concentrate transfer;
 - c. Reverberatory furnace operations, including feeding, slag return, matte and slag tapping;
 - d. Matte transfer; and
 - e. Converter operations.
 3. The measurement technique or method of estimation used to fulfill the requirement in subsection (B)(2) shall be approved in advance by the Department.
 4. The results of at least a six-month fugitive emission impact analysis conducted during that part of the year when fugitive emissions are expected to have the greatest ambient air quality impact. The study shall utilize sufficient measurements of fugitive emissions, meteorological conditions and ambient sulfur dioxide concentrations to associate fugitive emissions with specific measured ambient concentrations of sulfur dioxide. The study shall describe in detail the techniques used to make the required determinations. The design of the study shall be approved in advance by the Department.
- C.** On the basis of the results of the evaluation as well as other data and information contained in the records of the Department, the Director shall determine whether fugitive emissions from a particular smelter have the potential to cause or significantly contribute to violations of the ambient sulfur dioxide standards in the vicinity of the smelter. If the Director finds that fugitive emissions from a particular smelter have the potential to cause or significantly contribute to violations of ambient sulfur dioxide standards in the vicinity of a smelter, then the Director shall adopt rules specifying the emission limits and undertake other appropriate measures necessary to maintain ambient sulfur dioxide standards.
- D.** The requirements of subsection (B) shall not apply to a smelter subject to this Section if the owner or operator of that smelter can demonstrate to the Director both that:
1. Compliance with the applicable cumulative occurrence and emission limits listed in R18-2-715(F) will require the smelter to undergo major modifications to its physical configuration or work practices prior to the compliance date, and
 2. That the modification will reduce fugitive emissions to such an extent that such emissions will not cause or significantly contribute to violations of ambient sulfur dioxide standards in the vicinity of the smelter.
- E.** In order to assess the sufficiency of the cumulative occurrence and emission limits contained in R18-2-715(F) to maintain the ambient air quality standards for sulfur dioxide set forth in R18-2-202, an owner or operator of a smelter subject to this Section shall continue to calibrate, maintain and operate any ambient sulfur dioxide monitoring equipment owned by the smelter owner or operator and in operation within the area of the smelter enclosed by a circle with 10-mile radius as calculated from a center point which shall be the point of the smelter's greatest sulfur dioxide emissions, for a period of at least three years after the compliance date.
1. Such monitors shall be operated and maintained in accordance with 40 CFR 50 and 58 and such other conditions as the Director deems necessary.
 2. The location of ambient sulfur dioxide monitors and length of time such monitors remain at a location shall be determined by the Director.
- F.** The owner and operator of the copper smelter located near Hayden, Arizona at the latitude and longitude provided in R18-2-715(F)(1) shall comply with Section R18-2-715.02 until the effective date of R18-2-B1302 as determined by R18-2-B1302(A)(2). The owner and operator of the copper smelter located near Miami, Arizona at the latitude and longitude provided in R18-2-715(F)(2) shall comply with Section R18-2-715.02 until the effective date of R18-2-C1302 as determined by R18-2-C1302(A)(2).

Historical Note

Section R18-2-715.02 renumbered from R18-2-515.02 and amended effective November 15, 1993 (Supp. 93-4).
Amended by final rulemaking at 23 A.A.R. 767, effective May 7, 2017, (Supp. 17-1).

R18-2-716. Standards of Performance for Existing Coal Preparation Plants

- A.** The provisions of this Section are applicable to any of the following affected facilities in coal preparation plants: thermal dryers, pneumatic coal-cleaning equipment, coal processing and conveying equipment including breakers and crushers, coal storage systems, and coal transfer and loading systems. For purposes of this Section, the definitions contained in 40 CFR 60.251 are adopted by reference and incorporated herein.
- B.** No person shall cause, allow or permit the discharge of particulate matter into the atmosphere in any one hour from any existing coal preparation plant in total quantities in excess of the amounts calculated by one of the following equations:
1. For process sources having a process weight rate of 60,000 pounds per hour (30 tons per hour) or less, the maximum allowable emissions shall be determined by the following equation:

$$E = 4.10P^{0.67}$$
 where:
 E = the maximum allowable particulate emissions rate in pounds-mass per hour.
 P = the process weight rate in tons-mass per hour.
 2. For process sources having a process weight rate greater than 60,000 pounds per hour (30 tons per hour), the maximum allowable emissions shall be determined by the following equation:

$$E = 55.0P^{0.11}-40$$
 where "E" and "P" are defined as indicated in subsection (B)(1).
- C.** Actual values shall be calculated from the applicable equations and rounded off to two decimal places.
- D.** For purposes of this Section, the total process weight from all similar units employing a similar type process shall be used in determining the maximum allowable emission of particulate matter.
- E.** Fugitive emissions from coal preparation plants shall be controlled in accordance with R18-2-604 through R18-2-607.
- F.** The test methods and procedures required by this Section are as follows:
1. The reference methods in the 40 CFR 60, Appendix A, as incorporated by reference in Appendix 2 of this Chapter, are used to determine compliance with standards prescribed in subsection (B) as follows:
 - a. Method 5 for the concentration of particulate matter and associated moisture content,
 - b. Method 1 for sample and velocity traverses,
 - c. Method 2 for velocity and volumetric flow rate,
 - d. Method 3 for gas analysis.
 2. For Method 5, the sampling time for each run shall be at least 60 minutes and the minimum sample volume is 0.85 dscm (30 dscf) except that short sampling times or

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smaller volumes, when necessitated by process variables or other factors, may be approved by the Director. Sampling shall not be started until 30 minutes after start-up and shall be terminated before shutdown procedures commence. The owner or operator of the affected facility shall eliminate cyclonic flow during performance tests in a manner acceptable to the Director.

3. The owner or operator shall construct the facility so that particulate emissions from thermal dryers or pneumatic coal cleaning equipment can be accurately determined by applicable test methods and procedures under subsection (F)(1).

Historical Note

Section R18-2-716 renumbered from R18-2-516 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).

R18-2-717. Expired**Historical Note**

Section R18-2-717 renumbered from R18-2-517 effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 15, effective September 30, 2015 (Supp. 15-4).

R18-2-718. Repealed**Historical Note**

Section R18-2-718 renumbered from R18-2-518 effective November 15, 1993 (Supp. 93-4). Section repealed by final rulemaking at 13 A.A.R. 2157, effective August 4, 2007 (Supp. 07-2).

R18-2-719. Standards of Performance for Existing Stationary Rotating Machinery

- A. The provisions of this Section are applicable to the following affected facilities: all stationary gas turbines, oil-fired turbines, or internal combustion engines. This Section also applies to an installation operated for the purpose of producing electric or mechanical power with a resulting discharge of sulfur dioxide in the installation's effluent gases.
- B. For purposes of this Section, the heat input shall be the aggregate heat content of all fuels whose products of combustion pass through a stack or other outlet. Compliance tests shall be conducted during operation at the normal rated capacity of each unit. The total heat input of all operating fuel-burning units on a plant or premises shall be used for determining the maximum allowable amount of particulate matter which may be emitted.
- C. No person shall cause, allow or permit the emission of particulate matter, caused by combustion of fuel, from any stationary rotating machinery in excess of the amounts calculated by one of the following equations:
 1. For equipment having a heat input rate of 4200 million Btu per hour or less, the maximum allowable emissions shall be determined by the following equation:

$$E = 1.02Q^{0.769}$$
 where:
 E = the maximum allowable particulate emissions rate in pounds-mass per hour.
 Q = the heat input in million Btu per hour.
 2. For equipment having a heat input rate greater than 4200 million Btu per hour, the maximum allowable emissions shall be determined by the following equation:

$$E = 17.0Q^{0.432}$$

where "E" and "Q" have the same meaning as in subsection (C)(1).

- D. Actual values shall be calculated from the applicable equations and rounded off to two decimal places.
- E. No person shall cause, allow or permit to be emitted into the atmosphere from any stationary rotating machinery, smoke for any period greater than 10 consecutive seconds which exceeds 40% opacity. Visible emissions when starting cold equipment shall be exempt from this requirement for the first 10 minutes.
- F. When low sulfur oil is fired, stationary rotating machinery installations shall burn fuel which limits the emission of sulfur dioxide to 1.0 pound per million Btu heat input.
- G. When high sulfur oil is fired, stationary rotating machinery installations shall not emit more than 2.2 pounds of sulfur dioxide per million Btu heat input.
- H. Any permit issued for the operation of an existing source, or any renewal or modification of such a permit, shall include a condition prohibiting the use of high sulfur oil by the permittee. This condition may not be included in the permit if the applicant demonstrates to the satisfaction of the Director both that sufficient quantities of low sulfur oil are not available for use by the source and that it has adequate facilities and contingency plans to ensure that the sulfur dioxide ambient air quality standards set forth in R18-2-202 will not be violated.
 1. The terms of the permit may authorize the use of high sulfur oil under such conditions as are justified.
 2. In cases where the permittee is authorized to use high sulfur oil, it shall submit to the Department monthly reports detailing its efforts to obtain low sulfur oil.
 3. When the conditions justifying the use of high sulfur oil no longer exist, the permit shall be modified accordingly.
 4. Nothing in this Section shall be construed as allowing the use of a supplementary control system or other form of dispersion technology.
- I. The owner or operator of any stationary rotating machinery subject to the provisions of this Section shall record daily the sulfur content and lower heating value of the fuel being fired in the machine.
- J. The owner or operator of any stationary rotating machinery subject to the provisions of this Section shall report to the Director any daily period during which the sulfur content of the fuel being fired in the machine exceeds 0.8%.
- K. The test methods and procedures required by this Section are as follows:
 1. To determine compliance with the standards prescribed in subsections (C) through (H), the following reference methods shall be used:
 - a. Reference Method 20 in 40 CFR 60, Appendix A, as incorporated by reference in Appendix 2 of this Chapter, for the concentration of sulfur dioxide and oxygen.
 - b. ASTM Method D129-91 (Test Method for Sulfur in Petroleum Products) (General Bomb Method) for the sulfur content of liquid fuels.
 - c. ASTM Method D1072-90 (Test Method for Total Sulfur in Fuel Gases for the sulfur content of gaseous fuels).
 2. To determine compliance with the standards prescribed in subsection (J), the following reference methods shall be used:
 - a. ASTM Method D129-91 (Test Method for Sulfur in Petroleum Products) (General Bomb Method) for the sulfur content of liquid fuels.
 - b. ASTM Method D1072-90 (Test Method for Total Sulfur in Fuel Gases) for the sulfur content of gaseous fuels.

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Historical Note

Section R18-2-719 renumbered from R18-2-519 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

R18-2-720. Standards of Performance for Existing Lime Manufacturing Plants

- A. The provisions of this Section are applicable to the following affected facilities used in the manufacture of lime: rotary lime kilns, vertical lime kilns, lime hydrators, and limestone crushing facilities. This Section is also applicable to limestone crushing equipment which exists apart from other lime manufacturing facilities.
- B. No person shall cause, allow or permit the discharge of particulate matter into the atmosphere in any one hour from any lime manufacturing or limestone crushing facility in total quantities in excess of the amounts calculated by one of the following equations:
 1. For process sources having a process weight rate of 60,000 pounds per hour (30 tons per hour) or less, the maximum allowable emissions shall be determined by the following equation:

$$E = 4.10P^{0.67}$$
 where:
 E = the maximum allowable particulate emissions rate in pounds-mass per hour.
 P = the process weight rate in tons-mass per hour.
 2. For process sources having a process weight rate greater than 60,000 pounds per hour (30 tons per hour), the maximum allowable emissions shall be determined by the following equation:

$$E = 55.0P^{0.11-40}$$
 where "E" and "P" are defined as indicated in subsection (B)(1).
- C. Actual values shall be calculated from the applicable equations and rounded off to two decimal places.
- D. For purposes of this Section, the total process weight from all similar units employing a similar type process shall be used in determining the maximum allowable emission of particulate matter.
- E. Fugitive emissions from lime plants shall be controlled in accordance with R18-2-604 through R18-2-607.
- F. The owner or operator subject to the provisions of this Section shall install, calibrate, maintain, and operate a continuous monitoring system, except as provided in subsection (G), to monitor and record the opacity of the gases discharged into the atmosphere from any rotary lime kiln. The span of this system shall be set at 70% opacity.
- G. The owner or operator of any rotary lime kiln using a wet scrubbing emission control device subject to the provisions of this Section shall not be required to monitor the opacity of the gases discharged as required in subsection (F).
- H. The test methods and procedures required by this Section are as follows:
 1. The reference methods in 40 CFR 60, Appendix A, as incorporated by reference in Appendix 2 of this Chapter, shall be used to determine compliance with this Section as follows:
 - a. Method 5 for the measurement of particulate matter,
 - b. Method 1 for sample and velocity traverses,
 - c. Method 2 for velocity and volumetric flow rate,
 - d. Method 3 for gas analysis,
 - e. Method 4 for stack gas moisture,
 - f. Method 9 for visible emissions.

2. For Method 5, the sampling time for each run shall be at least 60 minutes and the sampling rate shall be at least 0.85 dscm/hr (0.53 dscf/min), except that shorter sampling times, when necessitated by process variables or other factors, may be approved by the Director.
3. Because of the high moisture content of the exhaust gases from the hydrators, in the range of 40 to 85% by volume, the Method 5 sample train may be modified to include a calibrated orifice immediately following the sample nozzle when testing lime hydrators. In this configuration, the sampling rate necessary for maintaining isokinetic conditions can be directly related to exhaust gas velocity without a correction for moisture content.

Historical Note

Section R18-2-720 renumbered from R18-2-520 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).

R18-2-721. Standards of Performance for Existing Nonferrous Metals Industry Sources

- A. The provisions of this Section are applicable to the following affected facilities:
 1. Mines,
 2. Mills,
 3. Concentrators,
 4. Crushers,
 5. Screens,
 6. Material handling facilities,
 7. Fine ore storage,
 8. Dryers,
 9. Roasters, and
 10. Loaders.
- B. No person shall cause, allow or permit the discharge of particulate matter into the atmosphere in any one hour from any process source subject to the provisions of this Section in total quantities in excess of the amounts calculated by one of the following equations:
 1. For process sources having a process weight rate of 60,000 pounds per hour (30 tons per hour) or less, the maximum allowable emissions shall be determined by the following equation:

$$E = 4.10P^{0.67}$$
 where:
 E = the maximum allowable particulate emissions rate in pounds-mass per hour.
 P = the process weight rate in tons-mass per hour.
 2. For process sources having a process weight greater than 60,000 pounds per hour (30 tons per hour), the maximum allowable emissions shall be determined by the following equation:

$$E = 55.0P^{0.11-40}$$
 where "E" and "P" are defined as indicated in subsection (B)(1).
- C. Actual values shall be calculated from the applicable equations and rounded off to two decimal places.
- D. For purposes of this Section, the total process weight from all similar units employing a similar type process shall be used in determining the maximum allowable emission of particulate matter.
- E. No person shall cause, allow or permit to be discharged into the atmosphere from any dryer or roaster the operating temperature of which exceeds 700°F, reduced sulfur in excess of 10% of the sulfur entering the process as feed. Reduced sulfur includes sulfur equivalent from all sulfur emissions including sulfur dioxide, sulfur trioxide, and sulfuric acid.

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- F. The owner or operator of any mining property subject to the provisions of this Section shall record the daily process rates and hours of operation of all material handling facilities.
- G. A continuous monitoring system for measuring sulfur dioxide emissions shall be installed, calibrated, maintained and operated by the owner or operator where dryers or roasters are not expected to achieve compliance with the standard under subsection (E).
- H. The test methods and procedures required by this Section are as follows:
1. The reference methods in 40 CFR 60, Appendix A, as incorporated by reference in Appendix 2 of this Chapter, shall be used to determine compliance with the standard prescribed in this Section as follows:
 - a. Method 5 for the concentration of particulate matter and the associated moisture content;
 - b. Method 1 for sample and velocity traverses;
 - c. Method 2 for velocity and volumetric flow rate;
 - d. Method 3 for gas analysis and calculation of excess air, using the integrated sample technique;
 - e. Method 6 for concentration of SO₂.
 2. For Method 5, Method 1 shall be used to select the sampling site and the number of traverse sampling points. The sampling time for each run shall be at least 60 minutes and the minimum sampling volume shall be 0.85 dscm (30 dscf), except that smaller sampling times or volumes, when necessitated by process variables or other factors, may be approved by the Director. The probe and filter holder heating systems in the sampling train shall be set to provide a gas temperature no greater than 160°C. (320°F.).
 3. For Method 6, the sampling site shall be the same as that selected for Method 5. The sampling point in the duct shall be at the centroid of the cross section or at a point no closer to the walls than 1 m (3.28 ft.). For Method 6, the sample shall be extracted at a rate proportional to the gas velocity at the sampling point.
 4. For Method 6, the minimum sampling time shall be 20 minutes and the minimum sampling volume 0.02 dscm (0.71 dscf) for each sample. The arithmetic mean of two samples shall constitute one run. Samples shall be taken at approximately 30-minute intervals.
- E = the maximum allowable particulate emissions rate in pounds-mass per hour.
P = the process weight rate in tons-mass per hour.
2. For process sources having a process weight rate greater than 60,000 pounds per hour (30 tons per hour), the maximum allowable emissions shall be determined by the following equation:

$$E = 55.0P^{0.11-40}$$
 where "E" and "P" are defined as indicated in subsection (B)(1).
- C. Actual values shall be calculated from the applicable equations and rounded off to two decimal places.
- D. Spray bar pollution controls shall be utilized in accordance with "EPA Control of Air Emissions From Process Operations In The Rock Crushing Industry" (EPA 340/1-79-002), "Wet Suppression System" (pages 15-34, amended as of January 1979 (and no future amendments or editions)), as incorporated herein by reference and on file with the Office of the Secretary of State, with placement of spray bars and nozzles as required by the Director to minimize air pollution.
- E. Fugitive emissions from gravel or crushed stone processing plants shall be controlled in accordance with R18-2-604 through R18-2-607.
- F. The owner or operator of any affected facility subject to the provisions of this Section shall install, calibrate, maintain, and operate monitoring devices which can be used to determine daily the process weight of gravel or crushed stone produced. The weighing devices shall have an accuracy of ± 5% over their operating range.
- G. The owner or operator of any affected facility shall maintain a record of daily production rates of gravel or crushed stone produced.
- H. The test methods and procedures required by this Section are as follows:
1. The reference methods in 40 CFR 60, Appendix A, as incorporated by reference in Appendix 2 of this Chapter, shall be used to determine compliance with the standards prescribed in this Section as follows:
 - a. Method 5 for concentration of particulate matter and moisture content,
 - b. Method 1 for sample and velocity traverses,
 - c. Method 2 for velocity and volumetric flow rate,
 - d. Method 3 for gas analysis.
 2. For Method 5, the sampling time for each run shall be at least 60 minutes and the minimum sample volume is 0.85 dscm (30 dscf), except that shorter sampling times or smaller volumes, when necessitated by process variables or other factors, may be approved by the Director. Sampling shall not be started until 30 minutes after start-up and shall be terminated before shutdown procedures commence. The owner or operator of the affected facility shall eliminate cyclonic flow during performance tests in a manner acceptable to the Director.

Historical Note

Section R18-2-721 renumbered from R18-2-521 effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).

R18-2-722. Standards of Performance for Existing Gravel or Crushed Stone Processing Plants

- A. The provisions of this Section are applicable to the following affected facilities: primary rock crushers, secondary rock crushers, tertiary rock crushers, screens, conveyors and conveyor transfer points, stackers, reclaimers, and all gravel or crushed stone processing plants and rock storage piles.
- B. No person shall cause, allow or permit the discharge of particulate matter into the atmosphere except as fugitive emissions in any one hour from any gravel or crushed stone processing plant in total quantities in excess of the amounts calculated by one of the following equations:

1. For process sources having a process weight rate of 60,000 pounds per hour (30 tons per hour) or less, the maximum allowable emissions shall be determined by the following equation:

$$E = 4.10P^{0.67}$$
 where:

Historical Note

Section R18-2-722 renumbered from R18-2-522 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).

R18-2-723. Standards of Performance for Existing Concrete Batch Plants

Fugitive dust emitted from concrete batch plants shall be controlled in accordance with R18-2-604 through R18-2-607.

Historical Note

Section R18-2-723 renumbered from R18-2-523 and amended effective November 15, 1993 (Supp. 93-4).

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R18-2-724. Standards of Performance for Fossil-fuel Fired Industrial and Commercial Equipment

- A.** This Section applies to industrial and commercial installations which are less than 73 megawatts capacity (250 million Btu per hour), but in the aggregate on any premises are rated at greater than 500,000 Btu per hour (0.146 megawatts), and in which fuel is burned for the primary purpose of producing steam, hot water, hot air or other liquids, gases or solids and in the course of doing so the products of combustion do not come into direct contact with process materials. When any products or by-products of a manufacturing process are burned for the same purpose or in conjunction with any fuel, the same maximum emission limitations shall apply.
- B.** For purposes of this Section, the heat input shall be the aggregate heat content of all fuels whose products of combustion pass through a stack or other outlet. The heat content of solid fuel shall be determined in accordance with R18-2-311. Compliance tests shall be conducted during operation at the nominal rated capacity of each unit. The total heat input of all fuel-burning units on a plant or premises shall be used for determining the maximum allowable amount of particulate matter which may be emitted.
- C.** No person shall cause, allow or permit the emission of particulate matter, caused by combustion of fuel, from any fuel-burning operation in excess of the amounts calculated by one of the following equations:
- For equipment having a heat input rate of 4200 million Btu per hour or less, the maximum allowable emissions shall be determined by the following equation:

$$E = 1.02Q^{0.769}$$
 where:
 E = the maximum allowable particulate emissions rate in pounds-mass per hour.
 Q = the heat input in million Btu per hour.
 - For equipment having a heat input rate greater than 4200 million Btu per hour, the maximum allowable emissions shall be determined by the following equation:

$$E = 17.0Q^{0.432}$$
 where "E" and "Q" have the same meanings as in subsection (C)(1).
- D.** Actual values shall be calculated from the applicable equations and rounded off to two decimal places.
- E.** Fossil-fuel fired industrial and commercial equipment installations shall not emit more than 1.0 pounds of sulfur dioxide per million Btu heat input when low sulfur oil is fired.
- F.** Fossil-fuel fired industrial and commercial equipment installations shall not emit more than 2.2 pounds of sulfur dioxide per million Btu heat input when high sulfur oil is fired.
- G.** Any permit issued for the operation of an existing source, or any renewal or modification of such a permit, shall include a condition prohibiting the use of high sulfur oil by the permittee. This condition may be omitted from the permit if the applicant demonstrates to the satisfaction of the Director both that sufficient quantities of low sulfur oil are not available for use by the source and that it has adequate facilities and contingency plans to ensure that the sulfur dioxide ambient air quality standards set forth in R18-2-202 will not be violated.
- The terms of the permit may authorize the use of high sulfur oil under such conditions as are justified.
 - In cases where the permittee is authorized to use high sulfur oil, it shall submit to the Department monthly reports detailing its efforts to obtain low sulfur oil.
 - When the conditions justifying the use of high sulfur oil no longer exist, the permit shall be modified accordingly.
- 4.** Nothing in this Section shall be construed as allowing the use of a supplementary control system or other form of dispersion technology.
- H.** When coal is fired, fossil-fuel fired industrial and commercial equipment installations shall not emit more than 1.0 pounds of sulfur dioxide per million Btu heat input.
- I.** The owner or operator subject to the provisions of this Section shall install, calibrate, maintain and operate a continuous monitoring system for measurement of the opacity of emissions discharged into the atmosphere from the control device.
- J.** For the purpose of reports required under excess emissions reporting required by R18-2-310.01, the owner or operator shall report all six-minute periods in which the opacity of any plume or effluent exceeds 15%.
- K.** The test methods and procedures required by this Section are as follows:
- The reference methods in 40 CFR 60, Appendix A, as incorporated by reference in Appendix 2 of this Chapter, shall be used to determine compliance with the standards as prescribed in this Section.
 - Method 1 for selection of sampling site and sample traverses,
 - Method 3 for gas analysis to be used when applying Reference Methods 5 and 6,
 - Method 5 for concentration of particulate matter and the associated moisture content,
 - Method 6 for concentration of SO₂.
 - For Method 5, Method 1 shall be used to select the sampling site and the number of traverse sampling points. The sampling time for each run shall be at least 60 minutes and the minimum sampling volume shall be 0.85 dscm (30 dscf), except that smaller sampling times or volumes, when necessitated by process variables or other factors, may be approved by the Director. The probe and filter holder heating systems in the sampling train shall be set to provide a gas temperature no greater than 160°C. (320°F.).
 - For Method 6, the sampling site shall be the same as that selected for Method 5. The sampling point in the duct shall be at the centroid of the cross section or at a point no closer to the walls than 1 m (3.28 ft). For Method 6, the sample shall be extracted at a rate proportional to the gas velocity at the sampling point.
 - For Method 6, the minimum sampling time shall be 20 minutes and the minimum sampling volume 0.02 dscm (0.71 dscf) for each sample. The arithmetic mean of two samples shall constitute one run. Samples shall be taken at approximately 30-minute intervals.
 - Gross calorific value shall be determined in accordance with the applicable ASTM methods: D-2015-91 (Test for Gross Calorific Value of Solid Fuel by the Adiabatic Bomb Calorimeter) for solid fuels; D-240-87 (Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter) for liquid fuels; and D-1826-88 (Test Method for Calorific Value of Gases in Natural Gas Range by Continuous Recording Calorimeter) for gaseous fuels. The rate of fuels burned during each testing period shall be determined by suitable methods and shall be confirmed by a material balance over the fossil-fuel fired system.

Historical Note

Section R18-2-724 renumbered from R18-2-524 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 1164, effective February 15, 2001 (Supp. 01-1). Amended by final

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rulemaking at 15 A.A.R. 281, effective March 7, 2009
(Supp. 09-1).

R18-2-725. Standards of Performance for Existing Dry Cleaning Plants

- A. No person shall conduct any dry cleaning operation using chlorinated synthetic solvents without minimizing organic solvent emissions by good modern practices including but not limited to the use of an adequately sized and properly maintained activated carbon absorber or other equally effective control device.
- B. No person shall operate any dry cleaning establishment using petroleum solvents other than non-photochemically reactive solvents without reducing solvent emissions by at least 90%. For purposes of this subsection, a photochemically reactive solvent shall be any solvent with an aggregate of more than 20% of its total volume composed of the chemical compounds classified in subsections (B)(1) through (3), or which exceeds any of the following percentage composition limitations, referred to the total volume of solvent:
1. A combination of the following types of compounds having an olefinic or cyclo-olefinic type of unsaturation -- hydrocarbons, alcohols, aldehydes, esters, ethers, or ketones: 5%.
 2. A combination of aromatic compounds with 8 or more carbon atoms to the molecule except ethylbenzene: 8%.
 3. A combination of ethylbenzene, ketones having branched hydrocarbon structures, trichlorethylene or toluene: 20%.
- C. Where a stack, vent or other outlet is at such a level that fumes, gas mist, odor, smoke, vapor or any combination thereof constituting air pollution is discharged to adjoining property, the Director may require the installation of abatement equipment or the alteration of such stack, vent, or other outlet by the owner or operator thereof to a degree that will adequately dilute, reduce or eliminate the discharge of air pollution to the adjoining property.

Historical Note

Section R18-2-725 renumbered from R18-2-525 effective November 15, 1993 (Supp. 93-4).

R18-2-726. Standards of Performance for Sandblasting Operations

No person shall cause or permit sandblasting or other abrasive blasting without minimizing dust emissions to the atmosphere through the use of good modern practices. Examples of good modern practices include wet blasting and the use of effective enclosures with necessary dust collecting equipment.

Historical Note

Section R18-2-726 renumbered from R18-2-526 effective November 15, 1993 (Supp. 93-4).

R18-2-727. Standards of Performance for Spray Painting Operations

- A. No person shall conduct any spray paint operation without minimizing organic solvent emissions. Such operations other than architectural coating and spot painting, shall be conducted in an enclosed area equipped with controls containing no less than 96% of the overspray.
- B. No person shall either:
1. Employ, apply, evaporate or dry any architectural coating containing photochemically reactive solvents for industrial or commercial purposes; or
 2. Thin or dilute any architectural coating with a photochemically reactive solvent.
- C. For purposes of subsection (B), a photochemically reactive solvent shall be any solvent with an aggregate of more than

20% of its total volume composed of the chemical compounds classified in subsections (1) through (3), or which exceeds any of the following percentage composition limitations, referred to the total volume of solvent:

1. A combination of the following types of compounds having an olefinic or cyclo-olefinic type of unsaturation -- hydrocarbons, alcohols, aldehydes, esters, ethers, or ketones: 5%.
 2. A combination of aromatic compounds with 8 or more carbon atoms to the molecule except ethylbenzene: 8%.
 3. A combination of ethylbenzene, ketones having branched hydrocarbon structures, trichlorethylene or toluene: 20%.
- D. Whenever any organic solvent or any constituent of an organic solvent may be classified from its chemical structure into more than one of the groups or organic compounds described in subsection (C)(1) through (3), it shall be considered to be a member of the group having the least allowable percent of the total volume of solvents.

Historical Note

Section R18-2-727 renumbered from R18-2-527 effective November 15, 1993 (Supp. 93-4).

R18-2-728. Standards of Performance for Existing Ammonium Sulfide Manufacturing Plants

- A. The provisions of this Section are applicable to the following affected facilities in ammonium sulfide manufacturing plants: sulfide unloading facilities, reactor-absorbers, bubble cap scrubbers, and fume incinerators.
- B. No person shall cause, allow or permit to be emitted into the atmosphere, from any type of incinerator or other outlet smoke, fumes, gases, particulate matter or other gas-borne material, the opacity of which exceeds 20%.
- C. No person shall cause, allow or permit to be emitted into the atmosphere from any emission point from any incinerator, or to pass a convenient measuring point near such emission point, particulate matter of concentrations in excess of 0.1 grain per cubic foot, based on dry flue gas at standard conditions, corrected to 12% carbon dioxide.
- D. No person shall allow hydrogen sulfide to be emitted from any location in such manner and amount that the concentration of such emissions into the ambient air at any occupied place beyond the premises on which the source is located exceeds 0.03 parts per million by volume for any averaging period of 30 minutes or more.
- E. Where a stack, vent or other outlet is at such a level that fumes, gas mist, odor, smoke, vapor or any combination thereof constituting air pollution are discharged to adjoining property, the Director may require the installation of abatement equipment or the alteration of such stack, vent, or other outlet by the owner or operator thereof to a degree that will adequately dilute, reduce or eliminate the discharge of air pollution to adjoining property.
- F. The owner or operator of any ammonium sulfide tailgas incinerator subject to the provisions of this Section shall do both of the following:
1. Install, calibrate, maintain, and operate a flow measuring device which can be used to determine either the mass or volume of tailgas charged to the incinerator. The flow measuring device shall have an accuracy of $\pm 5\%$ over its operating range.
 2. Provide access to the tailgas charged so that a well-mixed representative grab sample can be obtained.
- G. The test methods and procedures required by this Section are as follows:

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1. The reference methods in 40 CFR 60, Appendix A shall be used to determine compliance with the standards prescribed in this Section as follows:
 - a. Method 5 for the concentration of particulate matter and the associated moisture content;
 - b. Method 1 for sample and velocity traverse;
 - c. Method 2 for velocity and volumetric flow rate;
 - d. Method 3 for gas analysis and calculation of excess air, using the integrated sample technique;
 - e. Method 11 shall be used to determine the concentration of H₂S and Method 6 shall be used to determine the concentration of SO₂.
2. For Method 5, the sampling time for each run shall be at least 60 minutes and the minimum sample volume shall be 0.85 dscm (30.0 dscf) except that shorter sampling times and smaller sample volumes, when necessitated by process variables or other factors, may be approved by the Director.
3. Particulate matter emissions, expressed in g/dscm, shall be corrected to 12% CO₂ by using the following formula:

$$C_{12} = \frac{12c}{\%CO_2}$$
 where:
 C_{12} = the concentration of particulate matter corrected to 12% CO₂,
 c = the concentration of particulate matter as measured by Method 5, and
 $\%CO_2$ = the percentage of CO₂ as measured by Method 3, or, when applicable, the adjusted outlet CO₂ percentage.
4. If Method 11 is used, the gases sampled shall be introduced into the sampling train at approximately atmospheric pressure. Where fuel gas lines are operating at pressures substantially above atmosphere, this may be accomplished with a flow control valve. If the line pressure is high enough to operate the sampling train without a vacuum pump, the pump may be eliminated from the sampling train. The sample shall be drawn from a point near the centroid of the fuel gas line. The minimum sampling time shall be 10 minutes and the minimum sampling volume 0.01 dscm (0.35 dscf) for each sample. The arithmetic average of two samples of equal sampling time shall constitute one run. Samples shall be taken at approximately one-hour intervals. For most fuel gases, sample times exceeding 20 minutes may result in depletion of the collecting solution, although fuel gases containing low concentrations of hydrogen sulfide may necessitate sampling for longer periods of time.
5. If Method 5 is used, Method 1 shall be used for velocity traverses and Method 2 for determining velocity and volumetric flow rate. The sampling site for determining CO₂ concentration by Method 3 shall be the same as for determining volumetric flow rate by Method 2. The sampling point in the duct for determining SO₂ concentration by Method 3 shall be at the centroid of the cross section if the cross sectional area is less than 5 m² (54 ft²) or at a point no closer to the walls than 1 m (3.28 feet) if the cross sectional area is 5 m² or more and the centroid is more than 1 meter from the wall. The sample shall be extracted at a rate proportional to the gas velocity at the sampling point. The minimum sampling time shall be 10 minutes and the minimum sampling volume 0.01 dscm (0.36 dscf) for each sample. The arithmetic average of two samples of equal sampling time shall constitute one run. Samples shall be taken at approximately one-hour intervals.

Historical Note

Section R18-2-728 renumbered from R18-2-528 effective November 15, 1993 (Supp. 93-4).

R18-2-729. Standards of Performance for Cotton Gins

- A. Fugitive dust, lint, bolls, cotton seed or other material emitted from a cotton gin or lying loose in a yard shall be collected and disposed of in an efficient manner or shall be treated in accordance with R18-2-604 through R18-2-607.
- B. No person shall cause, allow or permit to be emitted into the atmosphere, from any type of incinerator, smoke, fumes, gases, particulate matter or other gas-borne material which exceeds 40% opacity.
- C. No person shall cause, allow, or permit the discharge of particulate matter into the atmosphere in any one hour from any cotton gin in total quantities in excess of the amounts calculated by one of the following equations:
 1. For process sources having a process weight rate of 60,000 pounds per hour (30 tons per hour) or less, the maximum allowable emissions shall be determined by the following equation:

$$E = 4.10P^{0.67}$$
 where:
 E = the maximum allowable particulate emissions rate in pounds-mass per hour.
 P = the process weight rate in tons-mass per hour.
 2. For process sources having a process weight rate greater than 60,000 pounds per hour (30 tons per hour), the maximum allowable emissions shall be determined by the following equation:

$$E = 55.0P^{0.11-40}$$
 where "E" and "P" are defined as indicated in subsection (C)(1).
- D. The test methods and procedures required by this Section are as follows:
 1. The reference methods in the Arizona Testing Manual and 40 CFR 60, Appendix A shall be used to determine compliance with this Section as follows:
 - a. Method A-2 for the measurement of particulate matter,
 - b. Method 1 for sample and velocity traverses,
 - c. Method 2 for velocity and volumetric flow rate,
 - d. Method 3 for gas analysis,
 - e. Method 9 for visible emissions.
 2. For Method A-2, the sampling time for each run shall be at least 60 minutes and the sampling rate shall be at least 0.85 dry standard cubic meters per hour (0.53 dry standard cubic feet per minute), except that shorter sampling times, when necessitated by progress variables or other factors, may be approved by the Director.

Historical Note

Section R18-2-729 renumbered from R18-2-529 and amended effective November 15, 1993 (Supp. 93-4).

Amended by final rulemaking at 13 A.A.R. 2157, effective August 4, 2007 (Supp. 07-2).

R18-2-730. Standards of Performance for Unclassified Sources

- A. No existing source which is not otherwise subject to standards of performance under this Article or Article 9 or 11 of this Chapter, shall cause or permit the emission of pollutants at rates greater than the following:
 1. For particulate matter discharged into the atmosphere in any one hour from any unclassified process source in total quantities in excess of the amounts calculated by one of the following equations:

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- a. For process sources having a process weight rate of 60,000 pounds per hour (30 tons per hour) or less, the maximum allowable emissions shall be determined by the following equation:

$$E = 4.10P^{0.67}$$
 where:
 E = the maximum allowable particulate emissions rate in pounds-mass per hour.
 P = the process weight rate in tons-mass per hour.
- b. For process weight rate greater than 60,000 pounds per hour (30 tons per hour), the maximum allowable emissions shall be determined by the following equation:

$$E = 55.0P^{0.11-40}$$
 where "E" and "P" are defined as indicated in subsection (A)(1)(a).
2. Sulfur dioxide – 600 parts per million.
3. Nitrogen oxides expressed as NO₂ – 500 parts per million.
- B.** For purposes of this Section, the total process weight from all similar units employing a similar type process shall be used in determining the maximum allowable emission of particulate matter.
- C.** Actual values shall be calculated from the applicable equations and rounded off to two decimal places.
- D.** No person shall emit gaseous or odorous materials from equipment, operations or premises under the person's control in such quantities or concentrations as to cause air pollution.
- E.** No person shall operate or use any machine, equipment, or other contrivance for the treatment or processing of animal or vegetable matter, separately or in combination, unless all gaseous vapors and gas entrained effluents from such operations, equipment, or contrivance have been either:
 1. Incinerated to destruction, as indicated by a temperature measuring device, at not less than 1,200°F if constructed or reconstructed prior to January 1, 1989, or 1,600°F with a minimum residence time of 0.5 seconds if constructed or reconstructed thereafter; or
 2. Passed through such other device which is designed, installed and maintained to prevent the emission of odors or other air contaminants and which is approved by the Director.
- F.** Materials including solvents or other volatile compounds, paints, acids, alkalies, pesticides, fertilizers and manure shall be processed, stored, used and transported in such a manner and by such means that they will not evaporate, leak, escape or be otherwise discharged into the ambient air so as to cause or contribute to air pollution. Where means are available to reduce effectively the contribution to air pollution from evaporation, leakage or discharge, the installation and use of such control methods, devices, or equipment shall be mandatory.
- G.** Where a stack, vent or other outlet is at such a level that fumes, gas mist, odor, smoke, vapor or any combination thereof constituting air pollution is discharged to adjoining property, the Director may require the installation of abatement equipment or the alteration of such stack, vent, or other outlet by the owner or operator thereof to a degree that will adequately dilute, reduce or eliminate the discharge of air pollution to adjoining property.
- H.** No person shall allow hydrogen sulfide to be emitted from any location in such manner and amount that the concentration of such emissions into the ambient air at any occupied place beyond the premises on which the source is located exceeds 0.03 parts per million by volume for any averaging period of 30 minutes or more.
- I.** No person shall cause, allow or permit discharge from any stationary source carbon monoxide emissions without the use of complete secondary combustion of waste gases generated by any process source.
- J.** No person shall allow hydrogen cyanide to be emitted from any location in such manner and amount that the concentration of such emissions into the ambient air at any occupied place beyond the premises on which the source is located exceeds 0.3 parts per million by volume for any averaging period of eight hours.
- K.** No person shall allow sodium cyanide dust or dust from any other solid cyanide to be emitted from any location in such manner and amount that the concentration of such emissions into the ambient air at any occupied place beyond the premises on which the source is located exceeds 140 micrograms per cubic meter for any averaging period of eight hours.
- L.** No owner or operator of a facility engaged in the surface coating of miscellaneous metal parts and products may operate a coating application system subject to this Section that emits volatile organic compounds in excess of any of the following:
 1. 4.3 pounds per gallon (0.5 kilograms per liter) of coating, excluding water, delivered to a coating applicator that applies clear coatings.
 2. 3.5 pounds per gallon (0.42 kilograms per liter) of coating, excluding water delivered to a coating applicator in a coating application system that is air dried or forced warm air dried at temperatures up to 194°F (90°C).
 3. 3.5 pounds per gallon (0.42 kilograms per liter) of coating, excluding water, delivered to a coating applicator that applies extreme performance coatings.
 4. 3.0 pounds per gallon (0.36 kilograms per liter) of coating, excluding water, delivered to a coating applicator for all other coatings and application systems.
- M.** If more than one emission limitation in subsection (L) applies to a specific coating, then the least stringent emission limitation shall be applied.
- N.** All VOC emissions from solvent washings shall be considered in the emission limitations in subsection (L), unless the solvent is directed into containers that prevent evaporation into the atmosphere.

Historical Note

Renumbered from R18-2-530 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).

R18-2-731. Standards of Performance for Existing Municipal Solid Waste Landfills

- A.** This Section applies to each municipal solid waste landfill (MSW landfill) at which:
 1. Construction, reconstruction, or modification began on or before July 17, 2014; and
 2. Waste was accepted at any time since November 8, 1987, or additional design capacity is available for future waste deposition.
- B.** For the purposes of this Section, "Municipal solid waste landfill or MSW landfill" means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA (Resource Conservation and Recovery Act) Subtitle D wastes such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned.

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- C. MSW landfills covered by this Section shall comply with 40 CFR 60, Subpart Cf, effective as of the date of EPA approval of the state plan under section 111(d) of the Act. 40 CFR 60, Subpart WWW, "Standards of Performance for Municipal Solid Waste Landfills," will remain in effect until Arizona's state plan implementing Subpart Cf is approved by EPA. 40 CFR 60, Subpart Cf "Emissions Guidelines and Compliance Times for Municipal Solid Waste Landfills," as adopted on August 29, 2016 (and no future amendments) is hereby incorporated by reference as applicable requirements. MSW landfills may meet the requirements of Subpart Cf by complying with 40 CFR 60, Subpart XXX. 40 CFR 60, Subpart XXX "Standards of Performance for Municipal Solid Waste Landfills that Commenced Construction, Reconstruction or Modification After July 17, 2014," is incorporated by reference in R18-2-901.

Historical Note

Adopted effective April 4, 1997; filed with the Office of the Secretary of State March 14, 1997 (Supp. 97-1).

Amended by final rulemaking at 24 A.A.R. 1864, effective August 10, 2018 (Supp. 18-2).

R18-2-732. Expired**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3058, effective August 10, 1999 (Supp. 99-3). Amended by final rulemaking at 13 A.A.R. 2157, effective August 4, 2007 (Supp. 07-2). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 15, effective September 30, 2015 (Supp. 15-4).

R18-2-733. Repealed**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4701, effective January 29, 2007 (Supp. 06-4). Section repealed by final rulemaking at 21 A.A.R. 711, effective June 30, 2015 (Supp. 15-2).

R18-2-733.01. Repealed**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4701, effective January 29, 2007 (Supp. 06-4). Section repealed by final rulemaking at 21 A.A.R. 711, effective June 30, 2015 (Supp. 15-2).

R18-2-734. Standards of Performance for Mercury Emissions from Electric Generating Units

- A. Applicability and Purpose. The requirements of this Section apply to owners and operators of electric generating units. The purpose of this Section is to establish:
1. Interim standards for mercury emissions from electric generating units that shall apply until compliance with the emissions limits in the federal mercury standards is required.
 2. State standards for mercury emissions from electric generating units that shall apply if the federal mercury standards are vacated by a federal court or repealed by the administrator.
- B. Interim Standards. The following requirements shall apply until the date that compliance with the federal mercury standards or subsection (G) is required:
1. The owners and operators shall comply with the mercury control strategy operations and maintenance plan approved as part of the permit for the electric generating plant.

2. The owners and operators shall operate and maintain the electric generating plant, including any associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing mercury emissions. This requirement shall apply to any air pollution control equipment installed pursuant to subsection (B)(1) or to any new air pollution control equipment installed to comply with the federal mercury standards if such equipment replaces equipment installed pursuant to subsection (B)(1).
- C. Incorporation of Federal Mercury Standards. The federal mercury standards in 40 CFR Part 63, Subpart UUUUU, as of July 1, 2013 (and no future amendments or editions) are incorporated by reference and shall remain effective to the extent specified in this Section regardless of whether they are vacated by a federal court or repealed by the administrator. Subpart UUUU of 40 C.F.R. Part 63 is published by the United States Government Printing Office, 732 North Capital Street, NW, Washington, DC 20401-0001, is on file with the Department of Environmental Quality, 1110 West Washington Street, Phoenix, Arizona 85007, and is available at the Arizona State Library, Archives & Public Records, 1700 West Washington Street, Phoenix, Arizona 85007 and at other Federal depository libraries in the state (see http://catalog.gpo.gov/fdlpdir/FDLP-dir.jsp?st_12=AZ&flag=searchp). It is also available online at <http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>. The owners and operators shall provide to the director a copy of all notices and reports submitted to the Administrator under the federal mercury standards, except for any reports or data submitted to the Administrator through electronic systems (for example, Compliance and Emissions Data Reporting Interface (CEDRI), Emission Collection Monitoring Plan System Client Tool (ECMPS) or the Emissions Reporting Tool (ERT)).
- D. Notice of State Standard Applicability. The director shall provide notice to the responsible official for each electric generating plant of any repeal or federal court vacatur of the federal mercury standards. If the repeal or vacatur occurred after the date the electric generating plant was required to comply with the emission limits in the federal mercury standards, the plant shall continue to comply with the federal mercury standards until the date that compliance with subsection (G) is required.
- E. Application for Permit Revision. Within 120 days of receipt of written notice from the director under subsection (D), the owners and operators shall submit an application for a permit revision that proposes:
1. The mercury emission limit or limits in subsection (G) that shall apply to the electric generating plant.
 2. A date for demonstrating compliance with the mercury emission limit consistent with subsection (F)(2).
 3. A mercury monitoring plan consistent with subsection (H)(2).
- F. Permit Revision Setting State Standard. A permit revision granted in response to the application submitted under subsection (E) shall contain the following conditions:
1. The mercury emission limit or limits in subsection (G) that shall apply to the electric generating plant.
 2. The date compliance with the emission limit or limits shall be required. Unless the application requests an earlier date, the compliance date shall be the later of December 31, 2016 or the end of the first averaging period commencing no later than 180 days after permit issuance.
 3. The date for demonstrating initial compliance with the emission limit or limits, which shall be 45 days after completion of the first full averaging period after the compliance date established under subsection (F)(2).

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4. The date on which compliance with subsection (B), or the obligation to comply with the federal mercury standards in subsection (D), as applicable, shall no longer be required.
 5. A mercury monitoring plan consistent with subsection (H).
 6. Compliance reporting requirements consistent with subsection (I).
- G. State Mercury Emission Limits.** Emissions from an electric generating unit shall comply with one or more of the emission limits specified in the following table, as selected by the owners and operators under subsection (F).

No.	Limit	Averaging Period	Applicable To
1.	10 % of inlet mercury	Rolling 12-month	Electric generating plant
2.	0.0087 pounds per gigawatt-hour	Rolling 12-month	Electric generating plant
3.	0.011 pounds per gigawatt-hour	Rolling 90-boiler operating days	EGUs identified in averaging group
4.	1.0 pounds per Trillion Btu	Rolling 90-boiler operating days	EGUs identified in averaging group
5.	0.013 pounds per gigawatt-hour	Rolling 30-boiler operating days	Individual electric generating unit
6.	1.2 pounds per Trillion Btu	Rolling 30-boiler operating days	Individual electric generating unit

- H. Compliance Monitoring and Recordkeeping.**
1. Compliance with subsection (G) shall be determined using a mercury CEMS or sorbent trap monitoring system pursuant to Appendix A of the federal mercury standards and in accordance with an approved mercury monitoring plan.
 2. The mercury monitoring plan shall include the following elements:
 - a. Identification of the emission limit or limits in subsection (G) for which compliance will be demonstrated.
 - b. Identification of whether a mercury CEMS or sorbent trap monitoring system will be used as the primary compliance method. Backup methods may be identified and approved in the plan.
 - c. Description of the parameters that will be monitored, including mercury concentration, stack flow, fuel mercury content, fuel rate, electricity generation rate, moisture percent, and any diluent or other gas or process parameters necessary to calculate compliance in terms of the applicable emission limit.
 - d. Description and example of the calculations required to convert monitored parameters to mercury emissions in terms of the emission limit.
 - e. Establishment of CEMS analyzer data availability, and QA/QC requirements.
 - f. Procedures for completing an initial demonstration of compliance, except as otherwise provided in subsection (I)(1).

2. At least once per month, the mercury emissions data shall be compiled into a record demonstrating compliance with the emission limit or limits established in the permit revision issued under subsection (F). This record shall be completed no later than the 15th day of the following month.
3. Records shall be maintained as follows:
 - a. Records demonstrating compliance with the emissions limits shall be maintained for five years.
 - b. If a mercury CEMS is used, daily CEMS data, QA/QC data identified in the mercury monitoring plan, any maintenance work conducted on the CEMS or data logging system, and a calculation of all mercury CEMS downtime shall be maintained for five years.
 - c. If a sorbent trap monitoring system is used, all sorbent monitoring data and any maintenance work conducted on the system shall be maintained for five years.

- I. Reporting.** The owners and operators shall submit to the director the following reports:
1. An initial demonstration of compliance, which must be submitted to the director within 180 days after completion of the first full averaging period. This requirement shall not apply to an electric generating unit if an initial demonstration of compliance has been completed for that unit under 40 C.F.R. 63.10005(d)(3) and the demonstration shows compliance with subsection (G) for that unit. The report shall include:
 - a. The name of the electric generating plant and electric generating units.
 - b. The applicable emission limit or limits for the plant or the electric generating units.
 - c. The mercury emissions for the plant, group of averaged units, or each unit, as applicable, during the initial compliance demonstration in terms of the applicable standard.
 - d. A certification by a responsible official.
 2. Semiannual compliance reports, which must be submitted to the director on the dates established in the electric generating plant's air quality permit. The report shall include:
 - a. The name of the electric generating plant and electric generating units;
 - b. The applicable emission limit or limits for the plant or the electric generating units.
 - c. The mercury emissions for the plant, or each unit, as applicable, for each month during the six month period ending the month prior to the semiannual report in terms of the applicable standard.
 - d. An explanation of any excess emissions, the duration of the excess emissions, and corrective actions taken, if any, to resolve those excess emissions.
 - e. A certification by a responsible official.
- J. Exemption.** After receipt of notice under subsection (D), in lieu of submitting the permit revision application required by subsection (E), the owners and operators may notify the director in writing that they elect to comply with the vacated or repealed federal mercury standards at an electric generating plant. If the owners and operators for an electric generating plant make this election, the plant shall be exempt from subsections (E) through (I). If the owners and operators of an electric plant elect this option:
1. "Administrator" shall mean "Director" whenever it appears in the federal mercury standards or regulations referenced therein.

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2. "EPA" shall mean "ADEQ, Air Quality Division" whenever it appears in the federal mercury standards or regulations referenced therein.
3. In lieu of reports submitted to the Administrator through electronic systems (for example, Compliance and Emissions Data Reporting Interface (CEDRI), Emission Collection Monitoring Plan System Client Tool (ECMPS) or Emissions Reporting Tool (ERT)) pursuant to the federal mercury standards, the owners or operators shall submit to the Director, semiannually at the time required by permit, the RATA or the rolling 30-day or rolling 90-day average mercury value for each EGU or the plant, as applicable.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4701, effective January 29, 2007 (Supp. 06-4). Amended by final rulemaking at 21 A.A.R. 711, effective June 30, 2015 (Supp. 15-2).

Table 1. Expired**Historical Note**

Table 1 adopted by final rulemaking at 5 A.A.R. 3058, effective August 10, 1999 (Supp. 99-3). Table 1 expired under A.R.S. § 41-1056(J) at 23 A.A.R. 3427, effective October 10, 2017 (Supp. 17-4).

Table 2. Expired**Historical Note**

Table 2 adopted by final rulemaking at 5 A.A.R. 3058, effective August 10, 1999 (Supp. 99-3). Table 2 expired under A.R.S. § 41-1056(J) at 23 A.A.R. 3427, effective October 10, 2017 (Supp. 17-4).

ARTICLE 8. EMISSIONS FROM MOBILE SOURCES (NEW AND EXISTING)**R18-2-801. Classification of Mobile Sources**

- A. This Article is applicable to mobile sources which either move while emitting air contaminants or are frequently moved during the course of their utilization but are not classified as motor vehicles, agricultural vehicles, or agricultural equipment used in normal farm operations.
- B. Unless otherwise specified, no mobile source shall emit smoke or dust the opacity of which exceeds 40%.

Historical Note

Adopted effective February 26, 1988 (Supp. 88-1). Amended effective September 26, 1990 (Supp. 90-3). Amended effective February 3, 1993 (Supp. 93-1). Former Section R18-2-801 renumbered to Section R18-2-901, new Section R18-2-801 renumbered from R18-2-601 effective November 15, 1993 (Supp. 93-4).

R18-2-802. Off-road Machinery

- A. No person shall cause, allow or permit to be emitted into the atmosphere from any off-road machinery, smoke for any period greater than 10 consecutive seconds, the opacity of which exceeds 40%. Visible emissions when starting cold equipment shall be exempt from this requirement for the first 10 minutes.
- B. Off-road machinery shall include trucks, graders, scrapers, rollers, locomotives and other construction and mining machinery not normally driven on a completed public roadway.

Historical Note

Adopted effective February 26, 1988 (Supp. 88-1). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-802 renumbered to Section R18-2-

902, new Section R18-2-802 renumbered from R18-2-602 effective November 15, 1993 (Supp. 93-4).

R18-2-803. Heater-planer Units

No person shall cause, allow or permit to be emitted into the atmosphere from any heater-planer operated for the purpose of reconstructing asphalt pavements smoke the opacity of which exceeds 20%. However three minutes' upset time in any one hour shall not constitute a violation of this Section.

Historical Note

Adopted effective February 26, 1988 (Supp. 88-1). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-803 renumbered to Section R18-2-903, new Section R18-2-803 renumbered from R18-2-603 effective November 15, 1993 (Supp. 93-4).

R18-2-804. Roadway and Site Cleaning Machinery

- A. No person shall cause, allow or permit to be emitted into the atmosphere from any roadway and site cleaning machinery smoke or dust for any period greater than 10 consecutive seconds, the opacity of which exceeds 40%. Visible emissions when starting cold equipment shall be exempt from this requirement for the first 10 minutes.
- B. In addition to complying with subsection (A), no person shall cause, allow or permit the cleaning of any site, roadway, or alley without taking reasonable precautions to prevent particulate matter from becoming airborne. Reasonable precautions may include applying dust suppressants. Earth or other material shall be removed from paved streets onto which earth or other material has been transported by trucking or earth moving equipment, erosion by water or by other means.

Historical Note

Adopted effective February 26, 1988 (Supp. 88-1). Amended effective September 26, 1990 (Supp. 90-3). Amended effective February 3, 1993 (Supp. 93-1). Former Section R18-2-804 renumbered to Section R18-2-904, new Section R18-2-804 renumbered from R18-2-604 effective November 15, 1993 (Supp. 93-4).

R18-2-805. Asphalt or Tar Kettles

- A. No person shall cause, allow or permit to be emitted into the atmosphere from any asphalt or tar kettle smoke for any period greater than 10 consecutive seconds, the opacity of which exceeds 40%.
- B. In addition to complying with subsection (A), no person shall cause, allow or permit the operation of an asphalt or tar kettle without minimizing air contaminant emissions by utilizing all of the following control measures:
 1. The control of temperature recommended by the asphalt or tar manufacturer;
 2. The operation of the kettle with lid closed except when charging;
 3. The pumping of asphalt from the kettle or the drawing of asphalt through cocks with no dipping;
 4. The dipping of tar in an approved manner;
 5. The maintaining of the kettle in clean, properly adjusted, and good operating condition;
 6. The firing of the kettle with liquid petroleum gas or other fuels acceptable to the Director.

Historical Note

Adopted effective February 26, 1988 (Supp. 88-1). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-805 renumbered to Section R18-2-905, new Section R18-2-805 renumbered from R18-2-605 effective November 15, 1993 (Supp. 93-4).

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ARTICLE 9. NEW SOURCE PERFORMANCE STANDARDS**R18-2-901. Standards of Performance for New Stationary Sources**

Except as provided in R18-2-902 through R18-2-905, the following subparts of 40 CFR 60, New Source Performance Standards (NSPS), and all accompanying appendices, adopted as of June 28, 2013, unless otherwise specified, and no future editions or amendments, are incorporated by reference as applicable requirements. These standards are on file with the Department and shall be applied by the Department. These standards can be obtained from the U.S. Government Printing Office, Superintendent of Documents, bookstore.gpo.gov, Mail Stop: SSOP IDCC-SSOM, Washington, D.C. 20402-9328.

1. Subpart A - General Provisions.
2. Subpart D - Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction is Commenced After August 17, 1971.
3. Subpart Da - Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978.
4. Subpart Db - Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units.
5. Subpart Dc - Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units.
6. Subpart E - Standards of Performance for Incinerators.
7. Subpart Ea - Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced after December 20, 1989 and on or Before September 20, 1994.
8. Subpart Eb - Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced after September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996.
9. Subpart Ec - Standards of Performance for Hospital/Medical/ Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.
10. Subpart F - Standards of Performance for Portland Cement Plants.
11. Subpart G - Standards of Performance for Nitric Acid Plants.
12. Subpart Ga - Standards of Performance for Nitric Acid Plants for which Construction, Reconstruction, or Modification Commenced after October 14, 2011.
13. Subpart H - Standards of Performance for Sulfuric Acid Plants.
14. Subpart I - Standards of Performance for Hot Mix Asphalt Facilities.
15. Subpart J - Standards of Performance for Petroleum Refineries.
16. Subpart Ja - Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007.
17. Subpart K - Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.
18. Subpart Ka - Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.
19. Subpart Kb - Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984.
20. Subpart L - Standards of Performance for Secondary Lead Smelters.
21. Subpart M - Standards of Performance for Secondary Brass and Bronze Production Plants.
22. Subpart N - Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.
23. Subpart Na - Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.
24. Subpart O - Standards of Performance for Sewage Treatment Plants.
25. Subpart P - Standards of Performance for Primary Copper Smelters.
26. Subpart Q - Standards of Performance for Primary Zinc Smelters.
27. Subpart R - Standards of Performance for Primary Lead Smelters.
28. Subpart S - Standards of Performance for Primary Aluminum Reduction Plants.
29. Subpart T - Standards of Performance for Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants.
30. Subpart U - Standards of Performance for Phosphate Fertilizer Industry: Superphosphoric Acid Plants.
31. Subpart V - Standards of Performance for Phosphate Fertilizer Industry: Diammonium Phosphate Plants.
32. Subpart W - Standards of Performance for Phosphate Fertilizer Industry: Triple Superphosphate Plants.
33. Subpart X - Standards of Performance for Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.
34. Subpart Y - Standards of Performance for Coal Preparation Plants.
35. Subpart Z - Standards of Performance for Ferroalloy Production Facilities.
36. Subpart AA - Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983.
37. Subpart AAa - Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.
38. Subpart BB - Standards of Performance for Kraft Pulp Mills.
39. Subpart BBa - Standards of Performance for Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013
40. Subpart CC - Standards of Performance for Glass Manufacturing Plants.
41. Subpart DD - Standards of Performance for Grain Elevators.
42. Subpart EE - Standards of Performance for Surface Coating of Metal Furniture.
43. Subpart GG - Standards of Performance for Stationary Gas Turbines.
44. Subpart HH - Standards of Performance for Lime Manufacturing Plants.
45. Subpart KK - Standards of Performance for Lead-Acid Battery Manufacturing Plants.
46. Subpart LL - Standards of Performance for Metallic Mineral Processing Plants.
47. Subpart MM - Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations.

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48. Subpart NN - Standards of Performance for Phosphate Rock Plants.
49. Subpart PP - Standards of Performance for Ammonium Sulfate Manufacture.
50. Subpart QQ - Standards of Performance for Graphic Arts Industry: Publication Rotogravure Printing.
51. Subpart RR - Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations.
52. Subpart SS - Standards of Performance for Industrial Surface Coating: Large Appliances.
53. Subpart TT - Standards of Performance for Metal Coil Surface Coating.
54. Subpart UU - Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture.
55. Subpart VV - Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.
56. Subpart VVa - Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced after November 7, 2006.
57. Subpart WW - Standards of Performance for Beverage Can Surface Coating Industry.
58. Subpart XX - Standards of Performance for Bulk Gasoline Terminals.
59. Subpart AAA - Standards of Performance for New Residential Wood Heaters.
60. Subpart BBB - Standards of Performance for Rubber Tire Manufacturing Industry.
61. Subpart DDD - Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry.
62. Subpart FFF - Standards of Performance for Flexible Vinyl and Urethane Coating and Printing.
63. Subpart GGG - Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries.
64. Subpart GGGa - Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.
65. Subpart HHH - Standards of Performance for Synthetic Fiber Production Facilities.
66. Subpart III - Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.
67. Subpart JJJ - Standards of Performance for Petroleum Dry Cleaners.
68. Subpart KKK - Standards of Performance for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants.
69. Subpart LLL - Standards of Performance for Onshore Natural Gas Processing; SO₂ Emissions.
70. Subpart NNN - Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.
71. Subpart OOO - Standards of Performance for Nonmetallic Mineral Processing Plants.
72. Subpart PPP - Standards of Performance for Wool Fiberglass Insulation Manufacturing Plants.
73. Subpart QQQ - Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems.
74. Subpart RRR - Standards of Performance for Volatile Organic Compound Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.
75. Subpart SSS - Standards of Performance for Magnetic Tape Coating Facilities.
76. Subpart TTT - Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.
77. Subpart UUU - Standards of Performance for Calciners and Dryers in Mineral Industries.
78. Subpart VVV - Standards of Performance for Polymeric Coating of Supporting Substrates Facilities.
79. Subpart WWW - Standards of Performance for Municipal Solid Waste Landfills.
80. Subpart XXX - Standards of Performance for Municipal Solid Waste Landfills that Commenced Construction, Reconstruction, or Modification After July 17, 2014. This subpart and all accompanying appendices are adopted as of August 29, 2016 (and no future amendments), and are incorporated by reference as applicable requirements.
81. Subpart AAAA - Standards of Performance for Small Municipal Waste Combustion Units for Which Construction Is Commenced after August 30, 1999, or for Which Modification or Reconstruction Is Commenced after June 6, 2001.
82. Subpart CCCC - Standards of Performance for Commercial and Industrial Solid Waste Incineration Units for Which Construction Is Commenced after November 30, 1999, or for Which Modification or Reconstruction Is Commenced on or after June 1, 2001.
83. Subpart EEEE - Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006.
84. Subpart IIII - Standards of Performance for Stationary Compression Ignition Combustion Engines.
85. Subpart JJJJ - Standards of Performance for Stationary Spark Ignition Internal Combustion Engines.
86. Subpart KKKK - Standards of Performance for Stationary Combustion Turbines.
87. Subpart LLLL - Standards of Performance for New Sewage Sludge Incineration Units.
88. Subpart OOOO - Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution.
89. Subpart OOOOa - Standards of Performance for Crude Oil and natural gas Facilities for which Construction, Modification or Reconstruction Commenced After September 18, 2015.
90. Subpart PPPP [Reserved].
91. Subpart QQQQ - Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces.
92. Subpart TTTT - Standards of Performance for Greenhouse Gas Emission for Electric Generating Units

Historical Note

Adopted effective February 26, 1988 (Supp. 88-1).
 Amended effective September 26, 1990 (Supp. 90-3).
 Amended effective February 3, 1993 (Supp. 93-1). Section R18-2-901 renumbered to R18-2-1101, new Section R18-2-901 renumbered from R18-2-801 and amended effective November 15, 1993 (Supp. 93-4). Amended effective June 10, 1994 (Supp. 94-2). Amended effective December 7, 1995 (Supp. 95-4). Amended effective May 9, 1996 (Supp. 96-2). Amended effective April 4, 1997; filed with the Office of the Secretary of State March 14, 1997 (Supp. 97-1). Amended effective Decem-

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ber 4, 1997 (Supp. 97-4). Amended by final rulemaking at 5 A.A.R. 3058, effective August 10, 1999, and at 5 A.A.R. 3221, effective August 12, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 4170, effective October 11, 2000 (Supp. 00-4). Amended by final rulemaking at 8 A.A.R. 2543, effective May 24, 2002 (Supp. 02-2). Amended by final rulemaking at 10 A.A.R. 3281, effective September 27, 2004 (Supp. 04-3). Amended by final rulemaking at 11 A.A.R. 5504, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 4199, effective January 5, 2008 (Supp. 07-4). Amended by final expedited rulemaking at 21 A.A.R. 2747, effective December 13, 2015 (Supp. 15-4). Amended by final expedited rulemaking at 24 A.A.R. 1564, with an immediate effective date of May 2, 2018 (Supp. 18-2). Amended by final rulemaking at 24 A.A.R. 1864, effective August 10, 2018 (Supp. 18-3).

R18-2-902. General Provisions

- A.** As used in 40 CFR 60: "Administrator" means the Director of the Arizona Department of Environmental Quality, except that the Director shall not be authorized to approve alternate or equivalent test methods or alternative standards or work practices.
- B.** From the general standards identified in R18-2-901, delete the following:
1. 40 CFR 60.4. All requests, reports, applications, submittals, and other communications to the Director pursuant to this Article shall be submitted to the Arizona Department of Environmental Quality, Air Quality Division, 1110 West Washington Street, Phoenix, Arizona 85007.
 2. 40 CFR 60.5 and 60.6.
- C.** The Director shall not be delegated authority to deal with equivalency determinations or innovative technology waivers as covered in Sections 111(h)(3) and 111(j) of the Act.

Historical Note

Adopted effective February 26, 1988 (Supp. 88-1). Amended effective September 26, 1990 (Supp. 90-3). Section R18-2-902 renumbered to R18-2-1102, new Section R18-2-902 renumbered from R18-2-802 and amended effective November 15, 1993 (Supp. 93-4). Amended effective June 10, 1994 (Supp. 94-2). Amended by final rulemaking at 13 A.A.R. 4199, effective January 5, 2008 (Supp. 07-4).

R18-2-903. Standards of Performance for Fossil-fuel Fired Steam Generators

As exceptions to 40 CFR 60.40 through 60.47:

1. In place of 40 CFR 60.43(a)(2), the following language shall be substituted: 340 nanograms per joule heat input (0.8 pounds per million Btu) derived from solid fossil fuel or solid fossil fuel and wood residue.
2. Delete 40 CFR 60.43(b).
3. If an owner or operator of a fossil-fuel fired steam generator obtained an installation permit for two or more fuel-burning equipment or steam-power generating installations before May 14, 1979, that permitted the installation to comply with the sulfur dioxide emission standards specified in R18-2-901 and this Section as if the equipment or installations were one emission discharge point:
 - a. The owner or operator shall comply with the applicable sulfur dioxide emission standards in the manner specified in the installation permit;
 - b. The Department shall incorporate the emission standards under subsection (3)(a) into each owner's or operator's operating permit as an enforceable permit condition;

- c. No single fuel-burning equipment or steam-power generating installation shall emit sulfur dioxide in excess of:
 - i. 520 nanograms per joule heat input (1.2 pounds per million BTU) for solid fossil fuel or solid fossil fuel and wood residue; or
 - ii. 340 nanograms per joule heat input (0.8 pounds per million BTU) for liquid fossil fuel or liquid fossil fuel and wood residue.
4. When an owner or operator subject to subsection (3) changes the equipment configuration so that each fuel-burning equipment or steam-powered generating installation constitutes one emission discharge point:
- a. The owner or operator shall comply with the emissions standards specified in subsection (1) and R18-2-901; and
 - b. The Department shall incorporate the emissions standards into the owner's or operator's operating permit as enforceable permit conditions.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective May 28, 1982 (Supp. 82-3). Former Section R9-3-903 renumbered without change as Section R18-2-903 (Supp. 87-3). Repealed effective February 26, 1988 (Supp. 88-1). New Section R18-2-903 renumbered from R18-2-803 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 14 A.A.R. 230, effective March 8, 2008 (Supp. 08-1).

R18-2-904. Standards of Performance for Incinerators

- A.** Incinerators with a charging rate of more than 45 metric tons or 49.6 tons per day shall conform to the requirements of 40 CFR 60.50 through 60.54.
- B.** Incinerators with a charging rate of 45 metric tons or 49.6 tons per day or less that commence construction or modification after May 14, 1979, shall conform to the requirements of 40 CFR 60.52 through 60.54 and of R18-2-704(A).

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective May 28, 1982 (Supp. 82-3). Former Section R9-3-904 renumbered without change as Section R18-2-904 (Supp. 87-3). Repealed effective February 26, 1988 (Supp. 88-1). New Section R18-2-904 renumbered from R18-2-804 and amended effective November 15, 1993 (Supp. 93-4).

R18-2-905. Standards of Performance for Storage Vessels for Petroleum Liquids

In addition to 40 CFR 60.110 - 60.113:

1. Any petroleum liquid storage tank of less than 40,000 gallons (151,412 liters) capacity shall be equipped with a submerged filling device or acceptable equivalent as determined by the Director for the control of hydrocarbon emissions.
2. All facilities for dock loading of petroleum products having a vapor pressure of 2.0 pounds per square inch absolute, or greater, at loading pressure shall provide for submerged filling or other acceptable equivalent for control of hydrocarbon emissions.
3. All pumps and compressors which handle volatile organic compounds shall be equipped with mechanical seals or other equipment of equal efficiency to prevent the release of organic contaminants into the atmosphere.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective May 28, 1982 (Supp. 82-3). Former Section R9-

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3-905 renumbered without change as Section R18-2-905 (Supp. 87-3). Repealed effective February 26, 1988 (Supp. 88-1). New Section R18-2-905 renumbered from R18-2-805 effective November 15, 1993 (Supp. 93-4).

R18-2-906. Repealed**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective May 28, 1982 (Supp. 82-3). Former Section R9-3-906 renumbered without change as Section R18-2-906 (Supp. 87-3). Repealed effective February 26, 1988 (Supp. 88-1).

R18-2-907. Reserved**R18-2-908. Reserved****R18-2-909. Reserved****R18-2-910. Repealed****Historical Note**

Adopted effective August 9, 1985 (Supp. 85-4). Former Section R9-3-910 renumbered without change as Section R18-2-910 (Supp. 87-3). Repealed effective February 26, 1988 (Supp. 88-1).

R18-2-911. Reserved**R18-2-912. Reserved****R18-2-913. Repealed****Historical Note**

Adopted effective August 9, 1985 (Supp. 85-4). Former Section R9-3-913 renumbered without change as Section R18-2-913 (Supp. 87-3). Repealed effective February 26, 1988 (Supp. 88-1).

R18-2-914. Reserved**R18-2-915. Reserved****R18-2-916. Reserved****R18-2-917. Reserved****R18-2-918. Reserved****R18-2-919. Reserved****R18-2-920. Reserved****R18-2-921. Reserved****R18-2-922. Repealed****Historical Note**

Adopted effective August 9, 1985 (Supp. 85-4). Former Section R9-3-922 renumbered without change as Section R18-2-922 (Supp. 87-3). Repealed effective February 26, 1988 (Supp. 88-1).

ARTICLE 10. MOTOR VEHICLES; INSPECTIONS AND MAINTENANCE**R18-2-1001. Definitions**

The following definitions apply to this Article:

1. Abbreviations and symbols are defined as follows:
 - a. "A/F" means air/fuel,
 - b. "CO" means carbon monoxide.
 - c. "CO₂" means carbon dioxide.
 - d. "EGR" means exhaust gas recirculation.
 - e. "GVWR" means gross vehicle weight rating.
 - f. "HC" means hydrocarbon.
 - g. "HP" means horsepower.
 - h. "LNG" means liquefied natural gas.

- i. "LPG" means liquid petroleum gas.
 - j. "MIL" means malfunction indicator lamp.
 - k. "MPH" means miles per hour.
 - l. "MVD" means the Motor Vehicle Division of the Arizona Department of Transportation.
 - m. "NDIR" means nondispersive infrared.
 - n. "NO_x" means the sum of nitrogen oxide and nitrogen dioxide.
 - o. "%" means percent.
 - p. "OEM" means original equipment manufacturer.
 - q. "OBD" means on-board diagnostics.
 - r. "PCV" means positive crankcase ventilation.
 - s. "PPM" means parts per million by volume.
 - t. "RPM" means revolutions per minute.
 - u. "VIN" means vehicle identification number.
2. "All-terrain vehicle" (ATV) means a vehicle that is defined as an "all-terrain vehicle" in A.R.S. § 28-101.
 3. "Alternative fuel vehicle" means a vehicle powered by an alternative fuel as defined in A.R.S. § 1-215(4).
 4. "Annual test" means a test for which an annual frequency is specified in the applicable table in R18-2-1006(B).
 5. "Apportioned vehicle" means a vehicle that is subject to the proportional registration provisions of A.R.S. § 28-2233.
 6. "Area A" has the meaning in A.R.S. § 49-541.
 7. "Area B" has the meaning in A.R.S. § 49-541.
 8. "Biennial test" means a test for which a biennial frequency is specified in the applicable table in R18-2-1006(B).
 9. "Calibration gas" means a reference gas or gas mixture with assigned concentrations that is used to check the accuracy of emissions analyzers.
 10. "Certificate of compliance" means a uniquely numbered document issued as part of the vehicle inspection report by a state station at the time of a vehicle inspection indicating that the vehicle has met the emissions standards.
 11. "Certificate of exemption" means a uniquely numbered document issued by the Director providing an exemption from the testing requirements of this Article for a vehicle that is outside of the state on the emissions compliance expiration date.
 12. "Certificate of inspection" means a uniquely numbered document issued by the Director indicating that a vehicle has been inspected under A.R.S. § 49-546 and has passed inspection.
 13. "Certificate of waiver" means a uniquely numbered document issued by the Department indicating that the requirement of passing reinspection has been waived for a vehicle under A.R.S. § 49-542.
 14. "CFR" means the Code of Federal Regulations, with standard reference in this Chapter by Title and Part, so that "40 CFR 280" means Title 40 of the Code of Federal Regulations, Part 280.
 15. "Collectible vehicle" has the meaning in A.R.S. § 49-542(Z).
 16. "Constant 4-wheel drive vehicle" means any 4-wheel drive vehicle that cannot be converted to 2-wheel drive except by disconnecting one of the vehicle's drive shafts, or any vehicle equipped with non-disengageable traction control which cannot be safely tested on conventional 2-wheel drive dynamometers.
 17. "Constant volume sampler" means a system that dilutes engine exhaust to be sampled with ambient air so that the total combined flow rate of exhaust and dilution air mix is nearly constant for all engine operating conditions.

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18. "Contractor" means a person, business, firm, partnership, or corporation with whom the Director has a contract that provides for the operation of one or more official emissions inspection stations.
19. "Dealer" means a person or organization licensed by the Arizona Department of Transportation as a new motor vehicle dealer or used motor vehicle dealer.
20. "Department" means the Department of Environmental Quality.
21. "Diagnostic Trouble Code" (DTC) means an alphanumeric code which is set in a vehicle's on-board diagnostic system when the OBD system detects an emissions control device or system failure.
22. "Diesel" or "Diesel Fuel" has the same meaning as in A.R.S. § 3-3401.
23. "Director" means the Director of the Department of Environmental Quality.
24. "Director's certificate" means a uniquely numbered document issued by the Director in certain circumstances for the vehicle to show evidence of meeting the minimum standards for registration.
25. "Electrically-powered vehicle" means a vehicle that uses electricity as the means of propulsion and does not require the combustion of fossil fuel within the confines of the vehicle to generate electricity.
26. "Emissions compliance expiration date" means:
 - a. Each registration expiration date for a vehicle subject to an annual test; and
 - b. The registration expiration date in the second year after the initial biennial test required under this Article or R18-2-1005(B) for a vehicle subject to a biennial test.
27. "Emissions inspection station permit" means a certificate issued by the Director authorizing the holder to perform vehicle emissions inspections under this Article.
28. "Exhaust emissions" means products of combustion emitted into the atmosphere from any opening in the exhaust system downstream of the exhaust ports of a motor vehicle engine.
29. "Exhaust pipe" means the pipe that attaches to the muffler and exits the vehicle.
30. "Fleet emissions inspection station" or "fleet station" means any vehicle emissions inspection facility operated under a permit issued pursuant to A.R.S. § 49-546.
31. "Fleet vehicle" means any vehicle owned, leased, or operated by an individual or entity granted a vehicle emissions testing license under A.R.S. § 49-546.
32. "Fuel" means any material that is burned within the confines of a vehicle to propel the vehicle.
33. "Fuel Cell Electric Vehicle" or "FCEV" means a zero-emission vehicle that runs on compressed hydrogen fed into a fuel cell stack that produces electricity to power the vehicle.
34. "Golf cart" means a motor vehicle that is defined as a "golf cart" in A.R.S. § 28-101.
35. "Government vehicle" means a registered motor vehicle exempt from the payment of a registration fee, or a federally owned or leased vehicle.
36. "Gross vehicle weight rating" (GVWR) means the maximum vehicle weight that a vehicle is designed for as established by the manufacturer.
37. "Idle test" means an exhaust emissions test conducted with the engine of the vehicle running at the manufacturer's idle speed \pm 100 RPM but without pressure exerted on the accelerator.
38. "Inspection" means the mandatory vehicle emissions inspection including the tampering inspection.
39. "Mass emissions measurement" means measurement of a vehicle's exhaust in mass units such as grams.
40. "Maximum required repair cost" means the applicable maximum required repair cost under R18-2-1010(F) or (G) for a vehicle that has failed inspection.
41. "Model year" means the date of manufacture of the original vehicle within the annual production period of the vehicle as designated by the manufacturer or, if a reconstructed vehicle, the first year of titling.
42. "Motorcycle" means a vehicle that is defined as a "motorcycle" as in A.R.S. § 28-101.
43. "New aftermarket catalytic converter" means a new catalytic converter manufactured as an OEM part that meets the standards under 40 CFR 86.
44. "On-board diagnostics" or "OBD" means an on-board diagnostic system required by Section 202(m) of the Clean Air Act. For the purposes of the Article, OBD certification refers to United States Environmental Protection Agency OBD certification.
45. "Opacity" means the degree of absorption of transmitted light.
46. "Reconditioned OEM catalytic converter" means a catalytic converter remanufactured, as a non-OEM part, with new catalytic material housed in the original catalyst casing.
47. "Recognized repair facility" means a business with an Arizona Department of Revenue transaction privilege tax license pursuant to Title 15, Chapter 5 of the Arizona Revised Statutes whose primary purpose is vehicle repair, and who has at least one employee with a nationally recognized certification for emissions-related diagnosis and repair.
48. "Reconstructed vehicle" means a vehicle that has been assembled or constructed largely by means of essential parts, new or used, derived from vehicles or makes of vehicles of various names, models and types or that, if originally otherwise constructed, has been materially altered by the removal of essential parts or by the addition or substitution of essential parts, new or used, derived from other vehicles or makes of vehicles. For the purposes of this paragraph, "essential parts" means integral and body parts, the removal, alteration or substitution of which will tend to conceal the identity or substantially alter the appearance of the vehicle.
49. "Specially constructed vehicle" means any vehicle not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles.
50. "State inspector" means an employee of the Department designated to perform quality assurance or waiver functions under this Article.
51. "State station" means a facility, other than a fleet emissions inspection station, established for the purpose of conducting inspections under A.R.S. § 49-542.
52. "Tampering" means removing, defeating, or altering an emissions control device that was installed on a vehicle at the time the vehicle was manufactured.
53. "Two-stroke vehicle" means a vehicle equipped with an engine that requires one revolution of the crankshaft for each power stroke.
54. "Vehicle" or "Motor Vehicle" means any automobile, truck, truck tractor, motor bus, or self-propelled or motor-driven vehicle registered or to be registered in this state and used upon the public highways of this state for

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the purpose of transporting persons or property, except implements of husbandry, roadrollers, or road machinery temporarily operated upon the highway.

55. "Vehicle emissions inspector" means an individual who is licensed by the Director to perform vehicle emissions inspections under this Article.
56. "Waiver inspector" means an employee of the contractor or the Department who is authorized to issue waivers under R18-2-1008.
57. "Zero Emissions Vehicle" means a battery electric vehicle that runs on electricity stored in the batteries and has only an electric motor rather than an internal combustion engine, or a fuel cell electric vehicle that produces no emissions from the on-board source of power.

Historical Note

Former Section R9-3-1001 repealed, new Section R9-3-1001 adopted effective January 13, 1976 (Supp. 76-1). Former Section R9-3-1001 repealed, former Section R9-3-1002 renumbered and amended as Section R9-3-1001 effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1001 renumbered as Section R18-2-1001 and amended effective August 1, 1988 (Supp. 88-3). Amended effective September 19, 1990 (Supp. 90-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1002. Applicable Implementation Plan

- A. Substantive revisions to the rules in this article that are included in the Arizona State Clean Air Act Implementation Plan cannot become effective until approved by the Administrator of the United States Environmental Protection Agency. Amendments adopted by the Department but not yet approved as of the date of the latest amendments are therefore identified in this Article as not applying until the Administrator approves them.
- B. The Administrator's approvals of revisions to an applicable implementation plan are published as final rules in the Federal Register, which is available online at <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>. The Department publishes a list of Article 10 provisions approved since the last revisions to the Article at: <http://azdeq.gov/VECS/Rulemaking>.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1003. Vehicles to be Inspected by the Mandatory Vehicle Emissions Inspection Program

- A. The following vehicles shall be inspected according to this Article:
 1. A vehicle to be registered within Area A or Area B. For the purposes of this Article, registration within Area A or Area B shall be determined by the vehicle owner's permanent and actual residence. The permanent address in the MVD database shall be presumed to be the owner's permanent and actual residence. A post office box address listed on a title or registration document under A.R.S. § 28-2051(C) is not evidence of the owner's permanent and actual residence;

2. Each vehicle delivered to a retail purchaser by a dealer licensed to sell used motor vehicles under A.R.S. Title 28 and whose place of business is located in Area A or Area B;
3. Each vehicle registered outside Area A and Area B but used to commute to the driver's principal place of employment located within Area A or Area B;
4. Each vehicle owned by a person who is subject to A.R.S. §§ 15-1444(C) or 15-1627(G); and
5. An Area A or Area B vehicle owned or operated by the United States, this state, or a political subdivision of this state without regard to whether those vehicles are required to be registered in this state.

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

1. A vehicle manufactured in or before the 1966 model year;
2. A vehicle leased to a person residing outside Area A and Area B by a leasing company whose place of business is in Area A or Area B, except as provided in subsection (A)(3);
3. A vehicle sold between motor vehicle dealers;
4. A zero-emissions vehicle;
5. An apportioned vehicle;
6. A golf cart;
7. A vehicle with an engine displacement of less than 90 cubic centimeters;
8. A vehicle registered at the time of change of name of ownership if an emissions test is current and valid, except when the change results from the sale by a dealership whose place of business is located in Area A or Area B;
9. A vehicle for which a current certificate of exemption or Director's certificate is issued;
10. A new vehicle before the sixth registration year after initial purchase or lease; except that:
 - a. A reconstructed vehicle or specially constructed vehicle is not exempt.
 - b. A vehicle converted to operate on an alternative fuel, as defined in A.R.S. § 1-215, is not exempt.
 - c. A vehicle failing an emissions inspection the owner chooses to have under A.R.S. § 49-543 is not exempt for the current registration year.
11. A vehicle designed to operate exclusively on hydrogen, as defined in A.R.S. § 1-215;
12. A collectible vehicle;
13. A motorcycle;
14. An all-terrain vehicle (ATV);
15. These exemptions apply after the Administrator approves this subsection, (B)(15), into the applicable implementation plan:
 - a. Cranes and oversized vehicles that require permits pursuant to A.R.S. §§ 28-1100, 28-1103, and 28-1144;
 - b. A vehicle not in use and owned by a resident of this state while on active military duty outside of this state.

C. Government vehicles operated in Area A or Area B and not exempted by this Article shall be emissions inspected according to R18-2-1017.**Historical Note**

Former Section R9-3-1003 repealed, new Section R9-3-1003 adopted effective January 13, 1976; Amended as an emergency effective January 19, 1976 (Supp. 76-1). Amended effective January 3, 1977 (Supp. 77-1). Amended effective January 3, 1979 (Supp. 79-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days

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(Supp. 81-1). Former Section R9-3-1003 as amended effective January 3, 1979 and amended as an emergency effective January 2, 1981 now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended subsection (A) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1003 renumbered as Section R18-2-1003 and amended effective August 1, 1988 (Supp. 88-3). Amended effective September 19, 1990 (Supp. 90-3). Amended effective November 14, 1994 (Supp. 94-4). Amended effective October 15, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 2722, effective June 28, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1004. Repealed**Historical Note**

Former Section R9-3-1004 repealed, new Section R9-3-1004 adopted effective January 13, 1976 (Supp. 76-1). Amended effective January 3, 1977 (Supp. 77-1). Former Section R9-3-1004 renumbered as Section R18-2-1004 and amended effective August 1, 1988 (Supp. 88-3). Section repealed by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4).

R18-2-1005. Time of Inspection

- A.** All Area A and Area B vehicles subject to an annual test shall be inspected at the following times:
1. For a non-fleet vehicle, within 90 days before each registration expiration date.
 2. For a fleet vehicle inspected at a licensed fleet station, at least once within each 12 month period following any initial registration.
 3. For a government vehicle:
 - a. For a vehicle not exempt under R18-2-1003(B)(10), within 12 months after acquisition by the operating entity and then annually on or before the anniversary date of the previous inspection;
 - b. For a vehicle exempt under R18-2-1003(B)(10), within 90 days after the vehicle becomes subject to testing, and then annually on or before the anniversary date of the previous inspection; and
 - c. A government vehicle is subject to testing on the anniversary of its date of acquisition.
 4. For a vehicle registered outside Area A and Area B and used to commute to the driver's principal place of work located in Area A or Area B, upon vehicle registration and annually thereafter.
 5. For a vehicle owned by a person subject to A.R.S. §§ 15-1444(D) or 15-1627(G), within 30 calendar days following the date of initial registration at the institution located in Area A or Area B and annually thereafter.
- B.** All Area A and Area B vehicles subject to a biennial test shall be inspected at the following times:
1. For a non-fleet vehicle, within 90 days before the vehicle's emissions compliance expiration date.
 2. For a fleet vehicle inspected at a fleet station, at least once within each successive 24 month period following initial registration.
 3. For a government vehicle:
 - a. For a vehicle not exempt under R18-2-1003(B)(10), within 12 months after acquisition by the operating

entity, and biennially thereafter, on or before the anniversary date of the previous inspection; or

- b. For a vehicle exempt under R18-2-1003(B)(10), within 90 days after the vehicle becomes subject to testing, and biennially thereafter, on or before the anniversary date of the previous inspection.
4. For a vehicle registered outside Area A or Area B but used to commute to the driver's principal place of employment located in Area A or Area B, upon vehicle registration and biennially thereafter.
 5. For a vehicle owned by a person subject to A.R.S. §§ 15-1444(D) or 15-1627(G), within 30 days following the date of initial registration at the institution located in Area A or Area B and biennially thereafter.
- C.** All vehicles sold by a dealer licensed to sell used motor vehicles under A.R.S. Title 28, whose place of business is located in Area A or Area B, shall pass the applicable emissions test prescribed by R18-2-1006 before delivery of the vehicle to a retail purchaser.
- D.** An Area B vehicle being registered in Area A is subject to the appropriate annual or biennial test from Area A before registration even if the Area A test, or test period, is different from the test required for the same vehicle in Area B.
- E.** Nothing in this Section shall be construed to waive a late registration fee because of failure to meet inspection requirements by the registration deadline, except that a motor vehicle that fails the initial or subsequent test shall not be subject to a penalty fee for late registration renewal if:
1. The initial test is accomplished before the emissions compliance expiration date; and
 2. The registration renewal is received by MVD within 30 days of the initial test.
- F.** An owner of a vehicle may submit the vehicle for emissions inspection more than 90 days before the emissions compliance expiration date but the inspection does not satisfy the registration testing requirement under R18-2-1003.

Historical Note

Former Section R9-3-1005 repealed, new Section R9-3-1005 adopted effective January 31, 1976 (Supp. 76-1). Amended effective January 3, 1977 (Supp. 77-1). Amended effective March 2, 1978 (Supp. 78-2). Amended effective January 3, 1979 (Supp. 79-1). Amended effective February 20, 1980 (Supp. 80-1). Amended as an emergency effective January 2, 1981 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-2). Former Section R9-3-1005 as amended effective February 20, 1980 and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1005 renumbered as Section R18-2-1005 and subsections (A) and (C) amended effective August 1, 1988 (Supp. 88-3). Amended effective September 19, 1990 (Supp. 90-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1006. Emissions Test Procedures

- A.** This Section establishes the testing requirements for vehicles in the State of Arizona. Subsection (B) identifies which tests apply to a particular type and model year of vehicle. Subsec-

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tion (C) establishes the procedures and criteria for, passing, failing, or being rejected from each test.

B. Test applicability.

1. Area A and Area B non-diesel. The following general requirements govern test applicability for non-diesel vehicles in both Area A and Area B:
 - a. A rotary engine shall be inspected as a 4-stroke engine with four cylinders or less.
 - b. For a vehicle in which an engine has been replaced:
 - i. A vehicle owner shall not install a heavy-duty engine in a light-duty chassis.
 - ii. A vehicle owner shall not install a light-duty engine in a heavy-duty chassis.
 - iii. The replacement engine package shall include all emissions control equipment and devices that were required by the manufacturer for an engine-chassis certification. All emissions control equipment and devices shall be properly

installed and in operating condition, and the resulting engine-chassis configuration shall be equivalent to a verified configuration of the same, or newer, model year as that of the vehicle chassis.

- iv. The Department shall inspect the vehicle according to the model year of the vehicle chassis.

2. Area A Non-Diesel. Non-diesel vehicles in Area A are subject to the test procedures identified in this subsection:
 - a. Vehicles other than alternative fuel vehicles operated by a school district in Area A, heavy duty alternative fuel vehicles, reconstructed vehicles, and constant 4-wheel-drive vehicles that are not equipped with OBD, are subject to the following test procedures until the Administrator approves subsection (B)(2)(a)(i) into the applicable implementation plan:

Area A Non-Diesel Testing Procedures Until SIP Revision is Approved				
Model Year	GVWR	Test Frequency	Tests Applicable	Test Subsection
1996 or later	8,500 pounds or less	Biennial	OBD Functional gas cap Tampering	C.4 C.16 C.17
1981 through 1995	8,500 pounds or less	Biennial	Transient loaded and evaporative system pressure Functional gas cap Tampering	C.5 C.16 C.17
1975 through 1980	8,500 pounds or less	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1975 or later	More than 8,500 pounds	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1967 through 1974	Any	Annual	Loaded test Functional gas cap	C.6 C.16

- i. Test procedures that apply after the Administrator approves this subsection, (B)(2)(a)(i), into the applicable implementation plan:

Area A Non-Diesel Testing Procedures After SIP Revision is Approved					
Model Year	GVWR	OBD Certified?	Test Frequency	Tests Applicable	Test Subsection
1996 or Later	Any	Yes	Biennial	OBD Functional gas cap Tampering	C.4 C.16 C.17
1981 or later	8,500 pounds or less	No	Biennial	Transient loaded and evaporative system pressure Functional gas cap Tampering	C.5 C.16 C.17
1975 through 1980	8,500 pounds or less	No	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1975 or later	More than 8,500 pounds	No	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1967 through 1974	Any	No	Annual	Loaded test Functional gas cap	C.6 C.16

- b. Alternative fuel vehicles operated by a school district in Area A are subject to the following testing procedures until the Administrator approves subsection (B)(2)(b)(i) into the applicable implementation plan. After subsection (B)(2)(b)(i) has been

approved into the applicable implementation plan, alternative fuel vehicles operated by a school district in Area A will be subject to subsection (B)(2)(b)(i).

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Area A Alt. Fuel Vehicles Operated by a School District Testing Procedures Until SIP Revision is Approved				
Model Year	OBD Certified?	Test Frequency	Tests Applicable	Test Subsection
1975 or later	No	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1967 through 1974	No	Annual	Loaded test Functional gas cap	C.8 C.16

- i. Test procedures that apply after the Administrator approves this subsection, (B)(2)(b)(i), into the applicable implementation plan.

Area A Alt. Fuel Vehicles Operated by a School District Testing Procedures After SIP Revision is Approved				
Model Year	OBD Certified?	Test Frequency	Tests Applicable	Test Subsection
Any	Yes	Biennial	OBD Functional gas cap Tampering	C.4 C.16 C.17
1975 or later	No	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1967 through 1974	No	Annual	Loaded test Functional gas cap	C.6 C.16

- c. Heavy duty alternative fuel vehicles in Area A that are not owned by a school district are subject to the following testing procedures.

Model Year	GVWR	OBD Certified?	Test Frequency	Tests Applicable	Test Subsection
Any	More than 14,500 pounds	Yes	Biennial	OBD Functional gas cap Tampering	C.4 C.16 C.17
1975 or later	More than 14,500 pounds	No	Annual	Idle test Functional gas cap Tampering	C.8 C.16 C.17
1967 through 1974	More than 14,500 pounds	No	Annual	Idle test Functional gas cap	C.8 C.16

3. Area B Non-Diesel. Non-diesel vehicles in Area B are subject to the test procedures identified in this subsection:

- a. Vehicles other than reconstructed vehicles and constant 4-wheel-drive vehicles that are not

equipped with OBD shall be subject to the following test procedures until the Administrator approves subsection (B)(2)(a)(i) into the applicable implementation plan:

Area B Non-Diesel Testing Procedures Until SIP Revision is Approved				
Model Year	GVWR	Test Frequency	Tests Applicable	Test Subsection
1996 or later	8,500 pounds or less	Annual	OBD Functional gas cap Tampering	C.4 C.16 C.17
1981 through 1995	8,500 pounds or less	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1975 through 1980	8,500 pounds or less	Annual	Idle test Functional gas cap Tampering	C.8 C.16 C.17
1975 or later	More than 8,500 pounds	Annual	Idle test Functional gas cap Tampering	C.8 C.16 C.17
1967 through 1974	Any	Annual	Idle test Functional gas cap	C.8 C.16

- i. Test procedures that apply after the Administrator approves this subsection (B)(2)(a)(i) into the applicable implementation plan:

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Area B Non-Diesel Testing Procedures After SIP Revision is Approved					
Model Year	GVWR	OBD Certified?	Test Frequency	Tests Applicable	Test Subsection
Any	Any	Yes	Biennial	OBD Functional gas cap Tampering	C.4 C.16 C.17
1981 or later	8,500 pounds or less	No	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1975 through 1980	8,500 pounds or less	No	Annual	Loaded Test Functional gas cap Tampering	C.6 C.16 C.17
1975 or later	More than 8,500 pounds	No	Annual	Idle test Functional gas cap Tampering	C.8 C.16 C.17
1967 through 1974	Any	No	Annual	Idle test Functional gas cap	C.9 C.16

4. Reconstructed non-diesel vehicles. Reconstructed non-diesel vehicles in both Area A and Area B are subject to the tests specified in the following table:

Model Year	Test Frequency	Tests Applicable	Test Subsection
1967 or later	Annual	Loaded test Visual gas cap	C.6 C.18

5. Constant 4-wheel-drive vehicles. Constant 4-wheel-drive vehicles in both Area A and Area B that are not equipped with OBD are subject to the tests specified in the following table:

Model Year	Test Frequency	Tests Applicable	Test Subsection
1975 or later	Annual	Idle Test Functional gas cap Tampering	C.8 C.16 C.17
1967 through 1974	Annual	Idle Test Functional gas cap	C.8 C.16

6. Area A Diesel. Diesel vehicles that require inspection in Area A are subject to the test procedures specified in this subsection until the Administrator approves subsection (B)(8) into the applicable implementation plan:

Area A Diesel Testing Procedures Until SIP Revision is Approved					
GVWR	OBD Certified?	Model Year	Test Frequency	Tests Applicable	Test Subsection
8,500 and less	Yes	Any	Annual	OBD Tampering	C.4 C.17
More than 8,500 pounds	No	1975 or later	Annual	Snap idle Tampering	C.10 C.17
More than 8,500 pounds	No	1967 through 1974	Annual	Snap idle	C.10
More than 4,000 and less than or equal to 8,500 pounds	No	1975 or later	Annual	Loaded opacity B Tampering	C.12 C.17
More than 4,000 and less than or equal to 8,500 pounds	No	1967 through 1974	Annual	Loaded opacity B	C.12
4,000 pounds or less	No	1975 or later	Annual	Loaded opacity C Tampering	C.13 C.17
4,000 pounds or less	No	1967 through 1974	Annual	Loaded opacity C	C.13

7. Area B Diesel. Diesel vehicles that require inspection in Area B are subject to the test procedures specified in this subsection until the Administrator approves subsection (B)(8) into the applicable implementation plan:

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Area B Diesel Testing Procedures Until SIP Revision is Approved				
GVWR	Model Year	Test Frequency	Tests Applicable	Test Subsection
More than 26,000 pounds	1975 or later	Annual	Loaded opacity A Tampering	C.12 C.18
More than 26,000 pounds	1967 through 1974	Annual	Loaded opacity A	C.12
More than 10,500 and less than or equal to 26,000 pounds	1975 or later	Annual	Any of the following: Loaded opacity A Loaded opacity B Tampering	C.12 C.13 C.18
More than 10,500 and less than or equal to 26,000 pounds	1967 through 1974	Annual	Any of the following: Loaded opacity A Loaded opacity B	C.12 C.13
More than 4,000 and less than or equal to 10,500	1975 or later	Annual	Loaded opacity B Tampering	C.13 C.18
More than 4,000 and less than or equal to 10,500	1967 through 1974	Annual	Loaded opacity B	C.13
4,000 pounds or less	1975 or later	Annual	Loaded opacity C Tampering	C.14 C.18
4,000 pounds or less	1967 through 1974	Annual	Loaded opacity C	C.14

8. Test procedures that apply for diesel vehicles in both Area A and Area B after the Administrator approves this subsection (B)(8) into the applicable implementation plan:

Area A and Area B Diesel Testing Procedures After SIP Revision is Approved					
GVWR	OBD Certified?	Model Year	Test Frequency	Tests Applicable	Test Subsection
Any	Yes	Any	Biennial	OBD Tampering	C.4 C.17
More than 8,500 pounds	No	1975 or later	Annual	Snap idle Tampering	C.10 C.17
More than 8,500 pounds	No	1967 through 1974	Annual	Snap idle	C.10
More than 4,000 and less than or equal to 8,500 pounds	No	1975 or later	Annual	Loaded opacity B Tampering	C.12 C.17
More than 4,000 and less than or equal to 8,500 pounds	No	1967 through 1974	Annual	Loaded opacity B	C.12
4,000 pounds or less	No	1975 or later	Annual	Loaded opacity C Tampering	C.13 C.17
4,000 pounds or less	No	1967 through 1974	Annual	Loaded opacity C	C.13

9. Dealer Fleet Testing Procedures. The test procedures in the table in this Section apply until the administrator approves subsections (B)(2)(a)(i), (B)(3)(a)(i), and (B)(8) into the applicable implementation plan for used vehicles sold by a motor vehicle dealer who is a fleet operator and who has been issued a permit pursuant to A.R.S. § 49-546. After those sections are approved into the applicable implementation plan, used vehicles sold by a motor vehicle dealer who is a fleet operator and who has been issued a permit pursuant to A.R.S. § 49-546 will be subject to the same testing procedures as vehicles tested at state stations and the table in this Section will no longer be applicable.

Area A and Area B Dealer Fleet Testing Procedures Until SIP Revision is Approved			
Model Year	Test Frequency	Tests Applicable	Test Subsection

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1981 or later	Annual	Two speed idle test Functional gas cap Tampering	C.6 C.16 C.17
1975 through 1980	Annual	Idle Test Functional gas cap Tampering	C.7 C.16 C.17
1967 through 1974	Annual	Idle Test Functional gas cap	C.8 C.16

C. Test Requirements

1. Conditions for Pass. A vehicle passes inspection if the vehicle:

- a. Is subjected to all applicable tests required by Subsection (B);
- b. Is not rejected from any of the tests for any of the reasons specified in (C)(2) or (C)(3) of this subsection; and
- c. Does not fail any of the applicable tests for any of the reasons specified in this subsection.

2. Pre-Test Safety Inspection

- a. The Department shall inspect each vehicle visually before the emissions test for any of the following unsafe or untestable conditions:
 - i. A fuel leak that causes wetness or pooling of fuel;
 - ii. A continuous engine or transmission oil leak onto the floor;
 - iii. A continuous engine coolant leak onto the floor such that the engine is overheating or may overheat within a short time;
 - iv. A tire on a driving wheel with less than 2/32-inch tread, metal protuberances, unmatched tire size, obviously low tire pressure as determined by visual inspection;
 - v. An exhaust pipe that does not allow for safe exhaust probe insertion;
 - vi. An exhaust pipe on a diesel-powered vehicle that does not allow for safe exhaust probe insertion and attachment of opacity meter sensor units;
 - vii. Improperly operating brakes;
 - viii. Any vehicle modification or mechanical condition that prevents dynamometer operation;
 - ix. Loud internal engine noise;
 - x. An obvious exhaust leak;
 - xi. Towing a trailer or carrying a heavy load;
 - xii. Carrying explosives or any hazardous material not used as a fuel for the vehicle; or
 - xiii. Any other condition that in the judgment of the inspector makes testing unsafe or the vehicle untestable.
- b. If the inspector determines that a vehicle is unsafe or otherwise untestable by the visual inspection the following shall apply:
 - i. The vehicle shall be rejected without an emissions test;
 - ii. The inspector shall notify the vehicle owner or operator of all untestable or unsafe conditions found;
 - iii. A state station shall not charge a fee; and
 - iv. A state station shall not test the vehicle until the cause for rejection is repaired.

3. Test Operating Conditions. When conducting the emissions test required by this Section, the vehicle emissions inspector shall ensure that all of the following requirements are satisfied:

- a. The vehicle shall be tested in the condition presented, unless rejected under 18-2-1006(C)(2);
- b. The vehicle's engine shall be operating at normal temperature and not be overheating as indicated by a gauge, warning light, or boiling radiator; and
- c. All vehicle accessories shall be turned off during testing.

4. OBD Test.

- a. Test Procedure. The OBD test shall consist of:
 - i. A visual inspection of the MIL function; and
 - ii. An electronic examination of the OBD computer by connecting a scan tool to the data link connector and interrogating the OBD system to determine vehicle readiness status, MIL status, and the presence of diagnostic trouble codes.
- b. Equipment Specifications. The OBD equipment shall conform to the requirements of "Performing Onboard Diagnostic System Checks as Part of a Vehicle Inspection and Maintenance Program," EPA420-R-01-015, EPA, June 2001 (and no future editions or amendments), which is incorporated by reference. A copy of this incorporated material is on file with the Department, the Secretary of State, and is available online at <http://azdeq.gov/VECS/Rulemaking>.
- c. OBD scan tools shall have the most recent available software downloaded and installed before inspection.
- d. Test Rejection. A vehicle shall be rejected from an OBD test if any of the following conditions occurs:
 - i. The number of unset readiness indicators, excluding continuous indicators, is three or more for a model year 1996-2000 vehicle, or two or more for a model year 2001 and newer vehicle;
 - ii. The data link connector cannot be located or is inaccessible;
 - iii. The data link connector is loose and the scan tool cannot be inserted into the connector;
 - iv. The data link connector has no voltage; or
 - v. The eVIN and monitors are mismatched.
- e. Test Failure. A vehicle fails the OBD test if any of the following conditions occurs:
 - i. The vehicle's MIL does not illuminate when the ignition is on and the engine is off;
 - ii. The vehicle's MIL illuminates continuously or flashes with the engine running;
 - iii. The OBD system is not communicating;
 - iv. The vehicle's OBD system reports the MIL as commanded on;
 - v. The vehicle's OBD system data is inappropriate for the vehicle being tested; or
 - vi. The vehicle's OBD system data does not match the original equipment manufacturer (OEM) or a Department exempted OBD software configuration.

5. Transient Loaded and Evaporative System Pressure Test.

- a. Transient Loaded Test Procedure.

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- i. The transient loaded test shall consist of 147 seconds of mass emissions measurement using a constant volume sampler while the vehicle is driven by an inspector through a computer-monitored driving cycle on a dynamometer with inertial weight settings appropriate for the weight of the vehicle.
- ii. The driving cycle shall include the acceleration, deceleration, and idle operating modes described in Table 4.
- iii. The 147-second sequence may be ended earlier using a fast-pass or fast-fail algorithm.
- iv. A retest algorithm shall be used to determine if a test failure is due to insufficient vehicle preconditioning. As determined by the retest algorithm, an additional test may be performed on a failing vehicle.
- v. The highest selectable drive gear shall be used for automatic transmissions and first gear shall be used for manual transmission acceleration from idle.
- vi. Exhaust emissions concentrations in grams per mile for HC, CO, NO_x and CO₂ shall be recorded continuously beginning with the first second.
- vii. All testing and test equipment for the transient loaded emissions test shall conform to "IM240 & Evap Technical Guidance," EPA420-R-00-007, EPA, April 2000, and no future editions or amendments, which is incorporated by reference, except that the transient driving cycle in Table 4, the standards in Table 4, and the fast-pass, fast-fail retest algorithms described in subsection (C)(5)(a) shall be used. A copy of the incorporated material is on file with the Department, the Secretary of State, and is available online at <http://azdeq.gov/VECS/Rulemaking>.
- viii. In determining compliance under subsection (C)(5)(d) for a vehicle that operates on natural gas, HC emissions shall be multiplied by 0.19, when an analyzer with a flame ionization detector is used or 0.61, when an NDIR analyzer is used.
- b. Evaporative System Pressure Test Procedure. The evaporative system pressure test shall consist of the following steps in sequence:
 - i. Connect the test equipment to either the fuel tank vent hose at the canister or the fuel tank filler neck;
 - ii. Pressurize the system to 14 ± 0.5 inches of water without exceeding 26 inches of water system pressure; and
 - iii. Close off the pressure source, seal the evaporative system, and monitor pressure decay for two minutes unless a failure is detected or a fast-pass determination is made as defined in EPA420-R-00-007, which is incorporated by reference in subsection (C)(5)(a)(vii) of this rule.
- c. Test Rejection. A vehicle shall be rejected from the transient loaded and evaporative system pressure test if it has an audible or visible exhaust leak during emissions testing, or if the vehicle displays unsafe behavior on the dynamometer during testing.
- d. Transient Loaded Test Failure. A vehicle fails the transient loaded test if emissions measured during the test exceed the Table 3 standard applicable to the model year and type of the vehicle being tested as follows:
 - i. The average emissions measured for the entire test exceed the "composite standard" for any pollutant; or
 - ii. The average emissions measured during seconds 65 through 146 exceed the "phase-2" standard for any pollutant.
- e. Evaporative System Pressure Test Failure. A vehicle fails the evaporative system pressure test if any of the following conditions occurs:
 - i. The evaporative system cannot maintain a system pressure above eight inches of water for two minutes after being pressurized to 14 ± 0.5 inches of water;
 - ii. The canister is missing or damaged; or
 - iii. The hose or electrical system is missing, routed incorrectly, or disconnected, according to the vehicle emissions control information label.
- f. Test Failure. A vehicle fails the transient loaded and evaporative system pressure test if it fails the test under either subsection R10-2-1006(C)(5)(d) or R10-2-1006(C)(5)(e).
- 6. Loaded Test.
 - a. Loaded Cruise Test Procedure. The vehicle's drive wheels shall be placed on a dynamometer and the vehicle shall be operated according to the Table 1 of this Article.
 - b. Besides the Arizona specific dynamometer test schedule, loaded tests shall conform to the procedures listed at 40 CFR 51, Subpart S, Appendix B, Section III, amended as of July 1st, 2017, which is incorporated by reference and on file with the Department, the Secretary of State, and is available online at <http://azdeq.gov/VECS/Rulemaking>.
 - c. Loaded Test Equipment Specifications.
 - i. The equipment used in Area A state stations for loaded cruise and curb idle testing shall conform to "IM240 & Evap Technical Guidance," EPA420-R-00-007, EPA, April 2000, and no future editions or amendments, which is incorporated by reference in subsection (C)(5)(a)(vii) of this rule.
 - ii. The equipment used in Area B state stations and all Arizona fleet emission testing stations for the loaded test shall comply with 40 CFR 51, Subpart S, Appendix A, Section I, amended as of July 1, 2017, which is incorporated by reference and on file with the Department, the Secretary of State, and is available online at <http://azdeq.gov/VECS/Rulemaking>.
 - d. In determining whether a vehicle that operates on natural gas complies with the HC emissions standards in Table 2 of this Article, the results of the test shall be multiplied by 0.19, when an analyzer with a flame ionization detector is used or 0.61, when an NDIR analyzer is used.
 - e. Test Rejection. A vehicle shall be rejected from a loaded cruise and curb idle test, if the CO₂ plus CO reading during the curb idle test is less than 6%.
 - f. Test Failure. A vehicle fails the loaded cruise and curb idle test if tailpipe emissions measured by the test exceed the applicable standards in Table 2 for

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- loaded cruise mode or curb idle mode for the type and model year of the vehicle being tested.
7. Two Speed Idle Test
 - a. All two speed idle testing shall conform to the procedures listed at 40 CFR 51, Subpart S, Appendix B, Section II, amended as of July 1, 2017, and no future editions or amendments, which is incorporated by reference and on file with the Department, the Secretary of State, and is available online at <http://azdeq.gov/VECS/Rulemaking>.
 - b. All equipment used for two speed idle testing shall conform with the requirements of 40 CFR 51, Subpart S, Appendix A, Section I, amended as of July 1, 2017, and no future editions or amendments, which is incorporated by reference and on file with the Department.
 - c. Test Failure. A vehicle fails the two speed idle test if tailpipe emissions measured by the test exceed the applicable standards in Table 2 for the type and model year of the vehicle being tested.
 8. Idle Test
 - a. All idle testing shall conform to the procedures listed at 40 CFR 51, Subpart S, Appendix B, Section I, amended as of July 1, 2017, and no future editions or amendments, which is incorporated by reference and on file with the Department, the Secretary of State, and is available online at <http://azdeq.gov/VECS/Rulemaking>.
 - b. All equipment used for two speed idle testing shall conform with the requirements of 40 CFR 51, Subpart S, Appendix B, Section I, amended as of July 1, 2017, and no future editions or amendments, which is incorporated by reference and on file with the Department.
 - c. Test Failure. A vehicle fails the idle test if tailpipe emissions measured by the test exceed the applicable standards in Table 2 for the type and model year of the vehicle being tested.
 9. Exhaust Sampling Requirements for Annual Tests on Non-Diesel Vehicles.
 - a. All CO and HC emissions analyzers shall have water traps incorporated in the sampling lines. Sampling probes shall be capable of taking undiluted exhaust samples from a vehicle exhaust system.
 - b. A vehicle, other than a diesel-powered vehicle, shall be inspected with a gas analyzer capable of determining concentrations of CO and HC within the ranges and tolerances specified in Table 5.
 - c. A vehicle with multiple exhaust pipes shall be inspected by collecting and averaging samples by one of the following methods:
 - i. Collecting separate samples from each exhaust pipe and use the average concentration to determine the test result;
 - ii. Using manifold exhaust probes to simultaneously sample approximately equal volumes from each exhaust pipe; or
 - iii. Using manifold exhaust pipe adapters to collect approximately equal volume samples from each exhaust pipe.
 10. Snap Idle Test.
 - a. Snap Idle Test Procedure.
 - i. The Department shall test the vehicle with a procedure that conforms to Society of Automotive Engineers Recommended Practice J1667, February 1996, incorporated by reference and on file with the Department, the Secretary of State and is available online at <http://azdeq.gov/VECS/Rulemaking>.
 - ii. All testing and test equipment shall conform to the J1667 Recommended Practice.
 - iii. The procedure shall use the corrections for ambient test conditions in Appendix B of the J1667 Recommended Practice for all tests.
 - iv. To expedite testing throughput, the Department may implement rapid testing procedures.
 - v. The test results shall be reported as the percentage of smoke opacity.
 - b. Snap Idle Test Failure.
 - i. Except as provided in subsection (C)(10)(c), a vehicle fails the snap idle test if the opacity of emissions exceeds the level specified in the following table:

Model Year	Standard
1991 or later	40%
1990 or earlier	55%
 - ii. The engine model year is determined by the emission control label. If the emission control label is missing, illegible, or incorrect, the test standard shall be 40%, unless a correct, legible, emission control label replacement is attached to the vehicle within 30 days of the inspection.
 - c. Alternative Opacity Standard. The Director shall identify an alternative, less stringent opacity standard for an engine family if the conditions of either subsection (C)(10)(c)(i) or (C)(10)(c)(ii) are satisfied.
 - i. The engine family exhibits smoke opacity greater than the applicable standard in subsection (C)(10)(b)(i) when in good operating condition and adjusted to the manufacturer's specifications. If this condition is satisfied, the Director shall identify a technologically appropriate less stringent standard based on a review of data obtained from engines in good operating condition and adjusted to manufacturer's specifications.
 - ii. The engine family has been granted an exemption from a standard equivalent to the applicable standard in subsection (C)(10)(b)(i) based on the J1667 Recommended Practice by the executive officer of the California Air Resources Board (CARB). If this condition is satisfied, the Director shall allow the engine family to comply with any technologically appropriate less stringent standard identified by the executive officer of CARB.
 - iii. A demonstration under subsection (C)(10)(c)(i) shall be based on data from at least three vehicles. Data from official inspections under this subsection (C)(10) showing that vehicles in the engine family meet the standard may be used to rebut the demonstration.
 - iv. The Director shall implement any new standard resulting from each exemption as soon as practicable for all subsequent tests and provide notice at all affected test stations and fleets.
 11. Loaded Opacity A Test.
 - a. Test Procedure.

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- i. The vehicle shall be tested on a chassis dynamometer beginning with no power absorption by selecting a gear ratio that produces a maximum vehicle speed of 30-35 MPH at governed or maximum rated RPM.
 - ii. If the vehicle has a manual transmission or an automatic transmission with individual gear selection, the engine shall be operated at governed or maximum rated engine RPM, at normal operating temperature under a power absorption load applied to the dynamometer until the loading reduces the engine RPM to 80% of the governed speed at wide-open throttle position.
 - iii. If the vehicle has an automatic transmission and automatic gear kickdown, the engine shall be loaded to a speed just above the kickdown speed or 80% of the governed speed, whichever is greater.
 - iv. If the chassis dynamometer does not have enough horsepower absorption capability to lug the engine down to these speeds, the vehicle's brakes may be used to assist the dynamometer.
 - b. Test Failure. A vehicle fails the test if the opacity reading for a period of 10 consecutive seconds exceeds the applicable standard in R18-2-1030(B).
12. Loaded Opacity B Test.
- a. Test Procedure. The vehicle shall be tested by a loaded dynamometer test by applying a single load of 30 HP, \pm 2 HP, while operated at 50 MPH.
 - b. Test Failure. A vehicle fails the test if the opacity reading for a period of 10 consecutive seconds exceeds the applicable standard in R18-2-1030(B).
13. Loaded Opacity C Test.
- a. Test Procedure. The vehicle shall be tested by a loaded dynamometer test by applying a single load of between 6.4 - 8.4 HP while operated at 30 MPH.
 - b. Test Failure. A vehicle fails the test if the opacity reading for a period of 10 consecutive seconds exceeds the applicable standard in R18-2-1030(B).
14. Exhaust Sampling Requirements for Diesel Vehicles Tests other than the Snap Idle Test.
- a. For a diesel-powered vehicle equipped with multiple exhaust pipes, separate measurements shall be made on each exhaust pipe. The reading taken from the exhaust pipe that has the highest opacity reading shall be used for comparison with the standard in R18-2-1030(B).
 - b. A vehicle shall be inspected with either a full-flow or sampling-type opacity meter. The opacity meter shall be a direct reading, continuous reading light extinction-type using a collimated light source and photo-electric cell, accurate to a value within \pm 2% of full scale.
15. Functional Gas Cap Test.
- a. Test Procedure.
 - i. The vehicle shall undergo a functional test of the gas cap to determine cap leakage.
 - ii. A vehicle with a non-sealing gas cap shall be checked for the presence of a properly fitting gas cap.
 - b. Exemption. A vehicle with a vented fuel system is exempt from this subsection.
 - c. Exemption. A vehicle that is manufactured without a gas cap is exempt from this subsection.
 - d. Test Failure.
 - i. A vehicle fails the test if cap leakage exceeds 60 cubic centimeters of air per minute at a pressure of 30 inches of water gauge.
 - ii. Notwithstanding subsection 18-2-1006(C)(15)(d)(i), a vehicle does not fail the test if the failing cap is immediately replaced at the state station by a gas cap that satisfies the requirements of this subsection.
16. Tampering Inspection.
- a. The inspection shall be based on the original configuration of the vehicle as manufactured. The Department shall verify the applicable emissions system requirements shall be verified by the "Vehicle Emission Control Information" label. "Original configuration" for a foreign manufactured vehicle means the design and construction of a vehicle produced by the manufacturer for original entry and sale in the United States.
 - b. The Department's tampering inspection shall consist of the following:
 - i. A visual inspection to determine the presence and proper installation of each required catalytic converter system or OEM equivalent;
 - ii. An examination to determine the presence of an operational injection system, if applicable;
 - iii. A visual inspection to determine the presence of an operational positive crankcase ventilation system or closed crankcase ventilation system, if applicable; and
 - iv. A visual inspection to determine the presence of an operational evaporative control system, if applicable.
17. Visual Gas Cap Test. The visual gas cap test consists of the inspector's ocular verification that a gas cap is properly fitted to the vehicle.
18. Testing Vehicles that Operate on More than One Fuel. A vehicle, other than a vehicle for which an OBD test is required, designed to operate on more than one fuel, shall be tested on the fuel in use when the vehicle is presented for inspection, except vehicles that operate on alternative fuel, as defined in A.R.S. § 1-215.
19. Testing Vehicles that Operate on Alternative Fuels.
- a. The inspector shall test vehicles that operate on an alternative fuel, as defined in A.R.S. § 1-215, other than a vehicle for which an OBD test is required, on each fuel that the vehicle is intended to operate on, using the appropriate emissions test procedure and standards for that vehicle.
 - b. The vehicle shall be operated for a minimum of 30 seconds after switching fuels and before testing begins. The vehicle shall be rejected for testing if it is not able to operate on each fuel that the vehicle is intended to operate on or if the vehicle operator cannot switch fuels.
 - c. A vehicle that operates exclusively on propane or natural gas, as defined in A.R.S. § 1-215, shall be exempt from the functional gas cap test in subsection 10-2-1006(C)(15) and the evaporative pressure system test in subsection 10-2-1006(C)(5)(b).

Historical Note

Former Section R9-3-1006 repealed, new Section R9-3-1006 adopted effective January 13, 1976 (Supp. 76-1).
 Amended effective November 1, 1976 (Supp. 76-5).
 Amended effective March 2, 1978 (Supp. 78-2).
 Amended effective January 3, 1979 (Supp. 79-1).
 Amended effective February 20, 1980 (Supp. 80-1). For-

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mer Section R9-3-1006 repealed, new Section R9-3-1006 adopted as an emergency effective January 2, 1981 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1006 as amended effective February 20, 1980 repealed and a new Section R9-3-1006 adopted as an emergency effective January 2, 1981 now adopted and amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1006 renumbered as Section R18-2-1006 and subsections (A), (C) and (D) amended effective August 1, 1988 (Supp. 88-3). Amended effective September 19, 1990 (Supp. 90-3). Amended effective November 14, 1994 (Supp. 94-4). Amended effective October 15, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 2722, effective June 28, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 14 A.A.R. 2834, effective July 1, 2008 (Supp. 08-3). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1007. Evidence of Meeting State Inspection Requirements

- A.** A vehicle required to be inspected under this Article shall pass inspection before registration by meeting the requirements of R18-2-1006, unless the vehicle owner obtains a certificate of waiver under R18-2-1008.
- B.** The MVD or its agent may use the MVD motor vehicles emissions database, if available, as evidence that a vehicle complies with the requirements of this Article.
- C.** If the MVD motor vehicles emissions database is not available, the MVD or its agent shall accept any of the following documents identified in subsections (C)(1) to (C)(5), when complete, unaltered, and dated no more than 90 days before registration expiration date, as evidence that a vehicle complies with the requirements of this Article unless the MVD or its agent has reason to believe it is false. Documents accompanying a late registration may be dated subsequent to the registration expiration date:
 - 1. Certificate of compliance,
 - 2. Certificate of waiver (except from auto dealers licensed to sell used motor vehicles under Title 28),
 - 3. Certificate of exemption,
 - 4. Director's certificate, or
 - 5. The upper section of the vehicle inspection report with "PASS" in the final results block.
- D.** A complete certificate of inspection or government vehicle certificate of inspection dated within 12 months of registration for an annually tested vehicle and 24 months for a biennially tested vehicle shall be accepted by the MVD or its agent as evidence that a vehicle is in compliance with the requirements of this Article unless the MVD or its agent has reason to believe it is false.
- E.** Documents listed in subsection (C) and originating in Area B are not acceptable for meeting the inspection requirements in Area A, unless the tests required in Area A and Area B for the vehicle under R18-2-1006 are identical.
- F.** Government vehicles for which only weight fees are paid shall be registered without evidence of inspection.

Historical Note

Former Section R9-3-1007 repealed, new Section R9-3-1007 adopted effective January 13, 1976 (Supp. 76-1).
 Former Section R9-3-1007 repealed, new Section R9-3-

1007 adopted effective January 3, 1977 (Supp. 77-1).
 Amended effective February 20, 1980 (Supp. 80-1).
 Amended effective January 1, 1986 (Supp. 85-6). Former Section R9-3-1007 renumbered without change as Section R18-2-1007 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1008. Procedure for Issuing Certificates of Waiver

- A.** Unless prohibited under subsection (D), a waiver inspector shall issue a certificate of waiver after reinspection at a state station to a vehicle that failed the emissions reinspection when the vehicle owner demonstrates any of the following conditions have been satisfied:
 - 1. The requirements of R18-2-1009 and R18-2-1010, to the extent applicable, have been satisfied;
 - 2. The vehicle owner has spent the maximum required repair cost on the maintenance and repair procedures required by R18-2-1010; or
 - 3. Any further repairs within the maximum required repair cost would not enable the vehicle to pass the required vehicle emissions inspection.
- B.** The demonstration required by subsection (A) may consist of repair receipts, emissions test results, evidence of repairs performed, under hood verification, repair cost estimates, or similar evidence.
- C.** A temporary certificate of waiver may be issued to a vehicle failing the tampering inspection if the vehicle owner provides to a waiver inspector a written statement from an automobile parts or repair business that an emission control device necessary to repair the tampering is not available and cannot be obtained from any usual source of supply, and if all requirements of R18-2-1008(A) have been met. All written statements are subject to verification for authenticity and accuracy by the waiver inspector. The Department may deny a temporary certificate of waiver if the state inspector has any reason to believe the written statement is false or a usual source of supply exists and the device necessary to repair the tampering is available. Certificates of waiver may be issued under this subsection for a specified period, not to exceed 90 days, that allows sufficient time for the procurement and installation of a proper emissions control device. A receipt or bill from a vehicle repair facility or automobile parts store shall be an acceptable proof of purchase. Before the end of the specified time period, the vehicle owner shall present to the waiver inspector proof of purchase and installation of the device. The Department shall track all issued temporary certificates of waiver and if no proof of purchase and installation is received before the end of the specified time period, the Department shall forward to the MVD an order to cancel the vehicle's registration.
- D.** The Director shall not issue a waiver to a vehicle under any of the circumstances described in subsections (D)(1) through (4).
 - 1. The vehicle failed the emissions test due to the catalytic converter system. A vehicle fails the emissions test due to the catalytic converter system if:
 - a. The vehicle has a catalytic converter system that is missing or defeated;
 - b. The vehicle is equipped with an on-board diagnostic computer (OBD) with a malfunction indicator light (MIL), "check engine" or "service engine soon" light commanded on by the computer and containing diagnostic trouble codes indicating the catalytic converter must be replaced; or

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- c. A vehicle with a repair order or estimate paperwork provided the waiver technician at the time of waiver inspection shows that a diagnostic determination has been made by the mechanic that the catalytic converter must be replaced.
 - 2. The vehicle failed the emissions test with an HC, CO, NOx, or opacity emission level greater than two times the pass-fail standard in R18-2-1006.
 - 3. The same vehicle has previously received a certificate of waiver.
 - 4. The waiver request is based upon repair estimates and the waiver inspector demonstrates that a recognized repair facility can repair or improve the vehicle's test readings within the repair cost limit.
- E.** The fee for a certificate of waiver under this Section shall be fixed by the Director according to A.R.S. § 49-543, and shall be based upon the Director's estimated costs to the state for administering and enforcing the provisions of this Article for issuance of certificates of waiver under this Section. The fee shall be payable at the time the certificate of waiver is issued.
- F.** If a waiver inspector denies a certificate of waiver under this Section, the vehicle owner may request review of the denial by a state inspector.

Historical Note

Former Section R9-3-1008 repealed, new Section R9-3-1008 adopted effective January 13, 1976 (Supp. 76-1).

Former R9-3-1008 repealed, new Section R9-3-1008 adopted effective January 3, 1977 (Supp. 77-1). Amended effective March 2, 1978 (Supp. 78-2). Amended effective January 3, 1979 (Supp. 79-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1008 as amended effective January 3, 1979, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended subsection (A) and added subsection (D) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1008 renumbered as Section R18-2-1008 and amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1009. Tampering Repair Requirements

- A.** When a vehicle fails the visual inspection for properly installed catalytic converters, the vehicle owner shall replace the converters with new or reconditioned OEM converters, or equivalent new aftermarket converters.
- B.** When a vehicle fails the visual inspection for the presence of an operational air injection system, the vehicle owner shall install a new, used, or reconditioned, operational air pump on the vehicle according to manufacturer specifications.
- C.** When a gasoline vehicle fails the visual inspection for the presence or malfunction of the positive crankcase ventilation system, the vehicle owner shall repair or replace the system with OEM or equivalent aftermarket parts.
- D.** When a diesel-powered vehicle fails the visual inspection for the presence or malfunction of the closed crankcase ventilation system, the vehicle owner shall repair or replace the system with OEM or equivalent aftermarket parts.
- E.** When a vehicle fails the visual inspection for the presence or malfunction of the evaporative control system, the vehicle

owner shall repair or replace the system with OEM or equivalent aftermarket parts.

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1). Repealed effective January 3, 1977 (Supp. 77-1). New Section R9-3-1009 adopted effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1009 renumbered without change as Section R18-2-1009 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 14 A.A.R. 2834, effective July 1, 2008 (Supp. 08-3). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1010. Low Emissions Tune-up, Emissions and Evaporative System Repair

- A.** Vehicle maintenance and repairs under subsection (B) and the failure-specific maintenance and repair requirements of subsection (C) must be performed before reinspection of a vehicle that fails a tailpipe emissions or OBD test under R18-2-1006.
- B.** Vehicle maintenance and repairs on a non-diesel powered vehicle consists of the following procedures:
 - 1. Emissions Failure Diagnosis. For a computer-controlled vehicle, the on-board computer shall be accessed and any stored trouble codes recorded. For a model year 1996 or newer vehicle equipped with an OBD system, a compatible scan tool shall be used to access and record diagnostic trouble codes. The following instruments or equipment are required to complete a low emissions tune-up:
 - a. Tachometer, although for 1996 and later vehicles an OBD scanner can be used to monitor engine RPMs;
 - b. A compatible OBD scan tool, if appropriate;
 - c. Engine analyzer or oscilloscope; and
 - d. A HC/CO NDIR analyzer to make final A/F adjustments, if specified by the manufacturer.
 - 2. Adjustment. All adjustments shall be made according to the manufacturer's specifications and procedures. Final adjustment shall be made on the vehicle engine only after the engine is at normal operating temperature.
 - 3. Inspection of Air Cleaner, Choke, and Air Intake System. The vehicle owner shall repair or replace a dirty or plugged air cleaner, stuck choke, or restricted air intake system as required.
 - 4. Dwell and Basic Timing Check. Dwell and basic engine timing shall be checked and the vehicle owner shall make adjustments, if necessary, according to manufacturer's specifications.
 - 5. Inspection of PCV System. The PCV system shall be checked to ensure that it is the type recommended by the manufacturer and is correctly operating. Free flow through the PCV system passages and hoses shall be verified. The vehicle owner shall repair or replace the system as required.
 - 6. Inspection of Vacuum Hoses. The vacuum hoses shall be inspected for leaks, obstruction, and proper routing and connection. The vehicle owner shall repair or replace as required.
 - 7. Fuel Lines and System Components Inspection. A visual inspection for leaking fuel lines or system components shall be performed. The vehicle owner shall repair or replace any leaking lines or systems as required.

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8. Idle Speed and A/F Mixture Check. The idle speed and A/F mixture shall be checked and the vehicle owner shall make adjustments according to manufacturer's specifications and procedures. If the vehicle is equipped with a fuel injection system or an alternate fuel (LPG or LNG), the manufacturer's recommended adjustment procedure shall be followed.
- C. Failure-specific recommended repairs and maintenance. If the maximum required repair cost in subsection (F) or (G) is not exceeded after the diagnosis and vehicle maintenance and repairs described in subsection (B), then the following procedures apply:
 1. CO failure.
 - a. If a vehicle fails CO only, the vehicle shall be checked for:
 - i. Proper canister purge system operation,
 - ii. High float setting,
 - iii. Leaky power valve, and
 - iv. Faulty or worn needles, seats, jets or improper jet size.
 - b. If applicable, the vehicle shall be checked for the following items:
 - i. Computer,
 - ii. Engine and computer sensors,
 - iii. Engine solenoids,
 - iv. Engine thermostats,
 - v. Engine switches,
 - vi. Coolant switches,
 - vii. Throttle body or port fuel injection system,
 - viii. Fuel injectors,
 - ix. Fuel line routing and integrity,
 - x. Air in fuel system including line and pump,
 - xi. Fuel return system,
 - xii. Injection pump,
 - xiii. Fuel injection timing,
 - xiv. Routing of vacuum hoses, and
 - xv. Electrical connections.
 - c. The items in subsections (C)(1)(a) and (b) shall be repaired or replaced as required.
 2. HC, or HC and CO failure.
 - a. If a vehicle fails HC, or HC and CO emissions, the vehicle shall be checked for:
 - i. Faulty spark plugs and faulty, open, crossed, or disconnected plug wires;
 - ii. Distributor module;
 - iii. Vacuum hose routing and electrical connections;
 - iv. Distributor component malfunctions including vacuum advance;
 - v. Faulty points or condenser;
 - vi. Distributor cap crossfire;
 - vii. Catalytic converter efficiency air supply;
 - viii. Vacuum leaks at intake manifold, carburetor base gasket, EGR, and vacuum-operated components.
 - b. The vehicle owner shall repair or replace the items in subsection (C)(2)(a) as required.
 3. NOx failure.
 - a. If a vehicle fails for NOx emissions, the vehicle shall be checked for:
 - i. Removed, plugged, or malfunctioning EGR valve, exhaust gas ports, lines, and passages;
 - ii. EGR valve electrical and vacuum control circuitry, components, and computer control, as applicable;
 - iii. Above normal engine operating temperature;
 - iv. Proper air management;
 - v. Lean A/F mixture;
 - vi. Catalytic converter efficiency; and
 - vii. Over-advanced off-idle timing.
 - b. The items in subsection (C)(3)(a) shall be repaired or replaced as required.
 4. OBD failure. If the vehicle fails the OBD test, the vehicle owner shall repair the items indicated on the vehicle emissions report as causing the failure. If the failure results from diagnostic trouble codes (DTCs) that caused the malfunction indicator lamp (MIL) to be illuminated, the vehicle owner shall repair or replace the components or systems causing the DTCs. After repair of a DTC failure, and before reinspection, the vehicle shall be operated under conditions recommended by the vehicle manufacturer for the OBD computer to evaluate the repaired system.
- D. For Evaporative System Failures, the following procedures apply:
 1. If a vehicle fails the evaporative system pressure test, the vehicle shall be checked for leaking or disconnected vapor hoses, line, gas cap, and fuel tank.
 2. If a vehicle fails a visual inspection of the evaporative system, the vehicle shall be checked for a missing or damaged canister, canister electrical and vacuum control circuits and components, disconnected, damaged, mis-routed or plugged hoses, and damaged or missing purge valves. The vehicle owner shall repair or replace the system with OEM or equivalent aftermarket parts.
- E. If a vehicle fails the functional gas cap pressure test described in R18-2-1006, the vehicle owner shall replace the gas cap with one that meets the requirements of that subsection. If a vehicle designed with a vented system fails a visual inspection for the presence of a gas cap, the vehicle owner shall install a properly fitting gas cap on the vehicle.
- F. The maximum required repair cost for a vehicle in Area A, not including cost to repair the vehicle for failing an evaporative system pressure test due to tampering, or other tampering repair cost, is:
 1. For a diesel-powered vehicle with a GVWR greater than 26,000 pounds or a diesel-powered vehicle with tandem axles: \$500; and
 2. For a vehicle that is not a diesel-powered vehicle with a GVWR greater than 26,000 pounds and is not a diesel-powered vehicle with tandem axles:
 - a. Manufactured in or before the 1974 model year: \$200;
 - b. Manufactured in the 1975 through 1979 model years: \$300; and
 - c. Manufactured in or after the 1980 model year: \$450.
 3. Subsection (F) does not prevent a vehicle owner from authorizing or performing more than the required repairs. A vehicle operator who has a vehicle reinspected shall have the repair receipts available when requesting a certificate of waiver.
- G. The maximum required repair cost for vehicles in Area B, not including tampering repair cost, is:
 1. For a diesel-powered vehicle with a GVWR greater than 26,000 pounds or a diesel-powered vehicle with tandem axles: \$300; and
 2. For a vehicle that is not a diesel-powered vehicle with a GVWR greater than 26,000 pounds and is not a diesel-powered vehicle with tandem axles:
 - a. Manufactured in or before the 1974 model year: \$50;

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- b. Manufactured in the 1975 through 1979 model years: \$200; and
 - c. Manufactured in or after the 1980 model year: \$300.
3. Subsection (G) does not prevent a vehicle owner from authorizing or performing more than the required repairs. A vehicle operator who has a vehicle reinspected shall have the repair receipts available when requesting a certificate of waiver.
- H.** Before reinspection of a diesel vehicle that has failed an inspection, the vehicle owner shall comply with the following maintenance and repair requirements to the extent that the total cost of meeting the requirements does not exceed the maximum required repair cost in subsection (F) or (G):
1. Inspect for dirty or plugged air cleaner, or restricted air intake system. Repair or replace as required.
 2. Check fuel injection system timing according to manufacturer's specifications. Adjust as required.
 3. Check for fuel injector fouling, leaking, or mismatch. Repair or replace as required.
 4. Check fuel pump and A/F ratio control according to manufacturer's specifications. Adjust as required.
 5. If the vehicle fails the J1667 procedure, check smoke-limiting devices, if any, including the aneroid valve and puff limiter. Repair or replace as required.
- I.** The vehicle owner shall use any available warranty coverage for a vehicle to obtain needed repairs before an expenditure can be counted toward the cost limits in subsection (F) and (G). If the operator of a vehicle within the age and mileage coverage of section 207(b) of the Clean Air Act presents a written denial of warranty coverage from the manufacturer or authorized dealer, warranty coverage is not considered available under this subsection.
- Historical Note**
- Adopted effective January 13, 1976 (Supp. 76-1). Former Section R9-3-1010 repealed, new Section R9-3-1010 adopted effective January 3, 1977 (Supp. 77-1). Amended effective March 2, 1978 (Supp. 78-2). Amended effective January 3, 1979 (Supp. 79-1). Amended effective February 20, 1980 (Supp. 80-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1010 as amended effective February 20, 1980, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1010 renumbered as Section R18-2-1010 and subsection (D) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended effective October 15, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 14 A.A.R. 2834, effective July 1, 2008 (Supp. 08-3). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).
- R18-2-1011. Vehicle Inspection Report**
- A.** The Department shall provide a vehicle inspected at a state station with a uniquely numbered vehicle inspection report of a design approved by the Director that contains, at a minimum, the following information, as applicable to the tests required for the vehicle under R18-2-1006:
1. License plate number;
 2. Vehicle identification number;
 3. Model year of vehicle;
 4. Make of vehicle;
 5. Style of vehicle;
 6. Type of fuel;
 7. Odometer reading;
 8. Emissions standards for idle and loaded cruise modes, if applicable;
 9. Emissions measurements during idle and loaded cruise modes, if applicable;
 10. Opacity measurements and standards, if applicable;
 11. Emissions standards and measurements for the transient loaded test, and the evaporative system pressure test, if applicable;
 12. Results of OBD test including all diagnostic trouble codes that commanded the illumination of the malfunction indicator lamp;
 13. Tampering inspection results;
 14. Repair requirements;
 15. Final test results;
 16. Repairs performed;
 17. Cost of emissions-related repairs;
 18. Cost of tampering-related repairs;
 19. Name, address, and telephone number of the business or person making repairs;
 20. Signature and certification number of person certifying repairs;
 21. Date of inspection;
 22. Test results of the previous inspection if the inspection is a reinspection;
 23. Inspection station, lane locators; and
 24. Test number and time of test.
- B.** A vehicle failing the initial inspection shall receive the Department's approved inspection report supplement containing, at a minimum, the following:
1. Diagnostic and tampering information including acceptable replacement units, and
 2. Applicable maximum repair costs.
- C.** The inspection report shall include a section that may be used as a certificate of compliance for vehicles passing the inspection or as a certificate of waiver, if applicable. The section shall contain all of the following information:
1. License plate number,
 2. Vehicle identification number,
 3. Final results,
 4. Serial number of the inspection report,
 5. Date of inspection,
 6. Model year,
 7. Make,
 8. Date of initial inspection,
 9. Inspection fee, and
 10. Label as either a certificate of compliance or a certificate of waiver.
- D.** At the time of registration, the certificate of compliance or certificate of waiver may be submitted to the Arizona Department of Transportation Motor Vehicle Division as evidence of meeting the requirements of this Article.
- Historical Note**
- Adopted effective January 13, 1976 (Supp. 76-1). Former Section R9-3-1011 repealed, new Section R9-3-1011 adopted effective January 3, 1977 (Supp. 77-1). Amended effective January 3, 1979 (Supp. 79-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1011 as amended effective January 3, 1979, and as amended as an emergency effective January 2,

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1981 now amended effective April 15, 1981 (Supp. 81-2).

Amended effective January 1, 1986 (Supp. 85-6).

Amended subsections (A) and (B) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1011 renumbered as Section R18-2-1011 and amended by removing subsection (E) effective August 1, 1988 (Supp. 88-3). Amended effective September 19, 1990 (Supp. 90-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 14 A.A.R. 2834, effective July 1, 2008 (Supp. 08-3). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1012. Inspection and Reinspections; Procedures and Fee

- A.** The fees vehicle owners are required to pay for emissions inspections at a state station shall be specified in the contract between the contractor and the state of Arizona according to A.R.S. § 49-543, and shall include the full cost of the vehicle emissions inspection program including administration, implementation, and enforcement. Each fee is payable by the vehicle owner directly to the contractor at the time and place of inspection as specified in the contract, and deposited into an account established by the Department for administration of fees. The contractor will be compensated by the Department for services provided on a schedule and in a manner defined in the contract.
- B.** A vehicle failing the initial paid inspection or any subsequent paid inspection is entitled to one reinspection at no additional charge under the following conditions:
 1. The vehicle is presented for inspection within 60 calendar days of the initial or any subsequent paid inspection.
 2. Emissions-related repairs or adjustments and any tampering repairs have been made.
 3. The vehicle is accompanied by the vehicle inspection report from the initial or subsequent inspection.
- C.** A vehicle failing the reinspection shall be provided a vehicle inspection report and a vehicle inspection report supplement.
- D.** A state station emissions inspector shall not recommend repairs or repair facilities.

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1). Former Section R9-3-1012 repealed, new Section R9-3-1012 adopted effective January 3, 1977 (Supp. 77-1). Amended effective January 3, 1979 (Supp. 79-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1012 as amended effective January 3, 1979, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended subsections (A) and (D) effective November 9, 1982 (Supp. 82-6). Amended effective January 1, 1986 (Supp. 85-6). Former Section R9-3-1012 renumbered as Section R18-2-1012 and amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1013. Repealed

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1). Former Section R9-3-1013 repealed, new Section R9-3-1013 adopted effective January 3, 1977 (Supp. 77-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1013 adopted effective January 3, 1977, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1013 renumbered as Section R18-2-1013 and amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Repealed by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1014. Repealed

Historical Note

Adopted effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Section repealed by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

R18-2-1015. Repealed

Historical Note

Adopted effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Section repealed by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

R18-2-1016. Licensing of Inspectors and Fleet Agents

- A.** Emissions inspectors shall be licensed as follows:
 1. To obtain a license as a vehicle emissions inspector, an applicant shall pass a written test with a score greater than or equal to 80%. After passing the written test, the applicant shall pass a separate practical examination.
 - a. Applications to become an emissions inspector may be obtained from the Department and an applicant must submit a completed application to the Department. The Department must deem an application administratively complete before an applicant will be allowed to sit for the written test. If the Department finds the application to be incomplete, the applicant shall be provided an opportunity to submit sufficient information to enable the Department to deem the application administratively complete.
 - b. The written test shall cover the following subjects:
 - i. The air pollution problem in Arizona, its causes and effects;
 - ii. The purpose, function, and goals of the vehicle inspection program;
 - iii. State vehicle inspection regulations and procedures;
 - iv. Technical details of the test procedures and rationale for their design;
 - v. Emission control device function, configuration, and inspection;
 - vi. Test equipment operation, calibration, and maintenance;
 - vii. Quality control procedures and their purpose;
 - viii. Public relations; and

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- ix. Safety and health issues related to the inspection process.
 - c. After passing the written test, the inspector applicant shall pass a practical exam where the applicant shall demonstrate the ability to conduct a proper emissions inspection, including proper use of equipment and procedures, in accordance with the testing procedures in R18-2-1006(C). An inspector applicant shall pass a practical examination for each type of test the applicant intends to perform.
 2. Licenses issued to vehicle emissions inspectors shall be renewed biannually, on or before the expiration date.
 3. An inspector whose license is expired or suspended shall not inspect vehicles.
 4. A vehicle emissions inspector shall submit an application for a renewal of the vehicle emissions inspector's license at least 90 days before the current license expiration date.
 5. The Department may suspend, revoke, or refuse to renew a license if the licensee has violated any provision of A.R.S. Title 49, Chapter 3, Article 5, any provision of this Article, or fails to continue to demonstrate proficiency to the Department.
 6. A vehicle emissions inspector shall notify the Department of any change in employment status no later than fourteen days after the change.
 7. The Department shall assign a single, unique, nontransferable inspector's number to each vehicle emissions inspector.
 8. If a licensed emissions inspector fails to demonstrate the ability to conduct a proper vehicle emissions inspection during any audit, the Department shall suspend the vehicle emissions inspector's license. The suspended emissions inspector shall pass a practical examination within 30 days after suspension or the inspector's license shall be revoked. An inspector's license may be reinstated once the inspector passes a written examination with a score of 80% or greater and demonstrates the ability to properly conduct a vehicle emissions test during a practical examination.
- B. Fleet Agents shall be licensed as follows:**
1. To obtain a license as a fleet agent, an applicant shall pass a written test with a score greater than or equal to 80%. A fleet agent is an individual associated with a fleet emissions testing permit who is ultimately responsible for making sure a fleet complies with the requirements of this Article. This license is separate and distinct from a fleet emissions inspector license.
 - a. Applications to become a fleet agent may be obtained from the Department. An application must be administratively complete and submitted in the manner required by the Department before an applicant will be allowed to sit for the written test.
 - b. The written test shall cover the following subjects:
 - i. The statutes and rules governing the operation and administration of a fleet emissions inspection station.
 - ii. The duties of a fleet agent.
 - iii. How to operate an account on the Department's web portal.
 - iv. Purchasing certificates of inspection.
 2. If a licensed fleet agent fails to assure that the agent's fleet complies with this Article, the agent's license shall be suspended. The suspended agent shall pass a written test within 30 days of suspension or such license shall be revoked.
 3. Licenses issued to fleet agents shall be renewed biannually, on or before the expiration date.
 4. A fleet represented by an agent that has a suspended license may not inspect vehicles.
 5. The Department may suspend, revoke, or refuse to renew a fleet agent's license if the licensee has violated any provision of A.R.S. Title 49, Chapter 3, Article 5, any provision of this Article, or fails to continue to demonstrate proficiency to the Department as required.
 6. A fleet agent shall notify the Department of any change in employment status within seven days of the change.
 7. The Department shall assign a single, unique, nontransferable agent's number to each fleet agent.

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1).
 Amended effective January 3, 1977 (Supp. 77-1).
 Amended effective March 2, 1978 (Supp. 78-2).
 Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1016 as amended effective March 2, 1978, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1016 renumbered as Section R18-2-1016 and subsection (G) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1017. Inspection of Government Vehicles

- A.** Government vehicles operated in Area A and Area B shall be inspected as follows:
1. At a licensed fleet station operated by the government entity;
 2. At a state station upon payment of the fee; or
 3. At a state station upon payment of the contracted fee, either singly or in combination with other government fleet operators.
- B.** A government vehicle, except a federally owned vehicle that is excluded from the definition of motor vehicle under 40 CFR 85.1703, shall be inspected according to this Article and shall have a government vehicle certificate of inspection (GVCOI) affixed to the vehicle if in compliance with state emissions requirements.
1. The vehicle emissions inspector performing the inspection shall punch out the appropriate year and month on the GVCOI to designate the date of the vehicle's next annual or biennial inspection.
 2. If the vehicle emissions inspection is performed at a fleet station, the emissions inspector shall record administratively complete results of the inspection into the Department's web portal on the day of the inspection. The unique number on the GVCOI sticker must be entered along with the emissions testing results for the vehicle.
 3. A government vehicle, with the exception of a motorcycle or an undercover law enforcement vehicle, shall have the GVCOI affixed to the lower left side of the rear window as determined from a position facing the window, from outside the vehicle. If a vehicle does not have a rear window, the GVCOI shall be affixed to the lower left corner.

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ner of the windshield as determined from the driver's position.

- C. The GVCOI shall be purchased from the Department's web portal.

1. The fee for a certificate of inspection shall be fixed by the Director according to A.R.S. § 49-543, and shall be based upon the Director's estimated costs to the state of administering and enforcing the provisions of this Article as they apply to issuance of certificates of inspections.
2. Only the Department may sell or otherwise transfer GVCOI.

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1).
 Amended effective January 3, 1977 (Supp. 77-1).
 Amended effective January 3, 1979 (Supp. 79-1).
 Amended effective January 1, 1986 (Supp. 85-6). Former Section R9-3-1017 renumbered as Section R18-2-1017 and subsection (E) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1018. Certificate of Inspection

- A. A fleet inspector shall submit and certify administratively complete certificates of inspection (COI) to the Department through the Department's web portal. A COI is used as evidence that the vehicle it is assigned to has passed the tests required by this Article and complies with the applicable state emissions standards for that vehicle. Inspection data may be electronically transmitted to MVD under A.R.S. § 49-542(Q).
- B. On the day a vehicle is inspected, a licensed vehicle emissions inspector shall enter an administratively complete record of the inspection into the Department's web portal.
- C. A certificate of inspection issued to a fleet vehicle is valid for a period of 180 days unless the vehicle is reregistered with a new owner.
- D. The following individuals are authorized to purchase certificates of inspection as long as the fleet they are associated with meets the requirements of this article:
1. A fleet agent who is licensed by the Department under R18-2-1016;
 2. A responsible corporate officer; or
 3. A designated responsible officer.

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1).
 Amended effective January 3, 1977 (Supp. 77-1).
 Amended effective March 2, 1978 (Supp. 78-2).
 Amended subsection (A) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1018 renumbered as Section R18-2-1018 and amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1019. Fleet Station Procedures and Permits

- A. A fleet emissions testing station applicant or permittee shall create and manage an account on the Department's web portal.
- B. To obtain a fleet emissions inspection station permit, an applicant shall:

1. Be a registered owner or lessee of a fleet of at least 25 nonexempt vehicles.
 - a. A motor vehicle dealer's business inventory of vehicles held for resale over the previous 12 months shall be used to determine compliance with this subsection.
 - b. A motor vehicle dealer with less than 12 months of operations that applies for a fleet emissions testing permit shall certify that it intends to test at least 25 vehicles per year.
 2. Be located within Area A, within 50 miles of the border of Area A, or within Area B. A dealer outside these areas who certifies to the Department that customers who reside in Area A are the primary source of the dealer's business may also apply for a fleet permit.
 3. Maintain a facility that has space devoted principally to maintaining or repairing the fleet's motor vehicles.
 - a. The space shall be large enough to conduct maintenance or repair of at least one motor vehicle.
 - b. Any fleet station shall be exclusively rented, leased, or owned by the applicant.
 4. Own or lease the machinery, tools, and equipment required for the specific tests the applicant wishes to perform. Equipment and testing requirements are listed in R18-2-1006(C).
 5. Employ the following personnel:
 - a. At least one fleet agent licensed pursuant to R18-2-1016.
 - b. At least one emissions inspector licensed pursuant to R18-2-1016.
 - c. At least one person who is able to perform necessary emissions related repairs for fleet vehicles.
 - d. A single person may fill two or more of these roles for a fleet.
 6. Provide data to the Department as required by this Section.
 7. Pass an initial inspection to determine compliance with this Section.
 8. Submit to the ongoing inspections and audits prescribed in this Article.
- C. A fleet emissions inspection testing permittee shall continuously comply with all requirements of this Article.
- D. The equipment used at a fleet emissions inspection station is subject to the following requirements:
1. A fleet emissions testing station applicant or permittee shall own or lease the equipment referenced in R18-2-1006 that is necessary for the specific type of testing that the permittee is licensed to perform.
 2. All testing equipment and instruments shall be maintained in accurate working condition as required by the manufacturer. An instrument requiring periodic calibration shall be calibrated according to instruction and recommendations of the instrument or equipment manufacturer. Calibration records shall be submitted through the web portal for review by the Department. The calibration records shall be certified by the technician performing each calibration.
 - a. Fleet station analyzers shall comply with, be calibrated, and be quality control checked according to 40 CFR 51, Subpart S, Appendix A, Section I, amended as of July 1, 2017, and no future editions or amendments, which is incorporated by reference in (C)(7)(b) and on file with the Department.
 - b. A fleet station opacity meter used for emission inspections is required to read the equivalent opacity

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value of neutral density filter within +/- 5% opacity at any point in the range of meter.

3. Calibration gases used by the fleet station shall be subject to analysis and comparison to the Department's standard gases at any time.
 4. Fleet testing equipment shall be subject to both scheduled and unscheduled audits by state inspectors.
 5. A fleet's analyzer shall be calibrated at least monthly with calibration gases approved by the Department. A registered opacity meter shall be calibrated according to manufacturer's specifications before performing the first vehicle emissions inspection in any month.
- E. For every test performed by a vehicle emissions inspector, that vehicle emissions inspector shall log into the Department's web portal the same day that the inspection takes place to report the results of the test to the Department.
- F. A fleet's activities shall be governed by the following compliance and enforcement rules:
1. All requirements in this Article apply at all times after a fleet emissions testing license has been issued.
 2. The Director may suspend or revoke a fleet emissions testing license according to A.R.S. § 49-546(F) and A.R.S. Title 41, Chapter 6, if the permittee, or any person employed by the permittee:
 - a. Violates any provisions of A.R.S. Title 49, Chapter 3, Article 5 or any provision of this Article;
 - b. Misrepresents a material fact in obtaining a permit;
 - c. Fails to make, keep, and submit to the Department records for a vehicle tested; or
 - d. Does not provide a state inspector access to the information required in this Article.
 3. If a fleet emissions inspection permit is surrendered, suspended or revoked, all unused certificates of inspection shall be refunded.
 4. Any fleet vehicle is subject to inspection by a state inspector.
- G. A fleet emissions inspection station permit is non-transferable and does not expire.

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1).
 Amended effective January 3, 1977 (Supp. 77-1).
 Amended effective March 2, 1978 (Supp. 78-2).
 Amended effective January 3, 1979 (Supp. 79-1).
 Amended effective February 20, 1980 (Supp. 80-1).
 Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1019 as amended effective February 20, 1980, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1019 renumbered as Section R18-2-1019 and amended effective August 1, 1988 (Supp. 88-3).
 Amended effective September 19, 1990 (Supp. 90-3).
 Amended effective February 4, 1993 (Supp. 93-1).
 Amended effective November 14, 1994 (Supp. 94-4).
 Amended effective October 15, 1998 (Supp. 98-4).
 Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 14 A.A.R. 2834, effective July 1, 2008 (Supp. 08-3). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1020. Department Issuance of Alternative Fuel Certificates

Issuing Alternative Fuel Certificates. The Department shall inspect a vehicle converted to run on alternative fuel and issue an alternative fuel certificate according to A.R.S. § 28-2416(2)(b) if the vehicle is currently powered by an alternative fuel.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1021. Reserved**R18-2-1022. Procedure for Waiving Inspections Due to Technical Difficulties**

A vehicle emissions station manager employed by an official emissions inspection station may issue a Director's certificate for a vehicle that cannot be inspected as required by this Article because of technical difficulties inherent in the manufacturer's design or construction of the vehicle.

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1).
 Amended effective January 3, 1977 (Supp. 77-1).
 Amended effective March 2, 1978 (Supp. 78-2).
 Amended effective January 3, 1979 (Supp. 79-1).
 Amended effective January 1, 1986 (Supp. 85-6). Former Section R9-3-1022 renumbered without change as Section R18-2-1022 (Supp. 88-3). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1).

R18-2-1023. Certificate of Exemption for Out-of-State Vehicles

- A. If a vehicle being registered in Area A or Area B requires an emission test and will not be physically available for inspection within the state during the 90-day period before the emissions compliance expiration date, the owner or owner's agent may submit an application to the Department for a certificate of exemption.
- B. The owner or owner's agent shall apply for a certificate of exemption in the manner and form required by the Department.
- C. The Department may issue a certificate of exemption:
1. For a vehicle that will not be located in the state during the 90-day period before the emissions compliance expiration date and is located in an area where emissions testing is not available. This exemption shall only be granted if an affidavit confirming the location of the vehicle is signed and submitted with the application.
 2. For a vehicle that has passed an official emissions inspection in another state during the 90 days before emissions compliance expiration upon submission of the inspection compliance document issued by the entity conducting the inspection program.
- D. The fee for a certificate of exemption shall be fixed by the Director according to A.R.S. § 49-543 and shall be based upon the Director's estimated costs to the state of administering and enforcing the provisions of this Article as they apply to issuance of certificates of exemption. The payment for the certificates shall be included with the application for certificates.

Historical Note

Adopted effective January 13, 1976 (Supp. 76-1).
 Amended effective January 3, 1977 (Supp. 77-1).
 Amended effective January 3, 1979 (Supp. 79-1).

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Amended as an emergency effective January 2, 1981 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1023 as amended effective January 3, 1979 and amended as an emergency effective January 2, 1981 now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Former Section R9-3-1023 renumbered without change as Section R18-2-1023 (Supp. 88-3). Amended effective February 4, 1993 (Supp. 93-1). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1024. Expired**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 84, effective December 14, 2001 (Supp. 01-4). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 1128, effective April 30, 2008 (Supp. 09-2).

R18-2-1025. Inspection of Contractor's Equipment and Personnel

- A.** State inspectors shall conduct performance audits to determine whether a state station is correctly performing all inspection and functions related to inspections as follows:
1. Overt audits shall be completed at least two times each year for each inspection lane. Overt audits shall include:
 - a. A check for the observance of appropriate document security;
 - b. A check to see that required recordkeeping practices are being followed;
 - c. A check for licenses, certificates, and other required display information;
 - d. An observation and evaluation of each vehicle emissions inspector's ability to perform an inspection; and
 - e. A check to ensure all emissions testing equipment is calibrated and operating correctly.
 2. If a vehicle emissions inspector fails an audit, the vehicle emissions inspector's license may be suspended or revoked under R18-2-1016(A)(4).
 3. Vehicle emissions inspection records shall be reviewed at least monthly to assess station performance and identify any problems, potential fraud, or incompetence.
 4. Covert audits may be performed as necessary to confirm compliance with this article.
- B.** If an equipment audit indicates that equipment is not calibrated and accurate, the equipment shall not be used to conduct emissions testing until it is replaced or repaired.
- C.** Equipment that is removed from testing may be returned to service upon its repair and a state inspector's verification of a passing calibration audit.
- D.** A state inspector shall inspect on-road emissions analyzers at least monthly.

Historical Note

Adopted effective January 3, 1977 (Supp. 77-1).
 Amended effective March 2, 1978 (Supp. 78-2).
 Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1025 as amended effective March 2, 1978, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended subsection (A) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6).

Former Section R9-3-1025 renumbered as Section R18-2-1025 and subsection (C) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1026. Inspection of Fleet Stations

- A.** Equipment used to perform emissions testing shall meet the requirements for the type of testing a fleet station is licensed to perform.
- B.** A fleet station's gas analyzer shall not be used for an official emissions inspection if:
1. The calibration gases are not read within the following tolerances:
 - a. Within plus 0.50% CO to minus 0.25% CO in the range from 0 to 2% CO; and
 - b. Within plus 60 PPM HC to minus 30 PPM HC in the range from 0 to 500 PPM HC when read as N-HEX-ANE.
 2. The calibration gases are not read within the manufacturer specified tolerances;
 3. There is a leak in the sampling systems or the calibration port; or
 4. The sample handling system is restricted.
- C.** The fleet emissions testing station shall acquire and utilize calibration gases with assigned HC and CO concentrations to calibrate fleet emission analyzers.
- D.** A state inspector shall fail a fleet emissions analyzer if the analyzer does not meet the requirements of this Section. A fleet emission inspector shall not use the analyzer for inspection until the analyzer is cleared for return to service by a state inspector.
- E.** A state inspector shall conduct performance audits to determine whether a fleet emissions inspection station is correctly performing inspections and functions related to inspections as follows:
1. Overt audits at least two times each year that include:
 - a. A check for the observance of appropriate document security;
 - b. A check to see that required recordkeeping practices are being followed;
 - c. A check for licenses, certificates, and other required display information;
 - d. An observation and evaluation of each vehicle emissions inspector's ability to perform an inspection; and
 - e. A check to ensure all emissions testing equipment is calibrated and operating correctly.
 2. Fleet station and vehicle emissions inspector records shall be reviewed at least monthly to assess fleet performance and identify any problems, potential fraud, or incompetence.
 3. If a vehicle emissions inspector fails an audit, the vehicle emissions inspector's license may be suspended or revoked according to R18-2-1016(A)(4).
 4. Covert audits may be performed as necessary to confirm compliance with this Article.

Historical Note

Adopted effective January 3, 1977 (Supp. 77-1).
 Amended effective January 1, 1986 (Supp. 85-6).
 Amended subsections (A) and (J) and added subsection (K) effective January 1, 1987, filed December 31, 1986

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(Supp. 86-6). Former Section R9-3-1026 renumbered as Section R18-2-1026 and subsections (B), (F), (G) and (H) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1027. Repealed**Historical Note**

Adopted effective January 3, 1977 (Supp. 77-1). Amended effective March 2, 1978 (Supp. 78-2). Amended effective January 3, 1979 (Supp. 79-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1027 as amended effective January 3, 1979, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1027 renumbered as Section R18-2-1027 and subsections (B), (D), (F) and (G) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 14 A.A.R. 2834, effective July 1, 2008 (Supp. 08-3). Repealed by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1028. Repealed**Historical Note**

Adopted effective January 1, 1986 (Supp. 85-6). Amended subsections (A) and (F) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1028 renumbered as Section R18-2-1028 and subsection (D) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Repealed by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

R18-2-1029. Vehicle Emission Control Devices

For the purposes of A.R.S. §§ 28-955 and 49-447, a registered motor vehicle shall have in operating condition all emission control devices installed by the vehicle manufacturer to comply with federal requirements for motor vehicle emissions or equivalent after-market replacement parts or devices.

Historical Note

Adopted effective January 3, 1977 (Supp. 77-1). Former Section R9-3-1029 renumbered as Section R18-2-1029 and amended effective August 1, 1988 (Supp. 88-3). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1).

R18-2-1030. Visible Emissions; Mobile Sources

- A.** A vehicle other than a diesel-powered vehicle or 2-stroke vehicle that emits any visible emissions for 10 consecutive seconds or more is "excessive" for the purposes of A.R.S. § 28-955(C).
- B.** A diesel-powered vehicle shall not emit any visible emissions in excess of:
 1. Twenty percent visual opacity for 10 consecutive seconds or more at or below 2,000 feet elevation;
 2. Thirty percent visual opacity for 10 consecutive seconds or more above 2,000 feet and at or below 4,000 feet elevation; and
 3. Forty percent visual opacity for 10 consecutive seconds above 4,000 feet elevation.
- C.** A vehicle that exceeds the standards in subsection (B) fails the inspection under R18-2-1006 and is considered to have "excessive" emissions under A.R.S. § 28-955(C).

Historical Note

Adopted effective January 3, 1977 (Supp. 77-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1030 as adopted effective January 3, 1977, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended subsection (C) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1030 renumbered as Section R18-2-1030 and subsection (C) amended effective August 1, 1988 (Supp. 88-3). Amended effective September 19, 1990 (Supp. 90-3). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1).

R18-2-1031. Repealed**Historical Note**

Adopted effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1031 renumbered as Section R18-2-1031 and amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Repealed by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

Table 1. Dynamometer Loading Table - Annual Tests

Gross Vehicle Weight			
Rating (Pounds)	Engine Size	Speed (MPH)	Load (HP)
8500 or less	4 cyl. or less	22-25	2.8-4.1
8500 or less	5 or 6 cyl.	29-32	6.4-8.4
8500 or less	8 cyl. or more	32-35	8.4-10.8
8501 or more	All	37-40	12.7-15.8

Historical Note

Adopted effective November 14, 1994 (Supp. 94-4).

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Table 2. Emissions Standards - Annual Tests

MAXIMUM ALLOWABLE**Motorcycles**

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
2-Stroke	All	All	18,000	5.00	18,000	5.00	N/A	N/A
4-Stroke	All	All	500	5.00	1,800	5.50	N/A	N/A

Reconstructed Vehicles

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
4-Stroke	1967-1980	All	700	5.25	1,200	7.50	1,200	5.60
4-Stroke	1980 & newer	All	700	5.25	1,200	7.50	700	5.25

Light-Duty Vehicles

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
2-Stroke	All	All	18,000	5.00	18,000	5.00	18,000	5.00
4-Stroke	1967-1971	4 or less	450	3.75	500	5.50	500	4.20
4-Stroke	1967-1971	more than 4	380	3.00	450	5.00	450	3.75
4-Stroke	1972-1974	4 or less	380	3.50	400	5.50	400	4.20
4-Stroke	1972-1974	more than 4	300	3.00	400	5.00	400	3.75
4-Stroke	1975-1978	4 or less	120	1.00	250	2.20	250	1.65
4-Stroke	1975-1978	more than 4	120	1.00	250	2.00	250	1.50
4-Stroke	1979	4 or less	120	1.00	220	2.20	220	1.65
4-Stroke	1979	more than 4	120	1.00	220	2.00	220	1.50
4-Stroke	1980 & newer	All	100	0.50	220	1.20	220	1.20

Light-Duty Truck 1 (0-6000 lbs GVWR)

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
2-Stroke	All	All	18,000	5.00	18,000	5.00	18,000	5.00
4-Stroke	1967-1971	4 or less	450	3.75	500	5.50	500	4.20
4-Stroke	1967-1971	more than 4	380	3.00	450	5.00	450	3.75
4-Stroke	1972-1974	4 or less	380	3.50	400	5.50	400	4.20
4-Stroke	1972-1974	more than 4	300	3.00	400	5.00	400	3.75
4-Stroke	1975-1978	4 or less	120	1.00	250	2.20	250	1.65
4-Stroke	1975-1978	more than 4	120	1.00	250	2.00	250	1.50
4-Stroke	1979	4 or less	120	1.00	220	2.20	220	1.65
4-Stroke	1979	more than 4	120	1.00	220	2.00	220	1.50
4-Stroke	1980 & newer	All	100	0.50	220	1.20	220	1.20

Light-Duty Truck 2 (6001 - 8500 lbs GVWR)

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
2-Stroke	All	All	18,000	5.00	18,000	5.00	18,000	5.00
4-Stroke	1967-1971	4 or less	450	3.75	500	5.50	500	4.20
4-Stroke	1967-1971	more than 4	380	3.00	450	5.00	450	3.75
4-Stroke	1972-1974	4 or less	380	3.50	400	5.50	400	4.20
4-Stroke	1972-1974	more than 4	300	3.00	400	5.00	400	3.75
4-Stroke	1975-1978	All	300	3.00	350	4.00	350	3.00
4-Stroke	1979	4 or less	120	1.00	220	2.20	220	1.65
4-Stroke	1979	more than 4	120	1.00	220	2.00	220	1.50
4-Stroke	1980 & newer	All	100	0.50	220	1.20	220	1.20

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Heavy-Duty Truck (8501 lbs or greater GVWR)

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
2-Stroke	All	All	18,000	5.00	18,000	5.00	18,000	5.00
4-Stroke	1967-1971	4 or less	450	3.75	500	5.50	500	4.20
4-Stroke	1967-1971	more than 4	380	3.00	450	5.00	450	3.75
4-Stroke	1972-1974	4 or less	380	3.50	400	5.50	400	4.20
4-Stroke	1972-1974	more than 4	300	3.00	400	5.00	400	3.75
4-Stroke	1975-1978	All	300	3.00	350	4.00	350	3.00
4-Stroke	1979 & newer	All	300	3.00	300	4.00	300	3.00

Historical Note

Renumbered from R18-2-1006 and amended effective November 14, 1994 (Supp. 94-4). See emergency amendment below (Supp. 94-4). Emergency amendment adopted effective December 23, 1994, pursuant to A.R.S. § 41-1026, valid for 180 days (Supp. 95-2). Emergency amendment expired, previous text placed back into effect effective June 21, 1995 (Supp. 95-3). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

Table 3. Emissions Standards - Transient Loaded Emissions Tests

FINAL STANDARDS (Standards are in grams per mile)

(i) Light Duty Vehicles

Model Years	Hydrocarbons		Carbon Monoxide		Oxides of Nitrogen	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1981-1982	3.0	2.5	25.0	21.8	3.5	3.4
1983-1985	2.4	2.0	20.0	17.3	3.5	3.4
1986-1989	1.6	1.4	15.0	12.8	2.5	2.4
1990-1993	1.0	0.8	12.0	10.1	2.5	2.4
1994+	0.8	0.7	12.0	10.1	2.0	1.9

(ii) Light Duty Trucks 1 (less than 6000 pounds GVWR)

Model Years	Hydrocarbons		Carbon Monoxide		Oxides of Nitrogen	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1981-1985	4.0	3.4	40.0	35.3	5.5	5.4
1986-1989	3.0	2.5	25.0	21.8	4.5	4.4
1990-1993	2.0	1.7	20.0	17.3	4.0	3.9
1994+	1.6	1.4	20.0	17.3	3.0	2.9

(iii) Light Duty Trucks 2 (greater than 6000 pounds GVWR)

Model Years	Hydrocarbons		Carbon Monoxide		Oxides of Nitrogen	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1981-1985	4.4	3.7	48.0	42.5	7.0	6.9
1986-1987	4.0	3.4	40.0	35.3	5.5	5.4
1988-1989	3.0	2.5	25.0	21.8	5.5	5.4
1990-1993	3.0	2.5	25.0	21.8	5.0	4.9
1994+	2.4	2.0	25.0	21.8	4.0	3.9

Historical Note

Adopted effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Table heading amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

Table 4. Transient Driving Cycle

Time second	Speed mph	Time second	Speed mph	Time second	Speed mph	Time second	Speed mph	Time second	Speed mph
0	0	30	20.7	60	26	90	51.5	120	54.9
1	0	31	21.7	61	26	91	52.2	121	55.4
2	0	32	22.4	62	25.7	92	53.2	122	55.6
3	0	33	22.5	63	26.1	93	54.1	123	56
4	0	34	22.1	64	26.5	94	54.6	124	56
5	3.3	35	21.5	65	27.3	95	54.9	125	55.8
6	6.6	36	20.9	66	30.5	96	55	126	55.2

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Time second	Speed mph	Time second	Speed mph	Time second	Speed mph	Time second	Speed mph	Time second	Speed mph
7	9.9	37	20.4	67	33.5	97	54.9	127	54.5
8	13.2	38	19.8	68	36.2	98	54.6	128	53.6
9	16.5	39	17	69	37.3	99	54.6	129	52.5
10	19.8	40	17.1	70	39.3	100	54.8	130	51.5
11	22.2	41	15.8	71	40.5	101	55.1	131	50.8
12	24.3	42	15.8	72	42.1	102	55.5	132	48
13	25.8	43	17.7	73	43.5	103	55.7	133	44.5
14	26.4	44	19.8	74	45.1	104	56.1	134	41
15	25.7	45	21.6	75	46	105	56.3	135	37.5
16	25.1	46	22.2	76	46.8	106	56.6	136	34
17	24.7	47	24.5	77	47.5	107	56.7	137	30.5
18	25.2	48	24.7	78	47.5	108	56.7	138	27
19	25.4	49	24.8	79	47.3	109	56.3	139	23.5
20	27.2	50	24.7	80	47.2	110	56	140	20
21	26.5	51	24.6	81	47.2	111	55	141	16.5
22	24	52	24.6	82	47.4	112	53.4	142	13
23	22.7	53	25.1	83	47.9	113	51.6	143	9.5
24	19.4	54	25.6	84	48.5	114	51.8	144	6
25	17.7	55	25.7	85	49.1	115	52.1	145	2.5
26	17.2	56	25.4	86	49.5	116	52.5	146	0
27	18.1	57	24.9	87	50	117	53		
28	18.6	58	25	88	50.6	118	53.5		
29	20	59	25.4	89	51	119	54		

Historical Note

Adopted effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4).

Table 5. Tolerances

	Range	State Station	Fleet Station
4 and 2 stroke vehicles: CO in MOL percent	0 to 2.0% 2 to 10.0%	±0.1% ±0.25%	±0.25% ±0.5%
4-stroke vehicles: HC as N-hexane in PPM	0 to 500 PPM 500 to 2000 PPM	±15 PPM ±50 PPM	±30 PPM ±100 PPM
2-stroke vehicles: HC as propane in PPM	0 to 25,000 PPM	±1250 PPM	±1250 PPM

Historical Note

Adopted effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

Table 6. Repealed**Historical Note**

Adopted effective November 14, 1994 (Supp. 94-4). See emergency amendment below (Supp. 94-4). Emergency amendment adopted effective December 23, 1994, pursuant to A.R.S. § 41-1026, valid for 180 days (Supp. 95-2). Emergency amendment expired, previous text placed back into effect effective June 21, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Table 6 repealed by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

ARTICLE 11. FEDERAL HAZARDOUS AIR POLLUTANTS**R18-2-1101. National Emission Standards for Hazardous Air Pollutants (NESHAPs)**

A. Except as provided in R18-2-1102, the following subparts of 40 CFR 61, National Emission Standards for Hazardous Air Pollutants (NESHAPs), and all accompanying appendices,

adopted as of June 30, 2017, and no future editions or amendments, are incorporated by reference as applicable requirements. These standards are on file with the Department and shall be applied by the Department. These standards can be obtained from the U.S. Government Printing Office, Superintendent of Documents, bookstore.gpo.gov, Mail Stop: SSOP IDCC-SSOM, Washington, D.C. 20402-9328.

1. Subpart A - General Provisions.
2. Subpart B - Radon Emissions from Underground Uranium Mines.
3. Subpart C - Beryllium.
4. Subpart D - Beryllium Rocket Motor Firing.
5. Subpart E - Mercury.
6. Subpart F - Vinyl Chloride.
7. Subpart H - Radionuclides Other Than Radon from Department of Energy Facilities.
8. Subpart I - Radionuclide Emissions from Federal Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.

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9. Subpart J - Equipment Leaks (Fugitive Emission Sources) of Benzene.
 10. Subpart K - Radionuclide Emissions From Elemental Phosphorus Plants.
 11. Subpart L - Benzene Emissions from Coke By-Product Recovery Plants.
 12. Subpart M - Asbestos.
 13. Subpart N - Inorganic Arsenic Emissions from Glass Manufacturing Plants.
 14. Subpart O - Inorganic Arsenic Emissions from Primary Copper Smelters.
 15. Subpart P - Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production.
 16. Subpart Q - Radon Emissions from Department of Energy Facilities.
 17. Subpart R - Radon Emissions from Phosphogypsum Stacks.
 18. Subpart T - Radon Emissions from the Disposal of Uranium Mill Tailings.
 19. Subpart V - Equipment Leaks (Fugitive Emission Sources).
 20. Subpart W - Radon Emissions from Operating Mill Tailings.
 21. Subpart Y - Benzene Emissions From Benzene Storage Vessels.
 22. Subpart BB - Benzene Emissions from Benzene Transfer Operations.
 23. Subpart FF - Benzene Waste Operations.
- B.** Except as provided in R18-2-1102, the following subparts of 40 CFR 63, NESHAPs for Source Categories, and all accompanying appendices, adopted as of June 30, 2017, and no future editions or amendments, are incorporated by reference as applicable requirements. These standards are on file with the Department and shall be applied by the Department. These standards can be obtained from the U.S. Government Printing Office, Superintendent of Documents, bookstore.gpo.gov, Mail Stop: SSOP IDCC-SSOM, Washington, D.C. 20402-9328.
1. Subpart A - General Provisions.
 2. Subpart F - National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.
 3. Subpart G - National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.
 4. Subpart H - National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.
 5. Subpart I - National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.
 6. Subpart J - National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production.
 7. Subpart L - National Emission Standards for Coke Oven Batteries.
 8. Subpart M - National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.
 9. Subpart N - National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.
 10. Subpart O - Ethylene Oxide Emissions Standards for Sterilization Facilities.
 11. Subpart Q - National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.
 12. Subpart R - National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).
 13. Subpart S - National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry.
 14. Subpart T - National Emission Standards for Halogenated Solvent Cleaning.
 15. Subpart U - National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.
 16. Subpart W - National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production.
 17. Subpart Y - National Emission Standards for Marine Tank Vessel Loading Operations.
 18. Subpart AA - National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants.
 19. Subpart BB - National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants.
 20. Subpart CC - National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries.
 21. Subpart DD - National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.
 22. Subpart EE - National Emission Standards for Magnetic Tape Manufacturing Operations.
 23. Subpart GG - National Emission Standards for Aerospace Manufacturing and Rework Facilities.
 24. Subpart HH - National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities.
 25. Subpart JJ - National Emission Standards for Wood Furniture Manufacturing Operations.
 26. Subpart KK - National Emission Standards for the Printing and Publishing Industry.
 27. Subpart LL - National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants.
 28. Subpart MM - National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semi-chemical Pulp Mills.
 29. Subpart OO - National Emission Standards for Tanks - Level 1.
 30. Subpart PP - National Emission Standards for Containers.
 31. Subpart QQ - National Emission Standards for Surface Impoundments.
 32. Subpart RR - National Emission Standards for Individual Drain Systems.
 33. Subpart SS - National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.
 34. Subpart TT - National Emission Standards for Equipment Leaks - Control Level 1.
 35. Subpart UU - National Emission Standards for Equipment Leaks - Control Level 2 Standards.
 36. Subpart VV - National Emission Standards for Oil-Water Separators and Organic-Water Separators.
 37. Subpart WW - National Emission Standards for Storage Vessels (Tanks) - Control Level 2.
 38. Subpart XX - National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.
 39. Subpart YY - National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards.

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40. Subpart CCC - National Emission Standards for Hazardous Air Pollutants for Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants.
41. Subpart DDD - National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production.
42. Subpart EEE - National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors.
43. Subpart GGG - National Emission Standards for Pharmaceuticals Production.
44. Subpart HHH - National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities.
45. Subpart III - National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production.
46. Subpart JJJ - National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins.
47. Subpart LLL - National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry.
48. Subpart MMM - National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.
49. Subpart NNN - National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing.
50. Subpart OOO - National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins.
51. Subpart PPP - National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production.
52. Subpart QQQ - National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting.
53. Subpart RRR - National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.
54. Subpart TTT - National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting.
55. Subpart UUU - National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.
56. Subpart VVV - National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works.
57. Subpart XXX - National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese.
58. Subpart AAAA - National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills.
59. Subpart CCCC - National Emission Standards for Hazardous Air Pollutants: Manufacture of Nutritional Yeast.
60. Subpart DDDD - National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products.
61. Subpart EEEE - National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline).
62. Subpart FFFF - National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing.
63. Subpart GGGG - National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production.
64. Subpart HHHH - National Emissions Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production.
65. Subpart IIII - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks.
66. Subpart JJJJ - National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating.
67. Subpart KKKK - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans.
68. Subpart MMMM - National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products.
69. Subpart NNNN - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances.
70. Subpart OOOO - National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles.
71. Subpart PPPP - National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products.
72. Subpart QQQQ - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products.
73. Subpart RRRR - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture.
74. Subpart SSSS - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil.
75. Subpart TTTT - National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations.
76. Subpart UUUU - National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing.
77. Subpart VVVV - National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing.
78. Subpart WWWW - National Emissions Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production.
79. Subpart XXXX - National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing.
80. Subpart YYYY - National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines.
81. Subpart ZZZZ - National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.
82. Subpart AAAAA - National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants.
83. Subpart BBBBB - National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing.
84. Subpart CCCCC - National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks.
85. Subpart DDDDD - National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters.
86. Subpart EEEEE - National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries.
87. Subpart FFFFF - National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing.
88. Subpart GGGGG - National Emission Standards for Hazardous Air Pollutants: Site Remediation.
89. Subpart HHHHH - National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing.

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90. Subpart IIIII - National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants.
91. Subpart JJJJJ - National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing.
92. Subpart KKKKK - National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing.
93. Subpart LLLLL - National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing.
94. Subpart MMMMM - National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations.
95. Subpart NNNNN - National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production.
96. Subpart PPPPP - National Emission Standards for Hazardous Air Pollutants: Engine Test Cells/Stands.
97. Subpart QQQQQ - National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities.
98. Subpart RRRRR - National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing.
99. Subpart SSSSS - National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing.
100. Subpart TTTTT - National Emissions Standards for Hazardous Air Pollutants for Primary Magnesium Refining.
101. Subpart WWWWW - National Emission Standards for Hospital Ethylene Oxide Sterilizers.
102. Subpart YYYYY - National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities.
103. Subpart ZZZZZ - National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources.
104. Subpart BBBBBB - National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities.
105. Subpart CCCCCC - National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities.
106. Subpart DDDDDD - National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources.
107. Subpart EEEEE - National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources.
108. Subpart FFFFFF - National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources.
109. Subpart GGGGGG - National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources-Zinc, Cadmium, and Beryllium.
110. Subpart HHHHHH - National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources.
111. Subpart JJJJJJ - National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers Area Sources.
112. Subpart LLLLLL - National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources.
113. Subpart MMMMMM - National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources.
114. Subpart NNNNNN - National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds.
115. Subpart OOOOOO - National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources.
116. Subpart PPPPPP - National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources.
117. Subpart QQQQQQ - National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources.
118. Subpart RRRRRR - National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources.
119. Subpart SSSSSS - National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources.
120. Subpart TTTTTT - National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources.
121. Subpart VVVVVV - National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources.
122. Subpart WWWWWW - National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations.
123. Subpart XXXXXX - National Emission Standards for Hazardous Air Pollutants Area Source Standards for Nine Metal Fabrication and Finishing Source Categories.
124. Subpart YYYYYY - National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities.
125. Subpart ZZZZZZ - National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and other Nonferrous Foundries.
126. Subpart AAAAAA - National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing.
127. Subpart BBBBBBBB - National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry.
128. Subpart CCCCCCCC - National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing.
129. Subpart DDDDDDDD - National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing.
130. Subpart EEEEEEEE - National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category.
131. Subpart HHHHHHHH - National Emission Standards for Hazardous Air Pollutant Emissions for Polyvinyl Chloride and Copolymers Production.

Historical Note

Former Section R18-2-1101 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-1101 renumbered from R18-2-901 and amended effective November 15, 1993 (Supp. 93-4). Amended effective June 10, 1994 (Supp. 94-2). Amended effective February 17, 1995 (Supp. 95-1). Amended effective December 7, 1995 (Supp. 95-4). Amended effective May 9, 1996 (Supp. 96-2). Amended effective April 4, 1997; filed with the Office

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of the Secretary of State March 14, 1997 (Supp. 97-1).

Amended effective December 4, 1997 (Supp. 97-4).

Amended by final rulemaking at 5 A.A.R. 3221, effective

August 12, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 4170, effective October 11, 2000 (Supp. 00-4). Amended by final rulemaking at 8 A.A.R.

2543, effective May 24, 2002 (Supp. 02-2). Amended by final rulemaking at 10 A.A.R. 3281, effective September 27, 2004 (Supp. 04-3). Amended by final rulemaking at 11 A.A.R. 5504, effective February 4, 2006 (Supp. 05-4).

Amended by final rulemaking at 13 A.A.R. 4199, effective January 5, 2008 (Supp. 07-4). Amended by final expedited rulemaking at 21 A.A.R. 2747, effective

December 13, 2015 (Supp. 15-4). Amended by final expedited rulemaking at 23 A.A.R. 1564, effective May 2, 2018 (Supp. 18-2).

R18-2-1102. General Provisions

- A. When used in 40 CFR 61 or 63, "Administrator" means the Director of the Arizona Department of Environmental Quality except that the Director shall not be authorized to approve alternate or equivalent test methods or alternate standards or work practices, except as specifically provided in Part 63, Subpart B.
- B. From the general standards identified in R18-2-1101(A), delete 40 CFR 61.04. All requests, reports, applications, submittals, and other communications to the Director pursuant to this Article shall be submitted to the Arizona Department of Environmental Quality, Air Quality Division, 1110 West Washington Street, Phoenix, Arizona 85007.
- C. The Director shall not be delegated authority to deal with equivalency determinations that are nontransferable through Section 112(h)(3) of the Act.

Historical Note

Former Section R18-2-1102 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-1102 renumbered from R18-2-902 and amended effective November 15, 1993 (Supp. 93-4). Amended effective June 10, 1994 (Supp. 94-2). Amended effective February 17, 1995 (Supp. 95-1). Amended by final rulemaking at 13 A.A.R. 4199, effective January 5, 2008 (Supp. 07-4).

ARTICLE 12. VOLUNTARY EMISSIONS BANK**R18-2-1201. Definitions**

In addition to the definitions contained in Article 1 of this Chapter, and A.R.S. § 49-401.01, the following definitions apply to this Article:

"Account holder" means any person or entity who has opened an account in the emissions bank under R18-2-1206.

"Certification authority" means the Department or the county or multi-county district to which the Department has delegated authority to certify emission reduction credits under A.R.S. § 49-410(C).

"Certified credit" means an emission reduction credit that has been issued under R18-2-1203(C)(2), R18-2-1204(B), or R18-2-1205(E)(3).

"Conditional credit" means an emission reduction credit for a reduction in emissions by a plan generator that the certification authority has issued under R18-2-1205(D)(2) but the Administrator has not yet approved under R18-2-1205(E)(3).

"Emissions bank" means the system created by the Department to record and make publicly available information on the issuance, certification, transfer, retirement, and use of emission reduction credits.

"Emission reduction credit" or "credit" means a reduction in qualifying emissions expressed in tons per year for which the generator has submitted an application under R18-2-1203, R18-2-1204, or R18-2-1205 and which has not been withdrawn from the emissions bank under R18-2-1208(B)(5) or (C).

"Emission reduction plan" means a plan submitted under R18-2-1205 for assuring that reductions in qualifying emissions by a plan generator are permanent, quantifiable, surplus, enforceable, and real.

"Enforceable" means that specific measures for assessing compliance with an emissions limitation, control, or other requirement are established in a permit, offset-creation rule, or emission reduction plan in a manner that allows compliance to be readily determined by an inspection of records and reports.

"Form" means a paper document or online form provided through a web portal.

"Generator" means any permitted source or other activity that has made or proposes to make reductions in qualifying emissions.

"Issue," with respect to emission reduction credits, means to create and provide evidence of the creation of conditional credits or certified credits in the form or manner prescribed by the Department.

"Offset-creation rule" means a state, county, or multi-county district rule that has been approved into the state implementation plan and provides a method for allowing emission reductions from specific activities to qualify as offsets. Rule 242 of the Maricopa County Air Pollution Control Regulations is an example of an offset-creation rule.

"Offsets" means reductions in emissions required under R18-2-404 or the equivalent rule of a county or multi-county district.

"Pending credits" means emission reduction credits for which an application has been submitted under R18-2-1203, R18-2-1204, or R18-2-1205 but that have not yet been issued as conditional or certified credits.

"Permanent" means that the reduction in qualifying emissions are long-lasting and unchanging for the remaining life of the relevant activity.

"Permitted generator" means a generator that is a stationary source subject to a permit, other than a general permit, issued under A.R.S. § 49-426 or 49-480 and that seeks credits for reductions that are or will be made enforceable through permit condition.

"Plan generator" means a generator that intends to achieve or has achieved reductions in qualifying emissions in compliance with an emission reduction plan under R18-2-1205.

"Planning authority" means the organization responsible for preparing the state implementation plan for an area under A.R.S. § 49-404 or 49-406.

"Qualifying emissions" means emissions of any conventional air pollutant, other than elemental lead, or any precursor of a conventional air pollutant from any activity. Qualifying emissions does not include emissions from a fleet of motor vehicles if the fleet operates outside of a nonattainment area. A.R.S. § 49-410(H)(2).

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“Quantifiable” means that the amount, rate, and characteristics of a reduction in qualifying emissions can be measured through reliable, replicable methods.

“Real” means that a reduction in qualifying emissions is a reduction in actual emissions released to the air resulting from a physical change or change in the method of operations of a generator.

“Regulatory generator” means a generator that has achieved reductions in qualifying emissions in compliance with an offset-creation rule.

“Surplus” means that a reduction in qualifying emissions is not otherwise required by an applicable requirement and not relied upon in the state implementation plan.

“Ton” includes fraction of a ton as necessary to reflect the total amount of emissions reductions achieved or to be achieved by a generator.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1). Amended by final rulemaking at 25 A.A.R. 1433, effective July 28, 2019 (Supp. 19-2).

R18-2-1202. Applicability

- A.** Applicability. This Article applies to the following persons and entities:
1. The owners or operators of generators.
 2. The owners or operators of stationary sources that intend to use credits as offsets.
 3. Other account holders.
 4. Planning authorities.
- B.** Voluntary Participation. The certification of credits and registration of credits in the emissions bank under this article is voluntary and is not a condition to the creation or use of emission reductions as offsets.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1). Amended by final rulemaking at 25 A.A.R. 1433, effective July 28, 2019 (Supp. 19-2).

R18-2-1203. Certification of Credits for Emission Reductions by Permitted Generators

- A.** Application.
1. The owner or operator of a permitted generator may apply for credits for reductions in qualifying emissions at any time after filing either:
 - a. An application for a permit revision seeking the imposition of conditions to make the reductions in qualifying emissions enforceable; or
 - b. A notice of permit termination seeking to make the shutdown of a stationary source, and the resulting reductions in qualifying emissions, enforceable.
 2. An application for credits shall be filed with the certification authority on the form prescribed by the Department and shall include:
 - a. The emissions bank account number obtained under R18-2-1206 for the owner or operator;
 - b. Information on the identity, type, ownership, and location of the permitted generator;
 - c. A description of the actions that have resulted or will result in the reductions in qualifying emissions;
 - d. Information on the amount of and methodology for calculating the reductions in qualifying emissions for each pollutant subject to the application;

- e. Other information necessary to verify that the reductions in qualifying emissions qualify as permanent, quantifiable, surplus, enforceable, and real;
- f. The actual dates or anticipated dates of the reductions in qualifying emissions, as applicable; and
- g. A signed statement by a responsible official, as defined in R18-2-301, verifying the truthfulness and accuracy of all information provided in the application.

B. Notification and Consultation.

1. If the certification authority is not the permitting authority for the generator, the certification authority shall:
 - a. Provide a copy of the application for credits to the permitting authority; and
 - b. Consult with permitting authority on whether the reductions in qualifying emissions qualify as permanent, quantifiable, enforceable, surplus, and real.
2. If the owner or operator files the application for credits before final action on the permit revision or termination of the permit and the permitting authority for the generator is not the certification authority, the permitting authority shall provide notice of final action on the permit revision or termination of the permit to the certification authority.

C. Action on Application.

1. The certification authority shall deny the application for credits if:
 - a. The permitting authority denies the permit revision or termination on which enforceability of the reductions in qualifying emissions is based; or
 - b. None of the reductions in emissions qualify as permanent, quantifiable, surplus, enforceable, and real.
2. The certification authority shall grant the application and issue one certified credit for each ton per year of reduction that qualifies as permanent, quantifiable, surplus, enforceable, and real.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1). Amended by final rulemaking at 25 A.A.R. 1433, effective July 28, 2019 (Supp. 19-2).

R18-2-1204. Certification of Credits for Emission Reductions by Regulatory Generators

- A.** Application.
1. The owner or operator of a regulatory generator may apply for credits for reductions in qualifying emissions at any time after complying with the applicable offset-creation rule.
 2. An application for credits shall be filed with the certification authority on the form prescribed by the Department and shall include:
 - a. The emissions bank account number obtained under R18-2-1206 for the owner or operator;
 - b. A copy of a determination of compliance with the offset-creation rule by the agency administering the rule; and
 - c. A signed statement by a responsible official, as defined in R18-2-301, verifying the truthfulness and accuracy of all information provided in the application.
- B.** Action on Application. The certification authority shall grant the application and issue one certified credit for each ton per year of reduction that the agency administering the offset-creation rule has determined to be in compliance with the rule.

Historical Note

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New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1). Amended by final rulemaking at 25 A.A.R. 1433, effective July 28, 2019 (Supp. 19-2).

R18-2-1205. Certification of Credits for Emission Reductions by Plan Generators; Enforcement

- A.** Application. The owner or operator of a plan generator may apply for credits for reductions in qualifying emissions by filing an application with the certification authority. The application shall be filed on the form prescribed by the Department and shall include:
1. The emissions bank account number obtained under R18-2-1206 for the owner or operator;
 2. Information on the identity, type, ownership, and location of the plan generator;
 3. An emission reduction plan satisfying subsection (B); and
 4. A signed statement by a responsible official, as defined in R18-2-301, verifying the truthfulness and accuracy of all information provided in the application.
- B.** Emission Reduction Plan Contents. An emission reduction plan for a program to reduce qualifying emissions at a plan generator shall include the following elements:
1. A clearly defined purpose and goal;
 2. A clearly defined scope that identifies affected activities and assures that the program will not interfere with any other applicable requirements;
 3. The composition of any fleet of mobile sources that will participate in the program;
 4. A calculation of baseline emissions;
 5. A calculation of projected emissions after implementation of the program;
 6. Methods for accounting for uncertainty in the projection of program results;
 7. Reliable, replicable procedures for quantifying emissions or emission-related parameters, as appropriate;
 8. Monitoring, recordkeeping, and reporting requirements that are consistent with the specified quantification procedures and allow for compliance certification and enforcement;
 9. An implementation schedule, administrative system, and enforcement provisions adequate for ensuring enforceability of the program; and
 10. Such other elements as the Department may reasonably require in order to assure that reductions in qualifying emissions are permanent, quantifiable, surplus, enforceable, and real.
- C.** Proposed Action and Public Process.
1. The certification authority shall publish notice of the proposed action on an application submitted under this Section in the manner prescribed by A.R.S. § 49-444 and as follows:
 - a. On the website for the certification authority; and
 - b. By mail or email to persons on a mailing list who have requested notice of applications under this Section.
 2. By no later than the date public notice is published under subsection (C)(1), the certification authority shall make a copy of the following materials available at a public location in the same county as the proposed program to reduce qualifying emissions, at the closest office of the certification authority, and on the certification authority's website:
 - a. The application, including the emission reduction plan;
 - b. The proposed action;

- c. The certification authority's analysis in support of the proposed action; and
 - d. All other materials in the certification authority's possession that are relevant to the proposed action.
3. The certification authority shall accept public comment on the proposed action for at least 30 days after the first publication of the notice under subsection (C)(1).
 4. The certification authority shall hold a public hearing no sooner than 30 days after the first publication of the notice under subsection (C)(1).
 5. The notice shall include the following:
 - a. The identity and location of the applicant;
 - b. A concise description of the program for reducing qualifying emissions;
 - c. The locations at which materials relating to the proposed action are available under subsection (C)(2);
 - d. The date by and manner in which written comments on the proposed action may be submitted; and
 - e. The location, date, and time for the hearing under subsection (C)(4).
- D.** Action on Application.
1. The certification authority shall deny the application for certification if none of the reductions in emissions qualifies as permanent, quantifiable, surplus, enforceable, and real.
 2. The certification authority shall grant the application and issue one conditional credit for each ton per year of reductions that qualifies as permanent, quantifiable, surplus, enforceable, and real.
- E.** Approval by Administrator.
1. On grant of an application under subsection (D)(2) by a certification authority other than the Department, the certification authority shall transmit the conditional credits and the associated emission reduction plan to the Department for submission to the Administrator under subsection (E)(2). In addition to the credits and plan, the submission shall include all of the elements required for a revision to the state implementation plan under 40 CFR 51.
 2. On issuance of conditional credits by the Department under subsection (D)(2) or receipt of conditional credits under subsection (E)(1), the Department shall submit the conditional credits and the associated emission reduction plan to the Administrator for approval as a revision to the state implementation plan.
 3. On final action by the Administrator on the state implementation plan revision submitted under subsection (E)(2), the certification authority shall issue certified credits and revoke conditional credits as necessary to be consistent with the Administrator's action.
- F.** Enforcement. A violation of any provision of an emission reduction plan approved by the Administrator under subsection (E) is a violation of this rule by the owner or operator of the plan generator.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1). Amended by final rulemaking at 25 A.A.R. 1433, effective July 28, 2019 (Supp. 19-2).

R18-2-1206. Opening Emissions Bank Accounts

- A.** Any person or entity may open an account in the emissions bank by submitting the form prescribed by the Department.

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- B. The owner or operator of a generator must open an account in the emissions bank before submitting an application under R18-2-1203(A), R18-2-1204(A), or R18-2-1205(A).

Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1). Amended by final rulemaking at 25 A.A.R. 1433, effective July 28, 2019 (Supp. 19-2).

R18-2-1207. Registration of Emission Reduction Credits in Emissions Bank

- A. Notice to Department. A certification authority other than the Department shall provide notice on the form prescribed by the Department of the following events related to emissions reduction credits:
1. Receipt of an application under R18-2-1203(A), R18-2-1204(A), or R18-2-1205(A);
 2. Proposal to issue conditional credits;
 3. Issuance of conditional credits;
 4. Denial of an application for credits;
 5. Issuance of certified credits; and
 6. Revocation or reduction of credits.
- B. Registration by Department.
1. The Department shall register pending credits in the emissions bank account for the owner or operator of the generator on:
 - a. Receipt of an application under R18-2-1203(A), R18-2-1204(A), or R18-2-1205(A); or
 - b. Receipt of notice under subsection (A)(1).
 2. The Department shall register conditional credits in the emissions bank account for the owner or operator of the generator on:
 - a. Approval of the application under R18-2-1205(D); or
 - b. Receipt of notice under subsection (A)(3).
 3. The Department shall register certified credits in the emissions bank account for the owner or operator of the generator on:
 - a. Issuance of certified credits under R18-2-1203(C)(2), R18-2-1204(B), or R18-2-1205(E)(3).
 - b. Receipt of notice under subsection (A)(5).
 4. The Department shall adjust each account in which credits are deposited as necessary to reflect:
 - a. The denial of an application for credits under R18-2-1203(C)(1) or R18-2-1205(D)(1);
 - b. The Administrator's final action on a state implementation plan under R18-2-1205(E);
 - c. The revocation or reduction of credits by a permitting authority or an agency responsible for administering an offset-creation rule.
- C. Notice of Reductions. If reductions in qualifying emissions represented by credits have not occurred by the time pending credits are registered, the generator shall provide notice to the Department and the certifying authority on the form prescribed by the Department within five days after the reductions are achieved.
- D. Registration Information. For credits registered in the emissions bank, the Department shall include the following information:
1. The name and contact information of the account holder;
 2. The name, location, and description of the generator;
 3. The name, contact information, and location of the owner or operator of the generator;
 4. For each pollutant covered by the credits, the amount and date or expected date of the reductions;

5. The status of the credits, including whether the reductions in qualifying emissions represented by the credits have occurred and whether their use has been approved under R18-2-1208(B)(2).

Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1). Amended by final rulemaking at 25 A.A.R. 1433, effective July 28, 2019 (Supp. 19-2).

R18-2-1208. Transfer, Use, and Retirement of Emission Reduction Credits

- A. Transfer Procedures.
1. An account holder may transfer certified credits held in its account to any other account holder by filing the form prescribed by the Department.
 2. On verification of the information in the transfer form, the Department shall adjust the emissions bank accounts of the transferor and transferee to reflect the transfer.
- B. Use Procedures.
1. An account holder who intends to use credits held in its account as offsets shall file an application to use the credits on the form prescribed by the Department. The notice shall include:
 - a. Information on the identity, location, ownership, and emissions of the stationary source;
 - b. Specification of the amount of credits to be used;
 - c. Identification of the permitting authority with jurisdiction over the stationary source;
 - d. If the stationary source is seeking a permit revision, the identification number for the permit being revised.
 2. On approval of the application, the Department shall:
 - a. Issue a certificate representing the credits that may be included in the permit or permit revision application of the stationary source;
 - b. Notify the permitting authority of the issuance of the certificate; and
 - c. Change the status of the credits to use approved.
 3. The permitting authority shall provide notice to the Department of final action on the stationary source's application for a permit or permit revision.
 4. Reductions in qualifying emissions reflected in the credits must be implemented before actual construction of the new stationary source or modification begins.
 5. The Department shall register a withdrawal and use of credits used under subsection (B) on the later of:
 - a. Receipt of notice of approval of the application for a permit or permit revision for the stationary source; or
 - b. Implementation of the reductions reflected in the credits.
- C. Retirement.
1. An account holder may retire credits in its account without using them as offsets by submitting the form prescribed by the Department.
 2. On verification of the information contained in the form, the Department shall register a withdrawal and retirement of the credits from the account.
- D. Continuation of Credits. Except to the extent otherwise required by the act, certified credits do not expire and continue in effect until withdrawn under subsection (B) or (C).

Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1). Section R18-2-1208 renumbered to R18-2-1210; new Section R18-2-

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1208 made by final rulemaking at 25 A.A.R. 1433, effective July 28, 2019 (Supp. 19-2).

R18-2-1209. Exclusion of Emission Reduction Credits from Planning

Except to the extent otherwise required by the act, with regard to credits for emission reductions in an area for which a planning authority has responsibility, the planning authority shall:

1. Include the emissions for which the credits have been issued in the emissions inventory for the area as if reductions in those emissions had not yet occurred;
2. Account for the emissions for which the credits have been issued in any reasonable further progress or attainment demonstration for the area as if the reductions had not yet occurred; and
3. Refrain from relying on the reductions in any revision to the state implementation plan for the area.

Historical Note

New Section R18-2-1209 made by final rulemaking at 25 A.A.R. 1433, effective July 28, 2019 (Supp. 19-2).

R18-2-1210. Fees

- A. The owner or operator of a generator shall pay a non-refundable administrative fee of \$200.00 to the Department when submitting an application for certification. This fee is in addition to the fees specified in R18-2-326.
- B. An account holder using a credit under R18-2-1207(B) shall pay a non-refundable administrative fee of \$200.00 to the Department when submitting the application for use. This fee is in addition to the fees specified in R18-2-326.

Historical Note

New Section R18-2-1210 renumbered from R18-2-1208 and amended by final rulemaking at 25 A.A.R. 1433, effective July 28, 2019 (Supp. 19-2).

ARTICLE 13. STATE IMPLEMENTATION PLAN RULES FOR SPECIFIC LOCATIONS**R18-2-1301. Expired****Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

R18-2-1302. Expired**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

R18-2-1303. Expired**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

R18-2-1304. Expired**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

R18-2-1305. Expired**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

R18-2-1306. Expired**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

R18-2-1307. Expired**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

PART A. RESERVED**PART B. HAYDEN, ARIZONA, PLANNING AREA****R18-2-B1301. Limits on Lead Emissions from the Hayden Smelter****A. Applicability.**

1. This Section applies to the owner or operator of the Hayden Smelter.
2. Effective date. Except as otherwise provided, the requirements of this Section shall become applicable on the earlier of July 1, 2018 or 180 days after completion of all project improvements authorized by Significant Permit Revision No. 60647.

B. Definitions. In addition to general definitions contained in R18-2-101, the following definitions apply to this Section:

1. "ACFM" means actual cubic feet per minute.
2. "Anode furnace baghouse stack" means the dedicated stack that vents controlled off-gases from the anode furnaces to the Main Stack.
3. "Blowing" shall mean the introduction of air or oxygen-enriched air into the converter furnace molten bath through tuyeres that are submerged below the level of the molten bath. The flow of air through the tuyeres above the level of the molten bath or into an empty converter shall not constitute blowing.
4. "Capture system" means the collection of components used to capture gases and fumes released from one or more emission units, and to convey the captured gases and fumes to one or more control devices or a stack. A capture system may include, but is not limited to, the following components as applicable to a given capture system design: duct intake devices, hoods, enclosures, ductwork, dampers, manifolds, plenums, and fans.
5. "Control device" means a piece of equipment used to clean and remove pollutants from gases and fumes released from one or more emission units that would otherwise be released to the atmosphere. Control devices may include, but are not limited to, baghouses, Electrostatic Precipitators (ESPs), and sulfuric acid plants.
6. "Hayden Smelter" means the primary copper smelter located in Hayden, Gila County, Arizona at latitude 33°0'15"N and longitude 110°46'31"W.
7. "Main Stack" means the center and annular portions of the 1,000-foot stack, which vents controlled off-gases from the INCO flash furnace, the converters, and anode furnaces and also vents exhaust from the tertiary hoods.
8. "SCFM" means standard cubic feet per minute.

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9. "SLAMS monitor" means an ambient air monitor part of the State and Local Air Monitoring Stations network operated by State or local agencies for the purpose of demonstrating compliance with the National Ambient Air Quality Standards.
 10. "Smelting process-related fugitive lead emissions" means uncaptured and/or uncontrolled lead emissions that are released into the atmosphere from smelting copper in the INCO flash furnace, converters, and anode furnaces.
- C. Emission limit. Main Stack lead emissions shall not exceed 0.683 pound of lead per hour.
- D. Operational Standards.
1. Process equipment and control device operations. At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate smelter processes and associated emission capture and/or control equipment in a manner consistent with good air pollution control practices for minimizing lead emissions to the level required by subsection (C). Determination of whether acceptable operating and maintenance procedures are being used shall be based on all information available to the Department and EPA Region IX, which may include, but is not limited to, monitoring results, review of operating and maintenance procedures and records, and inspection of the relevant equipment.
 2. Capture system and control device operations and maintenance plan. The owner or operator shall develop and implement an operations and maintenance plan for each capture system and/or control device used to ventilate or control process gas or emissions from the flash furnace, including matte tapping, slag skimming and slag return operations; converter primary hoods, converter secondary hoods, tertiary ventilation system; and anode refining operations. The operations and maintenance plan must address the following requirements as applicable to each capture system and/or control device.
 - a. Monitoring devices. The plan shall provide for installation, operation, calibration, and maintenance of appropriate monitoring devices to measure and record operating limit values or settings at all times the required capture and control system is operating, except during periods of monitor calibration, repair, and malfunction. The initial plan shall provide for volumetric flow monitoring on the vent gas baghouse (inlet or outlet), each converter primary hood, each converter secondary hood, the tertiary ventilation system, and the anode furnace baghouse (inlet or outlet). All monitoring devices shall be accurate within +/- 10% and calibrated according to manufacturer's instructions. If direct measurement of the exhaust flow is infeasible due to physical limitations or exhaust characteristics, the owner or operator may propose a reliable equivalent method for approval. Initial monitoring may be adjusted as provided in subsection (D)(2)(e). Dampers that are manually set and remain in the same position while the capture system is operating are exempt from these monitoring requirements. Capture system damper position setting(s) shall be specified in the plan.
 - b. Operational limits. The owner or operator shall establish operating limits in the operations and maintenance plan for the capture systems and/or control devices that are representative and reliable indicators of the performance of the capture system and control device operations. Initial operating limits may be adjusted as provided in subsection (D)(2)(e). Initial operating limits shall include the following:
 - i. A minimum air flow for the furnace ventilation system and associated damper positions for each matte tapping hood or slag skimming hood when operating to ensure that the operation(s) are within the confines or influence of the capture system.
 - ii. A minimum air flow for the secondary hood baghouse and associated damper positions for each slag return hood to ensure that the operation is within the confines or influence of the capture system's ventilation draft during times when the associated process is operating.
 - iii. A minimum air infiltration ratio for the converter primary hoods of 1:1 averaged over 24 converter Blowing hours, rolled hourly measured as volumetric flow in primary hood less the volumetric flow of tuyere Blowing compared to the volumetric flow of tuyere Blowing.
 - iv. A minimum secondary hood exhaust rate of 35,000 SCFM during converter Blowing, averaged over 24 converter Blowing hours, rolled hourly.
 - v. A minimum secondary hood exhaust rate of 133,000 SCFM during all non-Blowing operating hours, averaged over 24 non-Blowing hours, rolled hourly.
 - vi. A minimum negative pressure drop across the secondary hood when the doors are closed equivalent to 0.007 inches of water.
 - vii. A minimum exhaust rate on the tertiary hooding of 400,000 ACFM during all times material is processed in the converter aisle, averaged over 24 hours and rolled hourly.
 - viii. Fan amperes or minimum air flow for the anode furnace baghouse and associated damper positions for each anode furnace hood to ensure that the anode furnace off-gas port is within the confines or influence of the capture system's ventilation draft during times when the associated furnace is operating.
 - ix. The anode furnace charge mouth shall be kept covered when the tuyeres are submerged in the metal bath except when copper is being charged to or transferred from the furnace.
 - c. Preventative maintenance. The owner or operator shall perform preventative maintenance on each capture system and control device according to written procedures specified in the operations and maintenance plan. The procedures must include a preventative maintenance schedule that is consistent with the manufacturer's or engineer's instructions, or operator's experience working with the equipment, and frequency for routine and long-term maintenance. This provision does not prohibit additional maintenance beyond that required by the plan.
 - d. Inspections. The owner or operator shall perform inspections in accordance with written procedures in the operations and maintenance plan for each capture system and control device that are consistent with the manufacturer's, engineer's, or operator's instructions for each system and device.
 - e. Plan development and revisions.

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- i. The owner or operator shall develop and keep current the plan required by this Section. Any plan or plan revision shall be consistent with this Section, shall be designed to ensure that the capture and control system performance conforms to the attainment demonstration in the Hayden 2008 Lead National Ambient Air Quality Standards Nonattainment Area State Implementation Plan (SIP), and shall be submitted to the Department for review. Any plan or plan revision submitted shall include the associated manufacturer's, engineer's or operator's recommendations and/or instructions used for capture system and control device operations and maintenance.
 - ii. The owner or operator shall submit the initial plan to the Department no later than May 1, 2018 and shall include the initial volumetric flow monitoring provisions in subsection (D)(2)(a), the initial operational limits in subsection (D)(2)(b), the preventative maintenance procedures in subsection (D)(2)(c), and the inspection procedures in subsection (D)(2)(d).
 - iii. The owner or operator shall submit to the Department for approval a plan revision with changes, if any, to the initial volumetric flow monitoring provisions in subsection (D)(2)(a) and initial operational limits in subsection (D)(2)(b) not later than six months after completing a fugitive emissions study conducted in accordance with Appendix 14. The Department shall submit the approved changes to the volumetric flow monitoring provisions and operational limits pursuant to this subsection to EPA Region IX as a SIP revision not later than 12 months after completion of a fugitive emissions study.
 - iv. Other plan revisions may be submitted at any time when necessary. All plans and plan revisions shall be designed to achieve operation of the capture system and/or control device consistent with the attainment demonstration in the Hayden 2008 Lead National Ambient Air Quality Standards Nonattainment Area SIP. Except for changes to the volumetric flow monitoring provisions in subsection (D)(2)(a) and operational limits in subsection (D)(2)(b), which shall require prior approval, plans and plan revisions may be implemented upon submittal and shall remain in effect until superseded or until disapproved by the Department. Disapprovals are appealable Department actions.
3. Emissions from the anode furnace baghouse stack shall be routed to the Main Stack.
- E. Performance Test Requirements.**
1. Main stack performance tests. No later than 180 calendar days after completion of all Converter Retrofit Project improvements authorized by Significant Permit Revision No. 60647, the owner or operator shall conduct initial performance tests on the following:
 - a. The gas stream exiting the anode furnaces baghouse prior to mixing with other gas streams routed to the Main Stack.
 - b. The gas stream exiting the acid plant at a location prior to mixing with other gas streams routed to the Main Stack.
 - c. The gas stream exiting the secondary baghouse at a location prior to mixing with other gas streams routed to the Main Stack.
 - d. The gas stream collected by the tertiary hooding at a location prior to mixing with other gas streams routed to the Main Stack.
 - e. The gas stream exiting the vent gas baghouse at a location prior to mixing with other gas streams routed to the Main Stack.
 2. Subsequent performance tests on the gas streams specified in subsection (E)(1) shall be conducted at least annually.
 3. Performance tests shall be conducted under such conditions as the Department specifies to the owner or operator based on representative performance of the affected sources and in accordance with 40 CFR 60, Appendix A, Reference Method 29.
 4. At least 30 calendar days prior to conducting a performance test pursuant to subsection (E)(1), the owner or operator shall submit a test plan, in accordance with R18-2-312(B) and the Arizona Testing Manual, to the Department for approval. The test plan must include the following:
 - a. Test duration;
 - b. Test location(s);
 - c. Test method(s), including those for test method performance audits conducted in accordance with subsection (E)(6); and
 - d. Source operation and other parameters that may affect the test result.
 5. The owner or operator may use alternative or equivalent performance test methods as defined in 40 CFR § 60.2 when approved by the Department and EPA Region IX, as applicable, prior to the test.
 6. The owner or operator shall include a test method performance audit during every performance test in accordance with 40 CFR § 60.8(g).
- F. Compliance Demonstration Requirements.**
1. For purposes of determining compliance with the Main Stack emission limit in subsection (C), the owner or operator shall calculate the combined lead emissions in pounds per hour from the gas streams identified in subsection (E)(1) based on the most recent performance tests conducted in accordance with subsection (E).
 2. The owner or operator shall determine compliance with the requirements in subsection (D)(2) as follows:
 - a. Maintaining and operating the emissions capture and control equipment in accordance with the capture system and control device operations and maintenance plan required in subsection (D)(2) and recording operating parameters for capture and control equipment as required in subsection (D)(2)(b); and
 - b. Conducting a fugitive emissions study in accordance with Appendix 14 starting not later than six months after completion of the Converter Retrofit Project authorized by Significant Permit Revision No. 60647. The fugitive emissions study shall demonstrate, as set forth in Appendix 14, that fugitive emissions from the smelter are consistent with estimates used in the attainment demonstration in the Hayden 2008 Lead National Ambient Air Quality Standards Nonattainment Area SIP.
 3. The owner or operator shall include periods of startup, shutdown, malfunction, or other upset conditions when determining compliance with the emission limit in subsection (C).

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- G.** Recordkeeping. The owner or operator shall maintain the following records for at least five years and keep on-site for at least two years:
1. All records as specified in the operations and maintenance plan required under subsection (D)(2).
 2. All records of major maintenance activities and inspections conducted on emission units, capture systems, monitoring devices, and air pollution control equipment, including those set forth in the operations and maintenance plan required by subsection (D)(2).
 3. All records of performance tests, test plans, and audits required by subsection (E).
 4. All records of compliance calculations required by subsection (F).
 5. All records of fugitive emission studies and study protocols conducted in accordance with Appendix 14.
 6. All records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of concentrate drying, smelting, converting, anode refining, and casting emission units; and any malfunction of the associated air pollution control equipment that is inoperative or not operating correctly.
 7. All records of reports and notifications required by subsection (H).
- H.** Reporting. The owner or operator shall provide the following to the Department:
1. Notification of commencement of construction of any equipment necessary to comply with the operational or emission limits.
 2. Semiannual progress reports on construction of any such equipment postmarked by July 30 for the preceding January-June period and January 30 for the preceding July-December period.
 3. Notification of initial startup of any such equipment within 15 business days of such startup.
 4. Whenever the owner or operator becomes aware of any exceedance of the emission limit set forth in subsection (C), the owner or operator shall notify the Department orally or by electronic or facsimile transmission as soon as practicable, but no later than two business days after the owner or operator first knew of the exceedance.
 5. Within 30 days after the end of each calendar-year quarter, the owner or operator shall submit a quarterly report to the Department for the preceding quarter that shall include dates, times, and descriptions of deviations when the owner or operator operated smelting processes and related control equipment in a manner inconsistent with the operations and maintenance plan required by subsection (D)(2).
 6. Reports from performance testing conducted pursuant to subsection (E) shall be submitted to the Department within 60 calendar days of completion of the performance test. The reports shall be submitted in accordance with the Arizona Testing Manual and A.A.C. R18-2-312(A).
- Historical Note**
- New Section R18-2-B1301 made by final rulemaking at 23 A.A.R. 767, effective on the earlier of July 1, 2018, or 180 calendar days after completion of all Converter Retrofit Project improvements authorized by Significant Permit Revision No. 60647 (Supp. 17-1).
- R18-2-B1301.01.Limits on Lead-Bearing Fugitive Dust from the Hayden Smelter**
- A.** Applicability.
1. This Section applies to the owner or operator of the Hayden Smelter.
 2. Effective Date. Except as otherwise provided, the requirements of this Section shall become applicable on December 1, 2018.
- B.** Definitions. In addition to definitions contained in R18-2-101 and R18-2-B1301, the following definitions apply to this Section:
1. "Acid plant scrubber blowdown drying system" means the process in which Venturi scrubber blowdown solids are dried and packaged via a thickener, filter press, electric dryer, and supersack filling stations.
 2. "Control measure" means a piece of equipment used, or actions taken, to minimize lead-bearing fugitive dust emissions that would otherwise be released to the atmosphere. Control equipment may include, but are not limited to, wind fences, chemical dust suppressants, and water sprayers. Actions may include, but are not limited to, relocating sources, curtailing operations, or ceasing operations.
 3. "Hayden Lead Nonattainment Area" means the townships in Gila and Pinal Counties, as identified and codified in 40 CFR § 81.303, that are designated nonattainment for the 2008 Lead National Ambient Air Quality Standards.
 4. "High wind event" means any period of time beginning when the average wind speed, as measured at a meteorological station maintained by the owner or operator that is approved by the Department, is greater than or equal to 15 mph over a 15 minute period, and ending when the average wind speed, as measured at the approved meteorological station maintained by the owner or operator, falls below 15 mph over a 15 minute period.
 5. "Lead-bearing fugitive dust" means uncaptured and/or uncontrolled particulate matter containing lead that is entrained in the ambient air and is caused by activities, including, but not limited to, the movement of soil, vehicles, equipment, and wind.
 6. "Material pile" means material, including concentrate, uncrushed reverts, crushed reverts, and bedding material, that is stored in a pile outside a building or warehouse and is capable of producing lead-bearing fugitive dust.
 7. "Non-smelting process sources" means sources of lead-bearing fugitive dust that are not part of the hot metal process, which includes smelting in the INCO flash furnace, converting, and anode refining and casting. Non-smelting process sources include storage, handling, and unloading of concentrate, uncrushed reverts, crushed reverts, and bedding material; acid plant scrubber blowdown solids; and paved and unpaved roads.
 8. "Ongoing visible emissions" means observed emissions to the outside air that are not brief in duration.
 9. "Road" means any surface on which vehicles pass for the purpose of carrying people or materials from one place to another in the normal course of business at the Hayden Smelter.
 10. "Slag" means the inorganic molten material that is formed during the smelting process and has a lower specific gravity than copper-bearing matte.
 11. "Slag hauler" means any vehicle used to transport molten slag.
 12. "Storage and handling" means all activities associated with the handling and storage of materials that take place at the Hayden Smelter, including, but not limited to, stockpiling, transport on conveyor belts, transport or storage in rail cars, crushing and milling, arrival and handling of offsite concentrate, bedding, and handling of reverts.

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13. "Trackout/carry-out" means any materials that adhere to and agglomerate on the surfaces of motor vehicles, haul trucks, and/or equipment (including tires) and that may then fall onto the road.

C. Operational Standards.

1. Equipment operations. At all times, the owner or operator shall operate and maintain all non-smelting process sources, including all associated air pollution control equipment, control measures, and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing lead-bearing fugitive dust, and in accordance with the fugitive dust plan required by subsection (C)(2) and performance and housekeeping requirements in subsection (D). A determination of whether acceptable operating and maintenance procedures are being used shall be based on all available information to the Department and EPA Region IX, which may include, but is not limited to, monitoring results, review of operating and maintenance procedures and records, review of fugitive dust plans, and inspection of the relevant equipment.
2. Fugitive dust plan. The owner or operator shall develop, implement, and follow a fugitive dust plan that is designed to minimize lead-bearing fugitive dust from non-smelting process sources. At minimum, the fugitive dust plan shall contain the following:
 - a. Performance and housekeeping requirements in subsection (D).
 - b. Design plans and specifications for each wind fence to be installed to control lead-bearing fugitive dust from non-smelting process sources identified in subsections (D)(11) through (D)(14). The dust plan shall contain height limits for the materials being stored in each wind fence, consistent with the design plans and specifications for that particular wind fence. Wind fence design and specifications shall:
 - i. Require full encircling of the source to be controlled, with reasonable and sufficient openings for ingress and egress;
 - ii. Consider the orientation of the wind fence to the prevailing winds;
 - iii. Consider the strength of the winds in the area where the fence will be located;
 - iv. Consider the porosity of the material to be used, which shall not exceed 50%; and
 - v. Consider the height of the fence relative to the height of the material being stored. At minimum, wind fence height shall be greater than or equal to the material pile height.
 - c. Design plans and specifications for each new or modified water sprayer system used to control lead-bearing fugitive dust from non-smelting process sources specified in subsections (D)(11) through (D)(14). The number, type, location, watering intensity, flow rates, and other operational parameters of the water sprayers must meet moisture content objectives for sources specified in subsections (D)(11) through (D)(14). The owner or operator may include in the dust plan an exemption to the water requirements at times when the materials are sufficiently moist or it is raining and thus there is no need for additional wetting until the next scheduled watering to meet moisture content objectives. The dust plan shall include the following for each water sprayer:
 - i. Watering schedule;

- ii. Watering intensity;
 - iii. Minimum flow rate or pressure drop;
 - iv. Appropriate and/or continuous monitoring;
 - v. Schedule for calibration based on the manufacturer's recommended calibration schedule;
 - vi. Preventative maintenance schedule; and
 - vii. Other applicable operational parameters.
- d. Necessary improvements and/or modifications to material conveyor systems, along with a schedule for implementing improvements or modifications, targeted to minimize lead-bearing fugitive dust from non-smelting process sources specified in subsections (D)(11) through (D)(14), as applicable, to the greatest extent practicable. The improvements or modifications may include, but is not limited to, hooding of transfer points, utilizing water sprayers, and employing scrapers, brushes, or cleaning systems at all points where belts loop around themselves to catch and contain material before it falls to the ground.
 - e. Design plans for the concrete pads for the non-smelting process sources specified in subsections (D)(11) and (D)(13). The concrete pads shall be designed to capture, store, and control stormwater or sprayed water to minimize emissions to the greatest extent practicable, including curbing around the outer edges of the concrete pad where feasible.
 - f. Additional controls and measures for sources specified in subsections (D)(11) through (D)(14) to be implemented during high wind events. These additional controls or measures, which must include curtailment or other alteration of activity when appropriate, must be implemented at these sources during all periods of high wind.
 - g. Sample inspection sheets, checklists, or logsheets for each of the inspections identified in subsection (D)(6), and in accordance with the following:
 - i. The inspection sheets or checklists shall include:
 - (1) Specific descriptions of the equipment being inspected and the specific functions being evaluated;
 - (2) The findings of the inspection;
 - (3) The date, time, and location of inspections; and
 - (4) An identification of who performed the inspection or logged the results.
 - ii. The logsheets for high wind events shall include:
 - (1) High wind event start time;
 - (2) High wind event end time;
 - (3) Description of area or activity inspected; and
 - (4) Description of corrective action taken if necessary.
 - h. Design plans of the new acid plant scrubber blow-down drying system specified in subsection (D)(15).
 - i. The name and location of the meteorological station, which must be approved by the Department, that is to be used by the owner or operator for determining high wind events pursuant to subsection (B)(4) and for implementing control requirements pursuant to subsection (D)(5).
3. Plan development and revisions. The owner or operator shall develop and keep current the fugitive dust plan required by subsection (C)(2). Any plan or plan revision

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shall be consistent with this Section and shall be submitted to the Department for review. The initial plan shall be submitted to the Department for review no later than May 1, 2017. Plans and plan revisions shall be consistent with good air pollution control practice for fugitive dust. Except for the meteorological station to be used for high wind events pursuant to subsection (D)(5), which shall require prior approval, plans and plan revisions may be implemented upon submittal and shall remain in effect until superseded or until disapproved by the Department. Disapprovals are appealable Department actions.

D. Performance and Housekeeping Requirements. The owner or operator shall comply with these requirements at all times regardless of a fugitive dust plan.

1. Water sprayers. The owner or operator shall implement a recordkeeping system to capture sprayer operations, including identification of the particular operation, lead-bearing fugitive dust source, timing and intensity of watering, and data regarding the quantity of water used at each water sprayer.
2. Wind fences. The owner or operator shall ensure that wind fences used to control lead-bearing fugitive dust from the non-smelting process sources specified in subsections (D)(11) through (D)(14) meet the following requirements:
 - a. Wind fence height shall be greater than or equal to the material pile height. The allowed material pile height shall be posted in a readily visible location at each wind fence.
 - b. Wind fence porosity shall not exceed 50%.
3. Material conveyor systems. For sources specified in subsections (D)(11) through (D)(14), as applicable, the owner or operator shall:
 - a. Minimize conveyor drop heights to the greatest extent practicable.
 - b. Clean any spills from conveyors within 30 minutes of discovery. The material collected must be handled in such a way so as to minimize lead-bearing fugitive dust to the maximum extent practicable.
4. Vehicle transport of materials. The owner or operator shall maintain vehicle cargo compartments used to transport materials capable of producing lead-bearing fugitive dust so that the cargo compartment is free of holes or other openings and is covered by a tarp.
5. High wind event requirements.
 - a. During high wind events, the owner or operator shall evaluate the non-smelting process sources specified in subsections (D)(11) through (D)(14) for ongoing visible emissions using the appropriate logsheet for each source.
 - b. If ongoing visible emissions are observed, the owner or operator shall promptly wet the source of emissions with the objective of mitigating further emissions.
 - c. If wetting does not appear to mitigate the ongoing visible emissions to 20% opacity or less, the owner or operator shall postpone associated handling of the source until the high wind event has ceased.
6. Physical inspections. The owner or operator shall conduct physical inspections as follows:
 - a. Daily inspections of all water sprayers to make sure they are functioning and are in accordance with the dust plan;
 - b. Daily visual inspections of all material piles to make sure they are maintained within areas protected by a wind fence, that they are not higher than allowed for

the wind fence, and to verify that moisture content requirements are met;

- c. Daily inspections of all material handling areas to identify and clean up track out or spills of materials;
 - d. Daily inspections of conveyor systems to identify and clean up material spills;
 - e. Daily inspections of rumble grates sump levels;
 - f. Daily spot inspections of vehicles carrying lead-bearing fugitive dust-producing materials when vehicles are in use to ensure that material is not overloaded, is properly covered, and cargo compartments are intact;
 - g. Weekly inspections of wind fences for material integrity and structural stability;
 - h. Daily inspections of all paved roads to identify and clean up track out or spills of materials;
 - i. Daily inspections of unpaved roads in subsection (D)(10)(a) to identify areas where chemical dust suppressant coverage has broken down; and
 - j. Bi-weekly inspections of the acid plant scrubber blowdown drying system enclosure.
7. Opacity limit and Method 9 readings.
 - a. Opacity from lead-bearing fugitive dust emissions shall not exceed 20% from any part of the facility at any time. Opacity shall be determined by using 40 CFR 60, Appendix A, Reference Method 9, except for unpaved roads, in which opacity shall be determined pursuant to subsection (D)(10)(c).
 - b. In the event that an employee observes ongoing visible emissions at a non-smelting process source covered by this Section, that employee shall promptly contact a Reference Method 9-certified observer, who shall promptly evaluate the emissions and conduct a Reference Method 9 reading, if possible.
 - c. A Reference Method 9-certified observer shall conduct a weekly visible emissions survey of all non-smelting process sources covered by this Section and perform a Reference Method 9 reading for any plumes that on an instantaneous basis appear to exceed 15% opacity.
 8. Corrective actions.
 - a. At any time that visible emissions from the non-smelting process sources covered by this Section appear to exceed 15% opacity, the owner or operator shall take prompt corrective action to identify the source of the emissions and abate such emissions, with the corrective action starting within 30 minutes after discovery. For any non-smelting process source that produces visible emissions that appear to exceed 15% opacity, the owner or operator shall perform an analysis of the root cause, and implement a strategy designed to prevent, to the extent feasible, the ongoing recurrence of the source of visible emissions. Within 14 days of completion of its analysis, if appropriate, the owner or operator shall modify the fugitive dust plan in subsection (C)(2) for any changes identified from the analysis differing from the current provisions of the fugitive dust plan.
 - b. At any time that the owner or operator becomes aware that provisions of the fugitive dust plan and/or performance and housekeeping provisions required by this Section are not being met, the owner or operator shall take prompt action to return to compliance, which may include modifications to monitoring, recordkeeping, and reporting require-

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- ments in the fugitive dust plan. This includes, but is not limited to, the following actions:
- i. Return water sprayers to full operational status;
 - ii. Repair damaged conveyor hoodings or other enclosures;
 - iii. Apply additional water to ensure that sources are meeting moisture content requirements;
 - iv. Clean any trackout or spillage of dust-producing material, including dropoff of dust producing material from conveyors, using a street sweeper, vacuum, or wet broom with sufficient water and at the speed recommended by the manufacturer;
 - v. Reapplication of chemical dust suppressants in areas where the coating has broken down on unpaved roads; and
 - vi. Revisions to the fugitive dust plan to undertake improved monitoring, recordkeeping, and reporting requirements necessary to ensure that the controls contained in the fugitive dust plan are being implemented as contemplated by the fugitive dust plan.
9. Paved Roads. These requirements apply to all roads at the facility currently paved and roads to be paved in the future. The owner or operator shall:
 - a. Clean roads at least once daily with a sweeper, vacuum, or wet broom in accordance with applicable manufacturer recommendations.
 - b. Maintain the integrity of the road surface.
 - c. Clean up trackout and carry-out of material on the following schedule:
 - i. As expeditiously as practicable, when trackout and carry-out extends a cumulative distance of 50 linear feet or more; and
 - ii. At the end of the workday, for all other trackout and carry-out.
 - d. Comply with a speed limit not to exceed 15 mph for all vehicular traffic. At minimum, speed limit signs shall be posted at all entrances and truck loading and unloading areas and/or at conspicuous areas along the roadway.
 10. Unpaved Roads. These requirements apply to the unpaved roads identified in subsections (D)(10)(a)(i) through (D)(10)(a)(iii) below, including any access points where the unpaved roads adjoin paved roads and any areas of vehicular handling of material. The owner or operator shall:
 - a. Implement a chemical dust suppressant application intensity and schedule, which at minimum shall be:
 - i. For the slag hauler road and all other unpaved roads used or to be used by the slag hauler, chemical dust suppressant shall be applied at least once per week during the summer, and once per every two weeks during the winter.
 - ii. For the main road to the secondary crusher, chemical dust suppressant shall be applied at least once every six weeks, year-round.
 - iii. For unpaved roads near reverts and silica flux crushing operations, chemical dust suppressant shall be applied at least once per two weeks during the summer, and once per month in the winter.
 - b. Increase the frequency of chemical dust suppressant application if necessary to reduce fugitive dust emissions from unpaved roads.
 - c. Not allow visible emissions to exceed 20% opacity and shall not allow silt loading equal to or greater than 0.33 oz/ft². However, if silt loading is equal to or greater than 0.33 oz/ft², then the owner or operator shall not allow the average percent silt content to exceed 6%. Compliance with these requirements shall be determined by the test methods described in Appendix 15.
 - d. Maintain sufficient watering trucks and personnel to operate such trucks to be employed as an interim measure whenever visible emissions or a breakdown in dust suppressant covering are observed at any point along the treated unpaved road system.
 - e. Immediately, but no later than 30 minutes after initial observation of any visible emissions, apply water or chemical dust suppressant to the portion of the unpaved road where the visible emissions were observed.
 - f. Reapply chemical dust suppressant within 24 hours of discovery of any area where the surface chemical dust suppressant coverage has broken down.
 - g. Collect and prevent from becoming airborne any runoff or material from rinsing or sweeping as soon as practicable.
 - h. Comply with a speed limit not to exceed 15 mph for all vehicular traffic. At minimum, speed limit signs shall be posted at all entrances and truck loading and unloading areas and/or at conspicuous areas along the roadway.
 11. Concentrate Storage, Handling, and Unloading. The owner or operator shall:
 - a. Consolidate and manage all concentrate storage piles in one or more concrete storage pads.
 - b. Store concentrate in an area with a wind fence in accordance with requirements set forth in the fugitive dust plan and pursuant to subsection (D)(2).
 - c. Maintain water sprayers in accordance with requirements set forth in the fugitive dust plan and to ensure the surfaces of concentrate piles are wetted to maintain a nominal 10% surface moisture content as determined from representative samples using ASTM Method D2216-10 or other equivalent methods approved by the Department and EPA Region IX.
 - d. Minimize the footprint of the concentrate storage piles by pushing into the stockpile with a front end loader and sweeping open areas of the pads with a self-powered vacuum sweeper at least daily during use.
 12. Uncrushed Reverts Handling and Storage. The owner or operator shall:
 - a. Manage uncrushed revert material only in areas protected by a wind fence in accordance with requirements set forth in the fugitive dust plan and pursuant to subsection (D)(2).
 - b. Maintain water sprayers in accordance with requirements set forth in the fugitive dust plan and to ensure the surface of uncrushed revert material is wetted with the objective to minimize lead-bearing fugitive dust emissions to the greatest extent practicable.
 13. Reverts Crushing Operations and Crushed Reverts Storage. The owner or operator shall:
 - a. Crush revert and store crushed revert only on one or more concrete pads.
 - b. Crush revert and store crushed revert only within an area protected by a wind fence in accordance with

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- requirements set forth in the fugitive dust plan and pursuant to subsection (D)(2).
- c. Maintain water sprayers in accordance with requirements set forth in the fugitive dust plan and to ensure the surfaces of all crushed revert material, including revert managed after it is crushed, is wetted to maintain a nominal 10% surface moisture content as determined from representative samples using ASTM Method D2216-10 or other equivalent methods approved by the Department and EPA Region IX.
 - d. By October 2017, relocate all revert crushing operations to 33° 00' 25.84" N, 110° 46' 26.55" W and shall crush revert only at this new location.
14. Bedding Operations, Including Handling, Storage, and Unloading. The owner or operator shall:
- a. Perform all bedding activities, including loading and unloading of materials to be blended, only within an area protected by a wind fence in accordance with requirements set forth in the fugitive dust plan and pursuant to subsection (D)(2). These activities include the storage and handling areas for potentially lead-bearing fugitive dust-producing material within the bedding plant area.
 - b. Maintain water sprayers in accordance with requirements set forth in the fugitive dust plan and to ensure the surfaces of material in the bedding area is wetted to maintain a nominal 10% surface moisture content as determined from representative samples using ASTM Method D2216-10 or other equivalent methods approved by the Department and EPA Region IX.
 - c. Maintain rumble grates at all of the bedding plant's entrances and exits to shake off material on the loader tires as they enter and exit the area. Material that is tracked out of the bedding area must be cleaned up at the end of the workday.
 - d. Operate its bedding activities in a manner designed to avoid any trackout outside an area protected by a wind fence. Areas of material spillage or trackout, whether inside or outside of an area protected by a wind fence, shall be rinsed or cleaned daily.
15. Acid Plant Scrubber Blowdown Drying System.
- a. The owner or operator shall dry acid plant scrubber blowdown solids only in an enclosed system that uses a venturi scrubber, thickener, filter press, and electric dryer that is maintained under negative pressure at all times that materials are being dried.
 - b. The owner or operator shall maintain the negative pressure of the electric dryer using a 2,500 ACFM dryer ventilation fan that must run at all times the electric dryer is operational. Monitoring of the negative pressure shall be demonstrated through the run and stop states of the ventilation fan and electric dryer.
 - c. The acid plant scrubber blowdown drying system shall include the following elements:
 - i. Venturi scrubber slurry that reports to a new thickener.
 - ii. Underflow from the thickener that goes to a filter press for further liquid removal, with the resulting filter cake sent to two electric dryers operating in parallel to provide final drying of the dust cake.
 - iii. Exhaust from the dryers sent to the packed gas cooling tower inlet duct.
- iv. Dried cake discharged directly into bags.
 - d. The owner or operator shall clean all areas previously used for scrubber blowdown drying and no longer use previous areas for scrubber blowdown drying.
- E. Contingency Requirements.
1. If the owner or operator does not meet the compliance schedule below in subsection (E)(3), or if the Hayden Lead Nonattainment Area does not attain the 2008 Lead National Ambient Air Quality Standards by the attainment date established in the Act, whichever occurs first, then the owner or operator shall increase the paved road cleaning frequency specified in subsection (D)(9) to twice per day.
 2. The owner or operator shall implement the contingency measure in subsection (E)(1) within 60 days of notification by EPA Region IX of either a failure to meet the compliance schedule in subsection (E)(3) or a failure to attain by the attainment date established in the Act, whichever occurs first.
 3. The compliance schedule is as follows. The Fugitive Dust Plan referred to in the compliance schedule shall mean the Fugitive Dust Plan submitted to the Administrator by the owner or operator to comply with requirements set forth in Consent Decree No. CV-15-02206-PHX-DLR, which became effective on December 30, 2015 in the United States District Court for the District of Arizona, as that plan may be later revised pursuant to subsection (C)(3):

Control Measure	Date of Implementation
Implementation of chemical dust suppression for unpaved roads.	Within 30 days of Administrator approval of application intensity and schedules in Fugitive Dust Plan.
Implementation of wind fences for materials piles (uncrushed reverts, reverts crushing and crushed reverts, bedding materials, and concentrate).	Within 120 days of Administrator approval of the Fugitive Dust Plan or the date of completion in the approved Fugitive Dust Plan, whichever is later.
Implementation of water sprays for materials piles (uncrushed reverts, reverts crushing and crushed reverts, bedding materials, and concentrate).	Within 120 days of Administrator approval of the Fugitive Dust Plan or the date of completion in the approved Fugitive Dust Plan, whichever is later.
Implementation of new acid plant scrubber blowdown drying system.	November 30, 2016
Implementation of new primary, secondary, and tertiary hooding systems for converter aisle for purposes of complying with requirements in R18-2-B1301.	July 1, 2018

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Implementation of new ventilation system for matte tapping and slag skimming for flash furnace for purposes of complying with requirements in R18-2-B1301.	July 1, 2018
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F. Ambient Air and Meteorological Monitoring Requirements.

1. The owner or operator shall conduct ambient air monitoring and sampling for lead as follows:
 - a. At minimum, the owner or operator shall continue to maintain and operate the ambient lead monitors located at ST-14 (the smelter parking lot), ST-23 (Hillcrest area), ST-26 (post office), and ST-18 (next to the concentrate handling area).
 - b. Samples must be collected continuously at all monitor sites specified in subsection (F)(1)(a). For the purposes of this requirement, "continuously" means that 24-hour filters are placed and collected at minimum, every six calendar days at all sites consistent with 40 CFR § 58.12.
 - c. The owner or operator shall follow the Hayden Smelter's Quality Assurance Project Plan (QAPP) applicable to these monitors.
 - d. The monitors must be operated and maintained in accordance with 40 CFR 58, Appendix A.
 - e. The owner or operator shall submit each filter removed from each monitor to a certified laboratory for analysis no later than 18 calendar days after the filter's removal. The owner or operator shall ensure that the laboratory performs its analysis and submits the results to the owner or operator no later than 21 calendar days from the lab's receipt of the filter.
 - f. The owner or operator shall calculate, update, and maintain as a record the following data within 14 calendar days of receipt of any results pertaining to the monitor filters received from a certified lab:
 - i. The total pollutants on the filters collected and analyzed; and
 - ii. Calculations of 30-day rolling average ambient air levels of lead for the ST-23, ST-26, and ST-18 monitors, and 60-day rolling average ambient air levels of lead for the ST-14 monitor, expressed as $\mu\text{g}/\text{m}^3$.
 - g. The owner or operator shall retain lead samples collected pursuant to this Section for at least three years. The samples shall be stored in individually sealed containers and labeled with the applicable monitor and date. Upon request, the samples shall be provided to the Department within five business days.
 2. The owner or operator shall conduct meteorological monitoring as follows:
 - a. Continuously monitor and record wind speed and direction data using equipment and a meteorological station approved by the Department.
 - b. The owner or operator shall calculate and record average wind speed in miles per hour over 15 minutes, rolled each minute.
 - c. Conduct wind speed and direction measurements using methods in accordance with EPA's Quality Assurance Handbook for Air Pollution Measurement Systems, Volume IV, Meteorological Measurements, Version 2.0.
 3. The ambient air and meteorological monitoring stations required by this Section may be discontinued at the end of three full calendar years after the Hayden Lead Nonattainment Area is redesignated attainment for the 2008 Lead National Ambient Air Quality Standards.
- G. Compliance Demonstration Requirements.** The owner or operator shall demonstrate compliance with this Section by complying with all requirements in the fugitive dust plan pursuant to subsection (C)(2) and implementing all housekeeping and performance requirements pursuant to subsection (D).
- H. Recordkeeping.**
1. The owner or operator shall maintain the following records for at least five years and keep on-site for at least two years:
 - a. Current and past fugitive dust plans required by subsection (C)(2).
 - b. Physical inspection sheets, checklists, and logsheets for inspections conducted in accordance with subsection (D)(6).
 - c. All records of opacity and stabilization tests, if any, conducted in accordance with subsection (D)(10)(c).
 - d. All records of surface moisture content tests, if any, conducted in accordance with subsection (D)(11), subsection (D)(13), and subsection (D)(14).
 - e. All records of major maintenance activities and inspections conducted on monitors required by subsection (F).
 - f. All records of quality assurance and quality control activities for the monitors required by subsection (F).
 - g. All air quality monitoring samples, rolling averages of ambient lead concentrations and necessary calculations, and data required by subsection (F).
 - h. All records of wind data from the meteorological station required by subsection (F).
 - i. All records of any periods during which a monitoring device required by subsection (F) is inoperative or not operating correctly.
 - j. All records of reports and notifications required by subsection (I).
 2. All of the following records maintained for the purposes of the fugitive dust plan required by subsection (C)(2) must be maintained in a recordkeeping log or recordkeeping system. As part of the records, the owner or operator shall include the dates and times for each of the following observations or activities, the name of the employee documenting each activity or observation, and the nature and location of each observation activity:
 - a. Each instance of observed visible emissions of 15% opacity or greater, along with a description of any corrective action undertaken and its success.
 - b. Water sprayer operations, including timing and intensity of watering to be captured in the water sprayer recordkeeping system.
 - c. Timing, location, type, and amount of chemical suppressant and water applied to unpaved roads, and a description of the nature and timing of any additional corrective action taken, as necessary, to minimize emissions to the greatest extent practicable.
 - d. Timing and location of all sweeping and cleaning of trackout or spillage material.
 - e. Timing and location of all washdown of concrete areas.
 - f. Timing and location of sump cleanouts.
 - g. Results of all visible emissions surveys and Reference Method 9 readings.

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- h. Appropriate records for operating conditions, including electric dryer ventilation fan start and stop times for the newly designed acid plant scrubber blowdown drying system.
 - i. Calibration records for all measurement devices, including maintenance of manufacturer's manuals or other documentation for suggested calibration schedules and accuracy levels for each measurement device.
 - j. Dates, times, and descriptions of deviations when the owner or operator's operations was carried out in a manner inconsistent with the fugitive dust plan required by subsection (C)(2).
 - I. Reporting. Within 30 days after the end of each calendar-year quarter, the owner or operator shall submit a report to the Department covering the prior quarter that includes the following:
 - 1. All instances where observed fugitive emissions coming from sources covered in this Section were 15% or greater.
 - 2. The date of all high wind events, with an identification of the location of the reading, wind speed, and duration of the event, and a description of actions taken as a result of the event on a source-by-source basis.
 - 3. All instances where corrective action was required with identification of the emission source involved, what triggered the corrective action, what action the owner or operator undertook to abate or mitigate the problem, and whether the corrective action achieved the intended results.
 - 4. A summary of all times when the electronic recordkeeping system was not recording data, and a summary and indication of the period when recorded data was outside of established operating parameters.
 - 5. A summary of progress of all new construction, installation, upgrades, or modifications to equipment or structures at the facility required by the fugitive dust plan and subsection (D), including dates of commencement and completion of construction, dates of operations of new or modified equipment or structures, and dates old or outdated equipment or structures were permanently retired.
 - 6. Raw monitoring data and calculated ambient lead concentrations from the ambient air monitoring stations required by subsection (F).
- Historical Note**
- New Section R18-2-B1301.01 made by final rulemaking at 23 A.A.R. 767, effective December 1, 2018 (Supp. 17-1).
- R18-2-B1302. Limits on SO₂ Emissions from the Hayden Smelter**
- A. Applicability.
 - 1. This Section applies to the owner or operator of the Hayden Smelter. It establishes limits on sulfur dioxide emissions from the Hayden Smelter and monitoring, recordkeeping and reporting requirements for those limits.
 - 2. Effective date. Except as otherwise provided, the requirements of this Section shall become applicable on the earlier of July 1, 2018 or 180 days after completion of all project improvements authorized by Significant Permit Revision No. 60647.
 - B. Definitions. In addition to definitions contained in R18-2-101 and R18-2-B1301, the following definitions apply to this rule.
 - 1. "Continuous emissions monitoring system" or "CEMS" means the total equipment, required under the emission monitoring provisions in this Chapter, used to sample, condition (if applicable), analyze, and to provide, on a continuous basis, a permanent record of emissions.
 - 2. "Operating day" means any calendar day in which any of the following occurs:
 - a. Concentrate is smelted in the smelting furnace;
 - b. Copper or sulfur bearing materials are processed in the converters;
 - c. Blister or scrap copper is processed in the anode furnaces;
 - d. Molten metal, including slag, matte or blister copper, is transferred between vessels; or
 - e. Molten metal is cast into anodes or other intermediate or final products.
 - 3. "Out of control period" means the time that begins with the completion of the fifth, consecutive, daily calibration drift check with a calibration drift in excess of two times the allowable limit, or the time corresponding to the completion of the daily calibration drift check preceding the daily calibration drift check that results in a calibration drift in excess of four times the allowable limit, and the time that ends with the completion of the calibration check following corrective action that results in the calibration drifts at both the zero (or low-level) and high-level measurement points being within the corresponding allowable calibration drift limit.
 - C. Sulfur Dioxide Emissions Limitations.
 - 1. Emissions from the Main Stack shall not exceed 1069.1 pounds per hour on a 14-operating day average unless 1,518 pounds or less is emitted during each hour of the 14-operating day period.
 - 2. The owner and operator shall not cause to be discharged into the atmosphere from any affected unit subject to 40 CFR 60 subpart P any gases which contain sulfur dioxide in excess of the limit set forth in 40 CFR § 60.163(a) (as in effect on July 1, 2016 and no later editions).
 - D. Operational Standards.
 - 1. Process equipment and control device operations. At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate smelter processes and associated emission control and/or control equipment in a manner consistent with good air pollution control practices for minimizing SO₂ emissions to the levels required by subsection (C). Determination of whether acceptable operating and maintenance procedures are being used will be based on all information available to the Director and EPA Region IX, which may include, but is not limited to, monitoring results, review of operating and maintenance procedures and records, and inspection of the relevant equipment.
 - 2. Capture system and control device operations and maintenance plan. The owner or operator shall develop and implement an operations and maintenance plan for each capture system and/or control device used to ventilate or control process gas or emissions from the flash furnace including matte tapping, slag skimming, and slag return operations; converter primary hoods, converter secondary hoods, tertiary ventilation system, and anode refining operations. The operations and maintenance plan must address the following requirements as applicable to each capture system and/or control device.
 - a. Monitoring devices. The plan shall provide for installation, operation, calibration, and maintenance of appropriate monitoring devices to measure and record operating limit values or settings at all times the required capture and control system is operating,

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except during periods of monitor calibration, repair and malfunction. The initial plan shall provide for volumetric flow monitoring on the vent gas baghouse (inlet or outlet), each converter primary hood, each converter secondary hood, the tertiary ventilation system and the anode furnace baghouse (inlet or outlet). All monitoring devices shall be accurate within +/- 10% and calibrated according to manufacturer's instructions. If direct measurement of the exhaust flow is infeasible due to physical limitations or exhaust characteristics, the owner or operator may propose a reliable equivalent method for approval. Initial monitoring may be adjusted as provided in subsection (D)(2)(e). Dampers that are manually set and remain in the same position while the capture system is operating are exempt from these monitoring requirements. Capture system damper position setting(s) shall be specified in the plan.

- b. Operational limits. The owner or operator shall establish operating limits in the operations and maintenance plan for the capture systems and/or control devices that are representative and reliable indicators of the performance of the capture system and control device operations. The initial operating limits may be adjusted as provided in subsection (D)(2)(e). Initial operating limits shall include the following:

- i. Identification of those modes of operation when the double dampers between the flash furnace vessel and the vent gas system will be closed and the interstitial space evacuated to the acid plant.
- ii. A minimum air flow for the furnace ventilation system and associated damper positions for each matte tapping hood or slag skimming hood when operating to ensure that the operation(s) are within the confines or influence of the capture system.
- iii. A minimum air flow for the secondary hood baghouse and associated damper positions for each slag return hood to ensure that the operation is within the confines or influence of the capture system's ventilation draft during times when the associated process is operating.
- iv. A minimum air infiltration ratio for the converter primary hoods of 1:1 averaged over 24 converter Blowing hours, rolled hourly measured as volumetric flow in primary hood less the volumetric flow of tuyere Blowing compared to the volumetric flow of tuyere Blowing.
- v. A minimum secondary hood exhaust rate of 35,000 SCFM during converter Blowing, averaged over 24 converter Blowing hours, rolled hourly.
- vi. A minimum secondary hood exhaust rate of 133,000 SCFM during all non-Blowing operating hours, averaged over 24 non-Blowing hours, rolled hourly.
- vii. A minimum negative pressure drop across the secondary hood when the doors are closed equivalent to 0.007 inches of water.
- viii. A minimum exhaust rate on the tertiary hooding of 400,000 ACFM during all times material is processed in the converter aisle, averaged over 24 hours and rolled hourly.

- ix. Fan amperes or minimum air flow for the anode furnace baghouse and associated damper positions for each anode furnace hood to ensure that the anode furnace off-gas port is within the confines or influence of the capture system's ventilation draft during times when the associated furnace is operating.
- x. The anode furnace charge mouth shall be kept covered when the tuyeres are submerged in the metal bath except when copper is being charged to or transferred from the furnace.
- xi. The temperatures of the acid plant catalyst bed, which shall at minimum, meet the manufacturer's recommendations.
- xii. The acid plant catalyst replenishment criteria, which shall at minimum, meet the manufacturer's recommendations.
- c. Preventative maintenance. The owner or operator must perform preventative maintenance on each capture system and control device according to written procedures specified in the operation and maintenance plan. The procedures must include a preventative maintenance schedule that is consistent with the manufacturer's or engineer's instructions, or operator's experience working with equipment, and frequency for routine and long-term maintenance. This provision does not prohibit additional maintenance beyond that required by the plan.
- d. Inspections. The owner or operator must perform inspections in accordance with written procedures in the operations and maintenance plan for each capture system and control device that are consistent with the manufacturer's, engineer's or operator's instructions for each system and device.
- e. Plan development and revisions.
 - i. The owner or operator shall develop and keep current the plan required by this Section. Any plan or plan revision shall be consistent with this Section, shall be designed to ensure that the capture and control system performance conforms to the attainment demonstration in the Hayden 2010 Sulfur Dioxide National Ambient Air Quality Standards Nonattainment Area State Implementation Plan (SIP), and shall be submitted to the Department for review. Any plan or plan revision submitted shall include the associated manufacturer's recommendations and/or instructions used for capture system and control device operations and maintenance.
 - ii. The owner or operator shall submit the initial plan to the Department no later than May 1, 2018 and shall include the initial volumetric flow monitoring provisions in subsection (D)(2)(a), the initial operational limits in subsection (D)(2)(b), the preventative maintenance procedures in subsection (D)(2)(c), and the inspection procedures in subsection (D)(2)(d).
 - iii. The owner or operator shall submit to the Department for approval a plan revision with changes, if any, to the initial volumetric flow monitoring provisions in subsection (D)(2)(a) and initial operational limits in subsection (D)(2)(b) not later than six months after completing a fugitive emissions study conducted in accordance with Appendix 14. The Department

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shall submit the approved changes to the volumetric flow monitoring provisions and operational limits pursuant to this subsection to EPA Region IX as a SIP revision not later than 12 months after completion of a fugitive emissions study.

- iv. Other plan revisions may be submitted at any time when necessary. All plans and plan revisions shall be designed to achieve operation of the capture system and/or control device consistent with the attainment demonstration in the Hayden 2010 Sulfur Dioxide National Ambient Air Quality Standards Nonattainment Area SIP. Except for changes to the volumetric flow monitoring provisions in subsection (D)(2)(a) and operational limits in subsection (D)(2)(b), which shall require prior approval, plans and plan revisions may be implemented upon submittal and shall remain in effect until superseded or until disapproved by the Department. Disapprovals are appealable Department actions.

- 3. Emissions from the anode furnace baghouse stack shall be routed to the Main Stack.

E. Monitoring.

- 1. To determine compliance with subsection (C)(1) the owner or operator of the Hayden Smelter shall install, calibrate, maintain, and operate a CEMS for continuously monitoring and recording SO₂ concentrations and stack gas volumetric flow rates at the following locations.
 - a. The exit of the acid plant;
 - b. The exit of the secondary hood particulate control device after the High Surface Area (HSA) lime injection system;
 - c. The exit of the flash furnace particulate control device after the HSA lime injection system;
 - d. The tertiary ventilation system prior to mixing with any other exhaust streams; and
 - e. The anode furnace baghouse stack prior to mixing with any other exhaust streams.
- 2. Except during periods of systems breakdown, repairs, maintenance, out-of-control periods, calibration checks, and zero and span adjustments, the owner or operator shall continuously monitor SO₂ concentrations and stack gas volumetric flow rates at each location in subsection (E)(1).
- 3. For purposes of this Section, continuous monitoring means the taking and recording of at least one measurement of SO₂ concentration and stack gas flow rate reading from the effluent of each affected stack, outlet, or other approved measurement location in each 15-minute period when the associated process units are operating. Fifteen-minute periods start at the beginning of each clock hour, and run consecutively. All CEMS required by subsection (E)(1) shall complete at least one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.
- 4. If the owner or operator can demonstrate to the Director that measurement of stack gas volumetric flow rate in the outlet of any particular piece of SO₂ control equipment would yield inaccurate results or would be technologically infeasible, then the Director may allow measurement of the flow rate at an alternative sampling point.
- 5. The owner or operator shall demonstrate that the CEMS required by subsection (E)(1) meet all of the following requirements:

- a. The SO₂ CEMS installed and operated under this Section meets the requirements of 40 CFR 60, Appendix B, Performance Specification 2 and Performance Specification 6. The CEMS on the anode furnace baghouse stack and tertiary ventilation system shall complete an initial Relative Accuracy Test Audit (RATA) in accordance with Performance Specification 2. The RATA runs shall be tied to when the anode furnace is in use and, for the tertiary system, when the converters are in operation and/or material is being transferred in the converter aisle. Asarco may petition the Department and EPA Region IX on the criteria for subsequent RATAs for the anode furnace baghouse stack or tertiary ventilation system CEMS. The petition shall include submittal of CEMS data during the year.
 - b. The SO₂ CEMS installed and operated under this Section meets the quality assurance requirements of 40 CFR 60, Appendix F.
 - c. The owner or operator shall notify the Director in writing at least 30 days in advance of the start of the relative accuracy test audit (RATA) performed on the CEMS.
 - d. The Director shall approve the location of all sampling points for monitoring SO₂ concentration and stack gas volumetric flow rates and the appropriate span values for the monitoring systems. This approval shall be in writing before installation and operation of the measurement instruments.
 - e. The measurement system installed and used under this subsection is subject to the manufacturer's recommended zero adjustment and calibration procedures at least once per operating day unless the manufacturer specifies or recommends calibration at shorter intervals, in which case the owner or operator shall follow those specifications or recommendations. The owner or operator shall make available a record of these procedures that clearly shows instrument readings before and after zero adjustment and calibration.
 - f. The owner or operator shall maintain on hand and ready for immediate installation sufficient spare parts or duplicate systems for the CEMS required by this Section to allow for the replacement within six hours of any monitoring equipment part that fails or malfunctions during operation.
- 6. The owner or operator of the Hayden Smelter may petition the Department to substitute annual stack testing for the tertiary ventilation or the anode furnace baghouse stack CEMS if the owner or operator demonstrates, for a period of two years, that either CEMS contribute(s) less than 5% individually of the total sulfur dioxide emissions. The Department must determine the demonstration adequate to approve the petition. Annual stack testing shall use EPA Methods 1, 4, and 6C in 40 CFR 60 Appendix A or an alternate method approved by the Department and EPA Region IX. Annual stack testing shall commence no later than the one year after the date the continuous emission monitoring system was removed. The owner or operator shall submit a test protocol to the Department at least 30 days in advance of testing. The protocol shall provide for three or more 24-hour runs unless the owner or operator justifies a different period and the Department approves such different period. Reports of testing shall be submitted to the Department no later than 60 days after testing or 30 days after receipt,

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whichever is later. The report shall provide an emissions rate, in the form of a pound per hour or pound per unit of production factor, that shall be used in the compliance demonstration in subsection (F)(1). Except as provided herein, the owner or operator shall otherwise comply with Section R18-2-312 in conducting such testing.

F. Compliance Demonstration Requirements.

1. For purposes of determining compliance with the emission limit in subsection (C)(1) the owner or operator shall calculate emissions for each operating day as follows:
 - a. Sum the hourly pounds of SO₂ vented to each uncontrolled shutdown ventilation flue and through each monitoring point listed in subsection (E)(1) for the current operating day and the preceding 13-operating days to calculate the total pounds of SO₂ emissions over the 14-operating day averaging period, as applicable.
 - b. Divide the total amount of SO₂ emissions calculated from subsection (F)(1)(a) by 336 to calculate the 14-operating day average SO₂ emissions.
 - c. If the calculation in subsection (F)(1)(b) exceeds 1069.1 pounds per hour, then the owner or operator shall sum the hourly pounds of SO₂ vented to each uncontrolled shutdown ventilation flue and through each monitoring point listed in subsection (E)(1) for each hour of the current operating day and each hour of the preceding 13-operating days to ascertain if any hour exceeded 1,518 pounds per hour.
2. When no valid hour or hours of data have been recorded by a continuous monitoring system required by subsections (E)(1) and (E)(2) and the associated process unit is operating, the owner or operator shall calculate substitute data for each such period according to the following procedures:
 - a. For a missing data period less than or equal to 24 hours, substitute the average of the hourly SO₂ concentrations recorded by the system for the hour before and the hour after the missing data period.
 - b. For a missing data period greater than 24 hours, substitute the greater of:
 - i. The 90th percentile hourly SO₂ concentrations recorded by the system during the previous 720 quality-assured monitor operating hours.
 - ii. The average of the hourly SO₂ concentrations recorded by the system for the hour before and the four hours after the missing data period.
 - c. Notwithstanding subsections (F)(3)(a) and (F)(3)(b), the owner or operator may present any credible evidence as to the quantity or concentration of emissions during any period of missing data.
3. The owner or operator shall determine compliance with the requirements in subsection (D)(2) as follows:
 - a. Maintaining and operating the emissions capture and control equipment in accordance with the capture system and control device operations and maintenance plan required in subsection (D)(2) and recording operating parameters for capture and control equipment as required in subsection (D)(2)(b); and
 - b. Conducting a fugitive study in accordance with Appendix 14 starting not later than six months after completion of the Converter Retrofit Project authorized by Significant Permit Revision No. 60647. The fugitive study shall demonstrate, as set forth in Appendix 14, that fugitive emissions from the smelter are consistent with estimates used in the attainment demonstration in the Hayden 2010 Sulfur

Dioxide National Ambient Air Quality Standards Nonattainment Area SIP.

4. The owner or operator shall include periods of startup, shutdown, malfunction, or other upset conditions when determining compliance with the emission limits in subsection (C).
5. The owner and operator shall demonstrate compliance with the limit in subsection (C)(2) in accordance with 40 CFR §§ 60.165 and 60.166 (as in effect on July 1, 2016 and not later editions).

G. Recordkeeping.

1. The owner or operator shall maintain a record of each operation and maintenance plan required under subsection (D)(2).
2. The owner or operator shall maintain the following records for at least five years:
 - a. All measurements from the continuous monitoring system required by subsection (E)(1), including the date, place, and time of sampling or measurement; parameters sampled or measured; and results. All measurements will be calculated daily.
 - b. All records of quality assurance and quality control activities for emissions measuring systems required by subsection (E)(1).
 - c. All records of calibration checks, adjustments, maintenance, and repairs conducted on the continuous monitoring systems required by subsection (E); including records of all compliance calculations required by subsection (F).
 - d. All records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of concentrate drying, smelting, converting, anode refining and casting emission units; any malfunction of the associated air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device required by subsection (E)(1) is inoperative or not operating correctly.
 - e. All records of planned and unplanned shutdown ventilation flue utilization events and calculations used to determine emissions from shutdown ventilation flue utilization events if the owner or operator chooses to use the alternative compliance determination method.
 - f. All records of major maintenance activities and inspections conducted on emission units, capture system, air pollution control equipment, and CEMS, including those set forth in the operations and maintenance plan required by subsection (D)(2).
 - g. All records of operating days and production records required for calculations in subsection (F).
 - h. All records of fugitive emissions studies and study protocols conducted in accordance with Appendix 14.
 - i. All records of reports and notifications required by subsection (H).

H. Reporting.

1. The owner or operator shall notify the Director in writing at least 30 days in advance of the start of relative accuracy test audit (RATA) procedures performed on the continuous monitoring systems required by subsection (E)(1).
2. Within 30 days after the end of each calendar quarter, the owner or operator shall submit a data assessment report to the Director in accordance with 40 CFR Part 60, Appendix F for the continuous monitoring systems required by subsection (E).

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3. The owner or operator shall submit an excess emissions and monitoring systems performance report or summary report form in accordance with 40 CFR § 60.7(c) to the Director quarterly for the continuous monitoring systems required by subsection (E)(1). Excess emissions means any 14-operating day average as calculated in subsection (F) in excess of the emission limit in subsection (C)(1), any period in which the capture and control system was operating outside of its parameters specified in the capture system and control device operation and maintenance plan in subsection (D)(2). For any 14-operating day period exceeding 1069.1 pounds per hour that the owner or operator claims does not exceed the limit in subsection (C)(1) because all hours in the operating period are below 1,518 pounds per hour, the owner or operator shall submit the CEMS data for each hour during that period. All reports shall be postmarked by the 30th day following the end of each calendar quarter time period.
4. The owner or operator shall provide the following to the Director:
 - a. The owner or operator shall notify the Director of commencement of construction of any equipment necessary to comply with the operational or emission limits.
 - b. The owner or operator shall submit semiannual progress reports on construction of any such equipment postmarked by July 30 for the preceding January-June period and January 30 for the preceding July-December period.
 - c. The owner or operator shall submit notification of initial startup of any such equipment within 15 business days of such startup.
- I. Preconstruction review. This Section is determined to be Reasonably Available Control Technology (RACT) for SO₂ emissions from the operations subject to subsection (C) for purposes of minor source NSR requirement addressed in R18-2-334.

Historical Note

New Section R18-2-B1302 made by final rulemaking at 23 A.A.R. 767, effective on the earlier of July 1, 2018, or 180 calendar days after completion of all Converter Retrofit Project improvements authorized by Significant Permit Revision No. 60647 (Supp. 17-1).

PART C. MIAMI, ARIZONA, PLANNING AREA

R18-2-C1301. Reserved

Historical Note

New Section R18-2-C1301 reserved at 23 A.A.R. 767 (Supp. 17-1).

R18-2-C1302. Limits on SO₂ Emissions from the Miami Smelter

 - A. Applicability.
 1. This Section applies to the owner or operator of the Miami Smelter. It establishes limits on SO₂ emissions from the Miami Smelter and monitoring, recordkeeping and reporting requirements for those limits.
 2. Effective date. Except as otherwise provided, the provisions of this Section shall take effect on the later of the effective date of the Administrator's action approving it as part of the state implementation plan or January 1, 2018.
 - B. Definitions. In addition to general definitions contained in R18-2-101, the following definitions apply to this rule.
 1. "Capture system" means the collection of components used to capture gases and fumes released from one or more emission points, and to convey the captured gases and fumes to one or more control devices. A capture system may include, but is not limited to, the following components as applicable to a given capture system design: duct intake devices, hoods, enclosures, ductwork, dampers, manifolds, plenums, and fans.
 2. "Electric furnace" means a furnace in which copper matte and slag are heated by electrical resistance without the mechanical introduction of air or oxygen.
 3. "IsaSmelt[®] furnace" means a furnace in which air, oxygen, and fuel are injected through a top-submerged lance into a molten slag bath to produce slag and copper matte.
 4. "Miami Smelter" means the primary copper smelter located near Miami, Gila County, Arizona at latitude 33°24'50"N and longitude 110°51'25"W.
 5. "Out of control period" means the time that begins with the completion of the fifth, consecutive, daily calibration drift check with a calibration drift in excess of two times the allowable limit, or the time corresponding to the completion of the daily calibration drift check preceding the daily calibration drift check that results in a calibration drift in excess of four times the allowable limit, and the time that ends with the completion of the calibration check following corrective action that results in the calibration drifts at both the zero (or low-level) and high-level measurement points being within the corresponding allowable calibration drift limit.
 6. "Operating day" means any calendar day in which any of the following occurs:
 - a. Concentrate is smelted in the Electric furnace or IsaSmelt[®] furnace;
 - b. Copper or sulfur bearing materials are processed in the converters;
 - c. Blister or scrap copper is processed in the anode furnaces or mold vessel;
 - d. Molten metal, including slag, matte or blister copper, is transferred between vessels;
 - e. Molten metal is cast into molds, anodes, or other intermediate or final products;
 - f. Power is provided to the electric furnace to make or maintain a molten bath; or
 - g. The anode furnace is heated to make or maintain a molten bath.
 - C. Sulfur Dioxide Emission Limitations. Combined SO₂ emissions from the tail gas stack, vent fume stack, aisle scrubber stack, bypass stack, and smelter roofline fugitives shall not exceed 142.45 pounds per hour on a 30-day rolling average basis.
 - D. Operational Standards.
 1. Process Equipment and control device operations. At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate smelter processes and associated emission control devices in a manner consistent with good air pollution control practices for minimizing SO₂ emissions from the process gases associated with the IsaSmelt[®] furnace, electric furnace, and converters at least to the levels required by subsection (C). Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Director and EPA Region IX, which may include, but is not limited to, monitoring results, review of operating and maintenance procedures and records, and inspection of the relevant equipment.

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2. Capture system and control device operations and maintenance plan. The owner or operator shall develop and implement an operations and maintenance plan for each capture system and control device used to ventilate or control process gas or emissions associated with the IsaSmelt[®] furnace, electric furnace, and converters. The owner or operator shall submit the initial plan to the Department and EPA Region IX for review and approval by July 1, 2017.
 - a. The operations and maintenance plan must address the following requirements as applicable to each capture system and control device:
 - i. Monitoring devices. The plan shall provide for installation, operation, calibration, and maintenance of appropriate monitoring devices to measure and record operating limit or range values at all times the required system is operating. Dampers that are manually set and remain in the same position while the capture system is operating are exempt from these monitoring requirements.
 - ii. Operational limits and ranges. The owner or operator shall establish operating limits and ranges in the plan for each capture system and control device that are representative and reliable indicators of capture system performance and control device operation. If selected as an operational limit or range, capture system damper position settings shall be specified in the plan.
 - iii. Preventative maintenance. The owner or operator must perform preventative maintenance for each capture system and control device according to written procedures in the plan. The procedures must include a preventative maintenance schedule that is consistent with the manufacturer's or engineer's instructions and specified frequency for routine and long-term maintenance.
 - iv. Inspections. The owner or operator must perform inspections in accordance with written procedures in the plan for each capture system and control device, including position verification of any manual damper settings specified in the plan, that are consistent with the manufacturer's or engineer's instructions for each system and device.
 - b. The owner or operator shall operate and maintain each capture system and each control device in accordance with the plan required by subsection (D)(2) and as approved by the Department and EPA Region IX, except as provided herein. Until receiving initial approval of the plan, the owner or operator shall operate and maintain each capture system and each control device in accordance with the plan as initially submitted pursuant to subsection (D)(2). The owner or operator shall submit plan revisions for review by the Department and EPA Region IX. At any time, the Department and/or EPA Region IX may require the owner or operator to revise the plan if determined to be inconsistent with subsection (D)(2)(a). Within 60 days of receiving written notification from the Department or EPA Region IX specifying such inconsistency, the owner or operator shall submit a proposal to the Department and EPA Region IX that addresses the inconsistency. The owner or operator shall maintain a current copy of the plan onsite and available for review and inspection upon request.
- E. Monitoring.
 1. To determine compliance with subsection (C), the owner or operator shall install, calibrate, maintain, and operate continuous monitoring systems to monitor and record SO₂ concentrations and stack gas volumetric flow rates at the following locations.
 - a. The acid plant tail gas stack;
 - b. The vent fume stack;
 - c. The aisle scrubber stack; and
 - d. The bypass stack.
 2. To determine compliance with the emission limit in subsection (C), the owner or operator shall install, calibrate, maintain, and operate a continuous monitoring system to monitor and record fugitive SO₂ concentrations at the Miami Smelter roofline.
 3. Except during periods of continuous monitoring system breakdown, repairs, maintenance, out-of-control periods, calibration checks, and zero and span adjustments, the owner or operator shall continuously monitor SO₂ concentrations and stack gas volumetric flow rates at each location specified in subsection (E)(1) and use the monitored concentrations and volumetric flow rates when demonstrating compliance with the SO₂ emission limit in subsection (C) in accordance with subsection (F).
 4. Except during periods of continuous monitoring system breakdown, repairs, maintenance, out-of-control periods, calibration checks and zero and span adjustments, the owner or operator shall continuously monitor fugitive SO₂ emissions at the Miami Smelter roofline and use the monitored concentrations and volumetric flow rates when demonstrating compliance with the SO₂ emission limit in subsection (C) in accordance with subsection (F).
 5. For purposes of subsections (E)(3) and (E)(4), continuous monitoring means the taking and recording of at least one measurement of SO₂ concentration and stack gas flow rate reading from the effluent of each affected stack, outlet, or other approved measurement location in each 15-minute period when the associated process units are operating. Fifteen-minute periods start at the beginning of each clock hour, and run consecutively. All continuous monitoring systems required by subsection (E)(1) shall complete at least one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.
 6. If the owner or operator can demonstrate to the Director and EPA Region IX that measurement of stack gas volumetric flow rate in the outlet of any particular piece of SO₂ control equipment would yield inaccurate results or would be technologically infeasible, then the Director and EPA Region IX may allow measurement of the flow rate at an alternative sampling point.
 7. The owner or operator shall demonstrate that the continuous monitoring systems required by subsection (E)(1) meet all of the following requirements:
 - a. Each SO₂ continuous monitoring system shall meet the specifications under 40 CFR 60, Appendix B, Performance Specification 6.
 - b. Each SO₂ continuous monitoring system installed and operated under this Section shall also meet the quality assurance requirements of 40 CFR 60, Appendix F, Procedure 1.
 - c. The owner or operator shall notify the Director in writing at least 30 days in advance of the start of the

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- relative accuracy test audit (RATA) procedures performed on each continuous monitoring system.
- d. The Director shall approve the location of all sampling points for monitoring SO₂ concentrations and stack gas volumetric flow rates in writing before installation and operation of measurement instruments.
 - e. The span of each continuous monitoring system for the acid plant tail stack, vent fume stack, and aisle scrubber stack shall be set at a SO₂ concentration of zero to 0.20% by volume.
 - f. The span of the continuous monitoring system for the bypass stack shall be set at a SO₂ concentration of zero to 20% by volume.
 - g. The zero (or low-level value between 0 and 20% of the span value) and span (50% to 100% of span value) calibration drifts shall be checked at least once each operating day in accordance with a written procedure. The zero and span must, at a minimum, be adjusted whenever either the 24-hour zero drift or the 24-hour span drift exceeds two times the limit in 40 CFR Part 60, Appendix B, Performance Specification 2. The system must allow the amount of the excess zero and span drift to be recorded and quantified.
 - h. The owner or operator shall maintain on hand and ready for immediate installation sufficient spare parts or duplicate systems for the continuous monitoring system equipment required by this Section to allow for the replacement within six hours of any monitoring system equipment part that fails or malfunctions during operation.
8. The owner or operator shall develop and implement a roofline fugitive emissions monitoring plan for the continuous monitoring system required by subsection (E)(2). The owner or operator shall submit the initial plan to the Department and EPA Region IX for review and approval by July 1, 2017.
- a. The roofline fugitive emissions monitoring plan must address the following requirements:
 - i. The continuous monitoring system required by subsection (E)(2) must include measurement of fugitive emissions from, at a minimum, the Converter, Electric Furnace, Anode Furnace, and IsaSmelt[®] systems that is representative of total fugitive emissions.
 - ii. Each measurement system shall include at least one SO₂ analyzer and sufficient sampling locations that ensure collection of a representative sample along the roof monitor for each monitor system. The number of sample probes and their locations for each monitoring system shall account for the physical configuration of the vent, the locations of emitting activities relative to the vent, and heat generated by the equipment served by the vent.
 - iii. Each measurement system shall include validation of adequate velocity for flow measurements and sufficient flow and temperature sensors to ensure calculation of representative exhaust flows through each vent. The number of such sensors and their locations for each monitoring system shall account for the physical configuration of the vent, the locations of emitting activities relative to the vent, and heat generated by the equipment served by the vent.
 - iv. Each measurement system shall include an on-site data collection system that continuously logs and stores the measured SO₂ concentration, the measured flow velocity, and the measured temperature.
 - v. An appropriate range for zero-span drift shall be established for all SO₂ analyzers to ensure proper calibration and operation. Unless otherwise provided in the roofline fugitive emissions monitoring plan required by subsection (E)(8), the zero (or low-level) value determination shall be made using a gas containing between zero to 20% of the span value for SO₂ and the span (or high-level) value determination shall be made using a certified gas with a value between 50% and 100% of the span value for SO₂. For each SO₂ analyzer, a daily zero-span check shall be performed by introducing zero gas and a known concentration of span gas to the analyzer. If the zero or span drift for an analyzer is greater than 5% of the span gas concentration for five consecutive days or greater than 10% of the span gas concentration for one day, the analyzer shall be found to be operating improperly and appropriate measures shall be taken to return the analyzer to proper operation. The zero-span check shall be repeated after any such corrective action is taken.
 - vi. All SO₂ analyzers shall be inspected quarterly by the owner or operator and inspected annually by an independent auditor. The inspections shall be conducted in accordance with the data accuracy assessment requirements of 40 CFR 60, Appendix F, Procedure 1, Section 5 or as otherwise provided in the roofline fugitive emissions monitoring plan required by subsection (E)(8). The quarterly inspections consist of two certified concentrations of SO₂ to each sample probe system and comparing the known concentrations to the concentrations logged by the corresponding on-site data collection system to generate a relative error for each system.
 - vii. The flow and temperature data shall be checked daily for proper operation of flow and temperature sensors in accordance with the roofline fugitive emissions monitoring plan required by subsection (E)(8). If a flow or temperature sensor is found to be operating improperly, appropriate measures shall be taken to return the sensor to proper operation.
 - viii. All temperature sensors shall be inspected annually. The inspection shall be conducted according to the manufacturer's specification. A temperature sensor tolerance range representative of proper sensor operation shall be established in the roofline fugitive emissions monitoring plan required by subsection (E)(8). If a temperature sensor is found to measure outside of an established tolerance range, the sensor shall be found to be operating improperly and appropriate measures shall be taken to return the sensor to proper operation.
 - ix. All flow sensors shall be calibrated semi-annually with calibration tools according to the manufacturer's specifications. A calibration tool range representative of proper sensor oper-

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ation shall be established in the roofline fugitive emissions monitoring plan required by subsection (E)(8). If a flow sensor is found to measure outside of an established range, the sensor shall be found to be operating improperly and appropriate measures shall be taken to return the sensor to proper operation.

- b. The owner or operator shall operate and maintain the continuous monitoring system required by subsection (E)(2) in accordance with the roofline fugitive emissions monitoring plan required by subsection (E)(2) and as approved by the Department and EPA Region IX, except as provided herein. Until receiving initial approval of the plan, the owner or operator shall operate and maintain the continuous monitoring system required by subsection (E)(2) in accordance with the plan as initially submitted pursuant to subsection (E)(2). The owner or operator shall keep the plan current and consistent with subsection (E)(8)(a). The owner or operator shall maintain a current copy of the plan onsite and available for review and inspection upon request. The Department and/or EPA Region IX may require the owner or operator to revise the plan if determined to be inconsistent with subsection (E)(8)(a). Within 60 days of receiving written notification from the Department or EPA Region IX specifying such inconsistency, the owner or operator shall submit a proposal to the Department and EPA Region IX that addresses the inconsistency.

F. Compliance Demonstration Requirements.

1. Within 180 days of the effective date set forth in subsection (A)(2), the owner or operator shall demonstrate compliance with the emission limit in subsection (C) by calculating SO₂ emissions for each operating day as follows:
 - a. Sum the hourly pounds of SO₂ measured by the continuous monitoring systems required by subsection (E)(1) and (E)(2) for the current operating day and the preceding 29 operating days to calculate the total pounds of SO₂ emissions over the 30-operating day averaging period.
 - b. Multiply the operating days occurring during a 30-day averaging period by 24 to calculate the total operating hours over the most recent 30-operating day period.
 - c. Divide the total amount of SO₂ emissions calculated from subsection (F)(1)(a) by the total operating hours calculated from subsection (F)(1)(b) to calculate the 30-day rolling hourly average SO₂ emissions.
2. For the continuous monitoring systems required by subsections (E)(1) and (E)(2), hourly emissions shall be computed as follows:
 - a. Except as provided under subsection (F)(2)(c), for a full operating hour (any clock hour with 60 minutes of unit operation), at least four valid data points are required to calculate the hourly average, i.e., one data point in each of the 15-minute quadrants of the hour.
 - b. Except as provided under subsection (F)(2)(c), for a partial operating hour (any clock hour with less than 60 minutes of unit operation), at least one valid data point in each 15-minute quadrant of the hour in which the unit operates is required to calculate the hourly average.

- c. For any operating hour in which required maintenance or quality-assurance activities are performed:
 - i. If the unit operates in two or more quadrants of the hour, a minimum of two valid data points, separated by at least 15 minutes, is required to calculate the hourly average; or
 - ii. If the unit operates in only one quadrant of the hour, at least one valid data point is required to calculate the hourly average.
 - d. If a daily calibration error check is failed during any operating hour, all data for that hour shall be invalidated, unless a subsequent calibration error test is passed in the same hour and the requirements of subsection (F)(2)(c) are met, based solely on valid data recorded after the successful calibration.
 - e. For each full or partial operating hour, all valid data points shall be used to calculate the hourly average.
 - f. Data recorded during periods of continuous monitoring system breakdown, repair, maintenance, out of control periods, calibration checks, and zero and span adjustments shall not be included in the data averages computed under subsection (F)(3).
 - g. Either arithmetic or integrated averaging of all data may be used to calculate the hourly average. The data may be recorded in reduced or non-reduced form.
3. When no valid hour or hours of data have been recorded by a continuous monitoring system required by subsections (E)(1) and (E)(2) and the associated process unit is operating, the owner or operator shall calculate substitute data for each such period according to the following procedures:
 - a. For a missing data period less than or equal to 24 hours, substitute the average of the hourly SO₂ concentrations recorded by the system for the hour before and the hour after the missing data period.
 - b. For a missing data period greater than 24 hours, substitute the greater of:
 - i. The 90th percentile hourly SO₂ concentrations recorded by the system during the previous 720 quality-assured monitor operating hours; or
 - ii. The average of the hourly SO₂ concentrations recorded by the system for the hour before and the hour after the missing data period.
 4. The owner or operator shall include periods of startup, shutdown, malfunction, or other upset conditions when determining compliance with the emission limit in subsection (C).

G. Recordkeeping.

1. The owner or operator shall maintain records as specified in the capture system and control device operations and maintenance plan required under subsection (D)(2) and the roofline fugitive emissions monitoring plan required under subsection (E)(8).
2. The owner or operator shall maintain the following records for at least five years:
 - a. All measurements from the continuous monitoring systems required by subsection (E)(1) and (E)(2); including the date, place, and time of sampling or measurement, parameters sampled or measured, and results.
 - b. All records of all compliance calculations required by subsection (F).
 - c. All records of quality assurance and quality control activities conducted on the continuous monitoring systems required by subsection (E)(1) and (E)(2).

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- d. All records of continuous monitoring system breakdowns, repairs, maintenance, out of control periods, calibration checks, and zero and span adjustments for the continuous monitoring systems required by subsection (E)(1) and (E)(2).
- e. All records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of Smelter processes; any malfunction of the associated air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device required by subsection (E)(1) and (E)(2) is inoperative.
- f. All records of all major maintenance activities conducted on emission units, capture system, air pollution control equipment, and continuous monitoring systems; including those set forth in the operations and maintenance plan required by subsection (D)(2).
- g. All records of reports and notifications required by subsection (H).

H. Reporting

1. Within 30 days after the end of each calendar quarter, the owner or operator shall submit a data assessment report to the Director in accordance with 40 CFR Part 60, Appendix F, Procedure 1 for the continuous monitoring systems required by subsection (E).
 2. The owner or operator shall submit an excess emissions and monitoring systems performance report and/or summary report form in accordance with 40 CFR § 60.7(c) to the Director semiannually for the continuous monitoring systems required by subsection (E)(1) and (E)(2). All reports shall be postmarked by the 30th day following the end of each six-month period.
 3. The owner or operator shall provide the following to the Director:
 - a. Notification of commencement of construction of the project improvements and equipment authorized by Significant Permit Revision No. 53592 to comply with the operational or emission limits in this Section no later than 30 days after such date.
 - b. Semiannual progress reports on construction of any such improvements and equipment on January 1 and July 1 of each calendar year until construction is complete.
 - c. Notification of initial startup of any such improvements and equipment within 15 days after such date.
4. "ADOT" means the Arizona Department of Transportation.
 5. "Applicable implementation plan" is defined in § 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under § 110, or promulgated under § 110(c), or promulgated or approved pursuant to regulations promulgated under § 301(d) and which implements the relevant requirements of the CAA.
 6. "CAA" means the Clean Air Act, as amended.
 7. "Cause or contribute to a new violation" for a project means either of the following:
 - a. To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented.
 - b. To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area.
 8. "Consultation" means that one party confers with another identified party, provides access to all appropriate information to that party needed for meaningful input, and, prior to taking any action, considers the views of that party and responds in accordance with the procedures established in R18-2-1405.
 9. "Control strategy implementation plan revision" is the applicable implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA §§ 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and §§ 192(a) and 192(b), for nitrogen dioxide).
 10. "Control strategy period" with respect to particulate matter less than 10 microns in diameter (PM₁₀), carbon monoxide (CO), nitrogen dioxide (NO₂), or ozone precursors (volatile organic compounds (VOC) and oxides of nitrogen (NO_x)), means that period of time after EPA approves control strategy implementation plan revisions containing strategies for controlling PM₁₀, NO₂, CO, or ozone, as appropriate. This period ends when the state submits and EPA approves a request under § 107(d) of the CAA for redesignation to an attainment area.
 11. "Design concept" means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed traffic rail transit, exclusive busway, etc.
 12. "Design scope" means the design aspects of a facility which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.
 13. "EPA" means the United States Environmental Protection Agency.
 14. "FHWA" means the Federal Highway Administration of USDOT.
 15. "FHWA or FTA project" means any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway program or the federal mass transit program, or requires Federal Highway Administration (FHWA) or Federal Transit

Historical Note

New Section R18-2-C1302 made by final rulemaking at 23 A.A.R. 767, on the later of the effective date of the Administrator's action approving it as part of the state implementation plan or January 1, 2018.

ARTICLE 14. CONFORMITY DETERMINATIONS**R18-2-1401. Definitions**

Terms used in this Article but not defined in this Article, Article 1 of this Chapter, or A.R.S. § 49-401.01 shall have the meaning given them by the CAA, Titles 23 and 40 U.S.C., other EPA regulations, or other USDOT regulations, in that order of priority. The following definitions and the definitions contained in Article 1 of this Chapter and in A.R.S. § 49-401.01 shall apply to this Article:

1. "ADEQ" means the Arizona Department of Environmental Quality.

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- Administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.
14. "FTA" means the Federal Transit Administration of USDOT.
 15. "Forecast period" with respect to a transportation plan means the period covered by the transportation plan pursuant to 23 CFR 450.
 16. "Highway project" means an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it shall be defined sufficiently to:
 - a. Connect logical termini and be of sufficient length to address environmental matters on a broad scope.
 - b. Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made.
 - c. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.
 17. "Horizon year" means a year for which the transportation plan describes the envisioned transportation system in accordance with R18-2-1406.
 18. "Hot-spot analysis" means an estimation of likely future localized CO and PM₁₀ pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Pollutant concentrations to be estimated should be based on the total emissions burden which may result from the implementation of a single, specific project, summed together with future background concentrations (which can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors) expected in the area. The total concentration shall be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.
 19. "Incomplete data area" means any ozone nonattainment area which EPA has classified, in 40 CFR 81, as an incomplete data area.
 20. "Increase the frequency or severity of a violation" means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed or would otherwise exist during the future period in question, if the project were not implemented.
 21. "ISTEA" means the Intermodal Surface Transportation Efficiency Act of 1991.
 22. "Local transportation agency" means a city, town, or county.
 23. "Maintenance area" means any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under § 175A of the CAA.
 24. "Maintenance period" with respect to a pollutant or pollutant precursor means that period of time beginning when a state submits and EPA approves a request under § 107(d) of the CAA for redesignation to an attainment area, and lasting for 20 years, unless the applicable implementation plan specifies that the maintenance period shall last for more than 20 years.
 25. "Metropolitan planning organization (MPO)" means the organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607.
 26. "Milestone" means an emissions level and the date on which it is required to be achieved as described in § 182(g)(1) and § 189(c) of the CAA.
 27. "Motor vehicle emissions budget" means that portion of the total allowable emissions defined in a revision to the applicable implementation plan (or in an implementation plan revision which was endorsed by the Governor or Director of ADEQ, subject to a public hearing, and submitted to EPA, but not yet approved by EPA) for a certain date for the purpose of meeting reasonable further progress milestones or attainment or maintenance demonstrations, for any criteria pollutant or its precursors, allocated by the applicable implementation plan to highway and transit vehicles. The applicable implementation plan for an ozone nonattainment area may also designate a motor vehicle emissions budget for oxides of nitrogen (NO_x) for a reasonable further progress milestone year if the applicable implementation plan demonstrates that this NO_x budget will be achieved with measures in the implementation plan (as an implementation plan must do for VOC milestone requirements). The applicable implementation plan for an ozone nonattainment area includes a NO_x budget if NO_x reductions are being substituted for reductions in volatile organic compounds in milestone years required for reasonable further progress.
 28. "National ambient air quality standards (NAAQS)" means those standards established pursuant to § 109 of the CAA.
 29. "NEPA" means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).
 30. "NEPA process completion" with respect to FHWA or FTA, means the point at which there is a specific action to do any of the following:
 - a. Make a formal final determination that a project is categorically excluded.
 - b. Make a Finding of No Significant Impact.
 - c. Issue a record of decision on a Final Environmental Impact Statement under NEPA.
 31. "Nonattainment area" means any geographic region of the United States which has been designated as nonattainment under § 107 of the CAA for any pollutant for which a national ambient air quality standard exists.
 32. "Not classified area" means any carbon monoxide nonattainment area which EPA has not classified as either moderate or serious.
 33. "Phase II of the interim period" with respect to a pollutant or pollutant precursor means that period of time after December 27, 1993, lasting until the earlier of the following:
 1. Submission to EPA of the relevant control strategy implementation plan revisions which have been endorsed by the Governor or the Director of ADEQ and have been subject to a public hearing.
 2. The date that the CAA requires relevant control strategy implementation plans to be submitted to EPA, provided EPA has made a finding of the state's failure to submit any such plans and the state, MPO,

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- and USDOT have received notice of such finding of the state's failure to submit any such plans.
34. "Project" means a highway project or transit project.
 35. "Recipient of funds designated under 23 U.S.C. or the Federal Transit Act" means any agency at any level of state, county, or city government, including any political subdivision or MPO, that routinely receives 23 U.S.C. or Federal Transit Act funds to construct FHWA or FTA projects, operate FHWA or FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.
 36. "Regional transportation agency" means a regional transit authority established pursuant to A.R.S. Title 28, Chapter 20 or Chapter 24, or a formal association of political subdivisions involved in regional transportation issues.
 37. "Regionally significant transportation project" means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals, as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.
 38. "Rural transport ozone nonattainment area" means an ozone nonattainment area that does not include, and is not adjacent to, any part of a Metropolitan Statistical Area or, where one exists, a Consolidated Metropolitan Statistical Area (as defined by the United States Bureau of the Census) and is classified under CAA § 182(h) as a rural transport area.
 39. "Standard" means a national ambient air quality standard.
 40. "Statewide transportation improvement program (STIP)" means a staged, multi-year, intermodal program of transportation projects covering the state, which is consistent with the statewide transportation plan and metropolitan transportation plans, and developed pursuant to 23 CFR 450.
 41. "Statewide transportation plan" means the official intermodal statewide transportation plan that is developed through the statewide planning process for the state, developed pursuant to 23 CFR 450.
 42. "Submarginal area" means any ozone nonattainment area which EPA has classified as submarginal in 40 CFR 81.
 43. "Transit" is mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.
 44. "Transit project" means an undertaking to implement or modify a transit facility or transit-related program, purchase transit vehicles or equipment, or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it shall be defined inclusively enough to:
 - a. Connect logical termini and be of sufficient length to address environmental matters on a broad scope.
 - b. Have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made.
 - c. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.
 45. "Transitional area" means any ozone nonattainment area which EPA has classified as transitional in 40 CFR 81.
 46. "Transitional period" with respect to a pollutant or pollutant precursor means that period of time which begins after submission to EPA of the relevant control strategy implementation plan which has been endorsed by the Governor or Director of ADEQ and has been subject to a public hearing. The transitional period lasts until EPA takes final approval or disapproval action on the control strategy implementation plan submission or finds it to be incomplete. The precise beginning and end of the transitional period is defined in R18-2-1428.
 47. "Transportation control measure (TCM)" means any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in § 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this rule.
 48. "Transportation improvement program (TIP)" means a staged, multi-year, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan and developed pursuant to 23 CFR 450.
 49. "Transportation plan" means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR 450.
 50. "Transportation project" means a highway project or a transit project.
 51. "USDOT" means the United States Department of Transportation.
 52. "VMT" means the number of vehicle miles traveled.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1402. Applicability

- A. Except as provided for in subsection (F) or R18-2-1434, conformity determinations are required for all of the following:
 1. The adoption, acceptance, approval, or support of transportation plans developed pursuant to 23 CFR 450 or 49 CFR 613 by an MPO or USDOT.
 2. The adoption, acceptance, approval, or support of TIPs developed pursuant to 23 CFR 450 or 49 CFR 613 by an MPO or USDOT.
 3. The approval, funding, or implementation of FHWA or FTA projects.
- B. Conformity determinations are not required under this Article for individual projects which are not FHWA or FTA projects. However, R18-2-1429 applies to such projects if they are regionally significant.
- C. The provisions of this Article shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.

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- D.** The provisions of this Article apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide, nitrogen dioxide, and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀).
- E.** The provisions of this Article apply with respect to emissions of the following precursor pollutants:
1. Volatile organic compounds and nitrogen oxides in ozone areas (unless the Administrator determines under § 182(f) of the CAA that additional reductions of NO_x would not contribute to attainment).
 2. Nitrogen oxides in nitrogen dioxide areas.
 3. Volatile organic compounds, nitrogen oxides, and PM₁₀ in PM₁₀ areas if either of the following apply:
 - a. During the interim period, the EPA Regional Administrator or the Director of ADEQ has made a finding (including a finding in an applicable implementation plan or a submitted implementation plan revision) that transportation-related precursor emissions within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified ADOT or the MPO where one exists and USDOT.
 - b. During the transitional, control strategy, and maintenance periods, the applicable implementation plan or implementation plan submission establishes a budget for such emissions as part of the reasonable further progress, attainment, or maintenance strategy.
- F.** Projects subject to this Article for which the NEPA process and a conformity determination have been completed by FHWA or FTA may proceed toward implementation without further conformity determinations if one of the following major steps has occurred within the most recent three-year period: NEPA process completion; formal start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications, and estimates. All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding, final design, right-of-way acquisition, construction, or any combination of these phases.
- G.** A new conformity determination for the project will be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if no major steps to advance the project have occurred within the most recent three-year period.
- B.** Each new transportation plan shall be found to conform before the transportation plan is approved by the MPO or accepted by USDOT.
- C.** All transportation plan revisions shall be found to conform before the transportation plan revisions are approved by the MPO or accepted by USDOT, unless the revision merely adds or deletes exempt projects listed in R18-2-1434 and has been made in accordance with the notification provisions contained in R18-2-1405. The conformity determination shall be based on the transportation plan and the revision taken as a whole.
- D.** An existing conformity determination shall lapse unless conformity of existing transportation plans is redetermined:
1. By May 25, 1995, unless previously redetermined consistent with 40 CFR 51, subpart T.
 2. Within 18 months after EPA approval of an implementation plan revision which either:
 - a. Establishes or revises a transportation-related emissions budget (as required by CAA §§ 175A(a), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and §§ 192(a) and 192(b), for nitrogen dioxide); or
 - b. Adds, deletes, or changes TCMs.
 3. Within 18 months after EPA promulgation of an implementation plan which establishes or revises a transportation-related emissions budget or adds, deletes, or changes TCMs.
- E.** In any case, conformity determinations shall be made no less frequently than every three years, or the existing conformity determination will lapse.
- F.** A new TIP shall be found to conform before the TIP is approved by the MPO or accepted by USDOT.
- G.** A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by USDOT, unless the amendment merely adds or deletes exempt projects listed in R18-2-1434 and has been made in accordance with the notification procedures under R18-2-1405.
- H.** After an MPO adopts a new or revised transportation plan, TIP conformity shall be redetermined by the MPO and USDOT within six months from the date of adoption of the plan, unless the new or revised plan merely adds or deletes exempt projects listed in R18-2-1434. Otherwise, the existing conformity determination for the TIP shall lapse.
- I.** In any case, TIP conformity determinations shall be made no less frequently than every three years or the existing TIP conformity determination shall lapse.
- J.** FHWA or FTA projects shall be found to conform before they are adopted, accepted, approved, or funded. Conformity shall be redetermined for any FHWA or FTA project if none of the following major steps has occurred within the most recent three-year period:
1. NEPA process completion,
 2. Start of final design,
 3. Acquisition of a significant portion of the right-of-way,
 4. Approval of the plans, specifications, and estimates.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1403. Priority

When assisting or approving any action with air quality-related consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent with statutory requirements for allocation of funds among states or other jurisdictions.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1404. Frequency of Conformity Determinations

- A.** Conformity determinations and conformity redeterminations for transportation plans, TIPs, and FHWA or FTA projects shall be made according to the requirements of this Section and the applicable implementation plan.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1405. Consultation

- A.** Consultation procedures as described in this Section shall be undertaken by all of the following entities and shall include the public and affected local and regional transportation agencies in preparing for and making conformity determinations and in developing applicable implementation plans:
1. An MPO where one exists.
 2. The Arizona Department of Transportation (ADOT).

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3. The United States Department of Transportation (USDOT).
 4. The Arizona Department of Environmental Quality (ADEQ).
 5. The county air pollution control agency established pursuant to A.R.S. Title 49 where one exists.
 6. The United States Environmental Protection Agency (EPA).
- B.** The following elements shall be used to implement the consultation processes under subsection (M), with the exception of subsection (M)(8), and under subsection (N), with the exception of subsections (N)(2) and (N)(3), and shall include all affected agencies and interested members of the public, and may be conducted at separate times or in combination:
1. Providing to the affected agencies and interested members of the public information describing the upcoming decision process,
 2. Distributing or providing access to draft documents,
 3. Providing an opportunity for informal question and answer on the draft document or proposed decision,
 4. Providing an opportunity for formal written comment,
 5. Writing and distributing both a response to comments and the final document or decision.
- C.** An MPO where one exists, ADEQ, a county air pollution control agency where one exists, ADOT, a transit authority where one exists, and any local transportation agency shall undertake a consultation process in accordance with this Section with each other, with the local or regional offices of EPA, FHWA and FTA, with affected regional transportation agencies, and with the public on the development of the following as described in subsections (D) through (G):
1. The implementation plan, including the emission budget and list of TCMs in the applicable implementation plan;
 2. The unified planning work program under 23 CFR § 450.314;
 3. The transportation plan and TIP;
 4. The statewide transportation plan and STIP;
 5. Any revisions to the preceding documents;
 6. All transportation conformity determinations.
- D.** ADEQ, or the MPO in a county having a population greater than 250,000 persons, shall be the lead agency responsible for preparing an implementation plan, the associated emission budgets, and the list of TCMs in the plan. The lead agency shall also be responsible for assuring the adequacy of the consultation process. The concurrence of ADEQ on each implementation plan is required before ADEQ adopts the plan and transmits it to EPA for inclusion in the state implementation plan pursuant to A.R.S. § 49-406.
- E.** ADOT, or the MPO where one exists, shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the consultation process with respect to the development of the transportation plan and the TIP. The MPO shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the consultation process with respect to the development of the unified planning work program under 23 CFR 450.314.
- F.** ADOT shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the consultation process with respect to the development of the statewide transportation plan and the STIP.
- G.** ADOT, or the MPO where one exists, shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the consultation process with respect to determinations of transportation conformity, except that the entity authorized to adopt or approve a project shall be the lead agency responsible for project-level conformity determinations for projects outside of the transportation plan or TIP and shall assure the adequacy of the consultation process.
- H.** Each lead agency described in subsections (D) through (G) shall:
1. Confer with all other agencies having an interest in the document or decision to be developed;
 2. Provide access to all information needed for meaningful input;
 3. Solicit early and continuing input from those agencies;
 4. Conduct the public consultation process described in subsection (P);
 5. Assure policy-level contact with agencies;
 6. With the exception of notifications pursuant to subsection (M)(8), prior to taking any action required pursuant to subsections (D) through (G), consider the views of each agency and the public and respond to significant comments in a timely, substantive written manner prior to taking any final action and assure that such views and written response are made part of the record of any action.
- I.** FHWA and FTA shall be responsible for assuring timely action on final findings of conformity for transportation plans, TIPs, and federally funded projects, including the basis for those findings, after consulting with other agencies as provided in this Section. FHWA and FTA shall also be responsible for providing guidance on conformity and the transportation planning process to agencies in consultation. FHWA and FTA may rely on the consultation process initiated by ADOT or the MPO where one exists and shall not be required to duplicate that process.
- J.** EPA shall be responsible for reviewing and approving updated motor vehicle emissions factors and providing guidance on conformity criteria and procedures to agencies in consultation.
- K.** Each lead agency subject to a consultation process under this Section, including any federal agency, shall provide or notice the availability of each final document that is the product of the consultation process, together with all supporting information, to each other agency and members of the public that have participated in the consultation process within 15 days of adopting or approving the document or making the determination. An agency may supply a checklist of available supporting information, which other participating agencies or the public may use to request all or part of the supporting information, in lieu of generally distributing all supporting information.
- L.** A meeting that is scheduled or required for another purpose may be used for the purposes of consultation if the conformity consultation purpose is identified in the public notice for the meeting.
- M.** A consultation process involving an MPO where one exists, ADEQ, a county air pollution control agency where one exists, ADOT, a transit authority where one exists, local and regional transportation agencies, EPA, USDOT, and the public shall be undertaken for the following:
1. Evaluating and choosing each model and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses including vehicle miles traveled (VMT) forecasting. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.
 2. Determining whether the responsible agency identified in R18-2-1433 has demonstrated that the requirements of R18-2-1416, R18-2-1418 and R18-2-1419 are satisfied without a particular mitigation or control measure. The consultation process pursuant to this subsection shall be initiated by the responsible agency.

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3. Making a determination, as required by R18-2-1429(C)(2), whether the project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not included in the TIP for the purposes of MPO project selection or endorsement, and whether the project's design concept and scope have changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility. The consultation process pursuant to this subsection shall be initiated by the MPO. In nonattainment areas where no MPO exists, ADOT shall initiate the consultation process for making a determination, as required by R18-2-1429(C)(2), whether a project that is outside of a TIP is included in the regional emissions analysis, and whether the project's design concept and scope have changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility.
 4. Determining pursuant to subsection (R) which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP. The consultation process pursuant to this subsection shall be initiated by the MPO. In nonattainment areas where no MPO exists, ADOT shall initiate the consultation process for determining pursuant to subsection (R) which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis.
 5. Evaluating whether exempt projects as described in R18-2-1434 and R18-2-1435 should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.
 6. Making a determination, as required by R18-2-1413, whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs. This consultation process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or to substitute TCMs or other emission reduction measures. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.
 7. Identifying, as required by R18-2-1431, projects located at sites in PM₁₀ nonattainment areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM₁₀ hot-spot analysis. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.
 8. Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in R18-2-1434. Notice shall be provided by the MPO and need not be provided prior to final action. Notice shall be provided by ADOT for revisions and amendments affecting the state transportation plan and the state TIP. The public involvement process described in subsection (P) is not required for the purposes of this subsection.
 9. Project-level conformity determinations pursuant to R18-2-1416. The consultation process pursuant to this subsection shall be initiated by the recipient of the funds designated under 23 U.S.C. or the Federal Transit Act.
- N. A consultation process involving the MPO, ADEQ, a county air pollution control agency where one exists, ADOT, appropriate political subdivisions, regional transportation agencies, if any, and the public shall be undertaken for the following:
1. Evaluating events which will trigger new conformity determinations in addition to those triggering events established in R18-2-1404 and including any changes in planning assumptions that may trigger a new conformity determination. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.
 2. Consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment areas or air basins. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists. The public involvement process described in subsection (P) is not required for the purposes of this subsection.
 3. Where the metropolitan planning area does not include the entire nonattainment or maintenance area, a consultation process involving the MPO and ADOT for cooperative planning and analysis for purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area. The consultation process pursuant to this subsection shall be initiated by ADOT. The public involvement process described in subsection (P) is not required for the purposes of this subsection.
 4. The design, schedule, and funding of research and data collection efforts and regional transportation model development. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.
 5. Determining that a conforming project approved with mitigation no longer requires mitigation. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.
- O. The following consultation processes involve recipients of funds designated under 23 U.S.C. or the Federal Transit Act:
1. A consultation process involving the MPO, ADEQ, a county air pollution control agency where one exists, ADOT, recipients of funds designated under 23 U.S.C. or the Federal Transit Act and any agency created under state law that sponsors or approves transportation projects shall be undertaken to assure that plans for construction of regionally significant projects which are not FHWA or FTA projects, including projects for which alternative locations, design concept or scope, or the no-build option are still being considered, are disclosed as soon as practicable to ADOT or the MPO where one exists, so as to assure that any significant changes to the design concept or scope of those plans are disclosed as soon as practicable. The political subdivision having authority to adopt or approve a regionally significant transportation project, and any agency that becomes aware of any such project through applications for approval, permitting, funding, or otherwise shall disclose such project to ADOT or the MPO if one exists as soon as practicable. To help assure timely disclosure, the political subdivision having author-

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ity to adopt or approve any potential regionally significant transportation project shall disclose to ADOT or the MPO on a schedule prescribed by ADOT or the MPO, whichever is appropriate, each project for which alternatives have been identified through the NEPA process and, in particular, any preferred alternative that may be a regionally significant project. The consultation process shall include assuming the location, design concept, and scope of the project, where the sponsor has not yet decided these features, in sufficient detail to allow ADOT or the MPO to perform a regional emissions analysis. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.

2. A consultation process involving the MPO, ADEQ, a county air pollution control agency where one exists, ADOT, recipients of funds designated under 23 U.S.C. or the Federal Transit Act, any agency created under state law that sponsors or approves transportation projects, and the public shall be undertaken for the development of procedures as described in R18-2-1429. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.

P. Public involvement processes shall be conducted according to the requirements of this subsection.

1. ADOT or the MPO, where one exists, when making conformity determinations on transportation plans, programs, and projects shall establish and continuously implement a proactive public involvement process which provides opportunity for public review and comment prior to taking formal action on a conformity determination for all transportation plans and TIPs, that meets the following minimum requirements:
 - a. Includes a process that provides complete information, timely public notice, full public access to key decisions and supports early and continuing involvement of the public in developing plans and TIPs.
 - b. Requires a minimum public comment period of 45 days before the public involvement process is initially adopted or revised.
 - c. Provides timely information about transportation issues and processes to citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation, other interested parties and segments of the community affected by transportation plans, programs, and projects, including but not limited to central city and other local jurisdiction concerns.
 - d. Provides reasonable public access to technical and policy information used in the development of plans and TIPs and open public meetings where matters related to the federal-aid highway and transit programs are being considered.
 - e. Requires adequate public notice of public involvement activities and time for public review and comment at key decision points, including, but not limited to, approval of plans and TIPs and approval of changes in plans and TIPs. In nonattainment areas classified as serious and above, the comment period shall be at least 30 days for the plan, TIP, and major amendments. Public notice shall include mailing of notice to a list of all persons who have requested notice of actions covered by this Article.
 - f. Demonstrates explicit consideration and response to public input received during the planning and program development processes.

- g. Seeks out and considers the needs of those traditionally underserved by existing transportation systems, including but not limited to low-income and minority households.
- h. When significant written and oral comments are received on a draft transportation plan or TIP, including the financial plan, as a result of the public involvement process or the consultation process required by this Section, a summary, analysis, and report on the disposition of comments shall be made part of the final plan and TIP.
- i. If the final transportation plan or TIP differs significantly from the one which was made available for public comment by the MPO and it raises new material issues which interested parties could not reasonably have foreseen from the public involvement efforts, an additional opportunity for public comment on the revised plan or TIP shall be made available.
- j. ADOT or the MPO where one exists shall specifically address in writing all public comments that known plans for a regionally significant transportation project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP.
- k. Public involvement processes shall be periodically reviewed by ADOT or the MPO in terms of their effectiveness in assuring that the process provides full and open access to all.
 - l. These procedures will be reviewed by the FHWA and the FTA during certification reviews for TMAs, and as otherwise necessary for all MPOs, to assure that full and open access is provided to MPO decisionmaking processes.
 - m. Metropolitan public involvement processes shall be coordinated with statewide public involvement processes wherever possible to enhance public consideration of the issues, plans, and programs and to reduce redundancies and costs.
2. Local and regional transportation agencies when making conformity determinations on regionally significant transportation projects shall establish and implement a public involvement process which meets, at a minimum, the following requirements:
 - a. Provides to the affected agencies and interested members of the public information describing the upcoming decision process.
 - b. Distributes or provides access to draft documents and all information needed for meaningful input.
 - c. Solicits early and continuing input from interested agencies and the public.
 - d. Provides an opportunity for informal question and answer on the draft document or proposed decision.
 - e. Provides an opportunity for formal written comment.
 - f. Provides for writing and distributing both a response to comments and the final document or decision. The response to comments shall consider the views of each agency and the public. The response to comments shall be made in a timely, substantive written manner prior to taking any final action and shall be made part of the record of any action.

- Q.** Any conflict among state agencies or between state agencies and an MPO shall be escalated to the Governor if the conflict cannot be resolved by the directors of the involved agencies.

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In the first instance, such entities shall make every effort to resolve any differences, including personal meetings between the directors of such entities or their policy-level representatives, to the extent possible. Within 14 calendar days after ADOT or the MPO has notified ADEQ of its decision, ADEQ may appeal a proposed determination of conformity, or other policy decision under this Article, to the Governor. ADEQ must provide notice of any appeal under this subsection to ADOT or the MPO. If ADEQ does not appeal to the Governor within 14 days, ADOT or the MPO may proceed with the final determination or decision. If ADEQ appeals to the Governor, the final conformity determination or policy decision shall have the concurrence of the Governor. The Governor may delegate to another official or agency within the state the role of hearing any appeal under this subsection and of deciding whether to concur in the determination or decision but may not delegate these functions to the director or staff of ADEQ, to any local air quality agency, to ADOT, to any state transportation commission or board, to an MPO, or to any agency that has responsibility for any of these functions.

R. The following procedures shall govern the consultation process regarding regionally significant transportation projects as defined in R18-2-1401(37):

1. By September 1, 1995, ADOT or the MPO where one exists shall develop and make available, for each nonattainment or maintenance area, consistent with A.R.S. § 49-408(A), the following:
 - a. A map of the highway or transit facilities in the nonattainment or maintenance area that serve regional transportation needs.
 - b. Guidance on which undertakings to implement or modify a highway facility are not transportation projects as defined in this Article, because they are not of sufficient length to address environmental matters on a broad scope.
 - c. Guidance on which types of transportation projects are normally included in the regional transportation model.
2. The map and guidance described in subsection (R)(1) shall be produced only after consultation with ADEQ, a county air pollution control agency where one exists, ADOT, a transit authority where one exists, local and regional transportation agencies, and the public. The map developed pursuant to subsection (R)(1) shall be updated prior to the commencement of the next TIP or STIP development cycle, unless no changes have occurred. The guidance developed pursuant to subsection (R)(3) shall be revised as necessary to reflect changes in the regional transportation model.
3. ADOT or the MPO where one exists shall develop and initiate the consultation process described in subsection (H) for a proposed list of transportation projects to be considered regionally significant. The consultation process shall include the MPO where one exists, ADEQ, a county air pollution control agency where one exists, ADOT, a transit authority where one exists, local and regional transportation agencies, EPA, USDOT, and the public. The list shall include information supporting the proposed classification.
4. In determining whether a facility serves regional transportation needs, ADOT or the MPO where one exists shall consider at a minimum whether the facility:
 - a. Would be classified as a principal arterial based on average daily traffic or other factors, if not for limitations that the USDOT places on the percentage of streets that can be so classified.

- b. For all other roadways, whether the facility:
 - i. Serves regional mobility needs, as opposed to local access.
 - ii. Carries regional traffic from one principal arterial to another.
 - iii. Is a modification that expands a facility such that it would serve regional transportation needs.
5. For the purposes of this Article, a street with a lower classification than a collector street, as specified in the most recent federal classification map for the region, does not serve regional transportation needs.
6. None of the following attributes, by itself, shall require a transportation project to be included in the modeling of a metropolitan area's transportation network:
 - a. The connection of a facility that does not serve regional transportation needs to a facility that does serve regional transportation needs.
 - b. The addition or modification of a lane other than a through lane.
- S.** An agency having a role or responsibility under this Section may delegate that role or responsibility to another entity pursuant to the applicable state law but shall notify all other parties to the consultation process of this fact when the delegation occurs and shall also provide to the other parties the name, address, and telephone number of one or more contact persons representing the entity that is accepting the delegated role or responsibility.
- T.** The provisions of this Section apply only to TIP and STIP planning cycles beginning with the cycles next following the effective date of this Section. The provisions of 40 CFR 51, Subpart T, continue to apply to all TIP and STIP planning cycles in progress at the time of the effective date of this Section. The provisions of this Section apply to consultation on projects and TIP amendments as of the effective date of this Section.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1406. Content of Transportation Plans

- A.** For transportation plans adopted after January 1, 1995, in serious, severe, or extreme ozone nonattainment areas and in serious carbon monoxide nonattainment areas, the following shall apply:
1. The transportation plan shall specifically describe the transportation system envisioned for certain future years which shall be called horizon years.
 2. The agency or organization developing the transportation plan, after consultation pursuant to R18-2-1405, may choose any years to be horizon years, subject to the following restrictions:
 - a. Horizon years may be no more than 10 years apart.
 - b. The first horizon year may be no more than 10 years from the base year used to validate the transportation demand planning model.
 - c. If the attainment year is in the time span of the transportation plan, the attainment year shall be a horizon year.
 - d. The last horizon year shall be the last year of the transportation plan's forecast period.
 3. For these horizon years all of the following apply:
 - a. The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land-use forecasts, in accordance with implementation plan provisions and R18-2-1405.

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- b. The highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years. Additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities and to determine their effect on route options between transportation analysis zones. Each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for area-wide transportation analysis in use by the MPO. Transit facilities, equipment, and services envisioned for the future shall be identified in terms of design concept, design scope, and operating policies sufficiently to allow modeling of their transit ridership. The description of additions and modifications to the transportation network shall also be sufficiently specific to show that there is a reasonable relationship between expected land use and the envisioned transportation system.
- c. Other future transportation policies, requirements, services, and activities, including intermodal activities, shall be described.
- B. Ozone or CO nonattainment areas which are reclassified from moderate to serious shall meet the requirements of subsection (A) within two years from the date of reclassification.
- C. Transportation plans for other areas shall meet the requirements of subsection (A) at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, transportation plans shall describe the transportation system envisioned for the future specifically enough to allow determination of conformity according to the criteria and procedures of R18-2-1409 through R18-2-1427.
- D. The requirements of this Section supplement other requirements of applicable law or regulation governing the format or content of transportation plans.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1407. Relationship of Transportation Plan and TIP Conformity with the NEPA Process

The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project shall meet the criteria in R18-2-1409 through R18-2-1427 for projects not from a TIP before NEPA process completion.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1408. Fiscal Constraints for Transportation Plans and TIPs

Transportation plans and TIPs shall demonstrate that they are fiscally constrained consistent with USDOT's metropolitan planning regulations at 23 CFR 450 in order to be found in conformity.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1409. Criteria and Procedures for Determining Con-**formity of Transportation Plans, Programs, and Projects: General**

- A. In order to be found to conform, each transportation plan, program, and FHWA or FTA project shall satisfy the applicable criteria and procedures in R18-2-1410 through R18-2-1427 as listed in Table 1 of this Section and shall comply with all applicable conformity requirements of implementation plans and of court orders for the area which pertain specifically to conformity determination requirements. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs, and FHWA or FTA projects), the time period in which the conformity determination is made, and the relevant pollutant.
- B. The following table indicates the criteria and procedures in R18-2-1410 through R18-2-1427 which apply for each action in each time period:

**Table 1. Conformity Criteria
DURING ALL PERIODS**

Action	Criteria
Transportation Plan	R18-2-1410, R18-2-1411, R18-2-1412, R18-2-1413(B)
TIP	R18-2-1410, R18-2-1411, R18-2-1412, R18-2-1413(C)
Project (from a conforming plan and TIP)	R18-2-1410, R18-2-1411, R18-2-1412, R18-2-1414, R18-2-1415, R18-2-1416, R18-2-1417
Project (not from a conforming plan and TIP)	R18-2-1410, R18-2-1411, R18-2-1412, R18-2-1413(D), R18-2-1414, R18-2-1416, R18-2-1417

PHASE II OF THE INTERIM PERIOD

Action	Criteria
Transportation Plan	R18-2-1422, R18-2-1425
TIP	R18-2-1423, R18-2-1426
Project (from a conforming plan and TIP)	R18-2-1421
Project (not from a conforming plan and TIP)	R18-2-1421, R18-2-1424, R18-2-1427

TRANSITIONAL PERIOD

Action	Criteria
Transportation Plan	R18-2-1418, R18-2-1422, R18-2-1425
TIP	R18-2-1419, R18-2-1423, R18-2-1426
Project (from a conforming plan and TIP)	R18-2-1421
Project (not from a conforming plan and TIP)	R18-2-1420, R18-2-1421, R18-2-1424, R18-2-1427

CONTROL STRATEGY AND MAINTENANCE PERIODS

Action	Criteria
Transportation Plan	R18-2-1418
TIP	R18-2-1419
Project (from a conforming plan and TIP)	No additional criteria
Project (not from a conforming plan and TIP)	R18-2-1420

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- R18-2-1410. The conformity determination must be based on the latest planning assumptions.
- R18-2-1411. The conformity determination must be based on the latest emission estimation model available.
- R18-2-1412. The MPO must make the conformity determination according to the consultation procedures of this rule and the implementation plan revision required by 40 CFR 51.396.
- R18-2-1413. The transportation plan, TIP, or FHWA or FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan.
- R18-2-1414. There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval.
- R18-2-1415. The project must come from a conforming transportation plan and program.
- R18-2-1416. The FHWA or FTA project must not cause or contribute to any new localized CO or PM₁₀ violations or increase the frequency or severity of any existing CO or PM₁₀ violations in CO and PM₁₀ nonattainment and maintenance areas.
- R18-2-1417. The FHWA or FTA project must comply with PM₁₀ control measures in the applicable implementation plan.
- R18-2-1418. The transportation plan must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.
- R18-2-1419. The TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.
- R18-2-1420. The project which is not from a conforming transportation plan and conforming TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.
- R18-2-1421. The FHWA or FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas).
- R18-2-1422. The transportation plan must contribute to emissions reductions in ozone and CO nonattainment areas.
- R18-2-1423. The TIP must contribute to emissions reductions in ozone and CO nonattainment areas.
- R18-2-1424. The project which is not from a conforming transportation plan and TIP must contribute to emissions reductions in ozone and CO nonattainment areas.
- R18-2-1425. The transportation plan must contribute to emission reductions or must not increase emissions in PM₁₀ and NO₂ nonattainment areas.
- R18-2-1426. The TIP must contribute to emission reductions or must not increase emissions in PM₁₀ and NO₂ nonattainment areas.
- R18-2-1427. The project which is not from a conforming transportation plan and TIP must contribute to emission reductions or must not increase emissions in PM₁₀ and NO₂ nonattainment areas.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1410. Criteria and Procedures: Latest Planning Assumptions

- A. During all periods the conformity determination, with respect to all other applicable criteria in R18-2-1411 through R18-2-1427, shall be based upon the most recent complete planning assumptions in force at the time of the conformity determination. The conformity determination shall satisfy the requirements of subsections (B) through (F).
- B. Assumptions, including vehicle miles traveled per capita or per household, trip generation per household, vehicle occupancy, household size, vehicle fleet mix, vehicle ownership, and the geographic distribution of population growth shall be derived from the estimates of current and future population, employment, travel, and congestion most recently used by ADOT or the MPO where one exists. Population estimates shall be consistent with the estimates developed by the Arizona Department of Economic Security pursuant to A.R.S. § 41-1954(A). The conformity determination shall also be based on the latest assumptions about current and future background concentrations.

pancy, household size, vehicle fleet mix, vehicle ownership, and the geographic distribution of population growth shall be derived from the estimates of current and future population, employment, travel, and congestion most recently used by ADOT or the MPO where one exists. Population estimates shall be consistent with the estimates developed by the Arizona Department of Economic Security pursuant to A.R.S. § 41-1954(A). The conformity determination shall also be based on the latest assumptions about current and future background concentrations.

- C. The conformity determination for each transportation plan and TIP shall discuss how transit operating policies (including fares and service levels) and assumed transit ridership have changed since the previous conformity determination.
- D. The conformity determination shall include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.
- E. The conformity determination shall use the latest existing information regarding the effectiveness of the TCMs which have already been implemented.
- F. Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by R18-2-1405.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1411. Criteria and Procedures: Latest Emissions Model

- A. During all periods the conformity determination shall be based on the latest emission estimation model available. This criterion is satisfied if the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in that state or area is used for the conformity analysis. Where EMFAC is the motor vehicle emissions model used in preparing or revising the applicable implementation plan, new versions shall be approved by EPA before they are used in the conformity analysis.
- B. Conformity analyses for which the emissions analysis was begun during the grace period or before the Federal Register notice of availability of the latest emission model, or during any grace period announced in such notice, may continue to use the previous version of the model for transportation plans and TIPs. The previous model may also be used for projects if the analysis was begun during the grace period or before the Federal Register notice of availability, provided no more than three years have passed since the draft environmental document was issued.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1412. Criteria and Procedures: Consultation

All conformity determinations shall be made according to the consultation procedures in R18-2-1405. This criterion applies during all periods. Until the implementation plan revision required by 40 CFR 51.396 is approved by EPA, the conformity determination shall be made according to the procedures in R18-2-1405. Once the implementation plan revision has been approved by EPA, this criterion is satisfied if the conformity determination is made consistent with the implementation plan's consultation requirements.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1413. Criteria and Procedures: Timely Implementation of TCMs

- A. During all periods the transportation plan, TIP, or FHWA, or FTA project which is not from a conforming plan and TIP

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shall provide for the timely implementation of TCMs from the applicable implementation plan.

- B.** For transportation plans, this criterion is satisfied if the following two conditions are met:
1. The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMs in the applicable implementation plan which are eligible for funding under 23 U.S.C. or the Federal Transit Act, consistent with schedules included in the applicable implementation plan.
 2. Nothing in the transportation plan interferes with the implementation of any TCM in the applicable implementation plan.
- C.** For TIPs, this criterion is satisfied if all of the following conditions are met:
1. An examination of the specific steps and funding source needed to fully implement each TCM indicates that TCMs which are eligible for funding under 23 U.S.C. or the Federal Transit Act are on or ahead of the schedule established in the applicable implementation plan, or, if such TCMs are behind the schedule established in the applicable implementation plan, the MPO and USDOT have determined that past obstacles to implementation of the TCMs have been identified and have been or are being overcome, and that all state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area. Maximum priority to approval or funding of TCMs includes demonstrations with respect to funding acceleration, commitment of staff or other agency resources, diligent efforts to seek approvals, and similar actions.
 2. If federal funding intended for TCMs in the applicable implementation plan has previously been programmed but is reallocated to projects in the TIP other than TCMs, (or if there are no other TCMs in the TIP, to projects in the TIP other than projects which are eligible for federal funding under ISTEA's Congestion Mitigation and Air Quality Improvement Program), and the TCMs are behind the schedule in the implementation plan, the TIP cannot be found to conform.
 3. Nothing in the TIP may interfere with the implementation of any TCM in the applicable implementation plan.
- D.** For FHWA or FTA projects which are not from a conforming transportation plan and TIP, this criterion is satisfied if the project does not interfere with the implementation of any TCM in the applicable implementation plan.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1414. Criteria and Procedures: Currently Conforming Transportation Plan and TIP

During all periods there shall be a currently conforming transportation plan and currently conforming TIP at the time of project approval. This criterion is satisfied if the current transportation plan and TIP have been found to conform to the applicable implementation plan by the MPO and USDOT according to the procedures of this subpart. Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by USDOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements of R18-2-1404.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1415. Criteria and Procedures: Projects from a Plan and TIP

- A.** During all periods the project shall come from a conforming transportation plan and program. Otherwise, the project shall satisfy all criteria in Table 1 of R18-2-1409 for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of subsection (B) and from a conforming program if it meets the requirements of subsection (C).
- B.** A project is considered to be from a conforming transportation plan if one of the following conditions applies:
1. For projects which are required to be identified in the transportation plan in order to satisfy R18-2-1406, the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility.
 2. For projects which are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan.
- C.** A project is considered to be from a conforming program if all of the following conditions are met:
1. The project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions and have not changed significantly from those which were described in the TIP, or in a manner which would significantly impact use of the facility.
 2. If the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, enforceable written commitments to implement such measures shall be obtained from the project sponsor or operator as required by R18-2-1433 in order for the project to be considered from a conforming program. Any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1416. Criteria and Procedures: Localized CO and PM₁₀ Violations (Hot Spots)

- A.** During all periods any FHWA or FTA project shall not cause or contribute to any new localized CO or PM₁₀ violations or increase the frequency or severity of any existing CO or PM₁₀ violations in CO and PM₁₀ nonattainment and maintenance areas. This criterion is satisfied if it is demonstrated that no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project.
- B.** The demonstration shall be performed according to the requirements of R18-2-1405 and R18-2-1431.
- C.** For projects which are not of the type identified by R18-2-1431(A) or R18-2-1431(D), this criterion may be satisfied if consideration of local factors clearly demonstrates that no local violations presently exist and no new local violations will be created as a result of the project. Otherwise, in CO nonattainment and maintenance areas, a quantitative demonstration

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shall be performed according to the requirements of R18-2-1431(B).

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1417. Criteria and Procedures: Compliance with PM₁₀ Control Measures

During all periods any FHWA or FTA project shall comply with PM₁₀ control measures in the applicable implementation plan. This condition is satisfied if control measures (for the purpose of limiting PM₁₀ emissions from the construction activities or normal use and operation associated with the project) contained in the applicable implementation plan are included in the final plans, specifications, and estimates for the project.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1418. Criteria and Procedures: Motor Vehicle Emissions Budget (Transportation Plan)

- A. The transportation plan shall be consistent with the motor vehicle emissions budget in the applicable implementation plan or implementation plan submission. This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in R18-2-1436. This criterion may be satisfied if the requirements in subsections (B) and (C) are met:
- B. A regional emissions analysis shall be performed as follows:
 1. The regional analysis shall estimate emissions of any of the following pollutants and pollutant precursors for which the area is in nonattainment or maintenance and for which the applicable implementation plan or implementation plan submission establishes an emissions budget:
 - a. VOC as an ozone precursor.
 - b. NO_x as an ozone precursor, unless the Administrator determines that additional reductions of NO_x would not contribute to attainment.
 - c. CO.
 - d. PM₁₀ (and its precursors VOC or NO_x if the applicable implementation plan or implementation plan submission identifies transportation-related precursor emissions within the nonattainment area as a significant contributor to the PM₁₀ nonattainment problem or establishes a budget for such emissions).
 - e. NO_x (in NO₂ nonattainment or maintenance areas).
 2. The regional emissions analysis shall estimate emissions from the entire transportation system, including all regionally significant transportation projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the time-frame of the transportation plan.
 3. The emissions analysis methodology shall meet the requirements of R18-2-1430.
 4. For areas with a transportation plan that meets the content requirements of R18-2-1406(A), the emissions analysis shall be performed for each horizon year. Emissions in milestone years which are between the horizon years may be determined by interpolation.
 5. For areas with a transportation plan that does not meet the content requirements of R18-2-1406(A), the emissions analysis shall be performed for all of the following:
 - a. The last year of the plan's forecast period.
 - b. The attainment year, if the attainment year is in the time span of the transportation plan.
 - c. Any other years in the time span of the transportation plan such that there is not a gap of more than 10

years between analysis years. Emissions in milestone years which are between these analysis years may be determined by interpolation.

- C. The regional emissions analysis shall demonstrate that for each of the applicable pollutants or pollutant precursors in subsection (B)(1) the emissions are less than or equal to the motor vehicle emissions budget as established in the applicable implementation plan or implementation plan submission as follows:
 1. If the applicable implementation plan or implementation plan submission establishes emissions budgets for milestone years, emissions in each milestone year are less than or equal to the motor vehicle emissions budget established for that year.
 2. For nonattainment areas, emissions in the attainment year are less than or equal to the motor vehicle emissions budget established in the applicable implementation plan or implementation plan submission for that year.
 3. For nonattainment areas, emissions in each analysis or horizon year after the attainment year are less than or equal to the motor vehicle emissions budget established by the applicable implementation plan or implementation plan submission for the attainment year. If emissions budgets are established for years after the attainment year, emissions in each analysis year or horizon year shall be less than or equal to the motor vehicle emissions budget for that year, if any, or the motor vehicle emissions budget for the most recent budget year prior to the analysis year or horizon year.
 4. For maintenance areas, emissions in each analysis or horizon year are less than or equal to the motor vehicle emissions budget established by the maintenance plan for that year, if any, or the emissions budget for the most recent budget year prior to the analysis or horizon year.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1419. Criteria and Procedures: Motor Vehicle Emissions Budget (TIP)

- A. The TIP shall be consistent with the motor vehicle emissions budgets in the applicable implementation plan or implementation plan submission. This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in R18-2-1436. This criterion may be satisfied if the requirements in subsections (B) and (C) are met.
- B. For areas with a conforming transportation plan that fully meets the content requirements of R18-2-1406(A), this criterion may be satisfied without additional regional emissions analysis if:
 1. Each program year of the TIP is consistent with the federal funding which may be reasonably expected for that year, and required state or local matching funds and funds for state or local funding-only projects are consistent with the revenue sources expected over the same period; and
 2. The TIP is consistent with the conforming transportation plan such that the regional emissions analysis already performed for the plan applies to the TIP also. This requires a demonstration that:
 - a. The TIP contains all projects which shall be started in the TIP's time-frame in order to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;
 - b. All TIP projects which are regionally significant are part of the specific highway or transit system envisioned in the transportation plan's horizon years; and

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- c. The design concept and scope of each regionally significant transportation project in the TIP is not significantly different from that described in the transportation plan.
 - 3. If the requirements in subsections (B)(1) and (B)(2) are not met, then either:
 - a. The TIP may be modified to meet those requirements; or
 - b. The transportation plan shall be revised so that the requirements in subsections (B)(1) and (B)(2) are met. Once the revised plan has been found to conform, this criterion is met for the TIP with no additional analysis except a demonstration that the TIP meets the requirements of subsections (B)(1) and (B)(2).
- C. For areas with a transportation plan that does not meet the content requirements of R18-2-1406(A), a regional emissions analysis shall meet all of the following requirements:
 - 1. The regional emissions analysis shall estimate emissions from the entire transportation system, including all projects contained in the proposed TIP, the transportation plan, and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the time-frame of the transportation plan.
 - 2. The analysis methodology shall meet the requirements of R18-2-1430(C).
 - 3. The regional emissions analysis shall satisfy the requirements of R18-2-1418(B)(1), R18-2-1418(B)(5), and R18-2-1418(C).
- 2. If the requirements in subsection (B)(1) are not met, a regional emissions analysis shall be performed as follows:
 - a. The analysis methodology shall meet the requirements of R18-2-1430.
 - b. The analysis shall estimate emissions from the transportation system, including the proposed project and all other regionally significant transportation projects expected in the nonattainment or maintenance area in the time-frame of the transportation plan. The analysis shall include emissions from all previously approved projects which were not from a transportation plan and TIP.
 - c. The regional emissions analysis shall meet the requirements of R18-2-1418(B)(1), R18-2-1418(B)(4) and R18-2-1418(C).
- C. For areas with a transportation plan that does not meet the content requirements of R18-2-1406(A), a regional emissions analysis shall be performed for the project together with the conforming TIP and all other regionally significant transportation projects expected in the nonattainment or maintenance area. This criterion may be satisfied if all of the following apply:
 - 1. The analysis methodology meets the requirements of R18-2-1430(C).
 - 2. The analysis estimates emissions from the transportation system, including the proposed project, and all other regionally significant transportation projects expected in the nonattainment or maintenance area in the time-frame of the transportation plan.
 - 3. The regional emissions analysis satisfies the requirements of R18-2-1418(B)(1), R18-2-1418(B)(5), and R18-2-1418(C).

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1420. Criteria and Procedures: Motor Vehicle Emissions Budget (Project Not from a Plan and TIP)

- A. The project which is not from a conforming transportation plan and a conforming TIP shall be consistent with the motor vehicle emissions budget in the applicable implementation plan or implementation plan submission. This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in R18-2-1436. It is satisfied if emissions from the implementation of the project, when considered with the emissions from the projects in the conforming transportation plan and TIP and all other regionally significant transportation projects expected in the area, do not exceed the motor vehicle emissions budget in the applicable implementation plan or implementation plan submission.
- B. For areas with a conforming transportation plan that meets the content requirements of R18-2-1406(A):
 - 1. This criterion may be satisfied without additional regional analysis if the project is included in the conforming transportation plan, even if it is not specifically included in the latest conforming TIP. This requires a demonstration that all of the following apply:
 - a. Allocating funds to the project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years.
 - b. The project is not regionally significant or is part of the specific highway or transit system envisioned in the transportation plan's horizon years.
 - c. The design concept and scope of the project is not significantly different from that described in the transportation plan.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1421. Criteria and Procedures: Localized CO Violations (Hot Spots) in the Interim and Transitional Periods

- A. Each FHWA or FTA project shall eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion applies during the interim and transitional periods only. This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that existing localized CO violations will be eliminated or reduced in severity and number as a result of the project.
- B. The demonstration shall be performed according to the requirements of R18-2-1405 and R18-2-1431.
- C. For projects which are not of the type identified by R18-2-1431(A), this criterion may be satisfied if consideration of local factors clearly demonstrates that existing CO violations will be eliminated or reduced in severity and number. Otherwise, a quantitative demonstration shall be performed according to the requirements of R18-2-1431(B).

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1422. Criteria and Procedures: Interim and Transitional Period Reductions in Ozone and CO Areas (Transportation Plan)

- A. A transportation plan shall contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in R18-2-1436. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if a regional

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emissions analysis is performed as described in subsections (B) through (F).

- B. Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than 10 years apart. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The second analysis year shall be either the attainment year for the area or, if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.
- C. Define the Baseline scenario for each of the analysis years to be the future transportation system that would result from current programs, composed of all of the following, except that projects listed in R18-2-1434 and R18-2-1435 need not be explicitly considered:
 1. All in-place regionally significant highway and transit facilities, services and activities.
 2. All ongoing travel demand management or transportation system management activities.
 3. Completion of all regionally significant transportation projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming transportation plan or TIP; or have completed the NEPA process. For the first conformity determination on the transportation plan after November 24, 1993, a project may not be included in the Baseline scenario and shall be included in the Action scenario as described in subsection (D), if one of the following major steps has not occurred within the most recent three-year period:
 - a. NEPA process completion;
 - b. Start of final design;
 - c. Acquisition of a significant portion of the right-of-way;
 - d. Approval of the plans, specifications and estimates.
- D. Define the Action scenario for each of the analysis years as the transportation system that will result in that year from the implementation of the proposed transportation plan, TIPs adopted under it, and other expected regionally significant transportation projects in the nonattainment area. The Action scenario will include all of the following except that projects listed in R18-2-1434 and R18-2-1435 need not be explicitly considered:
 1. All facilities, services, and activities in the Baseline scenario;
 2. Completion of all TCMs and regionally significant transportation projects, including facilities, services, and activities, specifically identified in the proposed transportation plan which will be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;
 3. All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which have been fully adopted or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the transportation plan;
 4. The incremental effects of any travel demand management programs and transportation system management

activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which were adopted or funded prior to the date of the last conformity determination on the transportation plan, but which have been modified since then to be more stringent or effective;

5. Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP;
6. Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.
- E. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the Baseline and Action scenarios and determine the difference in regional VOC and NO_x emissions (unless the Administrator determines that additional reductions of NO_x would not contribute to attainment) between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis shall be performed for each of the analysis years according to the requirements of R18-2-1430. Emissions in milestone years which are between the analysis years may be determined by interpolation.
- F. This criterion is met if the regional VOC and NO_x emissions (for ozone nonattainment areas) and CO emissions (for CO nonattainment areas) predicted in the Action scenario are less than the emissions predicted from the Baseline scenario in each analysis year, and if this can reasonably be expected to be true in the periods between the first milestone year and the analysis years. The regional analysis shall show that the Action scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1423. Criteria and Procedures: Interim Period Reductions in Ozone and CO Areas (TIP)

- A. A TIP shall contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in R18-2-1436. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if a regional emissions analysis is performed as described in subsections (B) through (F).
- B. Determine the analysis years for which emissions are to be estimated. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The analysis years shall be no more than 10 years apart. The second analysis year shall be either the attainment year for the area or, if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.
- C. Define the Baseline scenario as the future transportation system that would result from current programs, composed of all of the following, except that projects listed in R18-2-1434 and R18-2-1435 need not be explicitly considered:
 1. All in-place regionally significant highway and transit facilities, services, and activities.
 2. All ongoing travel demand management or transportation system management activities.
 3. Completion of all regionally significant transportation projects, regardless of funding source, which are cur-

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rently under construction or are undergoing right-of-way acquisition, except for hardship acquisition and protective buying; come from the first three years of the previously conforming TIP; or have completed the NEPA process. For the first conformity determination on the TIP after November 24, 1993, a project may not be included in the Baseline scenario if one of the following major steps has not occurred within the most recent three-year period:

- a. NEPA process completion.
 - b. Start of final design.
 - c. Acquisition of a significant portion of the right-of-way.
 - d. Approval of the plans, specifications, and estimates. Such a project shall be included in the Action scenario, as described in subsection (D).
- D. Define the Action scenario as the future transportation system that will result from the implementation of the proposed TIP and other expected regionally significant transportation projects in the nonattainment area in the time-frame of the transportation plan. It will include all of the following, except that projects listed in R18-2-1434 and R18-2-1435 need not be explicitly considered:
1. All facilities, services, and activities in the Baseline scenario;
 2. Completion of all TCMs and regionally significant transportation projects, including facilities, services, and activities, included in the proposed TIP, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is contained in the applicable implementation plan;
 3. All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which have been fully adopted or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the TIP;
 4. The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which were adopted or funded prior to the date of the last conformity determination on the TIP, but which have been modified since then to be more stringent or effective;
 5. Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP;
 6. Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.
- E. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the Baseline and Action scenarios, and determine the difference in regional VOC and NO_x emissions (unless the Administrator determines that additional reductions of NO_x would not contribute to attainment) between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis shall be performed for each of the analysis years according to the requirements of R18-2-1430. Emissions in milestone years which are between analysis years may be determined by interpolation.

- F. This criterion is met if the regional VOC and NO_x emissions in ozone nonattainment areas and CO emissions in CO nonattainment areas predicted in the Action scenario are less than the emissions predicted from the Baseline scenario in each analysis year, and if this can reasonably be expected to be true in the period between the analysis years. The regional analysis shall show that the Action scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1424. Criteria and Procedures: Interim Period Reductions for Ozone and CO Areas (Project Not from a Plan and TIP)

A transportation project shall contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in R18-2-1436. This criterion is satisfied if a regional emissions analysis is performed which meets the requirements of R18-2-1422 and which includes the transportation plan and project in the Action scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the Baseline scenario shall include the project with its original design concept and scope, and the Action scenario shall include the project with its new design concept and scope.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1425. Criteria and Procedures: Interim Period Reductions for PM₁₀ and NO₂ Areas (Transportation Plan)

- A. A transportation plan shall contribute to emission reductions or shall not increase emissions in PM₁₀ and NO₂ nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if the requirements of either subsections (B) or (C) are met.
- B. Demonstrate that implementation of the plan and all other regionally significant transportation projects expected in the nonattainment area will contribute to reductions in emissions of PM₁₀ in a PM₁₀ nonattainment area, and of each transportation-related precursor of PM₁₀ in PM₁₀ nonattainment areas if the EPA Regional Administrator or the Director of ADEQ has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and USDOT, and of NO_x in an NO₂ nonattainment area, by performing a regional emissions analysis as follows:
1. Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than 10 years apart. The first analysis year shall be no later than 1996 (for NO₂ areas) or four years and six months following the date of designation (for PM₁₀ areas). The second analysis year shall be either the attainment year for the area or, if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.
 2. Define for each of the analysis years the Baseline scenario, as defined in R18-2-1422(C), and the Action scenario, as defined in R18-2-1422(D).
 3. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the Baseline and Action scenarios and determine the difference between the two scenarios in regional PM₁₀

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emissions in a PM₁₀ nonattainment area (and transportation-related precursors of PM₁₀ in PM₁₀ nonattainment areas if the EPA Regional Administrator or the Director of ADEQ has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified ADOT, the MPO where one exists and USDOT) and in NO_x emissions in an NO₂ nonattainment area. The analysis shall be performed for each of the analysis years according to the requirements of R18-2-1430. The analysis shall address the periods between the analysis years and the periods between 1990, the first milestone year if any, and the first of the analysis years. Emissions in milestone years which are between the analysis years may be determined by interpolation.

4. Demonstrate that the regional PM₁₀ emissions and PM₁₀ precursor emissions, where applicable, (for PM₁₀ nonattainment areas) and NO_x emissions (for NO₂ nonattainment areas) predicted in the Action scenario are less than the emissions predicted from the Baseline scenario in each analysis year, and that this can reasonably be expected to be true in the periods between the first milestone year (if any) and the analysis years.
- C. Demonstrate that when the projects in the transportation plan and all other regionally significant transportation projects expected in the nonattainment area are implemented, the transportation system's total highway and transit emissions of PM₁₀ in a PM₁₀ nonattainment area (and transportation-related precursors of PM₁₀ in PM₁₀ nonattainment areas if the EPA Regional Administrator or the Director of ADEQ has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and USDOT) and of NO_x in an NO₂ nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as follows:
 1. Determine the baseline regional emissions of PM₁₀ and PM₁₀ precursors, where applicable (for PM₁₀ nonattainment areas) and NO_x (for NO₂ nonattainment areas) from highway and transit sources. Baseline emissions are those estimated to have occurred during calendar year 1990, unless the control strategy implementation plan for that area includes a baseline emissions inventory for a different year.
 2. Estimate the emissions of the applicable pollutant or pollutants from the entire transportation system, including projects in the transportation plan and TIP and all other regionally significant transportation projects in the nonattainment area, according to the requirements of R18-2-1430. Emissions shall be estimated for analysis years which are no more than 10 years apart. The first analysis year shall be no later than 1996 (for NO₂ areas) or four years and six months following the date of designation (for PM₁₀ areas). The second analysis year shall be either the attainment year for the area or, if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.
 3. Demonstrate that for each analysis year the emissions estimated in subsection (C)(2) are no greater than baseline emissions of PM₁₀ and PM₁₀ precursors, where applicable (for PM₁₀ nonattainment areas) or NO_x (for NO₂ nonattainment areas) from highway and transit sources.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1426. Criteria and Procedures: Interim Period Reductions for PM₁₀ and NO₂ Areas (TIP)

- A. A TIP shall contribute to emission reductions or shall not increase emissions in PM₁₀ and NO₂ nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if the requirements of either subsection (B) or subsection (C) are met.
- B. Demonstrate that implementation of the plan and TIP and all other regionally significant transportation projects expected in the nonattainment area will contribute to reductions in emissions of PM₁₀ in a PM₁₀ nonattainment area (and transportation-related precursors of PM₁₀ in PM₁₀ nonattainment areas if the EPA Regional Administrator or the Director of ADEQ has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and USDOT) and of NO_x in an NO₂ nonattainment area, by performing a regional emissions analysis as follows:
 1. Determine the analysis years for which emissions are to be estimated, according to the requirements of R18-2-1425(B)(1).
 2. Define for each of the analysis years the Baseline scenario, as defined in R18-2-1423(C), and the Action scenario, as defined in R18-2-1423(D).
 3. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the Baseline and Action scenarios as required by R18-2-1425(B)(3), and make the demonstration required by R18-2-1425(B)(4).
- C. Demonstrate that when the projects in the transportation plan and TIP and all other regionally significant transportation projects expected in the area are implemented, the transportation system's total highway and transit emissions of PM₁₀ in a PM₁₀ nonattainment area (and transportation-related precursors of PM₁₀ in PM₁₀ nonattainment areas if the EPA Regional Administrator or the Director of ADEQ has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and USDOT) and of NO_x in an NO₂ nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as required by R18-2-1425(C).

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1427. Criteria and Procedures: Interim Period Reductions for PM₁₀ and NO₂ Areas (Project Not from a Plan and TIP)

A transportation project which is not from a conforming transportation plan and TIP shall contribute to emission reductions or shall not increase emissions in PM₁₀ and NO₂ nonattainment areas. This criterion applies during the interim and transitional periods only. This criterion is met if a regional emissions analysis is performed which meets the requirements of R18-2-1425 and which includes the transportation plan and project in the Action scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the transportation plan or TIP, and R18-2-1425(B) is used to demonstrate satisfaction of this criterion, the Baseline scenario shall include the project with its original design concept and scope, and the Action scenario shall include the project with its new design concept and scope.

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Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1428. Transition from the Interim Period to the Control Strategy Period

- A.** For areas which submit a control strategy implementation plan revision after November 24, 1993:
1. The transportation plan and TIP shall be demonstrated to conform according to transitional period criteria and procedures by one year from the date the CAA requires submission of such control strategy implementation plan revision. Otherwise, the conformity status of the transportation plan and TIP will lapse, and no new project-level conformity determinations may be made.
 - a. The conformity of new transportation plans and TIPs may be demonstrated according to Phase II interim period criteria and procedures for 90 days following submission of the control strategy implementation plan revision, provided the conformity of such transportation plans and TIPs is redetermined according to transitional period criteria and procedures as required in subsection (A)(1) and such transportation plans and TIPs are consistent with the motor vehicle emissions budget in the applicable implementation plan or any previously submitted control strategy implementation plan revision.
 - b. Beginning 90 days after submission of the control strategy implementation plan revision, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.
 2. If EPA disapproves the submitted control strategy implementation plan revision and so notifies the state, the MPO where one exists, and USDOT, which initiates the sanction process under CAA §§ 179 or 110(m), the conformity status of the transportation plan and TIP shall lapse 120 days after EPA's disapproval, and no new project-level conformity determinations may be made. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.
 3. Notwithstanding subsection (A)(2), if EPA disapproves the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by CAA § 110(a)(2)(A), the provisions of subsection (A)(1) shall apply for 12 months following the date of disapproval. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of disapproval unless another control strategy implementation plan revision is submitted to EPA and found to be complete.
- B.** For areas which have not submitted a control strategy implementation plan revision:
1. For areas whose CAA deadline for submission of the control strategy implementation plan revision is after November 24, 1993, and EPA has notified the state, the MPO where one exists, and USDOT of the state's failure to submit a control strategy implementation plan revision, which initiates the sanction process under CAA §§ 179 or 110(m) all of the following shall apply:
 - a. No new transportation plans or TIPs may be found to conform beginning 120 days after the CAA deadline.
 - b. The conformity status of the transportation plan and TIP shall lapse one year after the CAA deadline, and no new project-level conformity determinations may be made.
 2. For areas whose CAA deadline for submission of the control strategy implementation plan was before November 24, 1993, and EPA has made a finding of failure to submit a control strategy implementation plan revision, which initiates the sanction process under CAA §§ 179 or 110(m), all of the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:
 - a. No new transportation plans or TIPs may be found to conform beginning March 24, 1994.
 - b. The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.
- C.** For areas which have not submitted a complete control strategy implementation plan revision:
1. For areas where EPA notifies the state, the MPO where one exists, and USDOT after November 24, 1993, that the control strategy implementation plan revision submitted by the state is incomplete, which initiates the sanction process under CAA §§ 179 or 110(m), all of the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:
 - a. No new transportation plans or TIPs may be found to conform beginning 120 days after EPA's incompleteness finding.
 - b. The conformity status of the transportation plan and TIP shall lapse one year after the CAA deadline, and no new project-level conformity determinations may be made.
 - c. Notwithstanding subsections (C)(1)(a) and (b), if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by CAA § 110(a)(2)(A), the provisions of subsection (A)(1) shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy implementation plan revision is submitted to EPA and found to be complete.
 2. For areas where EPA has determined before November 24, 1993, that the control strategy implementation plan revision is incomplete, which initiates the sanction process under CAA §§ 179 or 110(m), all of the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:
 - a. No new transportation plans or TIPs may be found to conform beginning March 24, 1994.
 - b. The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.
 - c. Notwithstanding subsections (C)(2)(a) and (b), if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by CAA § 110(a)(2)(A), the provisions of subsection (A)(1) shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

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able form as required by CAA § 110(a)(2)(A), the provisions of subsection (D)(1) shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

D. For areas which submitted a control strategy implementation plan before November 24, 1993:

1. The transportation plan and TIP shall have been demonstrated to conform according to transitional period criteria and procedures by November 25, 1994. Otherwise, their conformity status will lapse, and no new project-level conformity determinations may be made. From and after February 22, 1994, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.
2. If EPA has disapproved the most recent control strategy implementation plan submission, the conformity status of the transportation plan and TIP shall lapse March 24, 1994, and no new project-level conformity determinations may be made. No new transportation plans, TIPs, or projects may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.
3. Notwithstanding subsection (D)(2), if EPA has disapproved the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by CAA § 110(a)(2)(A), the provisions of subsection (D)(1) shall apply until November 25, 1994. The conformity status of the transportation plan and TIP shall lapse November 25, 1994, unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

E. If the currently conforming transportation plan and TIP have not been demonstrated to conform according to transitional period criteria and procedures, the requirements of subsections (E)(1) and (2) shall be met.

1. Before a FHWA or FTA project which is regionally significant and increases single-occupant vehicle capacity (a new general purpose highway on a new location or adding general purpose lanes) may be found to conform, ADEQ shall be consulted on how the emissions which the existing transportation plan and TIP's conformity determination estimates for the Action scenario, as required by R18-2-1422 through R18-2-1427, compare to the motor vehicle emissions budget in the implementation plan submission or the projected motor vehicle emissions budget in the implementation plan under development.
2. In the event of unresolved disputes on such project-level conformity determinations, ADEQ may escalate the issue to the governor consistent with the procedure in R18-2-1405, which applies for ADEQ comments on a conformity determination.

F. Redetermination of conformity of the existing transportation plan and TIP according to the transitional period criteria and procedures:

1. The redetermination of the conformity of the existing transportation plan and TIP according to transitional period criteria and procedures (as required by subsections

(A)(1) and (D)(1)) does not require new emissions analysis and does not have to satisfy the requirements of R18-2-1410 and R18-2-1411 if all of the following are met:

- a. The control strategy implementation plan revision submitted to EPA uses the MPO's modeling of the existing transportation plan and TIP for its projections of motor vehicle emissions.
 - b. The control strategy implementation plan does not include any transportation projects which are not included in the transportation plan and TIP.
2. A redetermination of conformity as described in subsection (F)(1) is not considered a conformity determination for the purposes of R18-2-1404(E) or R18-2-1404(I) regarding the maximum intervals between conformity determinations. Conformity shall be determined according to all the applicable criteria and procedures of R18-2-1409 within three years of the last determination which did not rely on subsection (F)(1).

G. Ozone nonattainment areas:

1. The requirements of subsection (B)(1) apply if a serious or above ozone nonattainment area has not submitted the implementation plan revisions which CAA §§ 182(c)(2)(A) and 182(c)(2)(B) require to be submitted to EPA November 15, 1994, even if the area has submitted the implementation plan revision which CAA § 182(b)(1) requires to be submitted to EPA November 15, 1993.
2. The requirements of subsection (B)(1) apply if a moderate ozone nonattainment area which is using photochemical dispersion modeling to demonstrate the "specific annual reductions as necessary to attain" required by CAA § 182(b)(1), and which has permission from EPA to delay submission of such demonstration until November 15, 1994, does not submit such demonstration by that date. The requirements of subsection (B)(1) apply in this case even if the area has submitted the 15% emission reduction demonstration required by CAA § 182(b)(1).
3. The requirements of subsection (A) apply when the implementation plan revisions required by CAA §§ 182(c)(2)(A) and 182(c)(2)(B) are submitted.

H. Nonattainment areas which are not required to demonstrate reasonable further progress and attainment. If an area listed in R18-2-1436 submits a control strategy implementation plan revision, the requirements of subsections (A) and (E) apply. Because the areas listed in R18-2-1436 are not required to demonstrate reasonable further progress and attainment and therefore have no CAA deadline, the provisions of subsection (B) do not apply to these areas at any time.

I. If a control strategy implementation plan revision is not submitted to EPA but a maintenance plan required by CAA § 175A is submitted to EPA, the requirements of subsection (A) or (D) apply, with the maintenance plan submission treated as a "control strategy implementation plan revision" for the purposes of those requirements.

J. This Section does not become effective until June 1, 1996.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1429. Requirements for Adoption or Approval of Projects by Recipients of Funds Designated under 23 U.S.C. or the Federal Transit Act

A. This Section shall not apply to any of the following:

1. A transportation project that is a street with a lower classification than a collector street, as specified in the most recent federal classification map for the region.
2. An exempt project listed in R18-2-1434.

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- B. No recipient of federal funds designated under 23 U.S.C. or the Federal Transit Act shall adopt or approve a transportation project, regardless of funding source, without first determining whether the transportation project is regionally significant. In making this determination, the recipient shall not take any action that is inconsistent with the procedures developed by ADOT or the MPO pursuant to R18-2-1405(R).
- C. No recipient of federal funds designated under 23 U.S.C. or the Federal Transit Act shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless both of the following apply:
 1. There is a currently conforming transportation plan and TIP consistent with the requirements of R18-2-1414.
 2. The requirements of one of the following are met:
 - a. The project comes from a conforming plan and program consistent with the requirements of R18-2-1415.
 - b. The project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not strictly "included" in the TIP for the purposes of MPO project selection or endorsement, and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility.
 - c. During the control strategy or maintenance period, the project is consistent with the motor vehicle emissions budget in the applicable implementation plan consistent with the requirements of R18-2-1420.
 - d. During Phase II of the interim period, the project contributes to emissions reductions or does not increase emissions consistent with the requirements of R18-2-1424 (in ozone and CO nonattainment areas) or R18-2-1427 (in PM₁₀ and NO₂ nonattainment areas).
 - e. During the transitional period, the project satisfies the requirements of both subsections (1)(2)(c) and (d).
- D. Pursuant to the consultation process established in R18-2-1405(O), ADOT or the MPO where one exists shall, not later than September 1, 1995, develop and make available the procedures to be used by any recipient of federal funds designated under 23 U.S.C. or the Federal Transit Act to comply with subsections (B) and (C). These procedures may be revised periodically, as needed, using the same consultation process. At a minimum, such procedures shall provide for the following:
 1. The minimum information required by the recipient to make determinations in compliance with subsections (B) and (C);
 2. The time-frames for action to be taken by the recipient;
 3. For transportation projects determined to be regionally significant, the documentation necessary to demonstrate that the requirements of 23 CFR 450.324(e), (g), and (h) have been met.
- E. After a transportation project is adopted or approved, no subsequent act defined as adoption or approval under this Section or under procedures developed to implement this Section shall be subject to subsection (B) or (C), unless project's design concept or scope have changed significantly since the project was first adopted or approved.
- F. A regionally significant transportation project found to be in conformity, either as a result of a TIP or a separate project analysis, shall retain such conformity finding, irrespective of subsequent analysis, unless the project fails to meet the conditions of its approval or undergoes a significant change in

scope. In any event, a conformity determination shall lapse after three years in the absence of a redetermination; except that a project undergoing NEPA approval shall retain its conformity determination, unless none of the following major steps has occurred within the most recent three-year period:

1. NEPA process completion;
2. Start of final design;
3. Acquisition of a significant portion of the right-of-way;
4. Approval of the plans, specifications, and estimates.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1430. Procedures for Determining Regional Transportation-related Emissions

- A. The following are general requirements for determining regional transportation-related emissions:
 1. The regional emissions analysis for the transportation plan, TIP, or project not from a conforming plan and TIP shall include all regionally significant transportation projects expected in the nonattainment or maintenance area, including FHWA or FTA projects proposed in the transportation plan and TIP and all other regionally significant transportation projects which are disclosed to ADOT or the MPO as required by R18-2-1405. Projects which are not regionally significant are not required to be explicitly modeled, but VMT from such projects shall be estimated in accordance with reasonable professional practice. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice.
 2. The emissions analysis may not include for emissions reduction credit any TCMs which have been delayed beyond the scheduled date until such time as implementation has been assured. If the TCM has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.
 3. Emissions reduction credit from projects, programs, or activities which require a regulation in order to be implemented may not be included in the emissions analysis unless the regulation is already adopted by the enforcing jurisdiction. Adopted regulations are required for demand management strategies for reducing emissions which are not specifically identified in the applicable implementation plan, and for control programs which are external to the transportation system itself, such as tailpipe or evaporative emission standards, limits on gasoline volatility, inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel. A regulatory program may also be considered to be adopted if an opt-in to a federally enforced program has been approved by EPA, if EPA has promulgated the program (if the control program is a federal responsibility, such as tailpipe standards), or if the CAA requires the program without need for individual state action and without any discretionary authority for EPA to set its stringency, delay its effective date, or not implement the program.
 4. Notwithstanding subsection (A)(3), during the transitional period, control measures or programs which are committed to in an implementation plan submission as described in R18-2-1418 through R18-2-1420, but which has not received final EPA action in the form of a finding of incompleteness, approval, or disapproval, may be assumed for emission reduction credit for the purpose of

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demonstrating that the requirements of R18-2-1418 through R18-2-1420 are satisfied.

5. A regional emissions analysis for the purpose of satisfying the requirements of R18-2-1422 through R18-2-1424 may account for the programs in subsection (A)(4), but the same assumptions about these programs shall be used for both the Baseline and Action scenarios.
 6. Ambient temperatures shall be consistent with those used to establish the emissions budget in the applicable implementation plan. Factors other than temperatures, for example the fraction of travel in a hot stabilized engine mode, may be modified after interagency consultation according to R18-2-1405 if the newer estimates incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.
- B.** For serious, severe, and extreme ozone nonattainment areas and serious carbon monoxide areas after January 1, 1995, estimates of regional transportation-related emissions used to support conformity determinations shall be made according to procedures which meet the requirements in subsections (B)(1) through (5).
1. A network-based transportation demand model or models relating travel demand and transportation system performance to land-use patterns, population demographics, employment, transportation infrastructure, and transportation policies shall be used to estimate travel within the metropolitan planning area of the nonattainment area. Such a model shall possess all of the following attributes:
 - a. The modeling methods and the functional relationships used in the model shall in all respects be in accordance with acceptable professional practice and reasonable for purposes of emission estimation.
 - b. The network-based model shall be validated against ground counts for a base year that is not more than 10 years prior to the date of the conformity determination. Land use, population, and other inputs shall be based on the best available information and appropriate to the validation base year.
 - c. For peak-hour or peak-period traffic assignments, a capacity sensitive assignment methodology shall be used.
 - d. Zone-to-zone travel times used to distribute trips between origin and destination pairs shall be in reasonable agreement with the travel times which result from the process of assignment of trips to network links. Where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times should also be used for modeling mode splits.
 - e. Free-flow speeds on network links shall be based on empirical observations.
 - f. Peak and off-peak travel demand and travel times shall be provided.
 - g. Trip distribution and mode choice shall be sensitive to pricing, where pricing is a significant factor, if the network model is capable of such determinations and the necessary information is available.
 - h. The model shall utilize and document a logical correspondence between the assumed scenario of land development and use and the future transportation system for which emissions are being estimated. Reliance on a formal land-use model is not specifically required but is encouraged.
 - i. A dependence of trip generation on the accessibility of destinations via the transportation system, including pricing, is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available.
 - j. A dependence of regional economic and population growth on the accessibility of destinations via the transportation system is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available.
 - k. Consideration of emissions increases from construction-related congestion is not specifically required.
2. Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled shall be considered the primary measure of vehicle miles traveled within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. A factor or factors shall be developed to reconcile and calibrate the network-based model estimates of vehicle miles traveled in the base year of its validation to the HPMS estimates for the same period, and these factors shall be applied to model estimates of future vehicle miles traveled. In this factoring process, consideration will be given to differences in the facility coverage of the HPMS and the modeled network description. Departure from these procedures is permitted with the concurrence of USDOT and EPA.
3. Reasonable methods shall be used to estimate nonattainment area vehicle travel on off-network roadways within the urban transportation planning area and on roadways outside the urban transportation planning area.
 4. Reasonable methods in accordance with good practice shall be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network model.
- C.** For areas which are not serious, severe, or extreme ozone nonattainment areas or serious carbon monoxide areas, or before January 1, 1995:
1. Procedures which satisfy some or all of the requirements of subsection (A) shall be used in all areas not subject to subsection (A) in which those procedures have been the previous practice of the MPO.
 2. Regional emissions may be estimated by methods which do not explicitly or comprehensively account for the influence of land use and transportation infrastructure on vehicle miles traveled and traffic speeds and congestion. Such methods shall account for VMT growth by extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for vehicle miles travelled per person. These methods shall also consider future economic activity, transit alternatives, and transportation system policies.
- D.** This subsection applies to any nonattainment or maintenance area or any portion thereof which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP (because the nonattainment or maintenance area or portion thereof does not contain a metropolitan planning area or portion of a metropolitan planning area and is not part of a Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area which is or contains a nonattainment or maintenance area).

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1. Conformity demonstrations for projects in these areas may satisfy the requirements of R18-2-1420, R18-2-1424, and R18-2-1427 with one regional emissions analysis which includes all the regionally significant transportation projects in the nonattainment or maintenance area or portion thereof.
 2. The requirements of R18-2-1420 shall be satisfied according to the procedures in R18-2-1420(C), with references to the "transportation plan" taken to mean the statewide transportation plan.
 3. The requirements of R18-2-1424 and R18-2-1427 which reference "transportation plan" or "TIP" shall be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the nonattainment or maintenance area or portion thereof.
 4. The requirement of R18-2-1429(A)(2) shall be satisfied if all of the following are met:
 - a. The project is included in the regional emissions analysis which includes all regionally significant highway and transportation projects in the nonattainment or maintenance area or portion thereof and supports the most recent conformity determination made according to the requirements of R18-2-1420, R18-2-1424 or R18-2-1427 (as modified by subsections (D)(2) and (D)(3)), as appropriate for the time period and pollutant.
 - b. The project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis or in a manner which would significantly impact use of the facility.
 - E. For areas in which the implementation plan does not identify construction-related fugitive PM_{10} as a contributor to the nonattainment problem, the fugitive PM_{10} emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.
 - F. In PM_{10} nonattainment and maintenance areas with implementation plans which identify construction-related fugitive PM_{10} as a contributor to the nonattainment problem, the regional PM_{10} emissions analysis shall consider construction-related fugitive PM_{10} and shall account for the level of construction activity, the fugitive PM_{10} control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.
- because of increased traffic volumes related to a new project in the vicinity;
 3. For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the highest traffic volumes;
 4. For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the worst Level-of-Service;
 5. Where use of the "Guideline" models is practicable and reasonable given the potential for violations.
 - B. In cases other than those described in subsection (A), other quantitative methods may be used if they represent reasonable and common professional practice.
 - C. CO hot-spot analyses shall include the entire project and may be performed only after the major design features which will significantly impact CO concentrations have been identified. The background concentration may be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors.
 - D. PM_{10} hot-spot analysis shall be performed for projects which are located at sites at which violations have been verified by monitoring, and at sites which have essentially identical vehicle and roadway emission and dispersion characteristics (including sites near one at which a violation has been monitored). The projects which require PM_{10} hot-spot analysis shall be determined through the interagency consultation process required in R18-2-1405. In PM_{10} nonattainment and maintenance areas, new or expanded bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location require hot-spot analysis. USDOT may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels. The requirements of this subsection for quantitative hot-spot analysis will not take effect until EPA releases modeling guidance on this subject and announces in the Federal Register that these requirements are in effect.
 - E. Hot-spot analysis assumptions shall be consistent with those in the regional emissions analysis for those inputs which are required for both analyses.
 - F. PM_{10} or CO mitigation or control measures shall be assumed in the hot-spot analysis only where there are enforceable written commitments from the project sponsor or operator to the implementation of such measures, as required by R18-2-1433(A).
 - G. CO and PM_{10} hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site which is affected by construction-related activities shall be considered separately, using established "Guideline" methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1431. Procedures for Determining Localized CO and PM_{10} Concentrations (Hot-spot Analysis)

- A. In the following cases, CO hot-spot analyses shall be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR 51 Appendix W ("Guideline on Air Quality Models (Revised)" (1988), supplement (A) (1987) and supplement (B) (1993), EPA publication no. 450/2-78-027R, incorporated by reference and on file with the Department and with the Secretary of State), unless, after the interagency consultation process described in R18-2-1405 and with the approval of the EPA Regional Administrator, these models, data bases, and other requirements are determined to be inappropriate:
 1. For projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of current violation or possible current violation;
 2. For those intersections at Level-of-Service D, E, or F, or those that will change to Level-of-Service D, E, or F

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1432. Using the Motor Vehicle Emissions Budget in the Applicable Implementation Plan or Implementation Plan Submission

- A. In interpreting an applicable implementation plan or implementation plan submission with respect to its motor vehicle emissions budget, ADOT or the MPO where one exists and USDOT may not infer additions to the budget that are not explicitly intended by the implementation plan or submission. Unless the implementation plan explicitly quantifies the

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amount by which motor vehicle emissions could be higher while still allowing a demonstration of compliance with the milestone, attainment, or maintenance requirement and explicitly states an intent that some or all of this additional amount should be available to ADOT or the MPO and USDOT in the emission budget for conformity purposes, ADOT or the MPO may not interpret the budget to be higher than the implementation plan's estimate of future emissions. This applies in particular to applicable implementation plans or submissions which demonstrate that after implementation of control measures in the implementation plan any of the following apply:

1. Emissions from all sources will be less than the total emissions that would be consistent with a required demonstration of an emissions reduction milestone.
 2. Emissions from all sources will result in achieving attainment prior to the attainment deadline or ambient concentrations in the attainment deadline year will be lower than needed to demonstrate attainment.
 3. Emissions will be lower than needed to provide for continued maintenance.
- B.** If an applicable implementation plan submitted before November 24, 1993, demonstrates that emissions from all sources will be less than the total emissions that would be consistent with attainment and quantifies that "safety margin," the state may submit a SIP revision which assigns some or all of this safety margin to highway and transit mobile sources for the purposes of conformity. Such a SIP revision, once it is endorsed by the governor and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA.
- C.** A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan or implementation plan submission allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, without a SIP revision or a SIP which establishes mechanisms for such trades.
- D.** If the applicable implementation plan or implementation plan submission estimates future emissions by geographic subarea of the nonattainment area, ADOT or the MPO where one exists and USDOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan or implementation plan submission explicitly indicates an intent to create such subarea budgets for the purposes of conformity.
- E.** If a nonattainment area includes more than one MPO, the SIP may establish motor vehicle emissions budgets for each MPO. Otherwise, the MPOs shall collectively make a conformity determination for the entire nonattainment area.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1433. Enforceability of Design Concept and Scope and Project-level Mitigation and Control Measures

- A.** Prior to determining that a transportation project is in conformity, ADOT, the MPO where one exists, other recipient of funds designated under 23 U.S.C. or the Federal Transit Act, FHWA, or FTA shall obtain from the project sponsor or operator enforceable written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM₁₀ or CO impacts. Before making conformity determinations enforceable written commitments shall also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and included in the project design concept and scope which is used in the regional

emissions analysis required by R18-2-1418 through R18-2-1420 and R18-2-1422 through R18-2-1424 or used in the project-level hot-spot analysis required by R18-2-1416 and R18-2-1421.

- B.** Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations shall provide enforceable written commitments and comply with the obligations of such commitments.
- C.** Enforceable written commitments to mitigation or control measures shall be obtained prior to a positive conformity determination, and that project sponsors shall comply with such commitments.
- D.** During the control strategy and maintenance periods, if ADOT, the MPO, or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the requirements of R18-2-1416, R18-2-1418, and R18-2-1419 are satisfied without the mitigation or control measure and so notifies the agencies involved in the inter-agency consultation process required under R18-2-1405. ADOT or the MPO where one exists and USDOT shall confirm that the transportation plan and TIP still satisfy the requirements of R18-2-1418 and R18-2-1419 and that the project still satisfies the requirements of R18-2-1416, and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1434. Exempt Projects

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 2 are exempt from the requirement that a conformity determination be made. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 is not exempt if ADOT or the MPO where one exists in consultation with other agencies pursuant to R18-2-1405, the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs shall ensure that exempt projects do not interfere with TCM implementation.

Table 2. Exempt Projects
Exempt Projects
SAFETY

1. Railroad or highway crossing.
2. Hazard elimination program.
3. Safer non-federal-aid system roads.
4. Shoulder improvements.
5. Increasing sight distance.
6. Safety improvement program.
7. Traffic control devices and operating assistance other than signalization projects.
8. Railroad or highway crossing warning devices.
9. Guardrails, median barriers, crash cushions.
10. Pavement resurfacing or rehabilitation.
11. Pavement marking demonstration.
12. Emergency relief (23 U.S.C. 125).
13. Fencing.
14. Skid treatments.
15. Safety roadside rest areas.
16. Adding medians.
17. Truck climbing lanes outside the urbanized area.
18. Lighting improvements.

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19. Widening narrow pavements or reconstructing bridges (no additional travel lanes).
20. Emergency truck pullovers.

MASS TRANSIT

1. Operating assistance to transit agencies.
2. Purchase of support vehicles.
3. Rehabilitation of transit vehicles. (In PM_{10} nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.)
4. Purchase of office, shop, and operating equipment for existing facilities.
5. Purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.).
6. Construction or renovation of power, signal, and communications systems.
7. Construction of small passenger shelters and information kiosks.
8. Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures).
9. Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way.
10. Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet. (In PM_{10} nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.)
11. Construction of new bus or rail storage or maintenance facilities categorically excluded in 23 CFR 771.

AIR QUALITY

1. Continuation of ride-sharing and van-pooling promotion activities at current levels.
2. Bicycle and pedestrian facilities.

OTHER

1. Specific activities which do not involve or lead directly to construction, such as:
 - a. Planning and technical studies.
 - b. Grants for training and research programs.
 - c. Planning activities conducted pursuant to Titles 23 and 49 U.S.C.
 - d. Federal-aid systems revisions.
2. Engineering to assess social, economic and environmental effects of the proposed action or alternatives to that action.
3. Noise attenuation.
4. Advance land acquisitions (23 CFR 712 or 23 CFR 771).
5. Acquisition of scenic easements.
6. Plantings, landscaping, etc.
7. Sign removal.
8. Directional and informational signs.
9. Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities).
10. Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational or capacity changes.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1435. Projects Exempt from Regional Emissions Analyses

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 3 are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM_{10} concentrations shall be considered to determine if a hot-spot analysis is required prior to making a

project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 is not exempt from regional emissions analysis if the MPO in consultation with other agencies pursuant to R18-2-1405, the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason.

Table 3. Projects Exempt From Regional Emissions Analyses**Projects Exempt From Regional Emissions Analyses**

1. Intersection channelization projects.
2. Intersection signalization projects at individual intersections.
3. Interchange reconfiguration projects.
4. Changes in vertical and horizontal alignment.
5. Truck size and weight inspection stations.
6. Bus terminals and transfer points.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1436. Special Provisions for Nonattainment Areas Which are Not Required to Demonstrate Reasonable Further Progress and Attainment

- A. This Section applies in the following areas:
 1. Rural transport ozone nonattainment areas,
 2. Marginal ozone areas,
 3. Submarginal ozone areas,
 4. Transitional ozone areas,
 5. Incomplete data ozone areas,
 6. Moderate CO areas with a design value of 12.7 ppm or less,
 7. Not classified CO areas.
- B. The criteria and procedures in R18-2-1422 through R18-2-1424 will remain in effect throughout the control strategy period for transportation plans, TIPs, and projects (not from a conforming plan and TIP) in lieu of the procedures in R18-2-1418 through R18-2-1420, except as otherwise provided in subsection (C).
- C. The state or MPO may voluntarily develop an attainment demonstration and corresponding motor vehicle emissions budget like those required in areas with higher nonattainment classifications. In this case, the state shall submit an implementation plan revision which contains that budget and attainment demonstration. Once EPA has approved this implementation plan revision, the procedures in R18-2-1418 through R18-2-1420 apply in lieu of the procedures in R18-2-1422 through R18-2-1424.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1437. Reserved**R18-2-1438. General Conformity for Federal Actions**

The following subparts of 40 CFR 93, Determining Conformity of Federal Actions to State or Federal Implementation Plans, and all accompanying appendices, adopted as of July 1, 1994, and no future editions, are incorporated by reference. These standards are on file with the Office of the Secretary of State and with the Department and shall be applied by the Department.

Subpart B - Determining Conformity of General Federal Actions to State or Federal Implementation Plans (58 FR 63253, November 30, 1993).

Historical Note

Adopted effective January 31, 1995 (Supp. 95-1).

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ARTICLE 15. FOREST AND RANGE MANAGEMENT BURNS**R18-2-1501. Definitions**

In addition to the definitions contained in A.R.S. § 49-501 and R18-2-101, in this Article:

1. "Activity fuels" means those fuels created by human activities such as thinning or logging.
2. "ADEQ" means the Department of Environmental Quality.
3. "Annual emissions goal" means the annual establishment in cooperation with the F/SLMs, under R18-2-1503(G), of a planned quantifiable value of emissions reduction from prescribed fires and fuels management activities.
4. "Burn plan" means the ADEQ form that includes information on the conditions under which a burn will occur with details of the burn and smoke management prescriptions.
5. "Burn prescription" means, with regard to a burn project, the pre-determined area, fuel, and weather conditions required to attain planned resource management objectives.
6. "Burn project" means an active or planned prescribed burn, including a wildland fire use incident.
7. "Duff" means forest floor material consisting of decomposing needles and other natural materials.
8. "Emission reduction techniques (ERT)" means methods for controlling emissions from prescribed fires to minimize the amount of emission output per unit of area burned.
9. "Federal land manager (FLM)" means any department, agency, or agent of the federal government, including the following:
 - a. United States Forest Service,
 - b. United States Fish and Wildlife Service,
 - c. National Park Service,
 - d. Bureau of Land Management,
 - e. Bureau of Reclamation,
 - f. Department of Defense,
 - g. Bureau of Indian Affairs, and
 - h. Natural Resources Conservation Service.
10. "F/SLM" means a federal land manager or a state land manager.
11. "Local fire management officer" means a person designated by a F/SLM as responsible for fire management in a local district or area.
12. "Mop-up" means the act of extinguishing or removing burning material from a prescribed fire to reduce smoke impacts.
13. "National Wildfire Coordinating Group" means the national inter-agency group of federal and state land managers that shares similar wildfire suppression programs and has established standardized inter-agency training courses and qualifications for fire management positions.
14. "Non-burning alternatives to fire" means techniques that replace fire for at least five years as a means to treat activity fuels created to achieve a particular land management objective (e.g., reduction of fuel-loading, manipulation of fuels, enhancement of wildlife habitat, and ecosystem restoration). These alternatives are not used in conjunction with fire. Techniques used in conjunction with fire are referred to as emission reduction techniques (ERTs).
15. "Planned resource management objectives" means public interest goals in support of land management agency objectives including silviculture, wildlife habitat management, grazing enhancement, fire hazard reduction, wilderness management, cultural scene maintenance, weed abatement, watershed rehabilitation, vegetative manipulation, and disease and pest prevention.
16. "Prescribed burning" means the controlled application of fire to wildland fuels that are in either a natural or modified state, under certain burn and smoke management prescription conditions that have been specified by the land manager in charge of or assisting the burn, to attain planned resource management objectives. Prescribed burning does not include a fire set or permitted by a public officer to provide instruction in fire fighting methods, or construction or residential burning under R18-2-602.
17. "Prescribed fire manager" means a person designated by a F/SLM as responsible for prescribed burning for that land manager.
18. "Smoke management prescription" means the predetermined meteorological conditions that affect smoke transport and dispersion under which a burn could occur without adversely affecting public health and welfare.
19. "Smoke management techniques (SMT)" means management and dispersion practices used during a prescribed burn or wildland fire use incident which affect the direction, duration, height, or density of smoke.
20. "Smoke management unit" means any of the geographic areas defined by ADEQ whose area is based on primary watershed boundaries and whose outline is determined by diurnal windflow patterns that allow smoke to follow predictable drainage patterns. A map of the state divided into the smoke management units is on file with ADEQ.
21. "State land manager (SLM)" means any department, agency, or political subdivision of the state government including the following:
 - a. State Land Department,
 - b. Department of Transportation,
 - c. Department of Game and Fish, and
 - d. Parks Department.
22. "Wildfire" means an unplanned wildland fire subject to appropriate control measures. Wildfires include those incidents where suppression may be limited for safety, economic, or resource concerns.
23. "Wildland fire use" means a wildland fire that is ignited by natural causes, such as lightning, and is managed using the same controls and for the same planned resource management objectives as prescribed burning.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).

Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1502. Applicability

- A. A F/SLM that is conducting or assisting a prescribed burn shall follow the requirements of this Article.
- B. A private or municipal burner with whom ADEQ has entered into a memorandum of agreement shall follow the requirements of this Article.
- C. The provisions of this Article apply to all areas of the state except Indian Trust lands. All federally managed lands and all state lands, parks, and forests are under the jurisdiction of ADEQ in matters relating to air pollution from prescribed burning.
- D. Notwithstanding subsection (C), ADEQ and any Indian tribe may enter into a memorandum of agreement to implement this Article.
- E. ADEQ and any private or municipal prescribed burner may enter into a memorandum of agreement to implement this Article.

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Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).
Amended by final rulemaking at 10 A.A.R. 388, effective
March 16, 2004 (Supp. 04-1).

R18-2-1503. Annual Registration, Program Evaluation and Planning

- A. Each F/SLM shall register annually with ADEQ on a form prescribed by ADEQ, all planned burn projects, including areas planned for wildland fire use.
- B. Each planned year extends from January 1 of the registration year to December 31 of the same year. Each F/SLM shall use best efforts to register before December 31 and no later than January 31 of each year.
- C. A F/SLM shall include the following information on the registration form:
 1. The F/SLM's name, address, and business telephone number;
 2. The name, address, and business telephone number of an air quality representative who will provide technical support to ADEQ for decisions regarding prescribed burning. The same air quality representative may be selected by more than one F/SLM;
 3. All prescribed burn projects and potential wildland fire use areas planned for the next year;
 4. Maximum project and annual acres to be burned, maximum daily acres to be burned, fuel types within project area, and planned use of emission reduction techniques to support the annual emissions goal for each prescribed burn project;
 5. Planned use of any smoke management techniques for each prescribed burn project;
 6. Maximum project and annual acres projected to be burned, maximum daily acres projected to be burned, and a map of the anticipated project area, fuel types and loading within the planned area for an area the F/SLM anticipates for wildland fire use;
 7. A list of all burn projects that were completed during the previous year;
 8. Project area for treatment, treatment type, fuel types to be treated, and activity fuel loading to support the annual emissions goal for areas to be treated using non-burning alternatives to fire; and
 9. The area treated using non-burning alternatives to fire during the previous year including the number of acres, the specific types of alternatives utilized, and the location of these areas.
- D. After consultation with the F/SLM, ADEQ may request additional information for registration of prescribed burns and wildland fire use to support regional coordination of smoke management, annual emission goal setting using ERTs, and non-burning alternatives to fire.
- E. A F/SLM may amend a registration at any time with a written submission to ADEQ.
- F. ADEQ accepts a facsimile or other electronic method as a means of complying with the deadline for registration. If an electronic means is used, the F/SLM shall deliver the original paper registration form to ADEQ for its records. ADEQ shall acknowledge in writing the receipt of each registration.
- G. ADEQ shall hold a meeting after January 31 and before April 1 of each year between ADEQ and F/SLMs to evaluate the program and cooperatively establish the annual emission goal. The annual emission goal shall be developed to minimize prescribed fire emissions to the maximum extent feasible using emission reduction techniques and alternatives to burning subject to economic, technical, and safety feasibility criteria, and consistent with land management objectives.

- H. At least once every five years, ADEQ shall request long-term projections of future prescribed fire and wildland fire use activity from the F/SLMs to support planning for visibility impairment and assessment of other air quality concerns by ADEQ.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).
Amended by final rulemaking at 10 A.A.R. 388, effective
March 16, 2004 (Supp. 04-1).

R18-2-1504. Prescribed Burn Plan

Each F/SLM planning a prescribed burn shall complete and submit to ADEQ the "Burn Plan" form supplied by ADEQ no later than 14 days before the date on which the F/SLM requests permission to burn. ADEQ shall consider the information supplied on the Burn Plan Form as binding conditions under which the burn shall be conducted. A Burn Plan shall be maintained by ADEQ until notification from the F/SLM of the completion of the burn project. Revisions to the Burn Plan for a burn project shall be submitted in writing no later than 14 days before the date on which the F/SLM requests permission to burn. To facilitate the Daily Burn authorization process under R18-2-1505, the F/SLM shall include on the Burn Plan form:

1. An emergency telephone number that is answered 24 hours a day, seven days a week;
2. Burn prescription;
3. Smoke management prescription;
4. The number of acres to be burned, the quantity and type of fuel, type of burn, and the ignition technique to be used;
5. The land management objective or purpose for the burn such as restoration or maintenance of ecological function and indicators of fire resiliency;
6. A map depicting the potential impact of the smoke unless waived either orally or in writing by ADEQ. The potential impact shall be determined by mapping both the daytime and nighttime smoke path and down-drainage flow for 15 miles from the burn site, with smoke-sensitive areas delineated. The map shall use the appropriate scale to show the impacts of the smoke adequately;
7. Modeling of smoke impacts unless waived either orally or in writing by ADEQ, for burns greater than 250 acres per day, or greater than 50 acres per day if the burn is within 15 miles of a Class I Area, an area that is non-attainment for particulates, a carbon monoxide non-attainment area, or other smoke-sensitive area. In consultation with the F/SLM, ADEQ shall provide guidelines on modeling;
8. The name of the official submitting the Burn Plan on behalf of the F/SLM; and
9. After consultation with the F/SLM, any other information to support the Burn Plan needed by ADEQ to assist in the Daily Burn authorization process for smoke management purposes or assessment of contribution to visibility impairment of Class I areas.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).
Amended by final rulemaking at 10 A.A.R. 388, effective
March 16, 2004 (Supp. 04-1).

R18-2-1505. Prescribed Burn Requests and Authorization

- A. Each F/SLM planning a prescribed burn, shall complete and submit to ADEQ the "Daily Burn Request" form supplied by ADEQ. The Daily Burn Request form shall include:
 1. The contact information of the F/SLM conducting the burn;

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2. Each day of the burn;
 3. The area to be burned on the day for which the Burn Request is submitted, with reference to the Burn Plan, including size, legal location to the section, and latitude and longitude to the minute;
 4. Projected smoke impacts; and
 5. Any local conditions or circumstances known to the F/SLM that, if conveyed to ADEQ, could impact the Daily Burn authorization process.
- B.** After consultation with the F/SLM, ADEQ may request additional information related to the burn, meteorological, smoke dispersion, or air quality conditions to supplement the Daily Burn Request form and to aid in the Daily Burn authorization process.
- C.** The F/SLM shall submit the Daily Burn Request form to ADEQ as expeditiously as practicable, but no later than 2:00 p.m. of the business day preceding the burn. An original form, a facsimile, or an electronic information transfer are acceptable submittals.
- D.** An F/SLM shall not ignite a prescribed burn without receiving the approval of ADEQ, as follows:
1. ADEQ shall approve, approve with conditions, or disapprove a burn on the same business day as the Burn Request submittal.
 2. If ADEQ fails to address a Burn Request by 10:00 p.m. of the business day on which the request is submitted, the Burn Request is approved by default after the burner makes a good faith effort to contact ADEQ to confirm that the Burn Request was received.
 3. ADEQ may communicate its decision by verbal, written, or electronic means. ADEQ shall provide a written or electronic reply if requested by the F/SLM.
- E.** If weather conditions cease to conform to those in the smoke management prescription of either the Burn Plan or an Approval with Conditions, the F/SLM shall take appropriate action to reduce further smoke impacts, ensure safe and appropriate fire control, and notify the public when necessary. After consultation with ADEQ, the smoke management prescription or burn plan may be modified.
- F.** The F/SLM shall ensure that there is appropriate signage and notification to protect public safety on transportation corridors including roadways and airports during a prescribed fire.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).
Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1506. Smoke Dispersion Evaluation

ADEQ shall approve, approve with conditions, or disapprove a Daily Burn Request submitted under R18-2-1505, by using the following factors for each smoke management unit:

1. Analysis of the emissions from burns in progress and residual emissions from previous burns on a day-to-day basis;
2. Analysis of emissions from active wildland fire use incidents, and active multiple-day burns, and consideration of potential long-term emissions estimates;
3. Analysis of the emissions from wildfires greater than 100 acres and consideration of their potential long-term growth;
4. Local burn conditions;
5. Burn prescription and smoke management prescription from the applicable Burn Plan;
6. Existing and predicted local air quality;
7. Local and synoptic meteorological conditions;
8. Type and location of areas to be burned;

9. Protection of the national visibility goal for Class I Areas under § 169A(a)(1) of the Act and 40 CFR 51.309;
10. Assessment of duration and intensity of smoke emissions to minimize cumulative impacts;
11. Minimization of smoke impacts in Class I Areas, areas that are non-attainment for particulate matter, carbon monoxide non-attainment areas, or other smoke-sensitive areas; and
12. Protection of the National Ambient Air Quality Standards.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).
Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1507. Prescribed Burn Accomplishment; Wildfire Reporting

- A.** Each F/SLM conducting a prescribed burn shall complete and submit to ADEQ the "Burn Accomplishment" form supplied by ADEQ. For each burn approval, the F/SLM shall submit a Burn Accomplishment form to ADEQ by 2:00 p.m. of the business day following the approved burn. The F/SLM shall include the following information on the Burn Accomplishment form:
1. Any known conditions or circumstances that could impact the Daily Burn decision process;
 2. The date, location, fuel type, fuel loading, and acreage accomplishments;
 3. The ERTs and SMTs described in R18-2-1509 and R18-2-1510, respectively, and may include any further ERTs and SMTs that become available, that the F/SLM used to reduce emissions or manage the smoke from the burn.
- B.** The F/SLM shall submit the Burn Accomplishment form as an original form, a facsimile, or an electronic information transfer.
- C.** ADEQ shall maintain a record of Burn Requests, Burn Approvals/Conditional Approvals/Denials and Burn Accomplishments for five years.
- D.** The F/SLM in whose jurisdiction a wildfire occurs shall make available to ADEQ no later than the day after the activity all required information for wildfire incidents that burned more than 100 acres per day in timber or slash fuels or 300 acres per day in brush or grass fuels. For each day of a wildfire incident that exceeds the daily activity threshold, the F/SLM shall provide the location, an estimate of predominant fuel type and quantity consumed, and an estimate of the area blackened that day.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).
Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1508. Wildland Fire Use: Plan, Authorization, Monitoring; Inter-agency Consultation; Status Reporting

- A.** In order for ADEQ to participate in the wildland fire use decision-making process, the F/SLM shall notify ADEQ as soon as practicable of any wildland fire use incident projected to attain or attaining a size of 50 acres of timber fuel or 250 acres of brush or grass fuel.
- B.** For each wildland fire use incident that has been declared as such by the F/SLM, the F/SLM shall complete and submit to ADEQ a Wildland Fire Use Burn Plan in a format approved by ADEQ in cooperation with the F/SLM. The F/SLM shall submit the Wildland Fire Use Burn Plan to ADEQ as soon as practicable but no later than 72 hours after the wildland fire use incident is declared or under consideration for such design.

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nation. The F/SLM shall include the following information in the Wildland Fire Use Burn Plan:

1. An emergency telephone number that is answered 24 hours a day, seven days a week;
 2. Anticipated burn prescription;
 3. Anticipated smoke management prescription;
 4. The estimated daily number of acres, quantity, and type of fuel to be burned;
 5. The anticipated maximum allowable perimeter or size with map;
 6. Information on the condition of the area to be burned, such as whether it is in maintenance or restoration, its ecological function, and other indicators of fire resiliency;
 7. The anticipated duration of the wildland fire use incident;
 8. The anticipated long-range weather trends for the site;
 9. A map depicting the potential impact of the smoke. The potential impact shall be determined by mapping both the daytime and nighttime smoke path and down-drainage flow for 15 miles from the wildland fire use incident, with smoke-sensitive areas delineated. Mapping is mandatory unless waived either orally or in writing by ADEQ. The map shall use the appropriate scale to show the impacts of the smoke adequately; and
 10. Modeling or monitoring of smoke impacts, if requested by ADEQ after consultation with the F/SLM.
- C. ADEQ shall approve or disapprove a Wildland Fire Use Burn Plan within three hours of receipt. ADEQ shall consult directly with the requesting F/SLM before disapproving a Wildland Fire Use Burn Plan. If ADEQ fails to address the Wildland Fire Use Burn Plan within the time allotted, the Plan is approved by default under the condition that the F/SLM makes a good faith effort to contact ADEQ to confirm that the Plan was received. Approval by ADEQ of a Wildland Fire Use Burn Plan is binding upon ADEQ for the duration of the wildland fire use incident, unless smoke from the incident creates a threat to public health or welfare. If a threat to public health or welfare is created, ADEQ shall consult with the F/SLM regarding the situation and develop a joint action plan for reducing further smoke impacts.
- D. The F/SLM shall submit a Daily Status Report for each wildland fire use incident to ADEQ for each day of the burn that the fire burns more than 100 acres in timber or slash fuels or 300 acres in brush or grass fuels. The F/SLM shall include a synopsis of smoke behavior, future daily anticipated growth, and location of the activity of the wildland fire use incident in the Daily Status Report.
- E. The F/SLM shall consult with ADEQ prior to initiating human-made ignition on the wildland fire use incident when greater than 250 acres is anticipated to be burned by the ignition. Emergency human-made ignition on the incident for protection of public or fire-fighter safety does not require consultation with ADEQ regardless of the size of the area to be burned.
- F. The F/SLM shall ensure that there is appropriate signage and notification to protect public safety on transportation corridors including roadways and airports during a wildland fire use incident.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).
Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1509. Emission Reduction Techniques

- A. Each F/SLM conducting a prescribed burn shall implement as many Emission Reduction Techniques as are feasible subject

to economic, technical, and safety feasibility criteria, and land management objectives.

B. Emission Reduction Techniques include:

1. Reducing biomass to be burned by use of techniques such as yarding or consolidation of unmerchandisable material, multi-product timber sales, or public firewood access, when economically feasible;
2. Reducing biomass to be burned by fuel exclusion practices such as preventing the fire from consuming dead snags or dead and downed woody material through lining, application of fire-retardant foam, or water;
3. Using mass ignition techniques such as aerial ignition by helicopter to produce high intensity fires of high fuel density areas such as logging slash decks;
4. Burning only fuels essential to meet resource management objectives;
5. Minimizing consumption and smoldering by burning under conditions of high fuel moisture of duff and litter;
6. Minimizing fuel consumption and smoldering by burning under conditions of high fuel moisture of large woody fuels;
7. Minimizing soil content when slash piles are constructed by using brush blades on material-moving equipment and by constructing piles under dry soil conditions or by using hand piling methods;
8. Burning fuels in piles;
9. Using a backing fire in grass fuels;
10. Burning fuels with an air curtain destructor, as defined in R18-2-101, operated according to manufacturer specifications and meeting applicable state or local opacity requirements;
11. Extinguishing or mopping-up of smoldering fuels;
12. Chunking of piles and other consolidations of burning material to enhance flaming and fuel consumption, and to minimize smoke production;
13. Burning before litter fall;
14. Burning before green-up of fuels;
15. Burning before recently cut large fuels cure in areas with activity; and
16. Burning just before precipitation to reduce fuel smoldering and consumption.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).
Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1510. Smoke Management Techniques

- A. Each F/SLM conducting a prescribed burn shall implement as many Smoke Management Techniques as are feasible subject to economic, technical, and safety feasibility criteria, and land management objectives.
- B. Smoke management techniques include:
1. Burning from March 15 through September 15, when meteorological conditions allow for good smoke dispersion;
 2. Igniting burns under good-to-excellent ventilation conditions;
 3. Suspending operations under poor smoke dispersion conditions;
 4. Considering smoke impacts on local community activities and land users;
 5. Burning piles when other burns are not feasible, such as when snow or rain is present;
 6. Using mass ignition techniques such as aerial ignition by helicopter to produce high intensity fires with short duration impacts;

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7. Using all opportunities that meet the burn prescription and all burn locations to spread smoke impacts over a broader time period and geographic area;
8. Burning during optimum mid-day dispersion hours, with all ignitions in a burn unit completed by 3:00 p.m. to prevent trapping smoke in inversions or diurnal windflow patterns;
9. Providing information on the adverse impacts of using green or wet wood as fuel when public firewood access is allowed;
10. Implementing maintenance burning in a periodic rotation to shorten prescribed fire duration and to reduce excessive fuel accumulations that could result in excessive smoke production in a wildfire; and
11. Using wildland fire-use strategies to shift smoke into more favorable smoke dispersion seasons.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4). Former Section R18-2-1510 renumbered to R18-2-1511; new R18-2-1510 made by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1511. Monitoring

- A. ADEQ may require a F/SLM to monitor air quality before or during a prescribed burn or a wildland fire use incident if necessary to assess smoke impacts. Air quality monitoring may be conducted using both federal and non-federal reference method as well as other techniques.
- B. ADEQ may require a F/SLM to monitor weather before or during a prescribed burn or a wildland fire use incident, if necessary to predict or assess smoke impacts. After consultation with the F/SLM, ADEQ may also require the F/SLM to establish burn site or area-representative remote automated weather stations or their equivalent, having telemetry that allows retrieval on a real-time basis by ADEQ. An F/SLM shall give ADEQ notice and an opportunity to comment before making any change to a long-term established remote automated weather station.
- C. A F/SLM shall employ the following types of monitoring, unless waived by ADEQ, for burns greater than 250 acres per day, or greater than 50 acres per day if the burn is within 15 miles of a Class I Area, an area that is non-attainment for particulate matter, carbon monoxide, or ozone, or other smoke-sensitive area:
 1. Smoke plume measurements, using a format supplied by ADEQ; and
 2. The release of pilot balloons (PIBALs) at the burn site to verify needed wind speed, direction, and stability. Instead of pilot balloons, a test burn at the burn site may be used for specific prescribed burns on a case-by-case basis as approved by ADEQ, to verify needed wind speed, direction, and stability.
- D. An F/SLM shall make monitoring information required under subsection (C) available to ADEQ on the business day following the burn ignition.
- E. The F/SLM shall keep on file for one year following the burn date any monitoring information required under this Section.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4). Former Section R18-2-1511 renumbered to R18-2-1512; new R18-2-1511 renumbered from R18-2-1510 and amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1512. Burner Qualifications

- A. All burn projects shall be conducted by personnel trained in prescribed fire and smoke management techniques as required by the F/SLM in charge of the burn and established by National Wildfire Coordinating Group training qualifications.
- B. A Prescribed Fire Boss or other local Fire Management Officer of the F/SLM having jurisdiction over prescribed burns shall have smoke management training obtained through one of the following:
 1. Successful completion of a National Wildfire Coordinating Group or F/SLM-equivalent course addressing smoke management; or
 2. Attendance at an ADEQ-approved smoke management workshop.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4). Former Section R18-2-1512 renumbered to R18-2-1513; new R18-2-1512 renumbered from R18-2-1511 and amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1513. Public Notification and Awareness Program; Regional Coordination

- A. The Director shall conduct a public education and awareness program in cooperation with F/SLMs and other interested parties to inform the general public of the smoke management program described by this Article. The program shall include smoke impacts from prescribed fires and the role of prescribed fire in natural ecosystems.
- B. ADEQ shall make annual registration, prescribed burn approval, and wildfire and wildland fire use activity information readily available to the public and to facilitate regional coordination efforts and public notification.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4). Former Section R18-2-1513 renumbered to R18-2-1514; new R18-2-1513 renumbered from R18-2-1512 and amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1514. Surveillance and Enforcement

- A. An F/SLM conducting a prescribed burn shall permit ADEQ to enter and inspect burn sites unannounced to verify the accuracy of the Daily Burn Request, Burn Plan, or Accomplishment data as well as matching burn approval with actual conditions, smoke dispersion, and air quality impacts. On-ground site inspection procedures and aerial surveillance shall be coordinated by ADEQ and the F/SLM for safety purposes.
- B. ADEQ may use remote automated weather station data if necessary to verify current and previous meteorological conditions at or near the burn site.
- C. ADEQ may audit burn accomplishment data, smoke dispersion measurements, or weather measurements from previously conducted burns, if necessary to verify conformity with, or deviation from, procedures and authorizations approved by ADEQ.
- D. Deviation from procedures and authorizations approved by ADEQ constitute a violation of this Article. Violations may require containment or mop-up of any active burns and may also require, in the Director's discretion, a five-day moratorium on ignitions by the responsible F/SLM. Violations of this Article are also subject to a civil penalty of not more than \$10,000 per day per violation under A.R.S. § 49-463.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4). Former Section R18-2-1514 repealed; new R18-2-1514 renumbered from R18-2-1513 and amended by final rulemaking

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at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1515. Forms; Electronic Copies; Information Transfers

- A. ADEQ shall make available on paper and in electronically readable format any form required to be developed by ADEQ and completed by a F/SLM.
- B. After consultation with an F/SLM, ADEQ may require the F/SLM to provide data in a manner that facilitates electronic transfers of information.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).
Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

ARTICLE 16. EXPIRED

Article 16, consisting of Sections R18-2-1601 through R18-2-1606, made by final rulemaking at 9 A.A.R. 4541, effective December 2, 2003 (Supp. 03-4).

R18-2-1601. Expired

Historical Note

New Section made by final rulemaking at 9 A.A.R. 4541, effective December 2, 2003 (Supp. 03-4). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2500, effective August 14, 2018 (Supp. 18-3).

R18-2-1602. Expired

Historical Note

New Section made by final rulemaking at 9 A.A.R. 4541, effective December 2, 2003 (Supp. 03-4). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2500, effective August 14, 2018 (Supp. 18-3).

R18-2-1603. Expired

Historical Note

New Section made by final rulemaking at 9 A.A.R. 4541, effective December 2, 2003 (Supp. 03-4). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2500, effective August 14, 2018 (Supp. 18-3).

R18-2-1604. Expired

Historical Note

New Section made by final rulemaking at 9 A.A.R. 4541, effective December 2, 2003 (Supp. 03-4). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2500, effective August 14, 2018 (Supp. 18-3).

R18-2-1605. Expired

Historical Note

New Section made by final rulemaking at 9 A.A.R. 4541, effective December 2, 2003 (Supp. 03-4). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2500, effective August 14, 2018 (Supp. 18-3).

R18-2-1606. Expired

Historical Note

New Section made by final rulemaking at 9 A.A.R. 4541, effective December 2, 2003 (Supp. 03-4). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2500, effective August 14, 2018 (Supp. 18-3).

R18-2-1607. Expired

Historical Note

Section reserved at 11 A.A.R. 386, effective December 20, 2004, expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2500, effective August 14, 2018 (Supp. 18-3).

R18-2-1608. Expired

Historical Note

Section reserved at 11 A.A.R. 386, effective December 20, 2004, expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2500, effective August 14, 2018 (Supp. 18-3).

R18-2-1609. Expired

Historical Note

Section reserved at 11 A.A.R. 386, effective December 20, 2004, expired under A.R.S. § 41-1056(J) at 24 A.A.R. 2500, effective August 14, 2018 (Supp. 18-3).

R18-2-1610. Expired

Historical Note

New Section made by final rulemaking at 11 A.A.R. 386, effective December 20, 2004 (Supp. 04-4). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

R18-2-1611. Expired

Historical Note

New Section made by final rulemaking at 11 A.A.R. 386, effective December 20, 2004 (Supp. 04-4). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

R18-2-1612. Expired

Historical Note

New Section made by final rulemaking at 11 A.A.R. 386, effective December 20, 2004 (Supp. 04-4). Section heading corrected at request of the Department, Office File No. M12-134, filed April 5, 2012 (Supp. 11-4). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

R18-2-1613. Expired

Historical Note

New Section made by final rulemaking at 11 A.A.R. 386, effective December 20, 2004 (Supp. 04-4). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2856, effective April 30, 2013 (Supp. 13-3).

ARTICLE 17. EXPIRED

R18-2-1701. Expired

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).

Table 1. Expired

Historical Note

Table 1 made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Table 1 expired under A.R.S. § 41-1056(J) at 23 A.A.R. 135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).

R18-2-1702. Expired

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Historical Note

New Section made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R.135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).

Table 2. Expired**Historical Note**

Table 2 made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Table 2 expired under A.R.S. § 41-1056(J) at 23 A.A.R.135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).

R18-2-1703. Expired**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R.135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).

R18-2-1704. Expired**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R.135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).

R18-2-1705. Expired**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R.135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).

R18-2-1706. Expired**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R.135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).

R18-2-1707. Expired**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R.135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).

R18-2-1708. Expired**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R.135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).

Table 3. Expired**Historical Note**

Table 3 made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Table 3 expired under A.R.S. § 41-1056(J) at 23 A.A.R.135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).

R18-2-1709. Expired**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R.135, effective August 26, 2016; filed in the Office of the Secretary of State December 23, 2016 (Supp. 16-4).

ARTICLE 18. REPEALED**R18-2-1801. Repealed****Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

R18-2-1802. Repealed**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

R18-2-1803. Repealed**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

R18-2-1804. Repealed**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

R18-2-1805. Repealed**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

R18-2-1806. Repealed**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

R18-2-1807. Repealed**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

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R18-2-1808. Repealed**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

R18-2-1809. Repealed**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

R18-2-1810. Repealed**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

R18-2-1811. Repealed**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

R18-2-1812. Repealed**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Section repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

CHAPTER APPENDICES**Appendix 1. Repealed****Historical Note**

Former Appendix 1 repealed, new Appendix 1 adopted effective October 2, 1979 (Supp. 79-5). Amended effective May 28, 1982 (Supp. 82-3). Amended effective September 22, 1983 (Supp. 83-5). Amended effective December 1, 1988 (Supp. 88-4). Appendix 1 repealed, new Appendix 1 adopted effective November 15, 1993 (Supp. 93-4). Amended effective October 7, 1994 (Supp. 94-4). Amended effective August 1, 1995 (Supp. 95-3). The reference to R18-2-101(80) amended to reference R18-2-101(84) (Supp. 99-3). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Repealed by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

Appendix 2. Test Methods and Protocols

The following test methods and protocols are approved for use as directed by the Department under this Chapter. These standards are incorporated by reference as applicable requirements revised as of June 30, 2017, and no future editions or amendments. These standards are on file with the Department, and are also available from the U.S. Government Printing Office, Superintendent of Documents, bookstore.gpo.gov, Mail Stop: SSOP IDCC-SSOM, Washington, D.C. 20402-9328.

- A.** 40 CFR 50;
- B.** 40 CFR 50, all appendices;
- C.** 40 CFR 51, Appendix M, Section IV of Appendix S, and Appendix W;

- D.** 40 CFR 52, Appendices D and E;
- E.** 40 CFR 53;
- F.** 40 CFR 58;
- G.** 40 CFR 58, all appendices;
- H.** 40 CFR 60, all appendices;
- I.** 40 CFR 61, all appendices;
- J.** 40 CFR 63, all appendices;
- K.** 40 CFR 75, all appendices.
- L.** 40 CFR 51.128, Appendix A(1)(B).
- M.** Silt Content Test Method. The purpose of this test method is to estimate the silt content of the trafficked parts of commercial farm roads, as defined in R18-2-610. The higher the silt content, the more fine dust particles that are released when cars and trucks drive on commercial farm roads.
 1. Equipment:
 - a. A set of sieves with the following openings: 4 millimeters (mm), 2mm, 1 mm, 0.5 mm and 0.25 mm and a lid and collector pan
 - b. A small whisk broom or paintbrush with stiff bristles and dustpan 1 ft. in width. (The broom/brush should preferably have one, thin row of bristles no longer than 1.5 inches in length.)
 - c. A spatula without holes A small scale with half ounce increments (e.g. postal/package scale)
 - d. A shallow, lightweight container (e.g. plastic storage container)
 - e. A sturdy cardboard box or other rigid object with a level surface
 - f. Basic calculator
 - g. Cloth gloves (optional for handling metal sieves on hot, sunny days)
 - h. Sealable plastic bags (if sending samples to a laboratory)
 - i. Pencil/pen and paper
 2. Step 1: Look for a routinely-traveled surface, as evidenced by tire tracks. [Only collect samples from surfaces that are not wet or damp due to precipitation, dew or watering.] Use caution when taking samples to ensure personal safety with respect to passing vehicles. Gently press the edge of a dustpan (1 foot in width) into the surface four times to mark an area that is 1 square foot. Collect a sample of loose surface material using a whisk broom or brush and slowly sweep the material into the dustpan, minimizing escape of dust particles. Use a spatula to lift heavier elements such as gravel. Only collect dirt/gravel to an approximate depth of 3/8 inch or 1 cm in the 1 square foot area. If you reach a hard, underlying subsurface that is < 3/8 inch in depth, do not continue collecting the sample by digging into the hard surface. In other words, you are only collecting a surface sample of loose material down to 1 cm. In order to confirm that samples are collected to 1 cm. in depth, a wooden dowel or other similar narrow object at least 1 foot in length can be laid horizontally across the survey area while a metric ruler is held perpendicular to the dowel. At this point, you can choose to place the sample collected into a plastic bag or container and take it to an independent laboratory for silt content analysis. A reference to the procedure the laboratory is required to follow is in subsection (10) below.
 3. Step 2: Place a scale on a level surface. Place a lightweight container on the scale. Zero the scale with the weight of the empty container on it. Transfer the entire sample collected in the dustpan to the container, minimizing escape of dust particles. Weigh the sample and record its weight.

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4. Step 3: Stack a set of sieves in order according to the size openings specified above, beginning with the largest size opening (4 mm) at the top. Place a collector pan underneath the bottom (0.25 mm) sieve.
5. Step 4: Carefully pour the sample into the sieve stack, minimizing escape of dust particles by slowly brushing material into the stack with a whisk broom or brush. (On windy days, use the trunk or door of a car as a wind barricade.) Cover the stack with a lid. Lift up the sieve stack and shake it vigorously up, down and sideways for at least 1 minute.
6. Step 5: Remove the lid from the stack and disassemble each sieve separately, beginning with the top sieve. As you remove each sieve, examine it to make sure that all of the material has been sifted to the finest sieve through which it can pass; e.g. material in each sieve (besides the top sieve that captures a range of larger elements) should look the same size. If this is not the case, re-stack the sieves and collector pan, cover the stack with the lid, and shake it again for at least 1 minute. (You only need to reassemble the sieve(s) that contain material which requires further sifting.)
7. Step 6: After disassembling the sieves and collector pan, slowly sweep the material from the collector pan into the empty container originally used to collect and weigh the entire sample. Take care to minimize escape of dust particles. You do not need to do anything with material captured in the sieves -- only the collector pan. Weigh the container with the material from the collector pan and record its weight.
8. Step 7: If the source is an unpaved road, multiply the resulting weight by 0.38. If the source is an unpaved parking lot, multiply the resulting weight by 0.55. The resulting number is the estimated silt loading. Then, divide by the total weight of the sample you recorded earlier in Step 2 and multiply by 100 to estimate the percent silt content.
9. Step 8: Select another two routinely-traveled portions of the unpaved road or unpaved parking lot and repeat this test method. Once you have calculated the silt loading and percent silt content of the three samples collected, average your results together.
10. Step 9: Examine Results. If the average silt loading is less than 0.33 oz/ft², the surface is STABLE. If the average silt loading is greater than or equal to 0.33 oz/ft², then proceed to examine the average percent silt content. If the source is an unpaved road and the average percent silt content is 6% or less, the surface is STABLE. If the source is an unpaved parking lot and the average percent silt content is 8% or less, the surface is STABLE. If your field test results are within 2% of the standard (for example, 4%-8% silt content on an unpaved road), it is recommended that you collect three additional samples from the source according to Step 1 and take them to an independent laboratory for silt content analysis.
11. Independent Laboratory Analysis: You may choose to collect 3 samples from the source, according to Step 1, and send them to an independent laboratory for silt content analysis rather than conduct the sieve field procedure. If so, the test method the laboratory is required to use comes from the from the following text: *Procedures For Laboratory Analysis Of Surface/Bulk Dust Loading Samples*, (Fifth Edition, Volume I, Appendix C.2.3 "Silt Analysis", 1995), AP-42, Office of Air Quality Planning & Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina.

Historical Note

Former Appendix 2 repealed, new Appendix 2 adopted effective October 2, 1979 (Supp. 79-5). Amended effective May 28, 1982 (Supp. 82-3). Amended effective December 1, 1988 (Supp. 88-4). Repealed effective November 15, 1993 (Supp. 93-4). New Appendix 2 adopted effective December 7, 1995 (Supp. 95-4). Amended effective May 9, 1996 (Supp. 96-2). Amended effective April 4, 1997; filed with the Office of the Secretary of State March 14, 1997 (Supp. 97-1). Amended effective December 4, 1997 (Supp. 97-4). Amended by final rulemaking at 5 A.A.R. 3221, effective August 12, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 4170, effective October 11, 2000 (Supp. 00-4). Amended by final rulemaking at 8 A.A.R. 2543, effective May 24, 2002 (Supp. 02-2). Amended by final rulemaking at 10 A.A.R. 3281, effective September 27, 2004 (Supp. 04-3). Amended by final rulemaking at 11 A.A.R. 3305, effective October 3, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 4199, effective January 5, 2008 (Supp. 07-4). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3). Amended by final expedited rulemaking at 21 A.A.R. 2747, effective December 13, 2015 (Supp. 15-4). Amended by final expedited rulemaking at 23 A.A.R. 1564, effective May 2, 2018 (Supp. 18-2). Missing subsection number in (M) added at Step 4, as (5), subsections following (M)(5) corrected (Supp. 21-4).

Appendix 3. Logging

1. Each log entry required by a change under R18-2-317.02(B) shall include at least the following information:
 - a. A description of the change, including:
 - i. A description of any process change.
 - ii. A description of any equipment change, including both old and new equipment descriptions, model numbers and serial numbers, or any other unique equipment number.
 - iii. A description of any process material change.
 - b. The date and time that the change occurred.
 - c. The provision of R18-2-317.02(B) that authorizes the change to be made with logging.
 - d. The date the entry was made and the first and last name of the person making the entry.
2. Logs shall be kept for five years from the date created. Logging shall be performed in indelible ink in a bound log book with sequentially numbered pages, or in any other form, including electronic format, approved by the Director.

Historical Note

Appendix 3 adopted by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3).

Appendix 4. Reserved**Appendix 5. Repealed****Historical Note**

Appendix 5 repealed effective November 15, 1993 (Supp. 93-4).

Appendix 6. Repealed**Historical Note**

Adopted effective August 7, 1975 (Supp. 75-1). Former Appendix 6 repealed, new Appendix 6 adopted effective July 7, 1978 (Supp. 78-4). Former Appendix 6 repealed

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effective May 14, 1979 (Supp. 79-1).

Appendix 7. Repealed

Historical Note

Adopted effective December 22, 1976 (Supp. 76-5). Former Appendix 7 repealed, new Appendix 7 adopted effective January 8, 1980 (Supp. 80-1). Editorial correction, Instructions for Schedule 2, paragraph (15) (Supp. 80-2).

Repealed effective September 26, 1990 (Supp. 90-3).

A8 Appendix 8. Procedures for Utilizing the Sulfur Balance Method for Determining Sulfur Emissions

PROCEDURES FOR UTILIZING THE SULFUR BALANCE METHOD FOR DETERMINING SULFUR EMISSIONS

A8.1. Calculating Input Sulfur

Total sulfur input is the sum of the product of the weight of each sulfur bearing material introduced into the smelting process as calculated in A8.1.1. multiplied by the fraction of sulfur contained in that material as calculated in A8.1.2. plus the amount of sulfur contained in fuel utilized in the smelting process as calculated in A8.1.3.

A8.1.1. Material Weight

The owner or operator of a copper smelter shall weigh all sulfur-bearing materials, other than fuels, introduced into the smelting process. The weighing shall be subject to the following conditions:

- A8.1.1.1. Weight shall be determined on a belt scale, rail or truck scales, or other weighing device.
- A8.1.1.2. Weight shall be determined within an accuracy of $\pm 5\%$.
- A8.1.1.3. All devices or scales used for weighing shall be calibrated to manufacturer's specifications at least once a month.
- A8.1.1.4. Sulfur-bearing materials subject to being weighed include concentrate, cement copper, reverbs that are discarded and not part of the internal circulating load and precipitates. Materials such as limestone and silica flux that are mixed with a charge of sulfur bearing materials shall be weighed and reported by the owner or operator.

A8.1.2. Sulfur Content

The owner or operator shall calculate the sulfur content of all sulfur-bearing materials introduced into the smelting process using the following steps or an alternative method approved according to A8.4.1.

A8.1.2.1. Sampling

The procedures followed by the owner or operator in sampling are dependent upon the input vehicles for the sulfur-bearing material.

A8.1.2.1.1. Beltfeed

The smelter owner or operator shall collect a five-pound sample each hour. The owner or operator shall combine hourly samples for a total daily sample.

A8.1.2.1.2. Railcar

The smelter owner or operator shall collect a 24-pound sample from each car by the auger method at a minimum of four locations. The owner or operator shall combine each car sample with all other car samples for a total lot sample.

A8.1.2.1.3. Truck

The owner or operator shall collect a 12-pound sample from each truck load. The owner or operator shall take samples at two locations during unloading. If more than one truck delivers a single lot, the samples from each truck shall be combined for a total lot sample.

A8.1.2.2.

Sample Preparation

The owner or operator shall prepare each total sample for analysis in the following manner:

- A8.1.2.2.1. The sample shall be crushed to minus 1/4 inch particles.
- A8.1.2.2.2. 2000 gm of the sample shall be split out using a Jones Riffle Splitter or similar device.
- A8.1.2.2.3. The 2000 gm sample shall be pulverized to minus 150 mesh.
- A8.1.2.2.4. The pulverized mass shall be mixed using a rolling cloth.
- A8.1.2.2.5. 500 gm shall be split out for sample analysis.

A8.1.2.3.

Sample Analysis

A8.1.2.3.1. The owner or operator shall analyze the sample to determine sulfur content using the Barium Sulfate (BaSO_4) Gravimetric Method according to A8.4.3. The analysis shall be accurate to within $\pm 1\%$.

A8.1.2.3.2. For purposes of comparison, the owner or operator shall analyze the sample for copper content using the Potassium Iodide (KI) Titration Method according to A8.4.3. The analysis shall be accurate to within $\pm 1\%$.

A8.1.3. Fuel Sulfur Content

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The owner or operator shall calculate sulfur in fuels by multiplying the amount of fuel that enters the process by the fraction of sulfur in the fuel, as reported to the smelter operator by the fuel's supplier. The sulfur content determination shall be accurate to within $\pm 5\%$.

A8.2. Calculating Removed Sulfur

Total removed sulfur is the sum of the removed sulfur in each of the following products as determined by each process set forth below, or by other processes approved according to A8.4.1.

A8.2.1. Furnace and Converter Slags

A8.2.1.1. The owner or operator shall determine the weight of each slag using a scale with an accuracy within $\pm 5\%$.

A8.2.1.2. The owner or operator shall collect a five-pound sample from each slag pot during tapping operations.

A8.2.1.3. The owner or operator shall prepare the sample and determine the amount of sulfur and copper using the procedures specified in A8.1.2.2. and A8.1.2.3.

A8.2.2. Dust Collection Equipment Dusts

A8.2.2.1. After the owner or operator collects the dust and places it in a rail car or truck they shall weigh it using a scale with an accuracy within $\pm 5\%$.

A8.2.2.2. The owner or operator shall sample the dust and prepare and analyze a sample for sulfur and copper using the procedures specified in A8.1.2.1., A8.1.2.2., and A8.1.2.3.

A8.2.3. Strong Acids

A8.2.3.1. The owner or operator shall take an inventory of strong acids daily by means of a manometer or sight glass, and increase the inventory by the amounts of acid shipped or otherwise transferred during that day.

A8.2.3.2. The owner or operator shall ensure the daily inventory will be accurate to within $\pm 5\%$.

A8.2.3.3. The owner or operator shall take a sample of each batch of the inventoried acid and analyze the sample for sulfur, according to the procedures in A8.1.2.3.

A8.2.4. Weak Acids

A8.2.4.1. The owner or operator shall determine the amount of weak acid discharged from an acid plant and scrubber systems by a time volumetric method of measurement in gallons per minute and to an accuracy of within $\pm 20\%$.

A8.2.4.2. The owner or operator shall analyze a 500 ml sample of the weak acid daily for sulfur content according to the procedures in A8.1.2.3.

A8.2.5. Sulfur in Copper Production

A8.2.5.1. The owner or operator shall determine the weight of copper produced by weight of copper cast to an accuracy of within $\pm 5\%$.

A8.2.5.2. The owner or operator shall record the weight and number of castings.

A8.2.5.3. The owner or operator shall obtain a sample of the copper, either by the grab sample method while casting, or by the use of at least three drill holes on a representative casting from each charge.

A8.2.5.4. The owner or operator shall obtain at least one sample from each charge.

A8.2.5.5. The owner or operator shall analyze each sample for sulfur content using the Barium Sulfate (BaSO_4) Gravimetric Method according to A8.4.3. The analysis shall be accurate to within $\pm 50\%$.

A8.2.6. Materials in Process

A8.2.6.1. The owner or operator shall determine the total tonnage of materials in process by physical inventory on the first or last day of each month.

A8.2.6.2. The owner or operator shall calculate a monthly change in in-process inventory for each material in process by taking the difference between the inventory from each material in process on the first or last day of the preceding month and multiplying that difference by the monthly composite sulfur assay for that material.

A8.2.6.3. The change in monthly in-process inventory shall be accurate to within $\pm 50\%$.

A8.3. Sulfur Dioxide Emissions Monitoring

A8.3.1. The sulfur dioxide emissions monitoring and recording system required under R18-2-715.01(K) through R18-2-715.01(N) shall meet the following specifications:

A8.3.1.1. The monitoring system shall be capable of continuously monitoring sulfur dioxide emissions with an accuracy of within $\pm 20\%$ and a confidence level of 95%.

A8.3.1.2. The owner or operator shall operate and calibrate the sulfur dioxide emission monitoring and recording equipment according to manufacturer's specifications for the equipment except that calibration shall be done at least once every 24 hours.

A8.3.2. The sulfur removal equipment bypass monitoring required under R18-2-715.01(Q) shall consist of a detector and recorder system capable of producing a permanent record of

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all periods that the bypass is in operation.

A8.4. General Provisions

- A8.4.1.** For purposes of this Appendix, an approved alternative method, process, or procedure, must be approved in writing by the Director and the U.S. Environmental Protection Agency.
- A8.4.2.** The processes and procedures specified in this Appendix shall be available for inspection, review and verification by the Department at all reasonable times.
- A8.4.3.** The barium sulfate gravimetric test method and potassium iodide titration test method provided in *Standard Methods of Chemical Analysis*, Volume One, *The Elements*, Sixth Edition, N. Howell Furman (ed.), D. Van Nostrand Company, Inc., Princeton, New Jersey, 1962, pages 410-411, 1006-1011, and 1342-1343 (and no future editions or amendments) is incorporated by reference and available at the Department.

Historical Note

Adopted effective December 22, 1976 (Supp. 76-5). Correction, Appendix 8, A8-2-1.1 (Supp. 77-2). Amended effective May 28, 1982 (Supp. 82-3). Amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 11 A.A.R. 2216, effective July 18, 2005 (Supp. 05-2). Subsection levels updated for clarity. No other changes have been made to Appendix 8 (Supp. 21-4).

A9. Appendix 9. Monitoring Requirements**MONITORING REQUIREMENTS**

- A9.1.** Unless otherwise approved by the Director or specified in applicable Sections, the requirements of this Appendix shall apply to all continuous monitoring systems required under applicable Sections.
- A9.2.** All continuous monitoring systems and monitoring devices shall be installed and operational prior to conducting performance tests under rule R18-2-312. Verification of operational status shall, as a minimum, consist of the following:
- A9.2.1.** For continuous monitoring systems referenced in A9.3.1. below, completion of the conditioning period specified by applicable requirements in the Arizona Testing Manual and 40 CFR 60.
- A9.2.2.** For continuous monitoring systems referenced in A9.3.2. below, completion of seven days of operation.
- A9.2.3.** For monitoring devices referenced in other applicable Sections, completions of the manufacturer's written requirements or recommendations for checking the operation or calibration of the device.
- A9.3.** During any performance tests required under rule R18-2-312 or within 30 days thereafter and at such other times as may be required by the Director, the owner or operator of any affected facility shall conduct continuous monitoring system performance evaluations and furnish the Director within 60 days thereof, 2, or upon request, more copies of a written report of the results of such tests. The continuous monitoring

system performance evaluations shall be conducted in accordance with the following specifications and procedures:

- A9.3.1.** Continuous monitoring systems listed within this subsection, except as provided in A9.3.2. below shall be evaluated in accordance with the requirements and procedures contained in the applicable performance specification of the Arizona Testing Manual and 40 CFR 60.
- A9.3.1.1.** Continuous monitoring systems for measuring opacity of emissions shall comply with Performance Specification 1.
- A9.3.1.2.** Continuous monitoring systems for measuring nitrogen oxides emissions shall comply with Performance Specification 2.
- A9.3.1.3.** Continuous monitoring systems for measuring sulfur dioxide emissions shall comply with Performance Specification 2.
- A9.3.1.4.** Continuous monitoring systems for measuring the oxygen content or carbon dioxide content of effluent gases shall comply with Performance Specification 3.
- A9.3.2.** An owner or operator who, prior to September 11, 1974, entered into a binding contractual obligation to purchase specific continuous monitoring system components except as referenced by A9.3.2.3. below shall comply with the following requirements:
- A9.3.2.1.** Continuous monitoring systems for measuring opacity of emissions shall be capable of measuring emission levels within $\pm 20\%$. The Calibration Error Test and associated calculation procedures set forth in Performance Specification 1 of 40 CFR 60, Appendix B shall be used for demonstrating compliance with this specification.
- A9.3.2.2.** Continuous monitoring systems for measurement of nitrogen oxides or sulfur dioxide shall be capable of measuring emission levels within $\pm 20\%$ with a confidence level of 95%. The Calibration Error Test, the Field Test for Accuracy (Relative), and associated operating and calculation procedures set forth in Performance Specification 2 of 40 CFR 60, Appendix B shall be used for demonstrating compliance with this specification.
- A9.3.2.3.** Owners or operators of all continuous monitoring systems installed on an affected facility prior to October 6, 1975, are not required to conduct tests under A9.3.2.1. and/or A9.3.2.2. above unless requested by the Director.
- A9.3.3.** All continuous monitoring systems referenced by A9.3.2. above shall be upgraded or replaced (if necessary) with new continuous monitoring systems, and such improved systems shall be demonstrated to comply with applicable performance

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specifications under A9.3.1. above by September 11, 1979.

A9.4. Owners or operators of all continuous monitoring systems installed in accordance with the provisions of these rules shall check the zero and span drift at least once daily in accordance with the method prescribed by the manufacturer of such systems unless the manufacturer recommends adjustments at shorter intervals, in which case such recommendations shall be followed. The zero and span shall, as a minimum, be adjusted whenever the 24-hour zero drift or 24-hour calibration drift limits of the applicable performance specifications in 40 CFR 60, Appendix B are exceeded. For continuous monitoring systems measuring opacity of emissions, the optical surfaces exposed to the effluent gases shall be cleaned prior to performing the zero or span drift adjustments except that for systems using automatic zero adjustments, the optical surfaces shall be cleaned when the cumulative automatic zero compensation exceeds 4% opacity. Unless otherwise approved by the Director, the following procedures, as applicable, shall be followed:

A9.4.1. For extractive continuous monitoring systems measuring gases, minimum procedures shall include introducing applicable zero and span gas mixtures into the measurement system as near the probe as practical. Span and zero gases certified by their manufacturer to be traceable to the National Bureau of Standards reference gases will be used whenever these reference gases are available. The span and zero gas mixtures shall be the same composition as specified in the 40 CFR 60, Appendix B. Every six months from date of manufacture, span and zero gases shall be re-analyzed by conducting triplicate analyses with Reference Methods 6 for SO₂, 7 for NO_x and 3 for O₂ and CO₂, respectively. The gases may be analyzed at less frequent intervals if longer shelf lives are guaranteed by the manufacturer.

A9.4.2. For nonextractive continuous monitoring systems measuring gases, minimum procedures shall include upscale check(s) using a certified calibration gas cell or test cell which is functionally equivalent to a known gas concentration. The zero check may be performed by computing the zero value from upscale measurements or by mechanically producing a zero condition.

A9.4.3. For continuous monitoring systems measuring opacity of emissions, minimum procedures shall include a method for producing a simulated zero opacity condition and an upscale (span) opacity condition using a certified neutral density filter or other related technique to produce a known obscuration of the light beam. Such procedures shall provide a system check of the analyzer internal optical surfaces and all electronic circuitry including the lamp and photodetector assembly.

A9.5. Except for system breakdowns, repairs, calibration checks, and zero and span adjustments required under A9.4. above, all continuous monitoring systems shall be in continuous operation and shall meet minimum frequency of operation requirements as follows:

A9.5.1. All continuous monitoring systems referenced by A9.3.1. and A9.3.2. above for measuring opacity of emissions shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 10-second period.

A9.5.2. All continuous monitoring systems referenced by A9.3.1. above for measuring oxides of nitrogen, sulfur dioxide, carbon dioxide, or oxygen shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

A9.5.3. All continuous monitoring systems referenced by A9.3.2. above, except opacity, shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive one-hour period.

A9.6. All continuous monitoring systems for monitoring devices shall be installed such that representative measurements of emissions or process parameters from the affected facility are obtained. Additional procedures for location of continuous monitoring systems contained in the applicable Performance Specifications of 40 CFR 60, Appendix B shall be used.

A9.7. When the effluents from a single affected facility or two or more affected facilities subject to the same emission standards are combined before being released to the atmosphere, the owner or operator may install applicable continuous monitoring systems on each effluent or on the combined effluent. When the affected facilities are not subject to the same emission standards, separate continuous monitoring systems shall be installed on each effluent. When the effluent from one affected facility is released to the atmosphere through more than one point, the owner or operator shall install applicable continuous monitoring systems on each separate effluent unless the installation of fewer systems is approved by the Director.

A9.8. Owners or operators of all continuous monitoring systems for measurement of opacity shall reduce all data to six-minute averages and for systems other than opacity to one-hour averages, respectively. Six minute opacity averages shall be calculated from 24 or more data points equally spaced over each six-minute period. For systems other than opacity, one-hour averages shall be computed from four or more data points equally spaced over each one-hour period. Data recorded during periods of system breakdowns, repairs, calibration checks, and zero and span adjustments shall not be included in the data averages computed under this subsection. An arithmetic or integrated average of all data may be used. The data output of all continuous monitoring systems may be recorded in reduced or nonreduced form (e.g. ppm pollutant and percent O₂ or lb/million Btu of pollutant). All excess emissions shall be converted into units of the standard using the applicable conversion procedures specified in subparts. After conversion into units of the standard, the data may be rounded to the same number of significant digits used in these rules to specify the applicable standard (e.g., rounded to the nearest 1% opacity).

A9.9. Upon written application by an owner or operator, the Director may approve alternatives to any monitoring procedures or requirements of these rules including, but not limited to the following:

A9.9.1. Alternative monitoring requirements when installation of a continuous monitoring system or monitoring device specified by these rules would not provide accurate measurements due to liquid water or other interferences caused by substances with the effluent gases.

A9.9.2. Alternative monitoring requirements when the affected facility is infrequently operated.

A9.9.3. Alternative monitoring requirements to accommodate continuous monitoring systems that require

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additional measurements to correct for stack moisture conditions.

- A9.9.4.** Alternative locations for installing continuous monitoring systems or monitoring devices when the owner or operator can demonstrate that installation at alternate locations will enable accurate and representative measurements.
- A9.9.5.** Alternative methods of converting pollutant concentration measurements to units of the standards.
- A9.9.6.** Alternative procedures for performing daily checks of zero and span drift that do not involve use of span gases or test cells.
- A9.9.7.** Alternatives to the ASTM test methods or sampling procedures specified by any subpart.
- A9.9.8.** Alternative continuous monitoring systems that do not meet the design or performance requirements in Performance Specification 1 in 40 CFR 60, Appendix B but adequately demonstrate a definite and consistent relationship between its measurements and the measurements of opacity by a system complying with the requirements in Performance Specification 1. The Director may require that such demonstration be performed for each affected facility.
- A9.9.9.** Alternative monitoring requirements when the effluent from a single affected facility or the combined effluent from two or more affected facilities are released to the atmosphere through more than one point.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective September 26, 1990 (Supp. 90-3). Amended effective June 15, 1995 (Supp. 95-2). Subsection levels updated for clarity. No other changes have been made to Appendix 9 (Supp. 21-4).

Appendix 10. Repealed**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Amended effective June 19, 1981 (Supp. 81-3). Repealed by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).

Appendix 11. Repealed**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective September 11, 1983 (Supp. 83-5). Repealed by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).

Appendix 12. Expired**Historical Note**

New Appendix 12 made by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Appendix 12 expired under A.R.S. § 41-1056(J) at 23 A.A.R. 3427, effective October 10, 2017 (Supp. 17-4).

Appendix 13. Repealed**Historical Note**

New Appendix 13 made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2). Appendix repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

A14. Appendix 14. Procedures for Sulfur Dioxide and Lead Fugitive Emissions Studies for the Hayden Smelter**A14.1. Applicability**

This Appendix applies to the owner or operator of the primary copper smelter located in Hayden, Arizona at latitude 33°0'15"N and longitude 110°46'31"W.

A14.2. Study Objectives

The owner or operator shall conduct fugitive emissions studies to derive a measurement or accurate estimate of total fugitive sulfur dioxide and lead emissions from the Hayden smelter during operations, including planned and unplanned start-up and shutdown periods and malfunctions, for the processes identified in A14.3 below. The studies shall include uncaptured fugitive sulfur dioxide emissions from the smelter processing units, but not emissions due solely to the use of fuel for space heating or steam generation, burners at anode casting, or slag pouring at the slag dump. The studies shall evaluate the extent to which correlations may exist between fugitive sulfur dioxide, lead, and particulate matter (PM/PM10/PM2.5) emissions, and shall develop such correlations as feasible.

The studies shall also be used to help validate that the operating conditions or ranges specified in the capture and control device maintenance and operations plans required in R18-2-B1301(D)(2) and R18-2-B1302(D)(2) are consistent with operating conditions demonstrating attainment of the 2008 Lead National Ambient Air Quality Standards (NAAQS) in the Hayden 2008 Lead NAAQS Nonattainment Area State Implementation Plan (SIP) and the 2010 Sulfur Dioxide NAAQS in the Hayden 2010 Sulfur Dioxide NAAQS Nonattainment Area SIP.

A14.3. Processes Evaluated

From the fugitive emissions studies, the owner or operator shall develop an emission factor or accurate estimate of fugitive emissions for sulfur dioxide and lead during operations, including planned and unplanned start-up and shutdown periods and malfunctions, produced by each of the following smelting processes:

- i. Flash furnace building, including flash furnace and dryer operations
- ii. Converter aisle, including converter and related operations
- iii. Anode furnace aisle, including oxidizing, poling and related operations

A14.4. Averaging Periods

The emission estimate shall include the average pounds per hour emission factor for the fugitive lead and sulfur dioxide emissions from each step in the smelting process identified in A14.3. The estimate shall include all time periods, including planned and unplanned start-up and shutdown periods and malfunctions.

A14.5. Methods and Study Protocols

The owner or operator shall submit to the Department and EPA Region IX for review and approval study protocols at least six months prior to conducting fugitive emission studies. Study protocols must be approved by the Department and EPA Region IX prior to commencement of fugitive emissions studies. Study protocols shall specify the method(s) used to meet the study objectives as described in A14.2, including during all recurring operating scenarios from all processes identified in A14.3.

Each fugitive emissions measurement system shall include validation of adequate velocity for flow measurements (i.e., the expected exhaust velocity is within the measurement range of the instrument), and have a sufficient number of flow and temperature sensors to ensure calculation of representative exhaust flows through each roof monitor vent. The

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number of such sensors and their locations for each monitoring system shall account for the physical configuration of the roof monitor vent, the locations of emitting activities relative to the roof monitor vent, and heat generated by the equipment served by the roof monitor vent.

The fugitive emissions studies shall include operation and process information to help understand the emission impacts of startup, shutdown, malfunctions, and significant changes in process operations. This shall include, for example, dates, times and duration of these events, cause of malfunctions, and descriptions of process changes.

After the completion of each fugitive emissions study, the owner or operator shall modify study methods based on data and lessons learned from previous studies, and submit such modified methods in the proceeding study protocols prior to conducting future emissions studies.

A14.6. Study Duration, Frequency, and Submission Schedule

The first fugitive emissions study must commence not later than six months after the completion of the Converter Retrofit Project authorized by Significant Permit Revision No. 60647. The second study commencement date shall occur within the same calendar quarter, but five years later from the date of commencement of the first study. The owner or operator shall submit the results of each fugitive emissions study in a report to the Department and EPA Region IX for review and approval not later than six months after completing a study. The data collection portion of the first and second fugitive emissions studies shall be conducted for a period of 12 months to assess the content and quantity of fugitive sulfur dioxide and lead emissions.

A14.7. Study Reports and Subsequent Studies

At minimum, fugitive emission study reports submitted pursuant to A14.6 must include:

- i. Resultant emission factors used to determine fugitive emissions of sulfur dioxide and lead.
- ii. Resultant average fugitive lead emissions for each process identified in A14.3.
- iii. Resultant peak one-hour fugitive sulfur dioxide emissions for each process identified in A14.3.
- iv. Seasonal differences, if any.
- v. Comparisons of results from past studies, if any.
- vi. Descriptions and identification of volumetric flow monitoring provisions in R18-2-B1301(D)(2)(a) and R18-2-B1302(D)(2)(a) and operational limits R18-2-B1301(D)(2)(b) and R18-2-B1302(D)(2)(b) that are associated with fugitive emissions.
- vii. An analysis of whether the results from a study demonstrate that the volumetric flow monitoring provisions in R18-2-B1301(D)(2)(a) and R18-2-B1302(D)(2)(a) and the operational limits in R18-2-B1301(D)(2)(b) and R18-2-B1302(D)(2)(b) continuously ensure that actual fugitive sulfur dioxide and lead emissions are consistent with the modeled emission rates used in the attainment demonstrations in the Hayden 2008 Lead NAAQS Nonattainment Area SIP and the Hayden 2010 Sulfur Dioxide NAAQS Nonattainment Area SIP. The analysis must also identify subsequent fugitive emissions studies, if any, needed to remedy inaccurate operational limits and volumetric flow monitoring provisions and to ensure attainment of the 2008 Lead NAAQS and 2010 Sulfur Dioxide NAAQS. The scope, duration, and frequency of any subsequent fugitive emissions studies must also be identified. This provision and

the report's conclusion neither require nor prohibit future fugitive emission studies.

- viii. An analysis of whether supplemental modeling is needed to demonstrate that resultant fugitive emissions from a study provide attainment of the 2008 Lead NAAQS and 2010 Sulfur Dioxide NAAQS.
- ix. A summary of methods as followed per approved study protocols.

A14.8. Revisions to Operations and Maintenance Plan

If an analysis conducted in accordance with A14.7(vi) demonstrates that fugitive emissions associated with volumetric flow monitoring provisions in R18-2-B1301(D)(2)(a) and R18-2-B1302(D)(2)(a) and operational limits in R18-2-B1301(D)(2)(b) and R18-2-B1302(D)(2)(b) may exceed the modeled emission rates used in the Hayden 2008 Lead NAAQS Nonattainment Area SIP attainment demonstration and/or the Hayden 2010 Sulfur Dioxide NAAQS Nonattainment Area SIP attainment demonstration, and result in an increased likelihood of a NAAQS exceedance based on modeling required under A14.9, then the owner or operator shall submit to the Department for approval, not later than six months after completing a study, recommended changes to operational limits and volumetric flow monitoring provisions as an operations and maintenance plan revision pursuant to R18-2-B1301(D)(2)(e) and R18-2-B1302(D)(2)(e) that would achieve necessary fugitive emissions levels to demonstrate attainment of the NAAQS at the same level of assurance as in the attainment demonstrations. Until receiving approval of the plan revision, the owner or operator shall operate and maintain the volumetric flow monitoring provisions and the operational limits in accordance with the plan as initially submitted pursuant to R18-2-B1301(D)(2)(e) and R18-2-B1302(D)(2)(e). Additionally, the owner and operator shall submit new attainment demonstrations pursuant to A14.9, making appropriate demonstrations of attainment at adjusted fugitive emissions levels.

Similarly, if an analysis conducted in accordance with A14.7(vi) demonstrates that fugitive emissions associated with the volumetric flow monitoring provisions in R18-2-B1301(D)(2)(a) and R18-2-B1302(D)(2)(a) and operational limits in R18-2-B1301(D)(2)(b) and R18-2-B1302(D)(2)(b) may exceed the modeled emission rates used in the Hayden 2008 Lead NAAQS Nonattainment Area SIP attainment demonstration and/or the Hayden 2010 Sulfur Dioxide NAAQS Nonattainment Area SIP attainment demonstration, and result in an increased likelihood of a NAAQS exceedance based on modeling required under A14.9, then the Department shall submit appropriate changes to the operational limits and volumetric flow monitoring provisions, and any revised attainment demonstration pursuant to A14.9, if applicable, to EPA Region IX as a SIP revision not later than 12 months after completion of a fugitive emissions study.

A14.9. Supplemental Modeling

If an analysis conducted in accordance with A14.7(vii) demonstrates that fugitive emissions associated with volumetric flow monitoring provisions in R18-2-B1301(D)(2)(a) and R18-2-B1302(D)(2)(a) and operational limits in R18-2-B1301(D)(2)(b) and R18-2-B1302(D)(2)(b) are greater than the modeled emission rates used in the Hayden 2008 Lead NAAQS Nonattainment Area SIP attainment demonstration and/or the Hayden 2010 Sulfur Dioxide NAAQS Nonattainment Area SIP attainment demonstration, the owner or opera-

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tor shall remodel to demonstrate whether the 2010 Sulfur Dioxide NAAQS and/or 2008 Lead NAAQS will be attained as such higher rates. The owner or operator shall submit such modeling to the Department and EPA Region IX for review and approval not later than six months after completing a fugitive emissions study.

If the revised modeling demonstrates that the 2010 Sulfur Dioxide NAAQS and/or 2008 Lead NAAQS will be attained, the Department shall submit such modeling demonstration and revised fugitive emissions assumptions as a SIP revision to EPA Region IX not later than 12 months after completion of a fugitive emissions study. Alternatively, the owner or operator shall propose additional emission control requirements to revise the SIP, or any combination of revised control measures and modeled attainment, to demonstrate attainment of the 2010 Sulfur Dioxide NAAQS and/or 2008 Lead NAAQS.

Historical Note

A14, Appendix 14 made by final rulemaking at 23 A.A.R. 722, effective May 7, 2017 (Supp. 17-1). Because of a clerical error in Supp. 17-1, A14, Appendix 14 was inadvertently published at the end of Article 13. At the request of the Department it has been moved to the end of this Chapter (Supp. 17-3). Subsection levels updated for clarity. No other changes have been made to Appendix 14 (Supp. 21-4).

A15. Appendix 15. Test Methods for Determining Opacity and Stabilization of Unpaved Roads

A15.1. Applicability

This Appendix applies to unpaved roads at the primary copper smelter located in Hayden, Arizona at latitude 33°0'15"N and longitude 110°46'31"W.

A15.2. Opacity Test Method

The purpose of this test method is to estimate the percent opacity of fugitive dust plumes caused by vehicle movement on unpaved roads. This method can only be conducted by an individual who has received certification as a qualified observer. Qualification and testing requirements can be found in Section A15.4 of this Appendix.

A15.2.1. Step 1

Stand at least 16.5 feet from the fugitive dust source in order to provide a clear view of the emissions with the sun oriented in the 140° sector to the back. Following the above requirements, make opacity observations so that the line of vision is approximately perpendicular to the dust plume and wind direction. If multiple plumes are involved, do not include more than one plume in the line of sight at one time.

A15.2.2. Step 2

Record the fugitive dust source location, source type, method of control used, if any, observer's name, certification data and affiliation, and a sketch of the observer's position relative to the fugitive dust source. Also record the time, estimated distance to the fugitive dust source location, approximate wind direction, estimated wind speed, description of the sky condition (presence and color of clouds), observer's position to the fugitive dust source, and color of the plume and type of background on the visible emission observation from both when opacity readings are initiated and completed.

A15.2.3. Step 3

Make opacity observations, to the extent possible, using a contrasting background that is perpendicular to the line of vision. Make opacity observations approximately 1 meter above the surface from which the plume is generated. Note that the observation is to be made at only one visual point upon generation of a plume, as opposed to visually tracking the entire length of a dust plume as it is created along a surface. Make two observations per vehicle, beginning with the first reading at zero seconds and the second reading at five seconds. The zero-second observation should begin immediately after a plume has been created above the surface involved. Do not look continuously at the plume but, instead, observe the plume briefly at zero seconds and then again at five seconds.

A15.2.4. Step 4

Record the opacity observations to the nearest 5% on an observational record sheet. Each momentary observation recorded represents the average opacity of emissions for a 5-second period. While it is not required by the test method, EPA recommends that the observer estimate the size of vehicles which generate dust plumes for which readings are taken (e.g. midsize passenger car or heavy-duty truck) and the approximate speeds the vehicles are traveling when readings are taken.

A15.2.5. Step 5

Repeat Step 3 (Section A15.2.3 of this Appendix) and Step 4 (Section A15.2.4 of this Appendix) until you have recorded a total of 12 consecutive opacity readings. This will occur once six vehicles have driven on the source in your line of observation for which you are able to take proper readings. The 12 consecutive readings must be taken within the same period of observation but must not exceed 1 hour. Observations immediately preceding and following interrupted observations can be considered consecutive.

A15.2.6. Step 6

Average the 12 opacity readings together. If the average opacity reading equals 20% or lower, the source is in compliance.

A15.3. Silt Content Test Method

The purpose of this test method is to estimate the silt content of the trafficked parts of unpaved roads. The higher the silt content, the more fine dust particles that are released when cars and trucks drive on unpaved roads.

A15.3.1. Equipment

A15.3.1.1. A set of sieves with the following openings: 4 millimeters (mm), 2 mm, 1 mm, 0.5 mm and 0.25 mm (or a set of standard/commonly available sieves), a lid, and collector pan.

A15.3.1.2. A small whisk broom or paintbrush with stiff bristles and dustpan 1 ft. in width. (The broom/brush should preferably have one, thin row of bristles no longer than 1.5 inches in length).

A15.3.1.3. A spatula without holes.

A15.3.1.4. A small scale with half-ounce increments (e.g., postal/package scale).

A15.3.1.5. A shallow, lightweight container (e.g., plastic storage container).

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- A15.3.1.6.** A sturdy cardboard box or other rigid object with a level surface.
- A15.3.1.7.** A basic calculator.
- A15.3.1.8.** Cloth gloves (optional for handling metal sieves on hot, sunny days).
- A15.3.1.9.** Sealable plastic bags (if sending samples to a laboratory).
- A15.3.1.10.** A pencil/pen and paper.
- A15.3.2. Step 1**
Look for a routinely traveled surface, as evidenced by tire tracks. (Only collect samples from surfaces that are not damp due to precipitation or dew. This statement is not meant to be a standard in itself for dampness where watering is being used as a control measure. It is only intended to ensure that surface testing is done in a representative manner.) Use caution when taking samples to ensure personal safety with respect to passing vehicles. Gently press the edge of a dustpan (1 foot in width) into the surface four times to mark an area that is 1 square foot. Collect a sample of loose surface material using a whiskbroom or brush and slowly sweep the material into the dustpan, minimizing escape of dust particles. Use a spatula to lift heavier elements such as gravel. Only collect dirt/gravel to an approximate depth of 3/8 inch or 1 cm in the 1 square foot area. If you reach a hard, underlying subsurface that is < 3/8 inch in depth, do not continue collecting the sample by digging into the hard surface. In other words, you are only collecting a surface sample of loose material down to 1 cm. In order to confirm that samples are collected to 1 cm in depth, a wooden dowel or other similar narrow object at least 1 foot in length can be laid horizontally across the survey area while a metric ruler is held perpendicular to the dowel. At this point, you can choose to place the sample collected into a plastic bag or container and take it to an independent laboratory for silt content analysis. A reference to the procedure the laboratory is required to follow is at the end of this section.
- A15.3.3. Step 2**
Place a scale on a level surface. Place a lightweight container on the scale. Zero the scale with the weight of the empty container on it. Transfer the entire sample collected in the dustpan to the container, minimizing escape of dust particles. Weigh the sample and record its weight.
- A15.3.4. Step 3**
Stack a set of sieves in order according to the size openings specified above, beginning with the largest size opening (4 mm) at the top. Place a collector pan underneath the bottom (0.25 mm) sieve.
- A15.3.5. Step 4**
Carefully pour the sample into the sieve stack, minimizing escape of dust particles by slowly brushing material into the stack with a whiskbroom or brush. (On windy days, use the trunk or door of a car as a wind barricade.) Cover the stack with a lid. Lift up the sieve stack and shake it vigorously up, down and sideways for at least 1 minute.
- A15.3.6. Step 5**
Remove the lid from the stack and disassemble each sieve separately, beginning with the top sieve. As you remove each sieve, examine it to make sure that all of the material has been sifted to the finest sieve through which it can pass (e.g., material in each sieve [besides the top sieve that captures a range of larger elements] should look the same size). If this is not the case, re-stack the sieves and collector pan, cover the stack with the lid, and shake it again for at least 1 minute. (You only need to reassemble the sieve(s) that contain material, which requires further sifting.)
- A15.3.7. Step 6**
After disassembling the sieves and collector pan, slowly sweep the material from the collector pan into the empty container originally used to collect and weigh the entire sample. Take care to minimize escape of dust particles. You do not need to do anything with material captured in the sieves; only the collector pan. Weigh the container with the material from the collector pan and record its weight.
- A15.3.8. Step 7**
If the source is an unpaved road, multiply the resulting weight by 0.38. The resulting number is the estimated silt loading. Then, divide by the total weight of the sample you recorded earlier in Step 2 (Section A15.3.3 of this Appendix) and multiply by 100 to estimate the percent silt content.
- A15.3.9. Step 8**
Select another two routinely traveled portions of the unpaved road and repeat this test method. Once you have calculated the silt loading and percent silt content of the three samples collected, average your results together.
- A15.3.10. Step 9**
Examine results. If the average silt loading is less than 0.33 oz/ft², the surface is STABLE. If the average silt loading is greater than or equal to 0.33 oz/ft², then proceed to examine the average percent silt content. If the source is an unpaved road and the average percent silt content is 6% or less, the surface is STABLE. If your field test results are within 2% of the standard (for example, 4%–8% silt content on an unpaved road), it is recommended that you collect three additional samples from the source according to Step 1 (Section A15.3.2 of this Appendix) and take them to an independent laboratory for silt content analysis.
- A15.3.11. Independent Laboratory Analysis**
You may choose to collect 3 samples from the source, according to Step 1 (Section A15.3.2 of this Appendix), and send them to an independent laboratory for silt content analysis rather than conduct the sieve field procedure. If so, the test method the laboratory is required to use is: U.S. Environmental Protection Agency (1995), "Procedures for Laboratory Analysis of Surface/Bulk Dust Loading Samples", (AP-42 Fifth Edition, Volume I, Appendix C.2.3 "Silt Analysis"), Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina.
- A15.4. Qualification and Testing**
- A15.4.1. Certification Requirements**
To receive certification as a qualified observer, a candidate must be tested and demonstrate the ability to assign opacity readings in 5% increments to 25 different black plumes and 25 different white plumes, with an error not to exceed 15% opacity

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on any one reading and an average error not to exceed 7.5% opacity in each category. Candidates shall be tested according to the procedures described in Section A15.4.2 of this Appendix. Any smoke generator used pursuant to Section A15.4.2 of this Appendix shall be equipped with a smoke meter which meets the requirements of Section A15.4.3 of this Appendix. Certification tests that do not meet the requirements of Sections A15.4.2 and A15.4.3 of this Appendix are not valid. The certification shall be valid for a period of six months, and after each six-month period the qualification procedures must be repeated by an observer in order to retain certification.

A15.4.2. Certification Procedure

The certification test consists of showing the candidate a complete run of 50 plumes, 25 black plumes and 25 white plumes, generated by a smoke generator. Plumes shall be presented in random order within each set of 25 black and 25 white plumes. The candidate assigns an opacity value to each plume and records the observation on a suitable form. At the completion of each run of 50 readings, the score of the candidate is determined. If a candidate fails to qualify, the complete run of 50 readings must be repeated in any retest. The smoke test may be administered as part of a smoke school or training program, and may be preceded by training or familiarization runs of the smoke generator, during which candidates are shown black and white plumes of known opacity.

A15.4.3. Smoke Generator Specifications

Any smoke generator used for the purpose of Section A15.4.2 of this Appendix shall be equipped with a smoke meter installed to measure opacity across the diameter of the smoke generator stack. The smoke meter output shall display in-stack opacity, based upon a path length equal to the stack exit diameter on a full 0% to 100% chart recorder scale. The smoke meter optical design and performance shall meet the specifications shown in Table 1 of this Appendix. The smoke meter shall be calibrated as prescribed in Section A15.4.3.1 of this Appendix prior to conducting each smoke reading test. At the completion of each test, the zero and span drift shall be checked, and if the drift exceeds plus or minus 1% opacity, the condition shall be corrected prior to conducting any subsequent test runs. The smoke meter shall be demonstrated, at the time of installation, to meet the specifications listed in Table 1 of this Appendix. This demonstration shall be repeated following any subsequent repair or replacement of the photocell or associated electronic circuitry, including the chart recorder or output meter, or every six months, whichever occurs first.

A15.4.3.1. Calibration

The smoke meter is calibrated after allowing a minimum of 30 minutes warm-up by alternately producing simulated opacity of 0% and 100%. When stable response at 0% or 100% is noted, the smoke meter is adjusted to produce an output of 0% or 100%, as appropriate. This calibration shall be repeated until stable 0% and

100% readings are produced without adjustment. Simulated 0% and 100% opacity values may be produced by alternately switching the power to the light source on and off while the smoke generator is not producing smoke.

A15.4.3.2. Smoke Meter Evaluation

The smoke meter design and performance are to be evaluated as follows:

A15.4.3.2.1. Light Source

Verify, from manufacturer's data and from voltage measurements made at the lamp, as installed, that the lamp is operated within plus or minus 5% of the nominal rated voltage.

A15.4.3.2.2. Spectral Response of Photocell

Verify from manufacturer's data that the photocell has a photopic response (i.e., the spectral sensitivity of the cell shall closely approximate the standard spectral-luminosity curve for photopic vision which is referenced in (b) of Table 1 of this Appendix).

A15.4.3.2.3. Angle of View

Check construction geometry to ensure that the total angle of view of the smoke plume, as seen by the photocell, does not exceed 15°. Calculate the total angle of view (ϕ_v) as follows:

Total Angle of View = $2 \tan^{-1} (d/2L)$
where:

d = The photocell diameter + the diameter of the limiting aperture; and

L = The distance from the photocell to the limiting aperture. The limiting aperture is the point in the path between the photocell and the smoke plume where the angle of view is most restricted. In smoke generator smoke meters, this is normally an orifice plate.

A15.4.3.2.4. Angle of Projection

Check construction geometry to ensure that the total angle of projection of the lamp on the smoke plume does not exceed 15°. Calculate the total angle of projection (ϕ_p) as follows:

Total Angle of Projection = $2 \tan^{-1} (d/2L)$
where:

d = The sum of the length of the lamp filament + the diameter of the limiting aperture; and

L = The distance from the lamp to the limiting aperture.

A15.4.3.2.5. Calibration Error

Using neutral-density filters of known opacity, check the error between the actual response and the

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theoretical linear response of the smoke meter. This check is accomplished by first calibrating the smoke meter, according to Section A15.4.3.1 of this Appendix, and then inserting a series of three neutral-density filters of nominal opacity of 20%, 50%, and 75% in the smoke meter path length. Use filters calibrated within plus or minus 2%. Care should be taken when inserting the filters to prevent stray light from affecting the meter. Make a total of five nonconsecutive readings for each filter. The maximum opacity error on any one reading shall be plus or minus 3%.

A15.4.3.2.6. Zero and Span Drift

Determine the zero and span drift by calibrating and operating the smoke generator in a normal manner over a 1-hour period. The drift is measured by checking the zero and span at the end of this period.

A15.4.3.2.7. Response Time

Determine the response time by producing the series of five simulated 0% and 100% opacity values and observing the time required to reach stable response. Opacity values of 0% and 100% may be simulated by alternately switching the power to the light source off and on while the smoke generator is not operating.

Historical Note

A15, Appendix 15, made by final rulemaking at 23 A.A.R. 767, effective May 7, 2017 (Supp. 17-1). Because of a clerical error in Supp. 17-1, A15, Appendix 15 was inadvertently published at the end of Article 13. At the request of the Department it has been moved to the end of this Chapter (Supp. 17-3). Subsection levels updated for clarity. No other changes have been made to Appendix 15 (Supp. 21-4).

Table 1. Smoke Meter Design and Performance Specifications

Parameter	Specification
a. Light source	Incandescent lamp operated at nominal rated voltage
b. Spectral response of photocell	Photopic (daylight spectral response of the human eye)
c. Angle of view	15° maximum total angle
d. Angle of projection	15° maximum total angle
e. Calibration error	Plus or minus 3% opacity; maximum
f. Zero and span drift	Plus or minus 1% opacity, 30 minutes
g. Response time	Less than or equal to 5 seconds

Historical Note

Table 1 made by final rulemaking at 23 A.A.R. 767, effective May 7, 2017 (Supp. 17-1). Table 1 separated from Appendix 15. No other changes have been made to Table 1 (Supp. 21-4).

49-104. Powers and duties of the department and director

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.
2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.
3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.
4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.
5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.
6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.
7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.
8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.
9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.
10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.
11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. The department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.
12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.
13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.
14. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.
15. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.
16. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter. This paragraph does not adversely affect standards adopted by an Indian tribe under federal law.
17. Provide administrative and staff support for the oil and gas conservation commission.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.
2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.
3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.
4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.
5. Contract with other agencies, including laboratories, in furthering any department program.
6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.
7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.
8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.
9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.
10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.
11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:
 - (a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.
 - (b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.
12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at those places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection I, paragraph 10.
13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

- (a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.
- (b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.
- (c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.
- (d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules may:

- (a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.
- (b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. The department may establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rulemaking process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. The department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on:

- (a) The direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.
- (b) The availability of other funds for the duties performed.
- (c) The impact of the fees on the parties subject to the fees.
- (d) The fees charged for similar duties performed by the department, other agencies and the private sector.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203, except that state agencies are exempt from paying those fees that are not associated with the dredge and fill

permit program established pursuant to chapter 2, article 3.2 of this title. For services provided under the dredge and fill permit program, a state agency shall pay either:

- (a) The fees established by the department under the dredge and fill permit program.
- (b) The reasonable cost of services provided by the department pursuant to an interagency service agreement.

2. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

3. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

49-401. Declaration of policy

- A. The legislature finds and declares that air pollution exists with varying degrees of severity within the state, such air pollution is potentially and in some cases actually dangerous to the health of the citizenry, often causes physical discomfort, injury to property and property values, discourages recreational and other uses of the state's resources and is esthetically unappealing. The legislature by this act intends to exercise the police power of this state in a coordinated state-wide program to control present and future sources of emission of air contaminants to the end that air polluting activities of every type shall be regulated in a manner that insures the health, safety and general welfare of all the citizens of the state; protects property values and protects plant and animal life. The legislature further intends to place primary responsibility for air pollution control and abatement in the department of environmental quality and the hearing board created thereunder. However, counties shall have the right to control local air pollution problems as specifically provided herein.
- B. It is further declared to be the policy of this state that no further degradation of the air in the state of Arizona by any industrial polluters shall be tolerated. Those industries emitting pollutants in the excess of the emission standard set by the director of environmental quality shall bring their operations into conformity with the standards with all due speed. A new industry hereinafter established shall not begin normal operation until it has secured a permit attesting that its operation will not cause pollution in excess of the standards set by the director of environmental quality.

49-404. State implementation plan

- A. The director shall maintain a state implementation plan that provides for implementation, maintenance and enforcement of national ambient air quality standards and protection of visibility as required by the clean air act.
- B. The director may adopt rules that describe procedures for adoption of revisions to the state implementation plan.
- C. The state implementation plan and all revisions adopted before September 30, 1992 remain in effect according to their terms, except to the extent otherwise provided by the clean air act, inconsistent with any provision of the clean air act, or revised by the administrator. No control requirement in effect, or required to be adopted by an order, settlement agreement or plan in effect, before the enactment of the clean air act in any area which is a nonattainment or maintenance area for any air pollutant may be modified after enactment in any manner unless the modification insures equivalent or greater emission reductions of the air pollutant. The director shall evaluate and adopt revisions to the plan in conformity with federal regulations and guidelines promulgated by the administrator for those purposes until the rules required by subsection B are effective.

49-410. Voluntary Arizona emissions bank; definitions

A. The department shall establish and administer a voluntary Arizona emissions bank for registering the deposit, transfer and use of emission reduction credits. The department shall make information on emission reduction credits deposited in the voluntary Arizona emissions bank easily accessible to the public.

B. This state, any political subdivision of this state and any person that reduces qualifying emissions may apply to the department to certify emission reduction credits to be deposited into the voluntary Arizona emissions bank. To be eligible for certification and deposit in the voluntary Arizona emissions bank, the reduction in qualifying emissions shall be permanent, quantifiable, surplus, real and otherwise enforceable and shall occur after August 6, 1999. This section does not prohibit an activity from receiving credit by means other than the voluntary Arizona emissions bank for emissions reductions.

C. The department shall act on an application submitted under subsection B of this section and certify the amount of the emission reduction credits under rules adopted pursuant to subsection D of this section before the credits may be deposited and used to offset future increases in emissions of air pollutants. Pursuant to title 41, chapter 6, article 8, the department may delegate certification of emission reduction credits to a county or multi-county air quality control region, but shall retain authority to register the deposit, transfer and use of emission reduction credits and administer the voluntary Arizona emissions bank.

D. The department shall adopt rules for the implementation and administration of the voluntary Arizona emissions bank, and establish the criteria the department will use to determine the eligibility of reductions in qualifying emissions for emission reduction credits and the amount of the credits. Except to the extent otherwise required by the clean air act, the rules shall provide for the award of emission reduction credits equal to the full amount of reductions in qualifying emissions that are permanent, quantifiable, surplus, real and otherwise enforceable. The department shall establish by rule a fee system to cover the reasonable costs of administering the voluntary Arizona emissions bank. A county that has been delegated authority to certify emission reduction credits pursuant to subsection C of this section may establish a fee system to cover the reasonable costs of certification in accordance with section 49-112, subsection B. In adopting rules pursuant to this subsection, the department and a county shall consider and make reasonable attempts to mitigate any adverse impact on the commercial trucking industry, including any adverse economic impact and any impact on driver safety.

E. Except to the extent otherwise required by the clean air act, until used or voluntarily retired by the owner, emission reduction credits deposited in the bank:

1. Do not expire.
2. Shall be identified and accounted for in the state implementation plan control strategy for the area in which the reduction in emissions occurred.
3. May not be reduced or withdrawn without permission of the owner.

F. Notwithstanding any other law, this section does not directly or indirectly authorize this state or any political subdivision of this state to establish new or more stringent emissions regulations than provided in existing law for stationary or mobile sources.

G. A fleet owner that applies for emission reduction credits pursuant to this subsection shall specify the composition of its proposed participating fleet.

H. For the purposes of this section, unless the context otherwise requires:

1. "Emission reduction credit" means a reduction in qualifying emissions that has been certified for potential use as an offsetting emission reduction in a permit issued under this chapter, including a permit required by section 173 of the clean air act.
2. "Qualifying emissions" means emissions of any conventional air pollutant, other than elemental lead, or any precursor of a conventional air pollutant from any activity. Qualifying emissions does not include emissions from a fleet of motor vehicles if the fleet operates outside of a nonattainment area.

49-422. Powers and duties

A. In addition to any other powers vested in it by law, the department may:

1. Accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, to carry out any of the purposes of this chapter. All monies resulting therefrom shall be deposited, pursuant to sections 35-146 and 35-147, in the account of the department.
2. Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise to carry out the purposes of this chapter.
3. Require, as specified in subsections B and C of this section, any source of air contaminants to monitor, sample or perform other studies to quantify emissions of air contaminants or levels of air pollution that may reasonably be attributable to that source, if the director either:
 - (a) Determines that monitoring, sampling or other studies are necessary to determine the effects of the source on levels of air pollution.
 - (b) Has reasonable cause to believe a violation of this chapter, rules adopted pursuant to this chapter or a permit issued pursuant to this chapter has been committed.
 - (c) Determines that those studies or data are necessary to accomplish the purposes of this chapter, and that the monitoring, sampling or other studies by the source are necessary in order to assess the impact of the source on the emission of air contaminants.

B. The director shall adopt rules requiring sources of air contaminants to monitor, sample or otherwise quantify their emissions of air pollution that may reasonably be attributable to such sources for air contaminants for which ambient air quality standards or emission standards or design, equipment, work practice or operational standards have been adopted pursuant to section 49-424 or section 49-425, subsection A. In the development of the rules, the director shall consider the cost and effectiveness of the monitoring, sampling or other studies.

C. For those sources of air contaminants for which rules are not required to be adopted pursuant to subsection B of this section, the director may require a source of air contaminants, by permit or order, to perform monitoring, sampling or other quantification of its emissions or air pollution that may reasonably be attributed to such a source. Before requiring such monitoring, sampling or other quantification by permit or order, the director shall consider the relative cost and accuracy of any alternatives that may be reasonable under the circumstances such as emission factors, modeling, mass balance analyses or emissions projections. The director may require such monitoring, sampling or other quantification by permit or order if the director determines in writing that all of the following conditions are met:

1. The actual or potential emissions or air pollution may adversely affect public health or the environment.
2. A monitoring, sampling or quantification method is technically feasible for the subject contaminant and the source.
3. An adequate scientific basis for the monitoring, sampling or quantification method exists.
4. The monitoring, sampling or quantification method is reasonably accurate.
5. The cost of the method is reasonable in light of the use to be made of the data.

D. In determining the frequency and duration of monitoring, sampling or quantification of emissions under subsections B and C of this section, the director shall consider the five factors prescribed in subsection C of this section and the level of emissions from the source.

E. Orders issued and permit conditions imposed pursuant to this section may be appealed as appealable agency actions pursuant to title 41, chapter 6, article 10.

F. On request of the on-scene commander or the department of health services, the department of environmental quality shall assist at a significant chemical or other toxic fire event, excluding chemical or nuclear warfare or biological agents, and shall

provide the following services if funding is available and if the director, in the director's professional capacity, determines the department's provision of services is necessary to protect human health and the environment:

1. Collect air samples for likely contaminants resulting from the fire. The department of environmental quality shall coordinate sampling locations, times and pollutants to be sampled with the department of health services and other appropriate health and emergency response officials.
2. Maintain an hourly plume report that includes meteorological conditions that affect dispersal of smoke.
3. In consultation with the department of health services and the on-scene coordinator, prepare a report that includes test results of any sampling, including the sampling rationale and protocol and chain of custody report using applicable environmental protection agency standards. The report shall also include, to the extent practicable, a smoke dispersion map with detail adequate to determine possible areas of impact at the level of detail practicable and a listing of likely releases of any chemical that is categorized by the United States environmental protection agency as a hazardous air pollutant and the corresponding environmental protection agency description of possible health effects of the chemical based on a reliable inventory of hazardous materials at the site or facility.

49-424. Duties of department

The department shall:

1. Determine whether the meteorology of the state is such that airsheds can be reasonably identified and air pollution, therefore, can be controlled by establishing air pollution control districts within well defined geographical areas.
2. Make continuing determinations of the quantity and nature of emissions of air contaminants, topography, wind and temperature conditions, possible chemical reactions in the atmosphere, the character of development of the various areas of the state, the economic effect of remedial measures on the various areas of the state, the availability, use and economic feasibility of air-cleaning devices, the effect on human health and danger to property from air contaminants, the effect on industrial operations of remedial measures and other matters necessary to arrive at a better understanding of air pollution and its control. In a county with a population in excess of one million two hundred thousand persons, the department shall locate a monitoring system in at least two remote geographic sites.
3. Establish substantive policy statements for identifying air quality exceptional events that take into consideration this state's unique geological, geographical and climatological conditions and any other unusual circumstances. These substantive policy statements shall be developed with the planning agency certified pursuant to section 49-406, subsection A and the county air pollution control department or district.
4. Determine the standards for the quality of the ambient air and the limits of air contaminants necessary to protect the public health, and to secure the comfortable enjoyment of life and property by the citizens of the state or in any defined geographical area of the state where the concentration of air pollution sources, the health of the population, or the nature of the economy or nature of land and its uses so require, and develop and transmit to the county boards of supervisors minimum state standards for air pollution control.
5. Conduct investigations, inspections and tests to carry out the duties of this section under the procedures established by this article.
6. Hold hearings relating to any aspect of or matter within the duties of this section, and in connection therewith, compel the attendance of witnesses and the production of records under the procedures established by section 49-432.
7. Prepare and develop a comprehensive plan or plans for the abatement and control of air pollution in this state.
8. Encourage voluntary cooperation by advising and consulting with persons or affected groups or other states to achieve the purposes of this chapter, including voluntary testing of actual or suspected sources of air pollution.
9. Encourage political subdivisions of the state to handle air pollution problems within their respective jurisdictions, and provide as it deems necessary technical and consultative assistance therefor.
10. Compile and publish from time to time reports, data and statistics with respect to those matters studied and investigated by the department.
11. Develop and disseminate air quality dust forecasts for the Maricopa county PM-10 nonattainment or maintenance area and any other PM-10 nonattainment or maintenance areas that are designated in this state from and after December 31, 2011. Each forecast shall identify a low, moderate or high risk of dust generation for the next five consecutive days and shall be issued by noon on each day the forecast is generated. At a minimum, the forecasts shall be posted on the department's website and distributed electronically. When developing these forecasts, the department shall consider all of the following:
 - (a) Projected meteorological conditions for the PM-10 nonattainment or maintenance area, including all of the following:
 - (i) Wind speed and direction.
 - (ii) Stagnation.
 - (iii) Recent precipitation.

(iv) Potential for precipitation.

(b) Existing concentrations of air pollution at the time of the forecast.

(c) Historic air pollution concentrations that have been observed during meteorological conditions similar to those that are predicted to occur in the forecast.

49-425. Rules; hearing

- A. The director shall adopt such rules as the director determines are necessary and feasible to reduce the release into the atmosphere of air contaminants originating within the territorial limits of the state or any portion thereof and shall adopt, modify and amend reasonable standards for the quality of and emissions into the ambient air of the state for the prevention, control and abatement of air pollution. Additional standards shall be established for particulate matter emissions, sulfur dioxide emissions and other air contaminant emissions determined to be necessary and feasible for the prevention, control and abatement of air pollution. In fixing such ambient air quality standards, emission standards or standards of performance, the director shall give consideration but shall not be limited to the relevant factors prescribed by the clean air act.
- B. No rule may be enacted or amended except after the director first holds a public hearing after thirty days' notice of such hearing. The proposed rule, or any proposed amendment of a rule, shall be made available to the public at the time of notice of such hearing.
- C. The department shall enforce the rules adopted by the director.
- D. All rules enacted pursuant to this section shall be made available to the public at a reasonable charge on request.

49-457. Agricultural best management practices committee; members; powers; permits; enforcement; preemption; definitions

- A. A best management practices committee for regulated agricultural activities is established.
- B. The committee shall consist of:
 - 1. The director of environmental quality or the director's designee.
 - 2. The director of the Arizona department of agriculture or the director's designee.
 - 3. The dean of the college of agriculture of the university of Arizona or the dean's designee.
 - 4. The state director of the United States natural resources conservation service or the director's designee.
 - 5. One person actively engaged in the production of citrus.
 - 6. One person actively engaged in the production of vegetables.
 - 7. One person actively engaged in the production of cotton.
 - 8. One person actively engaged in the production of alfalfa.
 - 9. One person actively engaged in the production of grain.
 - 10. One soil taxonomist from the university of Arizona college of agriculture.
 - 11. One person actively engaged in the operation of a beef cattle feed lot.
 - 12. One person actively engaged in the operation of a dairy.
 - 13. One person actively engaged in the operation of a poultry facility.
 - 14. One person actively engaged in the operation of a swine facility.
 - 15. One person who is employed by a county air quality department or agency.
- C. The governor shall appoint the members designated pursuant to subsection B, paragraphs 5 through 15 of this section for a term of six years. Members may be reappointed. Members are not entitled to compensation for their services but are entitled to receive reimbursement of expenses pursuant to title 38, chapter 4, article 2.
- D. The committee shall elect a chairperson from the appointed members to serve a two-year term.
- E. The committee shall meet at the call of the chairperson or at the request of a majority of the appointed members.
- F. The department of environmental quality, the Arizona department of agriculture and the college of agriculture of the university of Arizona shall cooperate with and provide technical assistance and any necessary information to the committee. The department of environmental quality shall provide the necessary staff support and meeting facilities for the committee.
- G. A person who commences a regulated agricultural activity that is subject to an agricultural general permit adopted pursuant to this section shall immediately comply with the general permit.
- H. The committee shall adopt and, as necessary and appropriate, amend by rule an agricultural general permit specifying best management practices, including recordkeeping and reporting requirements, for regulated agricultural activities to reduce fugitive PM-10 emissions. The committee shall adopt by rule a list of best management practices, at least one of which shall be used in areas designated as moderate nonattainment for PM-10 and at least two of which shall be used in areas designated as serious nonattainment for PM-10, to demonstrate compliance with applicable provisions of the general

permit. Best management practices may vary within the regulated area, according to regional or geographical conditions or cropping patterns.

I. Fugitive PM-10 emissions from regulated agricultural activities that are subject to an agricultural general permit pursuant to this section are not subject to a permit issued pursuant to section 49-426 except as follows:

1. If the fugitive PM-10 emissions are from regulated agricultural activities at a stationary source that is otherwise required to obtain a permit pursuant to section 49-426, the permit issued pursuant to section 49-426 shall be subject to conditions as necessary to ensure compliance with federal, state and county regulations approved as a part of the state implementation plan, including regulations adopted under section 110(a)(2)(c) of the clean air act.
2. A person for whom an agricultural general permit has been revoked under subsection L of this section must obtain a permit pursuant to section 49-426 that includes enforceable conditions that impose best management practices on fugitive PM-10 emissions from regulated agricultural activities.

J. If a person who is engaged in a regulated activity is not in compliance with the general permit and that person has not previously been subject to a compliance order issued pursuant to this section, the director may serve on the person by certified mail an order requiring compliance with the general permit and notifying the person of the opportunity for a hearing pursuant to title 41, chapter 6, article 10. The order shall state with reasonable particularity the nature of the noncompliance and shall specify that the person has a period that the director determines is reasonable, but is not less than sixty days, to submit a plan to the supervisors of the natural resource conservation district in which the person engages in the regulated activity that specifies the best management practices from among those adopted in rule pursuant to subsection H of this section that the person will use to comply with the general permit.

K. If a person who is engaged in a regulated activity is not in compliance with the general permit, and that person has previously submitted a plan pursuant to subsection J of this section, the director may serve on the person by certified mail an order requiring compliance with the general permit and notifying the person of the opportunity for a hearing pursuant to title 41, chapter 6, article 10. The order shall state with reasonable particularity the nature of the noncompliance and shall specify that the person has a period that the director determines is reasonable, but is not less than sixty days, to submit a plan to the department that specifies the best management practices from among those adopted in rule pursuant to subsection H of this section that the person will use to comply with the general permit.

L. If a person fails to comply with the plan submitted pursuant to subsection K of this section, the director may revoke the agricultural general permit for that person and require that the person obtain an individual permit pursuant to section 49-426. A revocation becomes effective after the director has provided the person with notice and an opportunity for a hearing pursuant to title 41, chapter 6, article 10.

M. The committee shall develop and commence an education program. The education program shall be conducted by the director or the director's designee or designees.

N. The regulation of fugitive PM-10 emissions produced by regulated agricultural activities is a matter of statewide concern. Accordingly, except for rules incorporated into the applicable implementation plan, this section preempts further regulation of fugitive PM-10 emissions from regulated agricultural activities by a county, city, town or other political subdivision of this state.

O. For the purposes of this section, unless the context otherwise requires:

1. "Agricultural general permit" means best management practices that:
 - (a) Reduce fugitive PM-10 emissions from tillage practices and from harvesting on a commercial farm.
 - (b) Reduce fugitive PM-10 emissions from those areas of a commercial farm that are not normally in crop production.
 - (c) Reduce fugitive PM-10 emissions from those areas of a commercial farm that are normally in crop production including prior to plant emergence and when the land is not in crop production.
 - (d) Reduce fugitive PM-10 emissions from those areas of a commercial farm undergoing significant agricultural earthmoving activities.

(e) Reduce fugitive PM-10 emissions from the activities of a dairy, a beef cattle feed lot, a poultry facility or a swine facility, including practices relating to the following:

(i) Unpaved access connections.

(ii) Unpaved roads and feed lanes.

(iii) Animal waste and feed handling and transporting.

(iv) Arenas, corrals and pens.

(f) Only in those regulated areas that are established after June 1, 2009, as prescribed in paragraph 6, subdivision (c) of this subsection, reduce fugitive PM-10 emissions from the activities of an irrigation district governed by title 48, chapter 19 and affecting those lands and facilities that are under the jurisdiction and control of the district, including practices relating to the following:

(i) Unpaved operation and maintenance roads.

(ii) Canals.

(iii) Unpaved utility access roads.

2. "Applicable implementation plan" means that term as defined in 42 United States Code section 7601(q).

3. "Best management practices" means techniques that are verified by scientific research and that on a case-by-case basis are practical, economically feasible and effective in reducing fugitive PM-10 emissions from a regulated agricultural activity.

4. "Maricopa PM-10 nonattainment area" means the Phoenix planning area as set forth in 40 Code of Federal Regulations section 81.303.

5. "Regulated agricultural activities" means:

(a) Commercial farming practices that may produce fugitive PM-10 emissions within the regulated area, including activities of a dairy, a beef cattle feed lot, a poultry facility and a swine facility.

(b) Only in those regulated areas that are established after June 1, 2009, as prescribed in paragraph 6, subdivision (c) of this subsection, activities of an irrigation district that is governed by title 48, chapter 19.

6. "Regulated area" means any of the following:

(a) The Maricopa PM-10 nonattainment area.

(b) Any portion of area A that is located in a county with a population of two million or more persons.

(c) Any other PM-10 nonattainment area established in this state on or after June 1, 2009.

49-501. Unlawful open burning; exceptions; civil penalty; definition

A. Notwithstanding the provisions of any other section of this article: 1. It is unlawful for any person to ignite, cause to be ignited, permit to be ignited, or suffer, allow, or maintain any open outdoor fire except as provided in this section.

2. From May 1 through September 30 each year, it is unlawful for any person to ignite, cause to be ignited, permit to be ignited or suffer, allow or maintain any open outdoor fire in area A as defined in section 49-541.

B. The following fires are excepted from this section:

1. Fires used only for cooking of food or for providing warmth for human beings or the branding of animals or the use of orchard heaters for the purpose of frost protection in farming or nursery operations.

2. Any fire set or permitted by any public officer in the performance of official duty, if such fire is set or permission given for the purpose of weed abatement, the prevention of a fire hazard, or instruction in the methods of fighting fires.

3. Fires set by or permitted by the director of the department of agriculture or county agricultural agents of the county for the purpose of disease and pest prevention.

4. Fires set by or permitted by the federal government or any of its departments, agencies or agents or the state or any of its agencies, departments or political subdivisions for the purpose of watershed rehabilitation or control through vegetative manipulation.

5. Fires permitted by any rule or regulation issued pursuant to this article, by any conditional permit issued by a hearing board established under this article or by any rule or conditional permit issued pursuant to article 2 of this chapter when the department of environmental quality pursuant to section 49-402 has assumed jurisdiction of the county in which the fire is located.

6. Fires set for the disposal of dangerous materials where there is no safe alternate method of disposal.

C. Permission for the setting of any fire given by a public officer in the performance of official duty under subsection B, paragraph 2, 3 or 4 of this section shall be given in writing and a copy of the written permission shall be transmitted immediately to the director of environmental quality and the control officer of the county, district or region in which such fire is allowed. The setting of any such fire shall be conducted in a manner and at such time as approved by the control officer or the director of environmental quality, unless doing so would defeat the purpose of the exemption.

D. Notwithstanding section 49-107, the director may delegate authority for the issuance of open burning permits to a county, city, town or fire district. A county, city, town or fire district that has been delegated authority for the issuance of open burning permits may assign the issuance of these permits to a private fire protection service provider that performs fire protection services within that county, city, town or fire district. Any private fire protection service provider that is authorized to issue open burning permits pursuant to this subsection shall maintain a copy of all currently effective permits issued including a means of contacting the person authorized by the permit to set the fire in the event that an order to extinguish the open burning is issued. Permits issued pursuant to this subsection shall contain both of the following:

1. Conditions that limit the manner and time of setting the fire and that are consistent with this section and rules adopted pursuant to this section.

2. A provision that all burning be extinguished at the discretion of the director or the director's authorized representative during periods of inadequate atmospheric smoke dispersion, periods of excessive visibility impairment that could adversely affect public safety or periods when smoke is blown into populated areas so as to create a public nuisance.

E. The director may issue a general permit to allow persons engaged in farming or ranching on forty acres or more in an unincorporated area to burn household waste, as defined in section 49-701, that is generated on site, if no household waste collection and disposal service is available. The general permit shall include the following:

1. Conditions governing the method, manner and times for burning.

2. Limitation on materials which may be burned, including a prohibition on burning of materials which generate noxious fumes.
3. A requirement that any person seeking coverage under the general permit shall register with the director on a form prescribed by the director. Upon receipt of a registration form, the director shall notify the county in which the farm or ranch is located of such registration.
4. A statement that the director, a local air pollution control officer, or any other public officer may order the extinguishment of burning or may prohibit burning during periods of inadequate smoke dispersion or excessive visibility impairment or at other times when public health or safety could be adversely affected.
- F. Nothing in this section is intended to permit any practice which is a violation of any statute, ordinance, rule or regulation in a county with a population in excess of one million two hundred thousand persons. Notwithstanding any other law, such a county shall prohibit by ordinance the use of wood burning chimineas, outdoor fire pits and similar outdoor fires on those days for which the county has issued a no burn day restriction.
- G. A person who violates any provision of this section may be served a notice of violation and be subject to the enforcement provisions of this article to the same extent as a person violating any rule or regulation adopted pursuant to this article, except that a violation that lasts no more than twenty-four hours and that is the first violation committed by that person is subject to a civil penalty of no more than five hundred dollars.
- H. For the purposes of this section, "open outdoor fire" means any combustion of combustible material of any type outdoors, in the open where the products of combustion are not directed through a flue. For the purposes of this subsection, "flue" means any duct or passage for air, gases or the like, such as a stack or chimney.

DEPARTMENT OF CHILD SAFETY

Title 21, Chapter 1, Article 3 & 5



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 6, 2023

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: April 28, 2023

SUBJECT: Department of Child Safety
Title 21, Chapter 1, Article 3 and 5

Summary

This Five Year Review Report (5YRR) from the Arizona Department of Child Safety (Department) covers twenty-two (22) rules in Title 21, Chapter 1, Articles 3 and 5 related to Appeals and Hearing Procedures and Substantiation of Report Findings.

The purpose of the Department is to protect children via investigation of reports of abuse and neglect; assess, promote, and support the safety of a child; and coordinate services on behalf of the child. On May 29, 2014, the Legislature created the Department and the responsibilities and authority of child welfare were transferred from the Department of Economic Security (DES) to the Department. Article 3 pertains to appeal and administrative hearing requests from applicants, licensees, or clients who dispute an adverse action and are enforced by multiple Administrations within the Department of Child Safety. Article 5 pertains to actions taken when the Department requests to substantiate findings of abuse or neglect against an alleged perpetrator. The Department administers reviews and appeals related to the proposed substantiated findings of child abuse or neglect.

The rules were made by final exempt rulemaking on November 30, 2015.

Proposed Action

In the Department's 2018 5YRR approved by Council on June 5, 2018, the Department planned to update statutory references and address the other minor issues identified in the report, but did not complete the course of action.

The Department has identified a few areas that need further analysis to determine the impact on the rules of Article 3, such as the missing appeal and hearing information specific to Comprehensive Health Plan (CHP) members and determine if adding rules to include the Extended Foster Care program affect other areas of the Article. Furthermore, the Department needs to analyze the impacts of HB2599 and other statutory amendments to the rules. The Department anticipates submitting the Notice of Final Rulemaking for Article 3 to the Council by July 2024 and for Article 5 by March 2024.

1. Has the agency analyzed whether the rules are authorized by statute?

The Department cites both general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Department states that the rules in Article 3 pertain to appeal and administrative hearing requests from applicants, licensees, or clients who dispute adverse actions. The purpose of the rules in Article 3 includes notifying those affected by an adverse action taken by the Department of their rights to formally dispute such action, detailing what actions are not appealable and providing the process to follow in submitting their disputes. The Department states that the rules under Article 5 pertain to actions taken when the Department is proposing a substantive finding of abuse or neglect against an alleged perpetrator. The rules in both Articles also outline the Department's process upon receipt of a request of an appeal.

The Department indicates that there is no fee or out-of-pocket cost to an alleged perpetrator for requesting a hearing. The Department believes those affected by the proposed substantiated finding benefit from the rules as the rules inform them of their due process rights.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Department believes the current rules pose the minimum cost and burden on businesses, the regulated public and on the general public. The Department indicates it does not charge a fee to the person requesting an appeal or hearing. The person requesting an appeal or hearing may incur a cost if the person requesting an appeal or hearing retains private counsel.

4. Has the agency received any written criticisms of the rules over the last five years?

Yes, the Department states that on January 31, 2023, they received a letter from Anne Ronan and Maria McCabe on behalf of the Arizona Center for Law in the Public Interest

addressing concerns surrounding the appealability of adverse actions to Extended Foster Care Services. The Department intends to amend the rules to make clear that adverse actions related to Extended Foster Care are appealable.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Department states that the following rules are not clear, concise, and understandable:

Article 3: All rules mentioned in subsection 6 and 8 of this report do not align with the Arizona Revised Statutes as they mention an incorrect statute or do not align with an amended or created statute.

Article 5: All rules mentioned in subsection 6 and 8 of this report do not align with the Arizona Revised Statutes as they mention an incorrect statute or do not align with an amended or created statute.

R21-1-303(C): the rules outlines actions taken by the Department that are not appealable and should include that the issuance of a provisional license for Child Welfare Agency is not appealable

R21-1-305: the rule does not make a distinction for appeals and administrative hearing requests involving services and adverse actions between CHP members who are eligible for the federal Title XIX and Title XXI and CHP members who are not eligible for the federal Title XIX and Title XXI.

R21-1-314: statute should be updated.

R21-1-501(9): definition should be updated to include the term "substantiated".

R21-1-504: the rule requires a technical correction of the word "case record".

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Department states the following rules are not consistent with other rules and statutes:

R21-1-301: a definition for Extended Foster Care is needed

R21-1-301(1), (9), (11): references the Comprehensive Medical and Dental Plan (CMDP) and should be updated to say Comprehensive Health Plan (CHP).

R21-1-301(7): The definition for "Appealable agency action" incorrectly refers to A.R.S. § 41-1092(3) and refers to A.R.S. § 41-1092(4).

R21-1-301(10): The definition of "Child Welfare Agency" incorrectly refers to A.R.S. § 8-501(A)(1) and should refer to A.R.S. § 8-501(A)(2).

R21-1-301(15): The definition for "Foster Home" incorrectly refers to A.R.S. § 8-501(A)(5) and should refer to A.R.S. § 8-501(A)(6). The definition also includes "Group Foster Home" which incorrectly refers to A.R.S. § 8-501 (A)(7) and should refer to A.R.S. § 8-501(A)(8).

R21-1-303(B)(2): the rule is not consistent with statute as it does not include reference to A.R.S. § 8-521.02 (Extended Foster Care Program) which was created in 2019 with HB1539.

R21-1-303 (B)(2)(f): references the Comprehensive Medical and Dental Plan (CMDP) and should be updated to say Comprehensive Health Plan (CHP).

R21-1-303(C)(7): This rule refers to A.R.S. § 8-509(D); the correct reference is A.R.S. § 8-509(E).

R21-1-303: this rule should include that this Article also applies to services provided by the Department's Extended Foster Care program.

R21-1-305(A)(2): This rule is not consistent with A.R.S. § 8-506(A).

R21-1-501(2): the rule contains an outdated reference to A.R.S. § 8-811(L)(1) and should refer to A.R.S. § 8-811(N)(1).

R21-1-501(11): the rule contains an outdated reference to A.R.S. § 8-201(24) and should refer to A.R.S. § 8-201(25).

R21-1-501(16): the rule refers to A.R.S. § 8-501(30) for the definition of "Report" when it should refer to A.R.S. § 8-501(10) for "DCS Report".

R21-1-501(17): R21-1-501(17)(c) incorrectly refers to subsection (11) and should refer to subsection (10).

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department states the following rules are not effective in achieving its objectives:

R21-1-303(B)(2): the rule lists adverse actions taken by the Department that are appealable but does not include the Extended Foster Care program.

R21-1-303(C)(8): the rule lists actions taken by the Department that are not appealable but does not include that a provisional license for a Child Welfare Agency is not appealable.

R21-1-305: the rule is not inclusive and does not include the timeframes for appeals concerning DCS Comprehensive Health Plan services or benefits for non-Title XIX and Title XXI eligible individuals.

8. Has the agency analyzed the current enforcement status of the rules?

The Department states the following rules are not enforced as written:

Article 3: All rules mentioned in subsection 6 of this report do not align with the Arizona Revised Statutes as they mention an incorrect statute or do not align with an amended or created statute.

Article 5: All rules mentioned in subsection 6 of this report do not align with the Arizona Revised Statutes as they mention an incorrect statute or do not align with an amended or created statute.

R21-1-305(B): The rule requires administrations to provide a form for requesting an administrative hearing, however not all administrations have forms available

R21-1-312(A): The rule requires the Department to provide a form for an appellant to withdraw an appeal, however a form is not available.

R21-1-502: Subsection (B) requires the Department to send an initial notification letter to the alleged perpetrators within 14 days after the completion of an investigation. Previously, the Department had a backlog of initial notification letters, which was ultimately remedied. In 2021 the Department introduced a new electronic Comprehensive Child Welfare Information System (known as GUARDIAN) which caused additional unforeseen delays.

9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

The Department indicates that the rules are not more stringent than corresponding federal law.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The Department indicates that none of the rules require the issuance of a regulatory permit, license or agency authorization, as A.R.S. § 41-1037 does not apply to these rules.

11. Conclusion

As stated above, the Board anticipates submitting the Notice of Final Rulemaking for Article 3 to the Council by July 2024 and for Article 5 by March 2024 to amend the rules for the reasons identified in the memo and report. The report meets the requirements of A.R.S. § 41-1056 and Council staff recommend approval of this report.



ARIZONA
DEPARTMENT
of **CHILD SAFETY**

Michael Wisehart, Interim Director
Katie Hobbs, Governor

March 30, 2023

VIA EMAIL: grrc@azdoa.gov
Ms. Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Arizona Department of Child Safety, A.A.C. Title 21, Chapter 1, Article 3 and Article 5, Five Year Review Reports

Dear Ms. Sornsin:

Please find enclosed the Five-Year-Review Report of the Arizona Department of Child Safety (DCS) for A.A.C. Title 21, Chapter 1, Article 3 and Article 5, due March 31, 2023.

DCS hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Angie Trevino, Rules Development Specialist, at (602) 619-3163 or angelica.trevino@azdcs.gov.

Sincerely,

Michael Wisehart
Interim Director

Enclosure

Safety · Compassion · Change · Teaming · Advocacy · Engagement · Accountability · Family

ARIZONA DEPARTMENT OF CHILD SAFETY

Five-Year-Review Report

Title 21. Child Safety

Chapter 1. Department of Child Safety - Administration

Article 3. Appeals and Hearing Procedures

Article 5. Substantiation of Report Findings

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 8-453(A)(5)

Specific Statutory Authority: A.R.S. §§ 8-145, 8-166, 8-506, 8-506.01, 8-512, 8-521, 8-521.01, 8-521.02, 8-811, 8-814

2. The objective of each rule:

Article 3. Appeals and Hearing Procedures

Rule	Objective
R21-1-301. Definitions	The objective of this rule is to define the terms used in Article 3.
R21-1-302. Hearing Proceedings	The objective of this rule is to advise the public that pre-hearing and hearing proceedings are governed by the Arizona Revised Statute unless otherwise specified.
R21-1-303. Entitlement to a Hearing; Appealable and Not Appealable Actions	The objective of this rule is to advise of the opportunity for an applicant, licensee, or client to obtain a hearing to challenge an adverse action and to specify the actions that are not appealable.
R21-1-304. Computation of Time	The objective of this rule is to indicate how terms are being defined and used for the purposes of computation of time used in this Article. It clarifies how days are counted.
R21-1-305. Request for Hearing; Form;	The objective of this rule is to specify the time period and the formal and procedural requirement for filing an appeal, and the circumstances that will excuse the late filing of an appeal.

Time Limits; Pre-sumptions	
R21-1-306. Administration; Transmittal of Appeal	The objective of this rule is to establish the Department's time requirement to forward notification of appeals to OAH so that appeals can be processed without delay.
R21-1-307. Stay of Adverse Action Pending Appeal	The objective of this rule is to convey the general requirement that the Department will not carry out the adverse action until certain requirements are met and to specify under what circumstances an adverse action may be carried out before finality attaches to the adverse action notice.
R21-1-308. Hearings: Location; Notice; Time	The objective of this rule is to specify when and where hearings are scheduled after the Department has received a request to appeal and notification requirements of such hearings.
R21-1-309. Rescheduling a Hearing	The objective of this rule is to inform that an appellant may request a postponement or rescheduling of a hearing and advise of the procedures and timeframes for requesting a postponement or rescheduling of a hearing.
R21-1-310. Subpoenas	The objective of this rule is to explain when and how a party may request a subpoena.
R21-1-311. Parties' Rights	The objective of this rule is to inform parties to a hearing of their rights.
R21-1-312. Withdrawal of an Appeal	The objective of this rule is to establish the process for withdrawing a request for an appeal.
R21-1-313. Effect of the Decision	The objective of this rule is to inform that the Department's Director may opt to review and act upon the Administrative Law Judge's decision and inform when a decision is effective.
R21-1-314. Judicial Review	The objective of this rule is to indicate that parties have a right to judicial review of an adverse final administrative decision and clarify the procedures that must be followed.

Article 5. Substantiation of Report Findings

Rule	Objective
R21-1-501. Definitions	The objective of this rule is to define the terms used in Article 5.
R21-1-502. Initial Notification Letter	The objective of this rule is to advise of the information PSRT must notify an alleged perpetrator and specify the time period in which PSRT must send the notification.
R21-1-503. Time Frame to Request an Administrative Hearing	The objective of this rule is to specify the time period for requesting an administrative hearing. It informs of circumstances in which an untimely request will be considered.
R21-1-504. PSRT Review	The objective of this rule is to specify PSRT's actions upon receipt of a timely administrative hearing request and information to include when sending a hearing notice.
R21-1-505. Exceptions to Right to a Hearing	The objective of this rule is to specify the conditions in which an alleged perpetrator does not have the right to request an administrative hearing and a time period to provide pending court information.
R21-1-506. Dependency Adjudication	The objective of this rule is to specify a circumstance in which a person's name will be entered in the Central Registry.
R21-1-507. Director Review and Further Appeal after the Administrative Hearing	The objective of this rule is to inform of the timeframe for the Department's Director to review the ALJ's decision and inform the perpetrator of their right to appeal an administrative decision.
R21-1-508. Entry into the Central Registry	The objective of this rule is to specify the conditions in which a person's name and substantiation finding is or is not entered in the Central Registry.

3. **Are the rules effective in achieving their objectives?**

Yes ___ No X

Rule	Explanation
R21-1-303(B)(2)	R21-1-303(B)(2) lists adverse actions taken by the Department that are appealable. This list is not all inclusive and should include the Extended Foster Care program (A.R.S. § 8-521.02) created in 2019 with HB1539 (54th Legislature, 1st Regular Session).
R21-1-303(C)(8)	R21-1-303(C)(8) lists actions taken by the Department that are not appealable. This list is not all inclusive and should include that a provisional license for a Child Welfare Agency is not appealable.
R21-1-305	This Section is not all inclusive and does not include the timeframes for appeals concerning DCS Comprehensive Health Plan services or benefits for non-Title XIX and Title XXI eligible individuals.

4. Are the rules consistent with other rules and statutes?

Yes ☐

No ☒

Rule	Explanation
R21-1-301	This Section should include a definition for Extended Foster Care (A.R.S. § 8-521.02). In 2019 with HB1539 the 54th Legislature, 1st Regular Session created A.R.S. § 8-521.02 (Extended Foster Care).
R21-1-301(1), (9), (11)	R21-1-301(1), (9), and (11) references to the Comprehensive Medical and Dental Plan (CMDP) need to be updated to say Comprehensive Health Plan (CHP). The name of this DCS program was amended in statute (A.R.S. § 8-512) and other rules in 21 A.A.C. 1, Article 2.
R21-1-301(7)	The definition for "Appealable agency action" incorrectly refers to A.R.S. § 41-1092(3). The correct reference is A.R.S. § 41-1092(4).
R21-1-301(10)	The definition of "Child Welfare Agency" incorrectly refers to A.R.S. § 8-501(A)(1) and should correctly refer to A.R.S. § 8-501(A)(2).
R21-1-301(15)	The definition for "Foster Home" incorrectly refers to A.R.S. § 8-501(A)(5). The correct reference is A.R.S. § 8-501(A)(6). The definition also includes "Group Foster Home" which incorrectly refers to A.R.S. § 8-501 (A)(7) and should correctly refer to A.R.S. § 8-501(A)(8).
R21-1-303(B)(2)	R21-1-303(B)(2) is not consistent with statute as it does not include reference to A.R.S. § 8-521.02 which was created in 2019 with HB1539 (54th Legislature, 1st Regular Session) regarding the Department's Extended Foster Care program.

R21-1-303 (B)(2)(f)	The Department's program that provides health, dental, and behavioral services (behavioral services provided since April 1, 2021) changed the name of the program from Comprehensive Medical and Dental Program (CMDP) to Comprehensive Health Plan (CHP). This name change was made to A.R.S. § 8-512 and 21 A.A.C. 1, Article 2.
R21-1-303(C)(7)	This rule refers to A.R.S. § 8-509(D) for when issuing a provisional foster care license. The correct reference is A.R.S. § 8-509(E).
R21-1-303	This Section needs to include that this Article also applies to services provided by the Department's Extended Foster Care program (A.R.S. § 8-521.02). In 2019, with HB1539 the 54th Legislature, 1st Regular Session created A.R.S. § 8-521.02. Further analysis may be required to determine specific Sections and subsections that may need to be subsequently updated.
R21-1-305(A)(2)	This rule is not consistent with A.R.S. § 8-506(A). Statute indicates that a foster home applicant or holder of a license has 25 days after the mailing date of a notice of proposed denial, revocation or suspension whereas rule indicates a foster home license revocation has 25 days after the mailing of the adverse action notice. Rule should include denial or suspension; the Department proposes to update rule to align with statute.
R21-1-501(2)	This rule is not consistent as it contains an outdated reference to A.R.S. § 8-811(L)(1). The correct reference is A.R.S. § 8-811(N)(1). The Department proposes to amend the rule to A.R.S. § 8-811 in general or correct the reference.
R21-1-501(11)	This rule is not consistent as it contains an outdated reference to A.R.S. § 8-201(24). The correct reference is A.R.S. § 8-201(25). The Department proposes to amend the rule to refer to A.R.S. § 8-811 in general or correct the reference.
R21-1-501(16)	R21-1-501(16) incorrectly refers to A.R.S. § 8-501(30) for the definition of "Report". The correct reference is A.R.S. § 8-501(10) for "DCS Report". The Department proposes to amend the rule to A.R.S. § 8-501 in general or correct the reference.
R21-1-501(17)	R21-1-501(17)(c) incorrectly refers to subsection (11) in this rule and should correctly refer to subsection (10) in this rule. The Department proposes to amend the rule to correct the error.

5. Are the rules enforced as written?

Yes __

No X

Rule	Explanation
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Multiple: As entered under paragraphs #4 of this report	<p>Article 3</p> <p>The rules mentioned in #4 of this report do not align with Arizona Revised Statutes. The rules as currently written either reference the incorrect statute or do not align with an amended or created statute. The Department follows statute in these instances. The Department proposes to conduct rulemaking to update the rules to align with statute.</p> <p>Article 5</p> <p>The rules mentioned in #4 of this report do not align with Arizona Revised Statutes or incorrectly refer to a subsection of the rule. The Department follows statute and the correct subsection of the rule. The Department proposes to conduct rulemaking to update the rules to align with statute and update R21-1-501(17) to reference the correct subsection.</p>
R21-1-305(B)	R21-1-305(B) indicates that administrations (units) within the Department must provide a form for requesting an administrative hearing. At this time, not all administrations have a form available. The Department proposes that each administration will ensure that a form is available and comply with this rule.
R21-1-312(A)	R21-1-312(A) indicates that the Department must have a form available for an appellant to withdraw an appeal. The Department has not yet created a form for this purpose. The Department will create and ensure that a form is available in order to comply with this rule.
R21-1-502	Per R21-1-502(B), the Department must send an initial notification letter to the alleged perpetrators within 14 days after the investigation was completed. Previously, the Department had a backlog of initial notification letters that needed to be sent, which resulted in the Department not complying with this rule. The backlog was ultimately remedied. However, in 2021 the Department introduced a new electronic Comprehensive Child Welfare Information System (known as GUARDIAN) which caused unforeseen delays in maintaining compliance with this rule. The Department is working on enhancements to the electronic Comprehensive Child Welfare Information System which will automate letters and facilitate in maintaining compliance with this rule.

6. Are the rules clear, concise, and understandable?

Yes __

No X

Rule	Explanation
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Multiple: As entered under paragraph #4 and #5 of this report	<p>Article 3</p> <p>The rules mentioned in #4 and #5 of this report do not align with Arizona Revised Statutes. The rules as currently written either reference the incorrect statute or do not align with an amended or created statute. The Department follows statute in these instances. The Department proposes to conduct rulemaking to update the rules to align with statute.</p> <p>Article 5</p> <p>The rules mentioned in #4 of this report do not align with Arizona Revised Statutes or incorrectly refer to a subsection of the rule. The Department follows statute and the correct subsection of the rule. The Department proposes to conduct rulemaking to update the rules to align with statute and update R21-1-501(17) to reference the correct subsection.</p>
R21-1-303(C)	R21-1-303(C) outlines actions taken by the Department that are not appealable. In order to provide clarity and include all actions taken by the Department that are not appealable, the rule should include that the issuance of a provisional license for Child Welfare Agency is not appealable.
R21-1-305	As outlined in this Section, the rules do not make a distinction for appeals and administrative hearing requests involving services and adverse actions between CHP members who are eligible for the federal Title XIX and Title XXI and CHP members who are not eligible for the federal Title XIX and Title XXI. The rules would benefit from updates to make the distinction and include information for processing these requests involving CHP members that are not eligible for Title XIX and Title XXI.
R21-1-314	This Section refers to A.R.S. § 1092.08 and should be corrected to read as A.R.S. § 41-1092.08 for clarity. The Department proposes to make this technical correction.
R21-1-501(9)	The definition of "Initial Notification Letter" says that a notice is sent " <i>... to an alleged perpetrator informing the person of the proposed finding of child abuse or neglect to be entered in the Central Registry ...</i> ". The definition may benefit from adding the term "substantiated" to the definition for it to read: " <i>...to an alleged perpetrator informing the person of the proposed substantiated finding of child abuse or neglect to be entered in the Central Registry</i> " for clarity.
R21-1-504	R21-1-501(3) defines Case Record, using a capital letter for the first letter in both words. However, R21-1-504 is not consistent and uses "Case Record" and "case record". The Department proposes to make this technical correction with efforts to maintain consistency.

7. **Has the agency received written criticisms of the rules within the last five years? Yes X No**

Yes, on January 31, 2023, the Department received a letter from Anne Ronan and Maria McCabe on behalf of the Arizona Center for Law in the Public Interest, which stated:

The regulations are silent as to whether adverse actions related to Extended Foster Care services are appealable. See R21-1-303 (listing which Department actions are and are not appealable). This is understandable, as this regulation was last amended in 2015, and the legislature passed the law allowing for extended foster care law in 2019. See S.B. 1539, 54th Legis., 1st Reg. Sess. (Ariz. 2019). However, R21-1-303 does provide for appeals of any decision denying, reducing, or terminating services under two related programs: the Independent Living Program and the Transitional Independent Living Program (TILP).⁷ Like EFC, these programs provide important services to older youth. However, EFC provides an eligible young person more comprehensive services than ILP or TILP—most significantly placement and support services. The loss of these supports and the risk of homelessness and other poor outcomes that can result from their termination, support heightened due process protections when a youth is at risk of benefit loss.

As stated above, the Department intends to amend the rules to address this statutory change, and make clear that adverse actions related to Extended Foster Care are also appealable.

8. **Economic, small business, and consumer impact comparison:**

The rules under Article 3 pertain to appeal and administrative hearing requests from applicants, licensees, or clients who dispute an adverse action. The rules in Article 3 are enforced by multiple Administrations/Units within the Department of Child Safety (Department): Office of Licensing and Regulation Administration (OLR); Adoption and Guardianship Subsidy Program Unit; Permanency and Youth Services Unit; and Comprehensive Health Program Unit (CHP). The purpose of the rules in Articles 3 includes notifying those affected by an adverse action taken by the Department of their rights to formally dispute such action, detailing what actions are not appealable and providing the process to follow in submitting their disputes. The rules under Article 5 pertain to actions taken when the Department of Child Safety is proposing to substantiate findings of abuse or neglect against an alleged perpetrator. The Department's Protective Services Review Team (PSRT) administers reviews and appeals related to the proposed substantiated findings of child abuse or neglect. The rules in both Articles also outline the Department's process upon receipt of a request of an appeal.

Article 3. Appeals and Hearing Procedures

The Department's organizational structure does not designate a specific unit to process and respond to appeals and hearings pertaining to Article 3. Instead, responsibilities to process appeals and hearings are incorporated with other job responsibilities within the designed Administration (program unit). Administrations impacted by these rules include: Comprehensive Health Program (CHP); Office of Licensing and Regulation (OLR); Adoption and Guardianship Subsidy Program Unit; and Permanency and Youth Services Unit (specific to the Independent Living Program and the Transitional Independent Living Program). Due to the organizational structure and units involved in processing requests for appeals and hearings, such costs are not readily quantifiable.

Independent Living Program/Transitional Independent Living Program:

During Calendar year 2022, the Independent Living Program/Transitional Independent Living Program has received 12 grievances and no administrative hearing requests. Membership in programs vary day by day. As of December 31, 2022, there were 2059 youths participating in these programs. This Administration has one staff member assigned to process appeal and hearing requests; however, responsibilities to process appeal and hearing requests are incorporated with other job duties.

Office of Licensing and Regulation (OLR):

From July 2021 to June 2022, OLR took 41 adverse actions against foster homes. In response to the adverse actions taken, OLR received 8 appeal and administrative hearing requests. In the calendar years 2021 and 2022, there were no adverse actions taken against an adoption agency nor against a child welfare agency.

Child welfare agencies are licensed by the Department to provide residential group care, emergency shelter care or provide services as a placing agency. Child welfare agencies that operate as a residential group care facility or shelter generally contract with the Department. As of February 28, 2023, 84 child welfare agencies maintain active licenses, of which 255 are residential group care facilities (group homes) and/or shelters, and seven (7) agencies hold a license as a child placing agency. Foster care providers (foster homes) are licensed by the Department to provide foster care, generally in a family setting. Foster care providers receive a set payment per child. As of June 2022, 3011 licensed foster care providers maintain active licenses. OLR's Foster Home Licensing Supervisor and Manager processes requests for appeals and hearings from foster care providers (foster homes); however, the responsibilities to process requests for appeals and administrative hearings are incorporated with their other job duties. Additionally, as of February 28, 2023, 16

adoption agencies hold a license. OLR has assigned two staff members to process requests for appeals and hearings; however, the responsibilities to process requests for appeals and administrative hearings are incorporated with their other job duties.

Adoption Subsidy and Guardianship Subsidy:

Since the implementation of these rules, the Department has only received one appeal regarding subsidy. However, the appeal was withdrawn prior to the hearing. The subsidy unit has one Behavioral Health Specialist assigned to process appeal and hearing requests; however, this responsibility to process appeal and administrative requests are incorporated with other job duties. The Program Manager will also process appeal and hearing requests as necessary.

Comprehensive Health Plan (CHP):

Pertaining to CHP services or benefits for non-Title XIX and Title XXI DCS clients, the Department has not received any appeals or requests for administrative hearings since the implementation of these rules. Additionally, from 2015 to present time, CHP has processed 95 claim disputes from service providers, of which none were appealed. On average, CHP membership for non-Title 19 is approximately 775 DCS clients. CHP currently has one Manager assigned to process requests for appeals and hearings; however, these responsibilities are incorporated with other job duties.

Article 5. Substantiation of Report Findings

Rules govern the Department's actions for substantiating an allegation of abuse or neglect and informing an alleged perpetrator of the process to request an Administrative Hearing. There is no fee or out-of-pocket cost to an alleged perpetrator for requesting a hearing. Those affected by a proposed substantiated finding benefit from the rules as the rules inform them of their due process rights.

The Department's Protective Services Review Team consists of 10 full time employees (FTE) and one temporary employee: one Manager, one Lead Reviewer, one temporary Legal Assistant, one Administrative Assistant, and seven PSRT Regional Reviewer Specialists. This is a change from the 2018 Five-Year Review Report, in which PSRT had 11 FTE and four (4) temporary employees. The PSRT team is responsible for administering reviews and appeals related to the proposed substantiated findings of child abuse or neglect, which includes sending notifications and processing appeal and hearing requests. The Department does not anticipate allotting any new full-time employees or making changes to those currently allotted. The Department only anticipates hiring employees to fill vacancies as they arise.

In 2021 the Department introduced a new electronic Comprehensive Child Welfare Information System (known as GUARDIAN). However, this electronic Comprehensive Child Welfare Information System has encountered some difficulties and as a result the Department is unable to provide updated data at this time.

The 2018 Five-Year-Review Report reported a total of \$771,629.26 for staffing expenditures in SFY 2017. The table below displays staffing expenditures for State Fiscal Year (SFY) 2022. The total of \$812.6k includes staffing and other operating expenses. Fund sources are General Fund and Federal Funds.

PSRT EXPENDITURES FY22	
Expense Category	Amount
Salaries	\$534,249
Benefits	\$198,716
Contracted Temporary Employees	\$59,677
Other Operating	\$19,984
Total	\$812,626

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ____ No X

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

The Department of Child Safety did not complete the course of action indicated in the Department's 2018 Five-Year-Review report. The concerns raised in the 2018 Five-Year-Review report were minor necessary updates to statute references. Due to other priorities and anticipated statute changes, the Department did not complete the course of action. There have been statutory changes in 2019, 2021, and 2022 that impact Article 3. Some of the statutory amendments are minor affecting references within Article 3 while others require further analysis and amendments to align rule with statute.

11. **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 regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department believes the current rules pose the minimum cost and burden on businesses, the regulated public and on the general public. The Department of Child Safety does not charge a fee to the person requesting an appeal or hearing. The person requesting an appeal or hearing may incur a cost if the person requesting an appeal or hearing retains private counsel.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No X

Federal laws 45 CFR 205.10; 45 CFR 147 et seq. apply to this rulemaking. The rules are not more stringent than corresponding federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

The Department has determined that A.R.S. § 41-1037 does not apply to these rules. The rules in Articles in 3 and 5 do not require the issuance of a regulatory permit, license, or agency authorization.

14. Proposed course of action

The Department has identified a few areas that may need further analysis to determine the impact on the rules of Title 21, Chapter 1, Article 3. For example, the Department of Child Safety has determined that Article 3 is missing appeal and hearing information specific to Comprehensive Health Plan (CHP) members who are not eligible to receive services through the federal program in Title XIX or Title XXI. The Department needs to analyze and determine whether to include information specific to requesting an appeal or hearing pertaining to services provided to CHP members who are not eligible for services provided under the federal Title XIX or Title XXI under in Title 21, Chapter 1, Article 3 or to remove all information in relation to CHP and move appeal and hearing rules to the CHP rules found in Title 21, Chapter 1, Article 2. The Department also needs to analyze and determine if adding rules to include the Extended Foster Care program affect other areas of the Article in addition to those mentioned above. Furthermore, the Department needs to analyze HB2599 that passed in 2022, 55th Legislature, Second Regular Session and determine the impacts of these statutory amendments on Article 3. If determined that the rules in Article 3 are impacted by this House Bill, the Department proposes to update the rules in Article 3 to align with statute. And lastly, the Department has identified that a few of the incorrect references to statute are due to statutory amendments. The Department needs to determine if corrections to rules will either refer to the general statute throughout this Article or correct the references and provide the current specific statute.

The Department proposes to complete the identified analysis pending, request approval to conduct rulemaking to Title 21, Chapter 1, Article 3 from the Governor's office, and submit the Notice of Final Rulemaking to the Governor's Regulatory Review Council by July 2024.

The Department proposes to request approval to conduct rulemaking to Title 21, Chapter 1, Article 5 from the Governor's office and submit the Notice of Final Rulemaking to the Governor's Regulatory Review Council by March 2024.

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make interpreters and translation for health services available to a DCS CHP Member at no cost.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 2518 (October 29, 2021), with an immediate effective date of October 5, 2021 (Supp. 21-4).

R21-1-211. Consent for Treatment

- A. For a DCS CHP Member in a voluntary placement under A.R.S. § 8-806 only, the Department shall obtain consent of the parent or guardian for medical treatment involving surgery, general anesthesia, or blood transfusion of the DCS CHP Member, except for an emergency situation described in subsection (B).
- B. In case of an emergency, in which the DCS CHP Member in voluntary placement is in need of immediate hospitalization, medical attention, or surgery, and when the parents of a DCS CHP Member in voluntary placement cannot readily be located, the consent shall be provided as described in A.R.S. § 8-514.05.
- C. For a DCS CHP Member under R21-1-201(4)(b) who is in the custody of the Department in an out-of-home placement, the Department shall, if possible, obtain the consent of the parent or guardian of the DCS CHP Member for surgery, general anesthesia, or blood transfusion.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 2518 (October 29, 2021), with an immediate effective date of October 5, 2021 (Supp. 21-4).

R21-1-212. Payment

DCS CHP may pay a healthcare provider in accordance with the established AHCCCS fee schedule unless otherwise permitted by A.R.S. § 8-512, or in the contract between the Department or sub-contractor and a provider.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 2518 (October 29, 2021), with an immediate effective date of October 5, 2021 (Supp. 21-4).

R21-1-213. Provider Claim Disputes and Appeals

- A. Provider claim disputes and Member Appeals for a DCS CHP Member who is Medicaid eligible follow the rules prescribed in 9 A.A.C. 34.
- B. Provider claim disputes and Member Appeals for a DCS CHP Member who is not Medicaid eligible follow:
 1. A.A.C. R9-34-203. Computation of Time,
 2. A.A.C. R9-34-208. Who May File,
 3. A.A.C. R9-34-209. Enrollee Time-frame for Filing an Appeal or Grievance with the Contractor,
 4. A.A.C. R9-34-210. Contractor General Requirements for Grievance or Appeal Process,
 5. A.A.C. R9-34-213. Contractor Time-frame for Standard Resolution of an Appeal,
 6. A.A.C. R9-34-214. Contractor Process for an Expedited Resolution of an Appeal,
 7. A.A.C. R9-34-215. Contractor Time-frame for an Expedited Appeal Resolution,
 8. A.A.C. R9-34-225. Reversed Appeal Resolutions,
 9. A.A.C. R9-34-403. Computation of Time,

10. A.A.C. R9-34-404. Content of Claim Dispute, and
11. A.A.C. R9-34-405. Filing a Claim Dispute for a Claim Involving a Member Enrolled with a Contractor.

- C. Provider claim disputes and Member Appeals hearing procedures for a DCS CHP Member who is not Medicaid eligible follow the rules prescribed in 21 A.A.C. 1, Article 3.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 2518 (October 29, 2021), with an immediate effective date of October 5, 2021 (Supp. 21-4).

ARTICLE 3. APPEALS AND HEARING PROCEDURES**R21-1-301. Definitions**

The following definitions apply in this Article.

1. "Administration" means the Department's organizational unit responsible for licensing or providing benefits or services that are the subject of an adverse action. The administrations covered by this Article are: OLR, CMDP, ILP, TILP, adoption subsidy and guardianship subsidy.
2. "Administrative appeal" means a written request to the Department to contest an adverse action at an administrative hearing.
3. "Administrative Law Judge" or "ALJ" means the same as A.R.S. § 41-1092(1).
4. "Adoption agency" means the same as "agency" in A.R.S. § 8-101(2).
5. "Adoption subsidy" means the same as A.R.S. § 8-141(A)(1) and includes the non-recurring adoption expense program under A.R.S. § 8-161 et seq.
6. "Adverse action" means the denial, suspension, or revocation of a foster home license, Child Welfare Agency license, and adoption agency license, or a denial or reduction of guardianship subsidy, adoption subsidy, or CMDP, ILP, or TILP services.
7. "Appealable agency action" means the same as A.R.S. § 41-1092(3).
8. "Appellant" means the party who requests a hearing with the Department to challenge an adverse action under R21-1-303.
9. "Applicant" means a person who has applied for a license issued by the Department or for benefits or services provided by the Department. Benefits and services under this Article include CMDP, ILP, TILP, guardianship subsidy, and adoption subsidy.
10. "Child Welfare Agency" means a person licensed by the Department to engage in the activities defined in A.R.S. § 8-501(A)(1).
11. "CMDP" means the Comprehensive Medical and Dental Program described in A.R.S. § 8-512.
12. "Client" means a person who is licensed or receiving benefits or services from one or more of the Administrations covered by this Article.
13. "Corrective action plan" means a written proposal specified by OLR for a foster parent, or a Child Welfare Agency to remedy the violation of a licensing requirement within a specified time-frame.
14. "Department" or "DCS" means the Arizona Department of Child Safety.
15. "Foster Home" means the same as A.R.S. § 8-501(A)(5) and includes a "Group Foster Home" defined in A.R.S. § 8-501(A)(7).
16. "Foster parent" means the same as A.R.S. § 8-501, and includes anyone licensed for any type of foster home including a group home.

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17. "Guardianship subsidy" means the program described in A.R.S. § 8-814.
18. "Independent Living Program" or "ILP" means an array of assistance and support services that DCS provides, contracts, refers, or otherwise arranges to help a person eligible under A.R.S. § 8-521, to transition to adulthood by building the skills and resources necessary to ensure personal safety, well-being, and permanency into adulthood.
19. "Licensee" means a person currently licensed as a foster parent, Child Welfare Agency, or adoption agency.
20. "Noncompliance Status" means the Department has received and substantiated a complaint or a Department representative has observed a violation of an adoption agency's license that does not endanger the health, safety, or well-being of a client.
21. "Office of Administrative Hearings" or "OAH" means the State's independent, quasi-judicial, administrative hearing body defined in A.R.S. § 41-1092.01.
22. "Office of Licensing and Regulation" or "OLR" means the administration in the Department responsible for licensing a foster home, Child Welfare Agency and adoption agency.
23. "Person" means an individual, partnership, joint venture, company, corporation, firm, association, society, or institution.
24. "Transitional Independent Living Program" or "TILP" means a program of services that provides assistance and support in counseling, education, vocation and employment, and the attainment or maintenance of housing to a person who qualifies under A.R.S. § 8-521.01.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-302. Hearing Proceedings

Unless otherwise expressly addressed, all pre-hearing and hearing proceedings in A.R.S. §§ 41-1092.01 through A.R.S. 41-1092.09 and 2 A.A.C. 19 shall apply.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-303. Entitlement to a Hearing; Appealable and Not Appealable Actions

- A. An applicant, licensee, or client, who disputes an adverse action may appeal and request an administrative hearing from the Department to challenge the adverse action as provided in this Article.
- B. The following adverse actions are appealable:
 1. An adverse licensing action on:
 - a. A foster home license (A.R.S. § 8-506);
 - b. A Child Welfare Agency license (A.R.S. § 8-506.01); and
 - c. An adoption agency license (A.R.S. § 8-126).
 2. Any decision denying, reducing, or terminating:
 - a. An adoption subsidy (A.R.S. § 8-145);
 - b. Nonrecurring expenses (A.R.S. § 8-166);
 - c. A permanent guardianship subsidy (A.R.S. § 8-814);
 - d. Independent Living Program services (A.R.S. § 8-521);
 - e. Transitional Independent Living Program services (A.R.S. § 8-521.01); and
 - f. CMDP services or benefits for non-Title XIX and Title XXI eligible individuals. Title XIX and Title XXI eligible individuals must follow A.R.S. § 36-

2903.01 and 9 A.A.C. 34, and may request an Administrative Hearing through the Arizona Health Care Cost Containment System.

- C. The following actions are not appealable:
 1. An adverse action resulting from a uniform change in federal or state law, unless the Department has misapplied the law to the person seeking the hearing;
 2. Failure to obtain a Level One fingerprint clearance card;
 3. Imposition of noncompliance status for an adoption agency;
 4. Imposition of a corrective action plan for a foster home or a Child Welfare Agency license;
 5. Removal of a child from a placement;
 6. Failure to enter into a contract with a particular licensee or to place a child with a particular licensee; and
 7. Imposition of a provisional license for a foster home under A.R.S. § 8-509(D).
- D. A finding of child abuse or neglect in a DCS investigation is not appealable under this Article. A person may appeal a proposed finding of child abuse or neglect made in a DCS investigation of a person or a licensee as prescribed in A.R.S. § 8-811 and A.A.C. Title 21, Chapter 1, Article 5.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-304. Computation of Time

- A. In computing any time period:
 1. The term "day" means a calendar day;
 2. The term "work day" means Monday through Friday, excluding Arizona state holidays;
 3. The date of the act, event, notice, or default from which a designated time period begins to run is not counted as part of the time period; and
 4. The last day of the designated time period is counted, unless it is a Saturday, Sunday, or Arizona state holiday.
- B. The mailing date is the date of the document, unless the facts show otherwise.
- C. A document mailed by the Department is deemed received by the addressee, five days after the mailing date to the addressee's last known address, unless the facts show otherwise.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-305. Request for Hearing: Form; Time Limits; Presumptions

- A. An appellant who wishes to appeal an adverse action shall file a written request within the following timeframes for a hearing with the Administration:
 1. For a Child Welfare Agency, 20 days after receipt of the adverse action notice under A.R.S. § 8-506.01;
 2. For a foster home license revocation, 25 days after the mailing date of the adverse action notice under A.R.S. § 8-506;
 3. For all other appeals covered by this Article, 20 days after receipt of the adverse action notice.
- B. The Administration shall provide a form for requesting an administrative hearing and, upon request, shall assist an appellant in completing the form.
- C. An appellant shall include the following information in the request for an administrative hearing:
 1. Name, address, and telephone number, and if applicable, e-mail address of the person subject to the adverse action;

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2. Identification of the Administration initiating the adverse action;
 3. A description of the adverse action that is the subject of the appeal;
 4. The date of the notice or letter of adverse action; and
 5. A statement explaining why the adverse action is unauthorized, unlawful, or an abuse of discretion.
- D.** The Department shall not deny an appeal solely because the request does not include all the information listed in subsection (C), so long as the request contains sufficient information for the Department to determine the identity of the appellant.
- E.** The Department shall forward the request for a hearing to OAH along with the information specified in A.A.C. R2-19-103.
- F.** A request for hearing is deemed filed with the Department:
1. On the mailing date, as shown by the postmark, if sent first-class mail, postage prepaid, through the United States Postal Service to the Department; or
 2. On the date actually received by the Department, if not mailed as provided in subsection (F)(1).
- G.** An appellant whose appeal is denied as untimely may request a review by the Department Director or designee. The request for review shall contain the following information:
1. Whether the appellant received the adverse action notice, and if so, when the appellant received the notice;
 2. If the appellant did not receive the adverse action notice;
 - a. Whether the appellant moved recently, and if so, whether the appellant notified the Department of the new address;
 - b. The type of mail receptacle the appellant uses;
 - c. The person that collects or receives the appellant's mail besides the appellant such as the appellant's;
 - i. Spouse,
 - ii. Child, or
 - iii. Roommate.
 - d. Whether the appellant has or is currently experiencing problems in receiving mail such as:
 - i. Not receiving the appellant's own mail; or
 - ii. Receiving others' mail;
 3. If the appellant did not receive the adverse action notice, how the appellant found out about the adverse action; and
 4. The date the appellant made the appeal to the Department and the method sent such as:
 - a. Hand delivery,
 - b. U.S. Mail,
 - c. Fax, or
 - d. E-mail.
- H.** The Department Director or designee may determine that a document was timely filed if the appellant demonstrates that the delay in submission was due to any of the following reasons:
1. Department error or misinformation;
 2. Delay or other action by the United States Postal Service; or
 3. Delay caused by the appellant changing mailing addresses at a time when the appellant had no duty to notify the Administration of the change.
- I.** When the Administration receives a request for a hearing that was not filed on time, the Department Director or designee shall determine if the delay meets the criteria under subsection (H), and if so, shall schedule a hearing with OAH.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-306. Administration: Transmittal of Appeal

An Administration that receives a request for an appeal shall send the OAH a copy of the request and a copy of the adverse action notice within two work days of receipt of the request. The Administration shall include all information as specified in A.A.C. R2-19-103.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-307. Stay of Adverse Action Pending Appeal

- A.** If an applicant, licensee, or client does not appeal, the Department shall carry out the adverse action after the time for filing an appeal has passed, or sooner if the appellant waives the delay of action in writing.
- B.** If an applicant, licensee, or client does not appeal, the Department shall not carry out the adverse action if the appellant has an additional appealable adverse action notice that may result in the same adverse action proposed in the current notice, and the time for filing an appeal to the additional adverse action notice has not passed.
- C.** If an appellant timely appeals an appealable adverse action as provided in R21-1-305, the Department shall not carry out the adverse action until an administrative hearing has been held and the Director certifies a final administrative decision.
- D.** If an appellant timely appeals an adverse action under R21-1-305, the Department may immediately carry out the adverse action under the following circumstances:
1. The appellant expressly waives the delay of action;
 2. The appeal challenges an adverse action that is not appealable under R21-1-303(C);
 3. The appellant withdraws the request for hearing;
 4. The appellant fails to appear for the hearing; or
 5. The Department summarily suspends a license and makes all of the required findings under A.R.S. § 41-1064.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-308. Hearings: Location; Notice; Time

- A.** The hearing shall be held by OAH.
- B.** OAH may schedule a telephonic hearing or permit a witness to appear telephonically as granted in A.A.C. R2-19-114.
- C.** After receiving a request for an appeal, the Department shall hold the hearing:
1. For a foster parent, 10 days after the Department receives the request for an appeal under A.R.S. § 8-506;
 2. For a Child Welfare Agency, 10 days after the Department receives the request for an appeal under A.R.S. § 506.01; and
 3. The time listed in A.R.S. § 41-1092.05(A)(2) for all other appeals.
- D.** The Department shall mail a notice of hearing to all interested parties at least 20 days before the scheduled hearing date, except where the hearing is held within the 10-day period specified in subsections (C)(1) and (C)(2). For hearings held within the 10-day period, the Department shall notify the parties by telephone and send a written notice at the earliest date practicable.
- E.** The notice of the hearing shall be in writing and shall include the information required in A.R.S. § 41-1092.05(D) and A.A.C. R2-19-104.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

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R21-1-309. Rescheduling a Hearing

- A. An appellant may request to postpone or reschedule a hearing under R2-19-110.
- B. Except in emergency circumstances, the appellant shall file a request for postponement at least five work days before the scheduled hearing date. OAH may deny an untimely request by considering the factors in A.A.C. R2-19-110.
- C. When OAH reschedules a hearing under this Section or under A.A.C. R2-19-110, OAH notifies all interested parties in writing of the rescheduled hearing. The notice requirements in R21-1-305(A) do not apply to postponed or rescheduled hearings.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-310. Subpoenas

- A. A party who wishes to have a witness testify at a hearing, or to offer a particular document or item in evidence, shall first attempt to obtain the witness or evidence by voluntary means.
- B. A party shall request a subpoena under A.A.C. R2-19-106 and A.A.C. R2-19-113.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-311. Parties' Rights

A party to a hearing has the following rights:

1. The right to request a postponement of the hearing, as provided in A.A.C. R2-19-106(A)(2) and A.A.C. R2-19-110.
2. The right to a copy, before or during the hearing, of documents in the Department's file regarding the appellant, and documents the Department may use at the hearing, except documents:
 - a. Shielded by the attorney-client privilege;
 - b. Shielded by work-product privilege; or
 - c. Otherwise prohibited by federal or state confidentiality laws.
3. The right to file a motion with OAH to disqualify an ALJ from conducting a hearing as provided in A.R.S. § 41-1092.07(A);
4. The right to request subpoenas for witnesses and evidence as provided in A.A.C. R2-19-113;
5. The right to represent themselves or be represented by a licensed attorney, subject to any limitations prescribed in the Rules of the Supreme Court of Arizona, Rule 31;
6. The right to present evidence and to cross-examine witnesses; and
7. The right to further appeal, if dissatisfied with a decision.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-312. Withdrawal of an Appeal

- A. An appellant may withdraw an appeal at any time prior to the scheduled hearing by signing a written statement expressing the intent to withdraw. The Department shall make a form available for an appellant to withdraw an appeal. An appellant may also orally withdraw an appeal on the open record under A.A.C. R2-19-111.
- B. The Department shall sign the form and file the form at OAH.
- C. OAH shall vacate the hearing and return the matter to the Department under A.A.C. R2-19-111.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-313. Effect of the Decision

- A. If the Department Director reviews the ALJ's recommended decision the Director may agree or disagree with the recommended decision as permitted in A.R.S. § 41-1092.08(F).
- B. The Department Director's final administrative decision becomes effective on the day OAH certifies the Department Director's final administrative decision.
- C. If the Department Director chooses not to review the recommended decision, then the ALJ's recommended decision becomes the final administrative decision within the time-frame under A.R.S. § 41-1092.08.
- D. If the final administrative decision affirms the adverse action, the adverse action remains in effect until the appellant appeals and obtains a higher judicial decision reversing or vacating the final administrative decision.
- E. If a final administrative decision reverses the Department's adverse action, the Department shall not take the adverse action.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-314. Judicial Review

Any party adversely affected by a final administrative decision may seek judicial review as prescribed in A.R.S. § 1092.08 and A.A.C. R2-19-122.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

ARTICLE 4. FINGERPRINTING**R21-1-401. Definitions**

In this Article, unless the context otherwise requires:

1. "Applicant" means personnel who apply for a Level One fingerprint clearance card or a person who applies for a license or certificate issued by the Department and who A.R.S. § 46-141(I) requires to submit a full set of fingerprints for the purpose of obtaining a state and federal criminal records check.
2. "Criminal History" means the same as A.R.S. § 41-1750(Y)(5).
3. "Department" or "DCS" means the Arizona Department of Child Safety.
4. "Direct visual supervision" means within sight and hearing of a provider or personnel who have a Level One fingerprint clearance card.
5. "Juvenile" means an individual who is less than 18 years of age.
6. "Level One fingerprint clearance card" means the same as A.R.S. § 41-1758.07(A).
7. "License" means the whole or part of a Department permit, registration, or similar form of permission or authorization required by law, but does not include a foster home license.
8. "Person" means a corporation, company, partnership, firm, association or society, as well as a natural person.
9. "Provider" means a federally recognized Indian tribe, county, political subdivision, military base, or person with whom the Department contracts or licenses to provide services to juveniles.
10. "Personnel" means paid or unpaid persons who have or may have direct contact with juveniles or provide ser-

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vices directly to juveniles for a provider, including the provider, consultants, subcontractors, volunteers, students, and persons otherwise affiliated with the provider.

11. "Services directly to juveniles" means in-person interaction between a provider or personnel and a juvenile.
12. "Supervised" means that personnel are within direct visual supervision at all times when providing services of any nature directly to juveniles, including psychological, medical, or any ancillary services.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-402. Applicability

This Article covers any applicant, provider, and personnel. This Article does not apply to a foster home license or adoptive home certification.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-403. Time Period Prior To Results of Personnel Criminal Records Check or Issuance of a Level One Fingerprint Clearance Card

- A. A provider shall not allow an applicant who applies for a Level One fingerprint clearance card under A.R.S. § 46-141 to provide services directly to juveniles or have unsupervised contact with juveniles until the applicant obtains a valid Level One fingerprint clearance card.
- B. A provider shall not allow an applicant who is required to submit fingerprints to the Department under A.R.S. § 46-141(I) to provide services directly to or have unsupervised contact with juveniles unless the applicant clears the Criminal records check or obtains a valid Level One fingerprint clearance card, as applicable.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-404. Effect of No Criminal History Disclosed

A provider may allow an applicant or personnel who certifies under A.R.S. § 46-141(E), (F), and (G) that the applicant or personnel has not been convicted of or is awaiting trial for an offense listed in A.R.S. § 41-1758.07(B) or (C), or A.R.S. § 46-141(G), and who is not subject to registration as a sex offender in this state or any other jurisdiction, to provide supervised services directly to juveniles.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-405. Effect of Proscribed Criminal History Disclosed or Discovered

- A. A provider shall not allow an applicant or personnel who disclose or have been convicted of or are awaiting trial for an offense listed in A.R.S. § 41-1758.07(B) or (C), or A.R.S. § 46-141(G), or who are subject to registration as a sex offender in this state or any other jurisdiction to provide services directly to or have any contact with juveniles.
- B. A provider shall not allow an applicant or personnel who apply for a Good Cause Exception under A.R.S. § 41-619.55 to provide services directly to or have any contact with juveniles until the Good Cause Exception is granted.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-406. Effect of Denied, Expired, Revoked or Suspended Level One Fingerprint Clearance Card

Upon notification by the Department of the denial, expiration, revocation, or suspension of a Level One fingerprint clearance card, the provider shall immediately prohibit those personnel from providing services directly to or having any contact with juveniles.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

ARTICLE 5. SUBSTANTIATION OF REPORT FINDINGS**R21-1-501. Definitions**

The following definitions apply to this Article.

1. "Abuse" means the same as A.R.S. § 8-201(2).
2. "Amend the finding" means the same as A.R.S. § 8-811(L)(1).
3. "Case Record" means the Report of child abuse and neglect and related records the Department intends to submit at the hearing, including information from internal and external sources.
4. "Central Registry" means the information maintained by the Department of substantiated reports of child abuse or neglect for the purposes of A.R.S. § 8-804.
5. "Completed Investigation" means the case record and the proposed substantiated finding for the report of child abuse or neglect have been reviewed and approved by a supervisor and contains all of the information required to support a finding of proposed substantiation.
6. "Day" means a calendar day.
7. "Department" or "DCS" means the Arizona Department of Child Safety.
8. "Ineligibility Letter" means a notice sent from the Department via first class mail to a person alleged to have committed child abuse or neglect stating that the person is not entitled to an administrative hearing on the issue for one of the reasons listed in R21-1-505.
9. "Initial Notification Letter" means a notice sent from the Department via first class mail to an alleged perpetrator informing the person of the proposed finding of child abuse or neglect to be entered in the Central Registry and describing appeal rights to challenge the proposed finding.
10. "Legally excluded" means that an alleged perpetrator is not entitled to an administrative hearing under A.R.S. § 8-811, because:
 - a. A court or administrative law judge has made a finding of abuse or neglect based on the same allegations as in the proposed substantiated finding; or
 - b. A court has found that a child is dependent, or has terminated a parent's rights based upon the same allegations of abuse or neglect as in the proposed substantiated finding.
11. "Neglect" or "neglected" means the same as A.R.S. § 8-201(24).
12. "Perpetrator" means a person who has committed child abuse or neglect under the standards required for listing in the Central Registry.
13. "Probable Cause" means some credible evidence that abuse or neglect occurred.
14. "Proposed Substantiated Finding" means the Department has investigated and found probable cause to support an allegation of abuse or neglect sufficient to place the alleged perpetrator's name in the Central Registry, subject to the alleged perpetrator's right to notice and a hearing.

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15. "PSRT" means the Department's Protective Services Review Team, that administers the process described in A.R.S. § 8-811 for review and appeal of proposed substantiated findings of child abuse or neglect.
16. "Report For Investigation" means the same as A.R.S. § 8-201(30).
17. "Substantiated Finding" means a proposed substantiated finding that:
 - a. An administrative law judge found to be true by a probable cause standard of proof after notice and an administrative hearing and the Department Director accepted the decision;
 - b. The alleged perpetrator did not timely appeal; or
 - c. The alleged perpetrator was not entitled to an administrative hearing because the alleged perpetrator was legally excluded as defined in subsection (11).

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-502. Initial Notification Letter

- A. When PSRT receives a proposed substantiated finding, PSRT shall notify an alleged perpetrator that:
 1. The Department intends to substantiate the proposed finding and place the alleged perpetrator's name in the Central Registry;
 2. The alleged perpetrator may obtain a copy of the Report for Investigation; and
 3. The alleged perpetrator has the right to an administrative hearing before the person's name is entered in the Central Registry.
- B. The Department shall send the Initial Notification Letter to the alleged perpetrator no more than 14 days after the Completed Investigation.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-503. Time Frame to Request an Administrative Hearing

- A. An alleged perpetrator shall request a hearing on the proposed substantiated finding by the Department within 20 days from the mailing date of the Initial Notification Letter. The mailing date of the Initial Notification Letter is deemed the date of the letter.
- B. A request is timely if:
 1. The request is postmarked no later than 20 days from the mailing date of the Initial Notification Letter;
 2. The request is not postmarked, and the request is stamped as received by the Department within 20 days of the mailing date of the initial notification letter;
- C. If the Department determines a hearing request is untimely, the Department shall enter the alleged perpetrator's name on the Central Registry unless:
 1. The delay is due to Department error;
 2. The delay is due to the postal service; or
 3. There is evidence the delay is due to circumstances beyond the reasonable control of the alleged perpetrator.
- D. To request an administrative timeliness review, the alleged perpetrator shall submit:
 1. An oral or written request to PSRT using the contact information on the initial notification letter;
 2. A statement explaining why the request is untimely; and
 3. Evidence of the cause of the untimeliness.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-504. PSRT Review

- A. Upon receiving a timely request for an administrative hearing, the PSRT shall within 60 days review the Case Record and shall:
 1. Determine there is no probable cause that the alleged perpetrator committed child abuse or neglect and amend the proposed substantiated finding to unsubstantiated; or
 2. Determine there is probable cause and send the alleged perpetrator a hearing notice.
- B. The hearing notice shall include:
 1. The date and time of the hearing;
 2. Notification of the right to request a settlement conference no later than 20 days before the hearing; and
 3. Notification of the right, upon oral or written request to the Department, to receive a copy of the case record, redacted as required by A.R.S. § 8-807.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-505. Exceptions to Right to a Hearing

- A. An alleged perpetrator shall be eligible to have an administrative hearing unless the alleged perpetrator is legally excluded.
- B. The Department shall mail an alleged perpetrator who is legally excluded an Ineligibility Letter within seven days of the PSRT determination of ineligibility for an appeal.
- C. The Department shall not schedule an administrative hearing if the alleged perpetrator:
 1. Is a party in a pending civil, criminal, or administrative proceeding in which the same allegations of child abuse or neglect are at issue; or
 2. Has a pending juvenile proceeding in which the same allegations of child abuse or neglect are at issue.
- D. An alleged perpetrator whose hearing is not scheduled under subsection (C)(1) shall have six months from the date of the Ineligibility Letter to provide court documentation to the Department showing:
 1. The results of the legal action;
 2. That the proceedings are still pending; or
 3. That the legal action did not determine the allegations of child abuse and neglect.
- E. If the alleged perpetrator does not contact the Department within six months of the date of the Ineligibility Letter with the information listed in subsection (D), the Department shall enter the person's name and the finding in the Central Registry.
- F. Notwithstanding subsection (E), if the alleged perpetrator contacts the Department after six months and provides the documentation in subsection (D) the alleged perpetrator may be entitled to a hearing subject to the provisions of R21-1-508.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-506. Dependency Adjudication

If the court in a proceeding described in A.R.S. § 8-811(F)(3), makes a finding of dependency based on child abuse or neglect against a person, the Department shall enter the person's name and the fact of the dependency finding in the Central Registry.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

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R21-1-507. Director Review and Further Appeal After the Administrative Hearing

- A.** An administrative law judge's decision is not final until the Department Director reviews the decision. The Director has 30 days to review the administrative decision. The Director may accept, reject or modify an administrative law judge's decision under A.R.S. § 41-1092.08.
- B.** A perpetrator may appeal the final administrative decision under A.R.S. Title 12, Chapter 7, Article 6.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-508. Entry into the Central Registry

- A.** If the perpetrator does not appeal the proposed substantiation, PSRT shall enter the perpetrator's name and the substantiated finding in the Central Registry.

- B.** If the administrative decision upholds the substantiation and the Department Director accepts the decision, PSRT shall enter the perpetrator's name and the substantiated finding in the Central Registry no later than 20 days after the date of the final administrative decision.
- C.** The Department shall not enter the person's name or the finding in the Central Registry if the:
1. Final administrative decision holds that the allegations of abuse or neglect are not substantiated; or
 2. A court ruling described in R21-1-505(C) finds no abuse or neglect by the alleged perpetrator.
- D.** If the court ruling described in R21-1-505(C) finds abuse or neglect by the perpetrator, the PSRT shall enter the person's name and the substantiated finding in the Central Registry.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

8-145. Appeals

An order denying, reducing or terminating a subsidy shall be appealable pursuant to title 41, chapter 6, article 6 and chapter 14, article 3.

8-166. Appeals

A person may appeal a department decision denying or reducing an application for reimbursement of nonrecurring expenses pursuant to title 41, chapter 6, article 6 and chapter 14, article 3.

8-453. Powers and duties

A. The director shall:

1. Carry out the purposes of the department prescribed in section 8-451.
2. Provide transparency by being open and accountable to the public for the actions of the department.
3. Develop a data system that enables persons and entities that are charged with a responsibility relating to child safety to access all relevant information relating to an abused, neglected or abandoned child as provided by law.
4. Subject to title 41, chapter 4, article 4 and, as applicable, articles 5 and 6, employ deputy directors and other key personnel based on qualifications that are prescribed by the director.
5. Adopt rules to implement the purposes of the department and the duties and powers of the director.
6. Petition, as necessary to implement the case plan established under section 8-824 or 8-845, for the appointment of a guardian or a temporary guardian under title 14, chapter 5 for children who are in custody of the department pursuant to court order. Persons applying to be guardians or temporary guardians under this section shall be fingerprinted. A foster parent or certified adoptive parent already fingerprinted is not required to be fingerprinted again, if the foster parent or certified adoptive parent is the person applying to be the guardian or temporary guardian.
7. Cooperate with other agencies of this state, county and municipal agencies, faith-based organizations and community social services agencies, if available, to achieve the purposes of this chapter.
8. Exchange information, including case specific information, and cooperate with the department of economic security for the administration of the department of economic security's programs.
9. Administer child welfare activities, including:
 - (a) Cross-jurisdictional placements pursuant to section 8-548.
 - (b) Providing the cost of care of:
 - (i) Children who are in temporary custody, are the subject of a dependency petition or are adjudicated by the court as dependent and who are in out-of-home placement, except state institutions.
 - (ii) Children who are voluntarily placed in out-of-home placement pursuant to section 8-806.
 - (iii) Children who are the subject of a dependency petition or are adjudicated dependent and who are in the custody of the department and ordered by the court pursuant to section 8-845 to reside in an independent living program pursuant to section 8-521.
 - (c) Providing services for children placed in adoption.
10. Formulate policies, plans and programs to effectuate the missions and purposes of the department.
11. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of funds.
12. Coordinate with, contract with or assist other departments, agencies and institutions of this state and local and federal governments in the furtherance of the department's purposes, objectives and programs.
13. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.

14. Collect monies owed to the department.
15. Act as an agent of the federal government in furtherance of any functions of the department.
16. Carry on research and compile statistics relating to the child welfare program throughout this state, including all phases of dependency.
17. Cooperate with the superior court in all matters related to this title and title 13.
18. Provide the cost of care and transitional independent living services for a person under twenty-one years of age pursuant to section 8-521.01.
19. Ensure that all criminal conduct allegations and reports of imminent risk of harm are investigated.
20. Ensure the department's compliance with the Indian child welfare act of 1978 (P.L. 95-608; 92 Stat. 3069; 25 United States Code sections 1901 through 1963).
21. Strengthen relationships with tribal child protection agencies or programs.

B. The director may:

1. Take administrative action to improve the efficiency of the department.
2. Contract with a private entity to provide any functions or services pursuant to this title.
3. Apply for, accept, receive and expend public and private gifts or grants of money or property on the terms and conditions as may be imposed by the donor and for any purpose provided for by this title.
4. Reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business. Volunteers reimbursed for expenses are not eligible for workers' compensation under title 23, chapter 6.

C. The department shall administer individual and family services, including sections on services to children and youth and other related functions in furtherance of social service programs under the social security act, as amended, title IV, parts B and E, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services and other related federal acts and titles.

D. If the department has responsibility for the care, custody or control of a child or is paying the cost of care for a child, the department may serve as representative payee to receive and administer social security and veterans administration benefits and other benefits payable to the child. Notwithstanding any law to the contrary, the department:

1. Shall deposit, pursuant to sections 35-146 and 35-147, any monies it receives to be retained separate and apart from the state general fund on the books of the department of administration.
2. May use these monies to defray the cost of care and services expended by the department for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.
3. Shall maintain separate records to account for the receipt, investment and disposition of monies received for each child.
4. On termination of the department's responsibility for the child, shall release any monies remaining to the child's credit pursuant to the requirements of the funding source or, in the absence of any requirements, shall release the remaining monies to:

(a) The child, if the child is at least eighteen years of age or is emancipated.

(b) The person who is responsible for the child if the child is a minor and not emancipated.

E. Subsection D of this section does not apply to benefits that are payable to or for the benefit of a child receiving services under title 36.

F. Notwithstanding any other law, a state or local governmental agency or a private entity is not subject to civil liability for the disclosure of information that is made in good faith to the department pursuant to this section.

G. Notwithstanding section 41-192, the department may employ legal counsel to provide legal advice to the director. The attorney general shall represent the department in any administrative or judicial proceeding pursuant to title 41, chapter 1, article 5.

H. The total amount of state monies that may be spent in any fiscal year by the department for foster care as provided in subsection A, paragraph 9, subdivision (b) of this section may not exceed the amount appropriated or authorized by section 35-173 for that purpose. This section does not impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

8-506. Denial, suspension or revocation of license; foster home; hearing; exception

A. The division may deny the application or suspend or revoke the license of any foster home for wilful violation of any provision of this article or failure to maintain the standards of the care prescribed by the division. Written notice of the grounds of the suspension or the proposed denial or revocation shall be given to the applicant or holder of the license. A copy of the written notice of the suspension or the proposed denial or revocation shall be forwarded to the agency that recommended the foster home for licensing. Within twenty-five days after the mailing date of the written notice of proposed denial, revocation or suspension, the applicant or holder may request a hearing in accordance with the rules of the division. If the hearing is requested it shall be held within ten days after the request, at which time the applicant or holder shall have the right to present testimony and confront witnesses.

B. A denial, suspension or revocation of a foster home license due to a failure to obtain or maintain a level I fingerprint clearance card as required by section 8-509 is not an appealable agency action.

8-506.01. Denial, suspension, revocation or change of license; child welfare agency; appeal

The division may deny the application or suspend or revoke the license of any child welfare agency for the wilful violation of any provision of this article or for failure to maintain the standards of the care prescribed by the division. Written notice of the grounds of the suspension or the proposed denial or revocation or any other material change in the license status, including provisional status, shall be given to the applicant or holder of the license. Within twenty days after receipt of written notice of a proposed denial, revocation, suspension or change, the applicant or holder may request a hearing in accordance with title 41, chapter 6, article 10. If the hearing is requested it shall be held within ten days of the request, at which time the applicant or holder has the right to subpoena witnesses, present testimony and confront witnesses.

8-512. Comprehensive medical and dental care; guidelines

A. The department shall provide comprehensive medical and dental care, including behavioral health services, as prescribed by rules of the department, for each child who is:

1. In a voluntary placement pursuant to section 8-806.
2. In the custody of the department in an out-of-home placement.
3. In the custody of a probation department and placed in foster care. The department shall not provide this care if the cost exceeds funds currently appropriated and available for that purpose.

B. The comprehensive medical and dental care consists of those benefits provided by the Arizona health care cost containment system benefit as prescribed in title 36, chapter 29, article 1 and as set forth in the approved medicaid state plan.

C. The department shall require providers to submit claims for medical and dental services pursuant to section 36-2903.01.

D. The department shall require that the provider pursue other third party payors before submitting a claim to the department. Payment received by a provider from the department is considered payment by the department of the department's liability for the bill. A provider may collect any unpaid portion of its bill from other third party payors or in situations covered by title 33, chapter 7, article 3.

E. The department shall not pay claims for services pursuant to this section that are submitted more than one hundred eighty days after the date of the service for which the payment is claimed.

F. The department may provide for payment through an insurance plan, hospital service plan, medical service plan, or any other health service plan authorized to do business in this state, fiscal intermediary or a combination of such plans or methods. The state shall not be liable for and the department shall not pay to any plan or intermediary any portion of the cost of comprehensive medical and dental care in excess of funds appropriated and available for such purpose at the time the plan or intermediary incurs the expense for such care.

G. The total amount of state monies that may be spent in any fiscal year by the department for comprehensive medical and dental care shall not exceed the amount appropriated or authorized by section 35-173 for that purpose. This section shall not be construed to impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

8-521. Independent living program; conditions; eligibility; rules; progress reports; educational case management unit

A. The department or a licensed child welfare agency may establish an independent living program for youths who are the subject of a dependency petition or who are adjudicated dependent and are all of the following:

1. In the custody of the department, a licensed child welfare agency or a tribal child welfare agency.
2. At least seventeen years of age.
3. Employed or full-time students.

B. The independent living program may consist of a residential program of less than twenty-four hours a day supervision for youths under the supervision of the department through a licensed child welfare agency or a foster home under contract with the department. Under the independent living program, the youth is not required to reside at a licensed child welfare agency or foster home.

C. The director or the director's designee shall review and approve any recommendation to the court that a youth in the custody of the department be ordered to an independent living program.

D. For a youth to participate in an independent living program, the court must order such a disposition pursuant to section 8-845.

E. The department of child safety, a licensed child welfare agency or a tribal child welfare agency having custody of the youth shall provide the cost of care as required by section 8-453, subsection A, paragraph 9, subdivision (b), item (iii) for each youth placed in an independent living program pursuant to this section, except that the monthly amount provided shall not be less than \$1,200.

F. The department shall adopt rules pursuant to title 41, chapter 6 to carry out this section.

G. The department shall provide quarterly progress reports to the court and to local foster care review boards for each youth participating in the independent living program.

H. The local foster care review boards shall review at least once every six months the case of each youth participating in the independent living program.

I. The department shall establish an educational case management unit within the division consisting of two case managers to develop and coordinate educational case management plans for youths participating in the independent living program and to assist youths in the program to do the following:

1. Graduate from high school.
2. Pass the statewide assessment pursuant to section 15-741.
3. Apply for postsecondary financial assistance.
4. Apply for postsecondary education.

8-521.01. Transitional independent living program

A. The department may establish a transitional independent living program for persons who meet the following qualifications:

1. The person is under twenty-one years of age.
2. The person was the subject of a dependency petition, adjudicated dependent or placed voluntarily pursuant to section 8-806.

B. The department shall provide care and services that complement the person's own efforts to achieve self-sufficiency and to accept personal responsibility for preparing for and making the transition to adulthood. The care and services provided shall be based on an individualized written agreement between the department and the person.

C. Care and services may be provided as follows:

1. If the person was in out-of-home placement or in the independent living program when the person became eighteen years of age, the department may provide out-of-home placement, independent living or other transitional living support services.
2. If the person was in out-of-home placement in the custody of the department, a licensed child welfare agency or a tribal child welfare agency while the person was sixteen, seventeen or eighteen years of age, the department may provide transitional living support services.

8-521.02. Extended foster care program; requirements

A. The department may establish an extended foster care program for qualified young adults. To participate in the program, a qualified young adult must meet all of the following requirements:

1. Have been in the custody of the department as a dependent child when the young adult became eighteen years of age.
2. Be eighteen, nineteen or twenty years of age and be one or more of the following:
 - (a) Completing secondary education or an educational program leading to an equivalent credential or be enrolled in an institution that provides postsecondary or vocational education.
 - (b) Employed at least eighty hours a month.
 - (c) Participating in a program or activity that promotes employment or removes barriers to employment.
 - (d) Unable to be a full-time student or to be employed because of a documented medical condition.
3. Sign a voluntary extended foster care agreement with the department on or after the qualified young adult's eighteenth birthday and before the young adult's twenty-first birthday.

B. The department shall provide a progress report every six months to the young adult administrative review panel for each qualified young adult who participates in the extended foster care program.

C. The young adult administrative review panel shall review, at least once every six months, the qualified young adult's voluntary extended foster care case plan, including the services and supports provided and needed to assist the young adult in the young adult's successful transition to adulthood.

D. The department shall develop and coordinate educational case management plans for a qualified young adult participating in the extended foster care program to assist the qualified young adult to accomplish the following:

1. Graduate from high school.
2. Pass the statewide assessment to measure pupil achievement adopted pursuant to section 15-741.
3. Apply for postsecondary education financial assistance.
4. Apply for postsecondary education.
5. Complete postsecondary education classes.

8-811. Hearing process; definitions

A. The department shall notify a person who is alleged to have abused or neglected a child that the department intends to substantiate the allegation in the central registry pursuant to section 8-804 and of that person's right:

1. To receive a copy of the report containing the allegation.
2. To a hearing before the entry into the central registry.

B. The department shall provide the notice prescribed in subsection A of this section by first class mail or by personal service no more than fourteen days after completion of the investigation.

C. A request for a hearing on the proposed finding must be received by the department within twenty days after the mailing or personal service of the notice by the department.

D. The department shall not disclose any information related to the investigation of the allegation except as provided in sections 8-456, 8-807, 8-807.01 and 13-3620.

E. If a request for a hearing is made pursuant to subsection C of this section, the department shall conduct a review before the hearing. The department shall provide an opportunity for the accused person to provide written or verbal information to support the position that the department should not substantiate the allegation. If the department determines that there is no probable cause that the accused person engaged in the alleged conduct, the department shall amend the information or finding in the report and shall notify the person and a hearing shall not be held.

F. Notwithstanding section 41-1092.03, the notification prescribed in subsection A of this section shall also state that if the department does not amend the information or finding in the report as prescribed in subsection E of this section within sixty days after it receives the request for a hearing the person has a right to a hearing unless:

1. The person is a party in a pending civil, criminal or administrative proceeding in which the allegations of abuse or neglect are at issue.
2. The person is a party in a pending juvenile proceeding in which the allegations of abuse or neglect are at issue.
3. A court or administrative law judge has made findings as to the alleged abuse or neglect.
4. A court has found that a child is dependent or has terminated a parent's rights based on an allegation of abuse or neglect.

G. If the court or administrative law judge in a pending proceeding described in subsection F, paragraph 1 or 2 of this section does not make a finding of abuse or neglect and the matter is no longer pending in that forum, the person has a right to a hearing pursuant to subsection F of this section.

H. If the court or administrative law judge in a proceeding described in subsection F of this section has made a finding of abuse or neglect, the finding shall be entered into the central registry as a substantiated report.

I. If the department does not amend the information or finding in the report as prescribed in subsection E of this section, the department shall notify the office of administrative hearings of the request for a hearing no later than five days after completion of the review. The department shall forward all records, reports and other relevant information with the request for hearing within ten days. The department shall redact the identity of the reporting source before transmitting the information to the office of administrative hearings.

J. The office of administrative hearings shall hold a hearing pursuant to title 41, chapter 6, article 10, with the following exceptions:

1. A child who is the victim of or a witness to abuse or neglect is not required to testify at the hearing.
 2. A child's hearsay statement is admissible if the time, content and circumstances of that statement are sufficiently indicative of its reliability.
 3. The identity of the reporting source of the abuse or neglect shall not be disclosed without the permission of the reporting source.
 4. The reporting source is not required to testify.
 5. A written statement from the reporting source may be admitted if the time, content and circumstances of that statement are sufficiently indicative of its reliability.
 6. If the person requesting the hearing fails to appear, the hearing shall be vacated and a substantiated finding of abuse or neglect shall be entered. On good cause shown, the hearing may be rescheduled if the request is made within fifteen calendar days after the date of the notice vacating the hearing for failure to appear.
- K. On completion of the presentation of evidence, the administrative law judge shall determine if probable cause exists to sustain the department's finding that the parent, guardian or custodian abused or neglected the child. If the administrative law judge determines that probable cause exists to sustain the department's finding of abuse or neglect, the sustained finding shall be entered into the central registry as a substantiated report. If the administrative law judge determines that probable cause does not exist to sustain the department's finding, the administrative law judge shall order the department to amend the information or finding in the report.
- L. When the department is requested to verify pursuant to section 8-807, if the central registry contains a substantiated report about a specific person, the department shall determine if the report was taken after January 1, 1998. If the report was taken after January 1, 1998, the department shall notify the requestor of the substantiated finding. If the report was taken before January 1, 1998, the department shall notify the person of the person's right to request an administrative hearing. The department shall not send this notification if the person was a party in a civil, criminal or administrative proceeding in which the allegations of abuse or neglect were at issue. The provisions of this section shall apply to the person's appeal.
- M. The department shall provide the parent, guardian or custodian who is the subject of the investigation and the person who reported the suspected child abuse or neglect if that person is the child's parent, guardian or custodian with a copy of the outcome of the investigation at one of the following times:
1. If the report is unsubstantiated.
 2. If probable cause exists that abuse or neglect has occurred but a specific person is not identified as having abused or neglected the child.
 3. After the time to request a hearing has lapsed pursuant to subsection C of this section without the department receiving a request for a hearing.
 4. After a final administrative decision has been made pursuant to section 41-1092.08.
- N. For the purposes of this section:
1. "Amend the finding" means to change the finding from substantiated to unsubstantiated.
 2. "Amend the information" means to change information identifying the accused of having abused or neglected a child.

8-814. Permanent guardianship subsidy; offsets; annual review; discontinuation; appeals; definition

A. The department shall establish and administer an ongoing program of subsidized permanent guardianship. Subsidies shall be provided from monies appropriated to the department or made available to it from other sources for permanent guardianship purposes.

B. The department may provide a subsidy to an applicant on behalf of a child subject to the requirements of this section.

C. The department shall determine the appropriate amount of the subsidy, which shall not exceed the maintenance payment allowable for an adoption subsidy pursuant to chapter 1, article 2 of this title. The amount of the subsidy shall be offset by benefits received from other state or federal programs to which the child is entitled.

D. The department shall conduct an annual review of a subsidy to determine that the permanent guardian continues to be eligible for the subsidy and that the subsidy is for the appropriate amount.

E. A permanent guardian who is receiving a subsidy shall:

1. Cooperate with the department in the annual review process.

2. Notify the department in writing of any change:

(a) That would lead to discontinuance of the subsidy pursuant to subsection F of this section.

(b) In benefits being received from other state or federal programs to which the child is entitled within two weeks of the change.

(c) In address within two weeks of the change.

F. The department shall discontinue a subsidy if any of the following occurs:

1. The permanent guardianship terminates.

2. The child dies or does not reside with the permanent guardian.

3. The child reaches eighteen years of age, except that the department may continue the subsidy until the child's twenty-second birthday if the child is enrolled in and regularly attending school and has not received a high school diploma or certificate of equivalency.

4. The applicant fails to comply with any requirement in this section.

G. Any decision denying, reducing or terminating a permanent guardianship subsidy is appealable pursuant to title 41, chapter 6 and chapter 14, article 3.

H. For the purposes of this section, "applicant" means a person who is appointed as a permanent guardian pursuant to section 8-872 or as a provisional or successor permanent guardian pursuant to section 8-874 and who applies for a subsidy pursuant to this section.

DEPARTMENT OF HEALTH SERVICES

Title 9, Chapter 6, Article 10



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 6, 2023

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 14, 2023

SUBJECT: Department of Health Services
Title 9, Chapter 6

This Five-Year-Review Report from the Department of Health Services relates to rules in Title 9, Chapter 6, Article 10 regarding HIV-Related Testing Notifications.

In the last 5YRR of these rules the Department proposed to amend several of its rules in order to make them more clear, concise, understandable, and effective. The Department completed the changes through expedited rulemaking effective September 11, 2018.

Proposed Action

The Department indicates the rules are clear, concise, understandable, effective, and consistent with other rules and statutes, and is not proposing any changes to the rules unless a threat to public health or safety arises.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes, the Department cites to both general and specific statutory authority.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The rules seek to define and prescribe reasonably necessary measures for procedures associated with the handling of communicable and preventable diseases, including the confidentiality of information, and requirements for court-ordered HIV related testing. The Department believes that rule changes in 2018 - including improvements to grammar, removal of obsolete definitions, and establishing consistency within cross-references - resulted in rules that are more easily understood, complied with, and enforced, while providing a significant benefit to stakeholders. These changes are consistent with the initial economic appraisal.

Stakeholders were identified as the Department, those being tested for HIV-infection, schools, local health departments, court ordered subjects, victims of sexual assault, and the general public.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department has determined that the rules impose the least burden and costs to persons regulated by the rules.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Department indicates they did not receive any written criticisms of the rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Department indicates the rules are overall clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, the Department indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates the rules are overall effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Department indicates the rules are enforced as written.

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Not applicable. There are no corresponding federal laws to the rules.

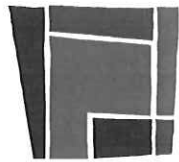
10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. The rules do not require the issuance of a general permit.

11. Conclusion

As mentioned above, the Department is not proposing any changes to the rules. The Department indicates the rules are clear, concise, understandable, effective, and consistent with other rules and statutes.

Council staff recommends approval of the report.



ARIZONA DEPARTMENT OF HEALTH SERVICES

April 6, 2023

VIA: E-MAIL: grrc@azdoa.gov

Nicole Sornsin, Chairperson
Governor's Regulatory Review Council
Arizona Department of Administration
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: ADHS, A.A.C. Title 9, Chapter 6, Article 10 Five Year Review Report

Dear Ms. Sornsin:

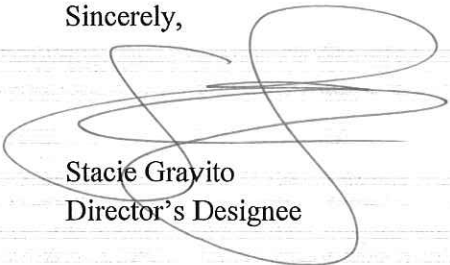
Please find enclosed the Five-Year Review Report from the Arizona Department of Health Services (Department) for A.A.C. Title 9, Chapter 6 Communicable Diseases and Infestations, Article 10 HIV-Related Testing and Notification which is due on April 30, 2023.

The Department reviewed the following rules in A.A.C. Title 9, Chapter 6, Article 10 with the intention that those rules do not expire under A.R.S. § 41-1056(J).

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Emily Carey at 602-542-5121 or emily.carey@azdhs.gov.

Sincerely,



Stacie Grayito
Director's Designee

RL: tk
Enclosures

Douglas A. Ducey | Governor Don Herrington | Interim Director

150 North 18th Avenue, Suite 500, Phoenix, AZ 85007-3247 P | 602-542-1025 F | 602-542-1062 W | azhealth.gov

Health and Wellness for all Arizonans



Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 6. Department of Health Services – Communicable Diseases and Infestations

Article 10. HIV-Related Testing and Notification

April 2023

1. **Authorization of the rule by existing statutes:**

Authorizing statutes: A.R.S. §§ 36-132(A)(1), 36-136(A)(7) and 36-136(G)

Implementing statutes: A.R.S. §§ 8-341, 13-1415, 36-136(I)(1), and 36-664

2. **The objective of each rule:**

Rule	Objective
R9-6-1001	To define terms used in the Article to enable the reader to understand clearly the requirements of the Article and allow for consistent interpretation.
R9-6-1002	To specify where HIV-related requirements for local health agencies are located.
R9-6-1004	The objectives of the rule are to: <ul style="list-style-type: none">a) Specify where requirements related to testing performed as a result of a court order issued under A.R.S. § 13-1210 or 32-3207 are located,b) Provide requirements for a prosecuting attorney who petitioned a court for HIV-related testing under A.R.S. § 8-341 or 13-1415,c) Provide requirements for a person who tests a specimen as a result of a court order issued under A.R.S. § 8-341 or 13-1415, andd) Specify notification requirements for HIV-related testing performed as a result of a court order.
R9-6-1005	To specify requirements related to anonymous HIV-related testing.
R9-6-1006	To specify notification requirements related to: <ul style="list-style-type: none">a) An individual reported to be at risk for HIV infection, andb) A pupil of a school district who tested positive for HIV infection.

3. **Are the rules effective in achieving their objectives?**

Yes ☒ No ☐

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation

4. **Are the rules consistent with other rules and statutes?**

Yes ☒ No ☐

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation

5. **Are the rules enforced as written?** Yes ☒ No ☐

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** Yes ☒ No ☐

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation

7. **Has the agency received written criticisms of the rules within the last five years?** Yes ☐ No ☒

If yes, please fill out the table below:

Commenter	Comment	Agency's Response

8. **Economic, small business, and consumer impact comparison (summary):**

Arizona Revised Statutes (A.R.S.) § 36-136(I)(1) requires the Arizona Department of Health Services (Department) to “define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases.” A.R.S. § 36-664 specifies requirements related to the confidentiality of communicable disease information and circumstances when communicable disease information may be disclosed. A.R.S. §§ 8-341 and 13-1415 specify requirements for court-ordered HIV-related testing. The Department has adopted rules to implement these statutes in Arizona Administrative Code (A.A.C.) Title 9, Chapter 6, Article 10. The rules in 9 A.A.C. 6, Article 10 were revised by final rulemakings published in the *Arizona Administrative Register* (A.A.R.) at 14 A.A.R. 1502, effective April 1, 2008. An economic, small business, and consumer impact statement (EIS) was submitted to the Council as part of the final rulemaking. The EIS designated annual costs/revenue changes as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or greater in additional costs or revenues. A cost or benefit was “significant” when meaningful or important, but not readily subject to quantification. In the past five years, the

Department has not received a request for a court-ordered or anonymous test.

The rules in R9-6-1002 were amended by regular rulemaking at 23 A.A.R. 2605, effective January 1, 2018. The revision amended the cross-reference to another amended rule to ensure that the rules were consistent with one another. The Department believes the costs of these amended rules were minimal and provided a benefit to individuals being testing for HIV-infection, schools, local health departments, and the general public. As part of an expedited rulemaking based on the 2018 five-year-review-report, found at 24 A.A.R. 2761, the rules in R9-6-1001, R9-6-1004, R9-6-1005, and R9-6-1006 were amended, effective September 11, 2018. The rule in R9-6-1001, were revised to remove three definitions that are no longer used in the Article. R9-6-1004 was amended to correct statute references for grammatical errors. The revisions to the rules in R9-6-1005 were made to make subsection (B)(1) clearer, and to correct grammatical errors and formatting in subsection (B)(4). Lastly, the rule in R9-6-1006 was amended to correct statutory references that were incorrectly cross-referenced. The Department believes the costs of these amended rules were minimal and provided a benefit to individuals being testing for HIV-infection, schools, local health departments, and the general public.

The Department believes the rule changes, as described above, that are more easily understood, complied with, and enforced, may have provided a significant benefit to the affected persons, including the Department, individuals being testing for HIV-infection, schools, local health departments, and the general public. In addition, court-ordered subjects, victims of sexual assault, and society in general were believed to receive a significant benefit from the clearer requirements for testing and notification under the new rules. On the basis of the information described above, the Department believes that the costs and benefits identified in the EISs are generally consistent with the actual costs and benefits of the rule.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ____ No ✓

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

In the 2018 five-year-review-report, the Department proposed to amend the rules in an expedited rulemaking. The Department completed this course of action by final expedited rulemaking at 24 A.A.R. 2761, effective September 11, 2018.

11. **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 regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department continues to use the rules without increased cost or burden. The Department believes that the rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

12. Are the rules more stringent than corresponding federal laws? Yes ____ No ✓

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

The rules are not related to any federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

The rules do not require the issuance of a regulatory permit, license, or agency authorization.

14. Proposed course of action:

If possible, please identify a month and year by which the agency plans to complete the course of action.

The Department believes the rules are sufficient to protect public health and does not plan to amend the rules in 9 A.A.C. 6, Article 10 unless a threat to public health or safety arises that would require amending the rules.

ARTICLE 10. HIV-RELATED TESTING AND NOTIFICATION

R9-6-1001. Definitions

In this Article, unless otherwise specified:

1. “Governing board” means a group of individuals, elected as specified in A.R.S. Title 15, Chapter 4, Article 2, to carry out the duties and functions specified in A.R.S. Title 15, Chapter 3, Article 3.
2. “School district” means the same as in A.R.S. § 15-101.
3. “Superintendent of a school district” means an individual appointed by the governing board of a school district to oversee the operation of schools within the school district.

R9-6-1002. Local Health Agency Requirements

For each HIV-infected individual or suspect case, a local health agency shall comply with the requirements in R9-6-347.

R9-6-1004. Court-ordered HIV-related Testing

- A. A health care provider who receives the results of a test, ordered by the health care provider to detect HIV infection and performed as a result of a court order issued under A.R.S. § 13-1210, shall comply with the requirements in 9 A.A.C. 6, Article 8.
- B. A health care provider who receives the results of a test, ordered by the health care provider to detect HIV infection and performed as a result of a court order issued under A.R.S. § 32-3207, shall comply with the requirements in 9 A.A.C. 6, Article 9.
- C. When a court orders a test under A.R.S. § 8-341 or 13-1415 to detect HIV infection, the prosecuting attorney who petitioned the court for the order shall provide to the Department:
 1. A copy of the court order, including an identifying number associated with the court order;
 2. The name and address of the victim; and
 3. The name and telephone number of the prosecuting attorney or the prosecuting attorney’s designee.
- D. A person who tests a specimen of blood or another body fluid from a subject to detect HIV infection as authorized by a court order issued under A.R.S. § 8-341 or 13-1415 shall:
 1. Use a screening test; and
 2. If the test results from a screening test on the specimen indicate a positive result, retest the specimen using a confirmatory test.
- E. A person who performs a test described in subsection (D) shall report the test results for each subject to the submitting entity within five working days after obtaining the test results.
- F. A submitting entity that receives the results of a test to detect HIV infection that was performed for a subject as a result of a court order issued under A.R.S. § 8-341 or 13-1415 shall:
 1. Notify the Department within five working days after receiving the results of the test to detect HIV infection;
 2. Provide to the Department:
 - a. A written copy of the court order,
 - b. A written copy of the results of the test to detect HIV infection, and
 - c. The name and telephone number of the submitting entity or submitting entity’s designee; and
 3. Either:
 - a. Comply with the requirements in:
 - i. R9-6-802(A)(2)(a) and (b), R9-6-802(D), and R9-6-802(F) through (J) for a subject who is not incarcerated or detained; and
 - ii. R9-6-802(B), R9-6-802(D) through (G), and R9-6-802(J) for a subject who is incarcerated or detained; or
 - b. Provide to the Department or the local health agency in whose designated service area the subject is living:
 - i. The name and address of the subject;
 - ii. A written copy of the results of the test to detect HIV infection, if not provided as specified in subsection (F)(2)(b); and

- iii. Notice that the submitting entity did not provide notification as specified in subsection (F)(3)(a).
- G. If the Department or a local health agency is notified by a submitting entity as specified in subsection (F)(3)(b), the Department or local health agency shall comply with the requirements in:
 - 1. R9-6-802(A)(2)(a) and (b), R9-6-802(D), and R9-6-802(F) through (J) for a subject who is not incarcerated or detained; and
 - 2. R9-6-802(B), R9-6-802(D) through (G), and R9-6-802(J) for a subject who is incarcerated or detained.
- H. When the Department receives a written copy of the results of a test to detect HIV infection that was performed for a subject as a result of a court order issued under A.R.S. § 8-341 or 13-1415, the Department shall either:
 - 1. Provide to the victim:
 - a. A description of the results of the test to detect HIV-infection;
 - b. The information specified in R9-6-802(D); and
 - c. A written copy of the test results; or
 - 2. Provide to the local health agency in whose designated service area the victim is living:
 - a. The name and address of the victim,
 - b. A written copy of the results of the test to detect HIV infection, and
 - c. Notice that the Department did not provide notification as specified in subsection (H)(1).
- I. If a local health agency is notified by the Department as specified in subsection (H)(2), the local health agency shall:
 - 1. Provide to the victim:
 - a. A description of the results of the test to detect HIV infection;
 - b. The information specified in R9-6-802(D); and
 - c. A written copy of the test results; or
 - 2. If the local health agency is unable to locate the victim, notify the Department that the local health agency did not inform the victim of the results of the test to detect HIV infection.

R9-6-1005. Anonymous HIV Testing

- A. A local health agency and the Department shall offer anonymous HIV testing to individuals.
- B. If an individual requests anonymous HIV testing, the Department or a local health agency shall:
 - 1. Provide to the individual requesting anonymous HIV testing:
 - a. Health education about HIV,
 - b. The meaning of HIV test results, and
 - c. The risk factors for becoming infected with HIV or transmitting HIV to other individuals;
 - 2. Collect a specimen of blood from the individual;
 - 3. Record the following information in a Department-provided format:
 - a. The individual's date of birth;
 - b. The individual's race and ethnicity;
 - c. The individual's gender;
 - d. The date and time the blood specimen was collected;
 - e. The type of screening test;
 - f. Information about the individual's risk factors for becoming infected with or transmitting HIV; and
 - g. The name, address, and telephone number of the person collecting the blood specimen;
 - 4. Before the individual leaves the building occupied by the Department or local health agency:
 - a. Test the individual's specimen of blood using the screening test for HIV specified in subsection (B)(3);
 - b. Provide the results of the screening test to the individual;
 - c. Enter the test results in the record established according to subsection (B)(3); and

- d. If the test results from the screening test on the specimen of blood indicate that the individual may be HIV-infected:
 - i. Assist the individual to connect with persons that may have additional resources available for the individual; and
 - ii. Provide confirmatory testing or submit the specimen of blood to the Arizona State Laboratory for confirmatory testing by:
 - (1) Assigning to the blood specimen an identification number corresponding to the record established according to subsection (B)(3);
 - (2) Giving the individual requesting anonymous HIV testing the identification number assigned to the blood specimen and information about how to obtain the results of the confirmatory test; and
 - (3) Sending the blood specimen and the record specified in subsection (B)(3) to the Arizona State Laboratory for confirmatory testing; and
5. If anonymous HIV testing is provided by a local health agency, submit the record specified in subsection (B)(3) to the Department.

R9-6-1006. Notification

- A. The Department or the Department's designee shall confidentially notify an individual reported to be at risk for HIV infection, as required under A.R.S. § 36-664(I), if all of the following conditions are met:
 1. The Department receives the report of risk for HIV infection in a document that includes the following:
 - a. The name and address of the individual reported to be at risk for HIV infection or enough other identifying information about the individual to enable the individual to be recognized and located,
 - b. The name and address of the HIV-infected individual placing the individual named under subsection (A)(1)(a) at risk for HIV infection,
 - c. The name and address of the individual making the report, and
 - d. The type of exposure placing the individual named under subsection (A)(1)(a) at risk for HIV infection;
 2. The individual making the report is in possession of confidential HIV-related information; and
 3. The Department determines that the information provided in the report is accurate and contains sufficient detail to:
 - a. Indicate that the exposure described as required in subsection (A)(1)(d) constitutes a significant exposure for the individual reported to be at risk for HIV infection, and
 - b. Enable the individual reported to be at risk for HIV infection to be recognized
- B. As authorized under A.R.S. § 36-136(M), the Department shall notify the superintendent of a school district in a confidential document that a pupil of the school district tested positive for HIV if the Department determines that:
 1. The pupil places others in the school setting at risk for HIV infection; and
 2. The school district has an HIV policy that includes the following provisions:
 - a. That a school shall not exclude a pupil who tested positive for HIV from attending school or school functions or from participating in school activities solely due to HIV infection;
 - b. That school district personnel who are informed that a pupil tested positive for HIV shall keep the information confidential; and
 - c. That the school district shall provide HIV-education programs to pupils, parents or guardians of pupils, and school district personnel through age-appropriate curricula, workshops, or in-service training sessions.

Authorizing Statutes

36-132. Department of health services; functions; contracts

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.
8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.
9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.
10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The

department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

36-136. Powers and duties of director; compensation of personnel; rules; definitions

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.

6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source

and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or

reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. If in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for not longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

- (a) Served at a noncommercial social event such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fundraising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

(j) Spirituous liquor produced on the premises licensed by the department of liquor licenses and control. This exemption includes both of the following:

(i) The area in which production and manufacturing of spirituous liquor occurs, as defined in an active basic permit on file with the United States alcohol and tobacco tax and trade bureau.

(ii) The area licensed by the department of liquor licenses and control as a microbrewery, farm winery or craft distiller that is open to the public and serves spirituous liquor and commercially prepackaged food, crackers or pretzels for consumption on the premises. A producer of spirituous

liquor may not provide, allow or expose for common use any cup, glass or other receptacle used for drinking purposes. For the purposes of this item, "common use" means the use of a drinking receptacle for drinking purposes by or for more than one person without the receptacle being thoroughly cleansed and sanitized between consecutive uses by methods prescribed by or acceptable to the department.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for preserving or storing food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparing food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director

shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (j) of this section, spirituous liquor and commercially prepackaged food, crackers or pretzels that meet the requirements of subsection I, paragraph 4, subdivision (j) of this section are exempt from the rules prescribed in subsection I of this section.

R. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

Implementing Statutes

8-341. Disposition and commitment; definitions

A. After receiving and considering the evidence on the proper disposition of the case, the court may enter judgment as follows:

1. It may award a delinquent juvenile:

- (a) To the care of the juvenile's parents, subject to the supervision of a probation department.
- (b) To a probation department, subject to any conditions the court may impose, including a period of incarceration in a juvenile detention center of not more than one year.
- (c) To a reputable citizen of good moral character, subject to the supervision of a probation department.
- (d) To a private agency or institution, subject to the supervision of a probation officer.
- (e) To the department of juvenile corrections.
- (f) To maternal or paternal relatives, subject to the supervision of a probation department.
- (g) To an appropriate official of a foreign country of which the juvenile is a foreign national who is unaccompanied by a parent or guardian in this state to remain on unsupervised probation for at least one year on the condition that the juvenile cooperate with that official.

2. It may award an incorrigible child:

- (a) To the care of the child's parents, subject to the supervision of a probation department.
- (b) To the protective supervision of a probation department, subject to any conditions the court may impose.
- (c) To a reputable citizen of good moral character, subject to the supervision of a probation department.
- (d) To a public or private agency, subject to the supervision of a probation department.
- (e) To maternal or paternal relatives, subject to the supervision of a probation department.

B. If a juvenile is placed on probation pursuant to this section, the period of probation may continue until the juvenile's eighteenth birthday or until the juvenile's nineteenth birthday if jurisdiction is retained pursuant to section 8-202, subsection H, except that the term of probation shall not exceed one year if all of the following apply:

- 1. The juvenile is not charged with a subsequent offense.
- 2. The juvenile has not been found in violation of a condition of probation.
- 3. The court has not made a determination that it is in the best interests of the juvenile or the public to require continued supervision. The court shall state by minute entry or written order its reasons for finding that continued supervision is required.
- 4. The offense for which the juvenile is placed on probation does not involve a dangerous offense as defined in section 13-105.

5. The offense for which the juvenile is placed on probation does not involve a violation of title 13, chapter 14 or 35.1.

6. Restitution ordered pursuant to section 8-344 has been made.

C. If a juvenile is adjudicated as a first time felony juvenile offender, the court shall provide the following written notice to the juvenile:

This is your first felony offense. If you commit another felony offense and you are fourteen years of age or older, any of the following could happen to you:

1. You could be tried as an adult in adult criminal court.
2. You could be committed to the department of juvenile corrections.
3. You could be placed on juvenile intensive probation, which could include incarceration in a juvenile detention center.

D. If a juvenile is fourteen years of age or older and is adjudicated as a repeat felony juvenile offender, unless the court determines based on the severity of the offense and a risk assessment that juvenile intensive probation services are not required, the juvenile court shall place the juvenile on juvenile intensive probation, which may include incarceration in a juvenile detention center, or may commit the juvenile to the department of juvenile corrections pursuant to subsection A, paragraph 1, subdivision (e) of this section.

E. If the juvenile is adjudicated as a repeat felony juvenile offender, the court shall provide the following written notice to the juvenile:

You are now a repeat felony offender. This means:

1. You will be tried as an adult in adult criminal court if you commit another felony offense and you are fifteen years of age or older.
2. You could be tried as an adult in adult criminal court if you commit another felony offense when you are at least fourteen years of age.
3. You could be incarcerated in the state department of corrections if you are convicted as an adult in adult criminal court.

F. The failure or inability of the court to provide the notices required under subsections C and E of this section does not preclude the use of the prior adjudications for any purpose otherwise allowed.

G. Except as provided in subsection S of this section, after considering the nature of the offense and the age, physical and mental condition and earning capacity of the juvenile, the court shall order the juvenile to pay a reasonable monetary assessment if the court determines that an assessment is in aid of rehabilitation. If the director of the department of juvenile corrections determines that enforcement of an order for monetary assessment as a term and condition of conditional liberty is not cost-effective, the director may require the youth to perform an equivalent amount of community restitution in lieu of the payment ordered as a condition of conditional liberty.

H. If a child is adjudicated incorrigible, the court may impose a monetary assessment on the child of not more than \$150.

I. A juvenile who is charged with unlawful purchase, possession or consumption of spirituous liquor is subject to section 8-323. The monetary assessment for a conviction of unlawful purchase, possession or consumption of spirituous liquor by a juvenile shall not exceed \$500. The court of competent jurisdiction may order a monetary assessment or equivalent community restitution.

J. The court shall require the monetary assessment imposed under subsection G or H of this section on a juvenile who is not committed to the department of juvenile corrections to be satisfied in one or both of the following forms:

1. Monetary reimbursement by the juvenile in a lump sum or installment payments through the clerk of the superior court for appropriate distribution.

2. A program of work, not in conflict with regular schooling, to repair damage to the victim's property, to provide community restitution or to provide the juvenile with a job for wages. The court order for restitution or monetary assessment shall specify, according to the dispositional program, the amount of reimbursement and the portion of wages of either existing or provided work that is to be credited toward satisfaction of the restitution or assessment, or the nature of the work to be performed and the number of hours to be spent working. The number of hours to be spent working shall be set by the court based on the severity of the offense but shall not be less than sixteen hours.

K. If a juvenile is committed to the department of juvenile corrections, the court shall specify the amount of the monetary assessment imposed pursuant to subsection G or H of this section.

L. After considering the length of stay guidelines developed pursuant to section 41-2816, subsection C, the court may set forth in the order of commitment the minimum period during which the juvenile shall remain in secure care while in the custody of the department of juvenile corrections. When the court awards a juvenile to the department of juvenile corrections or an institution or agency, it shall transmit with the order of commitment copies of a diagnostic psychological evaluation and educational assessment if one has been administered, copies of the case report, all other psychological and medical reports, restitution orders, any request for postadjudication notice that has been submitted by a victim and any other documents or records pertaining to the case requested by the department of juvenile corrections or an institution or agency. The department shall not release a juvenile from secure care before the juvenile completes the length of stay determined by the court in the commitment order unless the county attorney in the county from which the juvenile was committed requests the committing court to reduce the length of stay. The department may temporarily escort the juvenile from secure care pursuant to section 41-2804, may release the juvenile from secure care without a further court order after the juvenile completes the length of stay determined by the court or may retain the juvenile in secure care for any period subsequent to the completion of the length of stay in accordance with the law.

M. Written notice of the release of any juvenile pursuant to subsection L of this section shall be made to any victim requesting notice, the juvenile court that committed the juvenile and the county attorney of the county from which the juvenile was committed.

N. Notwithstanding any law to the contrary, if a person is under the supervision of the court as an adjudicated delinquent juvenile at the time the person reaches eighteen years of age, treatment services may be provided until the person reaches twenty-one years of age if the court, the person and the state agree to the provision of the treatment and a motion to transfer the person pursuant to

section 8-327 has not been filed or has been withdrawn. The court may terminate the provision of treatment services after the person reaches eighteen years of age if the court determines that any of the following applies:

1. The person is not progressing toward treatment goals.
2. The person terminates treatment.
3. The person commits a new offense after reaching eighteen years of age.
4. Continued treatment is not required or is not in the best interests of the state or the person.

O. On the request of a victim of an act that may have involved significant exposure as defined in section 13-1415 or that if committed by an adult would be a sexual offense, the prosecuting attorney shall petition the adjudicating court to require that the juvenile be tested for the presence of the human immunodeficiency virus. If the victim is a minor the prosecuting attorney shall file this petition at the request of the victim's parent or guardian. If the act committed against a victim is an act that if committed by an adult would be a sexual offense or the court determines that sufficient evidence exists to indicate that significant exposure occurred, it shall order the department of juvenile corrections or the department of health services to test the juvenile pursuant to section 13-1415. Notwithstanding any law to the contrary, the department of juvenile corrections and the department of health services shall release the test results only to the victim, the delinquent juvenile, the delinquent juvenile's parent or guardian and a minor victim's parent or guardian and shall counsel them regarding the meaning and health implications of the results.

P. If a juvenile has been adjudicated delinquent for an offense that if committed by an adult would be an offense listed in section 41-1750, subsection C, the court shall provide the department of public safety Arizona automated fingerprint identification system established in section 41-2411 with the juvenile's ten-print fingerprints, personal identification data and other pertinent information. If a juvenile has been committed to the department of juvenile corrections the department shall provide the fingerprints and information required by this subsection to the Arizona automated fingerprint identification system. If the juvenile's fingerprints and information have been previously submitted to the Arizona automated fingerprint identification system the information is not required to be resubmitted.

Q. Access to fingerprint records submitted pursuant to subsection P of this section shall be limited to the administration of criminal justice as defined in section 41-1750. Dissemination of fingerprint information shall be limited to the name of the juvenile, juvenile case number, date of adjudication and court of adjudication.

R. If a juvenile is adjudicated delinquent for an offense that if committed by an adult would be a misdemeanor, the court may prohibit the juvenile from carrying or possessing a firearm while the juvenile is under the jurisdiction of the department of juvenile corrections or the juvenile court.

S. If a juvenile is adjudicated delinquent for a violation of section 13-1602, subsection A, paragraph 5, the court shall order the juvenile to pay a fine of at least \$300 but not more than \$1,000. Any restitution ordered shall be paid in accordance with section 13-809, subsection A. The court may order the juvenile to perform community restitution in lieu of the payment for all or part of the fine if it is in the best interests of the juvenile. The court shall credit community restitution performed at a rate that is equal to the minimum wage prescribed by section 23-363, subsections A and B, rounded up to the nearest dollar. If the juvenile is convicted of a second or subsequent violation of section 13-

1602, subsection A, paragraph 5 and is ordered to perform community restitution, the court may order the parent or guardian of the juvenile to assist the juvenile in the performance of the community restitution if both of the following apply:

1. The parent or guardian had knowledge that the juvenile intended to engage in or was engaging in the conduct that gave rise to the violation.

2. The parent or guardian knowingly provided the juvenile with the means to engage in the conduct that gave rise to the violation.

T. If a juvenile is adjudicated delinquent for an offense involving the purchase, possession or consumption of spirituous liquor or a violation of title 13, chapter 34 and is placed on juvenile probation, the court may order the juvenile to submit to random drug and alcohol testing at least two times per week as a condition of probation.

U. If jurisdiction of the juvenile court is retained pursuant to section 8-202, subsection H, the court shall order continued probation supervision and treatment services until a child who has been adjudicated a delinquent juvenile reaches nineteen years of age or until otherwise terminated by the court. The court may terminate continued probation supervision or treatment services before the child's nineteenth birthday if the court determines that continued probation supervision or treatment is not required or is not in the best interests of the juvenile or the state or the juvenile commits a criminal offense after reaching eighteen years of age.

V. For the purposes of this section:

1. "First time felony juvenile offender" means a juvenile who is adjudicated delinquent for an offense that would be a felony offense if committed by an adult.

2. "Repeat felony juvenile offender" means a juvenile to whom both of the following apply:

- (a) Is adjudicated delinquent for an offense that would be a felony offense if committed by an adult.

- (b) Previously has been adjudicated a first time felony juvenile offender.

3. "Sexual offense" means oral sexual contact, sexual contact or sexual intercourse as defined in section 13-1401.

13-1415. Human immunodeficiency virus and sexually transmitted disease testing; victim's rights; petition; definitions

A. A defendant, including a defendant who is a minor, who is alleged to have committed a sexual offense or another offense involving significant exposure is subject to a court order that requires the defendant to submit to testing for the human immunodeficiency virus and other sexually transmitted diseases and to consent to the release of the test results to the victim.

B. Pursuant to subsection A of this section, the prosecuting attorney, if requested by the victim, or, if the victim is a minor, by the parent or guardian of the minor, shall petition the court for an order requiring that the person submit a specimen, to be determined by the submitting entity, for laboratory testing by the department of health services or another licensed laboratory for the presence of the human immunodeficiency virus and other sexually transmitted diseases. The court, within ten days,

shall determine if sufficient evidence exists to indicate that significant exposure occurred. If the court makes this finding or the act committed against the victim is a sexual offense it shall order that the testing be performed in compliance with rules adopted by the department of health services. The prosecuting attorney shall provide the victim's name and last known address of record to the department of health services for notification purposes. The victim's name and address are confidential, except that the department of health services may disclose the information to a local health department for victim notification purposes.

C. After a specimen has been tested pursuant to subsection B of this section, the laboratory that performed the test shall report the results to the submitting entity.

D. The submitting entity shall provide the results to the department of health services or a local health department. The department of health services or a local health department shall notify the victim of the results of the test conducted pursuant to subsection B of this section and shall counsel the victim regarding the health implications of the results.

E. The submitting entity or the department of health services shall notify the person tested of the results of the test conducted pursuant to subsection B of this section and shall counsel the person regarding the health implications of the results. If the submitting entity does not notify the person tested of the test results, the submitting entity shall provide both the name and last known address of record of the person tested and the test results to the department of health services or a local health department for notification purposes.

F. Notwithstanding any other law, copies of the test results shall be provided only to the victim of the crime, the person tested, the submitting entity and the department of health services.

G. For the purposes of this section:

1. "Sexual offense" means oral sexual contact, sexual contact or sexual intercourse as defined in section 13-1401.

2. "Sexually transmitted diseases" means:

(a) Chlamydia.

(b) Genital herpes.

(c) Gonorrhea.

(d) Syphilis.

(e) Trichomonas.

3. "Significant exposure" means contact of the victim's ruptured or broken skin or mucous membranes with a person's blood or body fluids, other than tears, saliva or perspiration, of a magnitude that the centers for disease control have epidemiologically demonstrated can result in transmission of the human immunodeficiency virus.

4. "Submitting entity" means one of the following:

- (a) A local health department.
- (b) A health unit of the state department of corrections.
- (c) A health unit of any detention facility.
- (d) A physician licensed pursuant to title 32, chapter 13, 14, 17 or 29.

36-664. Confidentiality; exceptions

A. A person who obtains communicable disease related information in the course of providing a health service or obtains that information from a health care provider pursuant to an authorization shall not disclose or be compelled to disclose that information except as authorized by state or federal law, including the health insurance portability and accountability act privacy standards (45 Code of Federal Regulations part 160 and part 164, subpart E), or pursuant to the following:

1. The protected person or, if the protected person lacks capacity to consent, the protected person's health care decision maker.
2. A health care provider or first responder who has had an occupational significant exposure risk to the protected person's blood or bodily fluid if the health care provider or first responder provides a written request that documents the occurrence and information regarding the nature of the occupational significant exposure risk and the report is reviewed and confirmed by a health care provider who is both licensed pursuant to title 32, chapter 13, 14, 15 or 17 and competent to determine a significant exposure risk. A health care provider who releases communicable disease information pursuant to this paragraph shall provide education and counseling to the person who has had the occupational significant exposure risk.
3. The department or a local health department for purposes of notifying a Good Samaritan pursuant to subsection E of this section.
4. An agent or employee of a health facility or health care provider to provide health services to the protected person or the protected person's child or for billing or reimbursement for health services.
5. A health facility or health care provider, in relation to procuring, processing, distributing or using a human body or a human body part, including organs, tissues, eyes, bones, arteries, blood, semen, milk or other body fluids, for use in medical education, research or therapy or for transplantation to another person.
6. A health facility or health care provider, or an organization, committee or individual designated by the health facility or health care provider, that is engaged in the review of professional practices, including the review of the quality, utilization or necessity of medical care, or an accreditation or oversight review organization responsible for the review of professional practices at a health facility or by a health care provider.
7. A private entity that accredits the health facility or health care provider and with whom the health facility or health care provider has an agreement requiring the agency to protect the confidentiality of patient information.
8. A federal, state, county or local health officer if disclosure is mandated by federal or state law.

9. A federal, state or local government agency authorized by law to receive the information. The agency is authorized to redisclose the information only pursuant to this article or as otherwise allowed by law.

10. An authorized employee or agent of a federal, state or local government agency that supervises or monitors the health care provider or health facility or administers the program under which the health service is provided. An authorized employee or agent includes only an employee or agent who, in the ordinary course of business of the government agency, has access to records relating to the care or treatment of the protected person.

11. A person, health care provider or health facility to which disclosure is ordered by a court or administrative body pursuant to section 36-665.

12. The industrial commission of Arizona or parties to an industrial commission of Arizona claim pursuant to section 23-908, subsection D and section 23-1043.02.

13. Insurance entities pursuant to section 20-448.01 and third-party payors or the payors' contractors.

14. Any person or entity as authorized by the patient or the patient's health care decision maker.

15. A person or entity as required by federal law.

16. The legal representative of the entity holding the information in order to secure legal advice.

17. A person or entity for research only if the research is conducted pursuant to applicable federal or state laws and regulations governing research.

18. A person or entity that provides services to the patient's health care provider, as defined in section 12-2291, and with whom the health care provider has a business associate agreement that requires the person or entity to protect the confidentiality of patient information as required by the health insurance portability and accountability act privacy standards (45 Code of Federal Regulations part 164, subpart E).

19. A county medical examiner or an alternate medical examiner directing an investigation into the circumstances surrounding a death pursuant to section 11-593.

B. At the request of the department of child safety or the department of economic security and in conjunction with the placement of children in foster care or for adoption or court-ordered placement, a health care provider shall disclose communicable disease information, including HIV-related information, to the department of child safety or the department of economic security.

C. A state, county or local health department or officer may disclose communicable disease related information if the disclosure is any of the following:

1. Specifically authorized or required by federal or state law.

2. Made pursuant to an authorization signed by the protected person or the protected person's health care decision maker.

3. Made to a contact of the protected person. The disclosure shall be made without identifying the protected person.

4. Made for the purposes of research as authorized by state and federal law.

5. Made to a nonprofit health information organization as defined in section 36-3801 that is designated by the department as this state's official health information exchange organization.

D. The director may authorize the release of information that identifies the protected person to the national center for health statistics of the United States public health service for the purposes of conducting a search of the national death index.

E. The department or a local health department shall disclose communicable disease related information to a Good Samaritan who submits a request to the department or the local health department. The request shall document the occurrence of the accident, fire or other life-threatening emergency and shall include information regarding the nature of the significant exposure risk. The department shall adopt rules that prescribe standards of significant exposure risk based on the best available medical evidence. The department shall adopt rules that establish procedures for processing requests from Good Samaritans pursuant to this subsection. The rules shall provide that the disclosure to the Good Samaritan not reveal the protected person's name and be accompanied by a written statement that warns the Good Samaritan that the confidentiality of the information is protected by state law.

F. An authorization to release communicable disease related information shall be signed by the protected person or, if the protected person lacks capacity to consent, the protected person's health care decision maker. An authorization shall be dated and shall specify to whom disclosure is authorized, the purpose for disclosure and the time period during which the release is effective. A general authorization for the release of medical or other information, including communicable disease related information, is not an authorization for the release of HIV-related information unless the authorization specifically indicates its purpose as an authorization for the release of confidential HIV-related information and complies with the requirements of this section.

G. A person to whom communicable disease related information is disclosed pursuant to this section shall not disclose the information to another person except as authorized by this section. This subsection does not apply to the protected person or a protected person's health care decision maker.

H. This section does not prohibit the listing of communicable disease related information, including acquired immune deficiency syndrome, HIV-related illness or HIV infection, in a certificate of death, autopsy report or other related document that is prepared pursuant to law to document the cause of death or that is prepared to release a body to a funeral director. This section does not modify a law or rule relating to access to death certificates, autopsy reports or other related documents.

I. If a person in possession of HIV-related information reasonably believes that an identifiable third party is at risk of HIV infection, that person may report that risk to the department. The report shall be in writing and include the name and address of the identifiable third party and the name and address of the person making the report. The department shall contact the person at risk pursuant to rules adopted by the department. The department employee making the initial contact shall have expertise in counseling persons who have been exposed to or tested positive for HIV or acquired immune deficiency syndrome.

J. Except as otherwise provided pursuant to this article or subject to an order or search warrant issued pursuant to section 36-665, a person who receives HIV-related information in the course of providing a health service or pursuant to a release of HIV-related information shall not disclose that information to another person or legal entity or be compelled by subpoena, order, search warrant or other judicial process to disclose that information to another person or legal entity.

K. This section and sections 36-666, 36-667 and 36-668 do not apply to persons or entities that are subject to regulation under title 20.

E

CONSIDERATION AND DISCUSSION OF PROPOSED AMENDMENTS TO, OR REPEAL OF,
STATE LAND DEPARTMENT'S RULES IN TITLE 12, CHAPTER 5, ARTICLES 7-9 AND 11
PURSUANT TO A.R.S. § 41-1056(E)



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM

MEETING DATE: June 6, 2023

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 22, 2023

SUBJECT: Proposed Amendments to State Land Department Rules in Title 12, Chapter 5, Articles 7-9 and 11 Pursuant to A.R.S. § 41-1056(E)

Summary

The State Land Department (Department) submitted a Five-Year Review Report (5YRR) for Title 12, Chapter 5, Articles 7-9, 11 on July 29, 2022. Therein, the Department identified rules that were inconsistent, not clear, concise, and understandable, not enforced as written, and overly burdensome. However, the Department did not put forth a proposed course of action to address the problematic rules. Instead, the Department stated, "[f]iduciary duties to Trust beneficiaries, current economic conditions, and continuous constraints on internal resources limit the Department's allocation of resources to rulemaking, so the Department does not intend to amend any of these rules at this time. As resources and stakeholder involvement allow, the Department may consider a rulemaking to any of its rules in Chapter 5, Title 12."

Council staff conducted a review of the Department's previous 5YRRs for these rules and in both the Department's two prior 5YRRs, while the Department identified the same significant issues with its rules, and put forth proposed courses of action to conduct rulemaking to address these issues, the Department did not follow through. As such, the Department's rules have contained significant issues for more than ten (10) years.¹

¹ In the 2012 5YRR, the Department indicated the rules "adversely impact Department staff and lessees due to the discrepancies with statutes, other rules and current Department procedures. They do not

Council staff noted these concerns in the memo dated October 12, 2022 and the 5YRR was considered by the Council at the October 25, 2022 Study Session and November 1, 2022 Council Meeting. At the October 25, 2022 Study Session, the several Council members also voiced their concern with the ongoing lack of clarity and consistency with the Department's rules and their impact on stakeholders as well as concerns regarding implementation of Department policies and procedures that do not align with the Department's rules.

At the November 1, 2023 Council Meeting, the Department indicated it could not commit resources to rulemaking for the rules in Title 12, Chapter 5, Articles 7-9, 11 at that time. This was due to ongoing constraints including Legislative funding and staff turnover. The Department also indicated they had unprecedented economic activity due to the number of options they were completing with fewer resources. The Department indicated any rulemaking activity undertaken would be detrimental to their beneficiaries and customers and would impact the services they could provide to customers and processing new applications and administering the current leases.

The Council voted to return the 5YRR for the rules in Title 12, Chapter 5, Articles 7-9, 11 in whole pursuant to A.R.S. § 41-1056(C) for its lack of a proposed course of action to address issues identified in the report under A.R.S. § 41-1056(A). As a separate matter, the Council voted, pursuant to A.R.S. § 41-1056(E), to require the Department to propose amendments to the rules that the Department's analysis in its 5YRR demonstrated were materially flawed by being not authorized by statute, inconsistent with other statutes, rules, or agency enforcement policies, not clear, concise, and understandable, and not imposing the least burden to persons regulated by the rule as necessary to achieve the underlying regulatory objective of the rule. The Council voted for the Department to propose amendments by the May 31, 2023 Study Session and June 6, 2023 Council Meeting.

Of note, at the December 6, 2022 Council Meeting, the Council voted to direct the Department to resubmit the 5YRR for Title 12, Chapter 5, Articles 7-9, 11 with an updated proposed course of action by July 1, 2023. Furthermore, the Council voted to require the Department to conduct a review of the rules in Title 12, Chapter 5, Articles 1, 2, 4, and 5 by July 1, 2023 and Articles 12, 17-25 by November 1, 2023 pursuant to A.R.S. § 41-1056(D).

On May 22, 2023, Council staff received an extension request from the Department to submit proposed amendments to the rules in Title 12, Chapter 5, Articles 7-9, 11 by November 1, 2023. Pursuant to A.R.S. § 41-1056(F), an agency may request an extension of no longer than one year from the date specified by the council pursuant to A.R.S. § 41-1056(E) by sending a

accomplish what the law says they will and it is misleading and confusing to the public and costs the Department staff time and resources it does not have." In the 2017 5YRR the Department stated it "recognizes the flaws within the rules analyzed herein and desires to eventually amend some of the rules to strike language which is inconsistent with statute, agency operations, or the Arizona Constitution; amend language for clarity and conciseness; and add, amend, and remove definitions which are redundant or inaccurate."

written request to the council that: 1) identifies the reason for the extension request and 2) demonstrates good cause for the extension.

Additionally, the Department is requesting an extension of four months to resubmit the 5YRR for Title 12, Chapter 5, Articles 7-9, 11 and conduct a review of Title 12, Chapter 5, Articles 1, 2, 4, and 5 by November 1, 2023. The Department is also requesting a similar four month extension to conduct a review of the rules in Title 12, Chapter 5, Articles 12, 17-25 by March 1, 2024.

Katie Hobbs
Governor



Robyn Sahid
Commissioner

Arizona State Land Department

1110 West Washington, Phoenix, Arizona 85007
(602) 542-4631

May 22, 2023

Arizona Department of Administration
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 402
Phoenix, AZ 85007

Attn: Nicole Sornsin, Chairperson

RE: Arizona State Land Department's Comprehensive Rule Review Schedule

Dear Chairperson Sornsin:

I am writing in regard to the Arizona State Land Department's ("ASLD") comprehensive rule review schedule. During its December 2022 meeting the Governor's Regulatory Review Council ("GRRC") voted to require the ASLD to submit reports for all of its rules within A.A.C. Title 12, Chapter 5 in two phases: Articles 1-11 due July 1 and Articles 12-25 due November 1, 2023.

My work at the ASLD began March 13, 2023. To date, I have spent a great deal of time with stakeholders and industries, as well as ASLD staff, to understand the critical issues that the ASLD should be focused on improving. The feedback from these interactions have been resoundingly clear - ASLD-specific rules are outdated, inhibit transactional efficiency (processing applications), and do not convey clear expectations to the public. This is in direct conflict with how I want the ASLD to function.

I extend a sincere commitment to GRRC, and to the affected industries and partners, that the ASLD will produce the rules package reports, as requested, that will delineate clear expectations, promote transparency, and ensure customer interface with the ASLD is efficient.

To ensure this rulemaking effort is meaningful and responsive to the concerns that have been conveyed to me thus far, I am humbly seeking your support to accomplish this important project. The ASLD staff have been working diligently toward completion of the first rule package – however, given the complexities and workload required to produce meaningful changes, the Department will likely not be able to meet the deadlines for either rule package.

I am respectfully requesting GRRC's approval to extend the deadline for each package by four months; Articles 1-12 to be November 1, 2023, and Articles 13-25 to be March 1, 2024.

Additionally, GRRC staff contacted ASLD last week reminding us that the proposed rulemaking for Articles 7, 8, 9, and 11 is due May 31. This due date was pursuant to a November 2022 GRRC vote. The ASLD acknowledges the November 2022 GRRC vote; however, perhaps mistakenly, the ASLD understood that the December GRRC vote superseded its earlier decision. As a result, the ASLD has only responded in action to the December 2022 vote. I, again, respectfully request GRRC's approval to include the rulemaking for Articles 7, 8, 9 and 11 in the first package as directed in December 2022 GRRC vote.

Thank you in advance for your favorable consideration of these requests. I look forward to working with you during my tenure to improve public confidence in the decisions and actions of the ASLD that should be clearly defined in administrative rule.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robyn Sahid". The signature is fluid and cursive, with the first name "Robyn" and last name "Sahid" clearly distinguishable.

Robyn Sahid, Commissioner
Arizona State Land Department

Douglas A. Ducey
Governor



Lisa A. Atkins
Commissioner

Arizona State Land Department

1110 West Washington, Phoenix, AZ 85007
(602) 542-4631

July 29, 2022

Arizona Department of Administration
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 402
Phoenix, AZ 85007

Attn: Nicole Sornsin, Chairperson

RE: Arizona State Land Department's 5 Year Rule Review; A.A.C. Title 12, Chapter 5, Articles 7, 8, 9, & 11

Dear Chairperson Sornsin:

The Arizona State Land Department ("Department") submits for Council approval the accompanying Five-Year Review Report for A.A.C. Title 12, Chapter 5, Articles 7, 8, 9, and 11. This document complies with the requirements under A.R.S. § 41-1056. The Department certifies that it is in compliance with the requirements of A.R.S. § 41-1091.

Should you have any questions, please do not hesitate to contact Angela Calabresi, Administrative Counsel, at (602) 542-2632 or acalabresi@azland.gov.

Sincerely,

A handwritten signature in blue ink that reads "Paul Peterson".

Paul Peterson
Senior Administrative Counsel

Enclosures

c: Angela Calabresi, Administrative Counsel

FIVE-YEAR RULE REVIEW REPORT

Submitted to

THE GOVERNOR'S REGULATORY REVIEW COUNCIL



ARIZONA STATE LAND DEPARTMENT

"Serving Arizona's Schools and Public Institutions Since 1915"

**TITLE 12 – Natural Resources
CHAPTER 5 – State Land Department**

Article 7 – Special Leasing Provisions

Article 8 – Right-of-way

Article 9 – Exchanges

Article 11 – Special Use Permits

Submitted July 29, 2022

Abstract of Rules Analyses

The Administrative Procedures Act (“APA”) mandates a periodic review of agency rules. A.R.S. § 41-1056 provides criteria by which an agency must examine each rule, compile the examination into a report, and submit the report to the Governor’s Regulatory Review Council (the “Council”) for review. The Arizona State Land Department (the “Department”) is scheduled to file a review of its rules under Title 12, Chapter 5, Articles 7, 8, 9 and 11 with the Council by the end of July 2022. The Department’s rules are published in the Arizona Administrative Code (“A.A.C.”) Title 12, Chapter 5, Articles 1 through 25 and can be found on the Arizona Secretary of State’s website.

The Department is not a regulatory agency. It functions as the trustee of the State’s 9.2 million acres of land and associated natural resources held in trust (“Trust Land”) for enumerated beneficiaries, the largest of which is K-12 public schools. The trust status of the lands granted to the State imposes obligations and constraints, specifically fiduciary duties to the beneficiaries, that would not apply if the State held the land outright. The Department’s management of the Trust is governed by the New Mexico-Arizona Enabling Act (Sections 24-30), the Arizona Constitution (Article X), and state statutes (Arizona Revised Statutes Titles 27 and 37). In addition, case law governs the Department’s procedures and management in that it interprets the Department’s governing legislation.

Within this report, the Department evaluated 11 separate rules relating to Articles 7, 8, 9 and 11. Article 7 governing Special Leasing Provisions contains three rules: agricultural leases (R12-5-702), grazing leases (R12-5-703), and commercial leases (R12-5-705). Article 8 governing Right-of-way contains two rules: one pertaining to rights-of-way generally (R12-5-801) and one specifically for Reservoir, Dams, and Other Sites (R12-5-802). Article 9 governing Exchanges contains five rules pertaining to scope of rules (R12-5-901), definitions (R12-5-902), application (R12-5-904), maps and photographs (R12-5-910), and controversy as to title or leasehold rights (R12-5-918). Article 11 governing Special Use Permits (also known as Special Land Use Permits) contains one rule (R12-5-1101 Policy; Use of Lands).

Legend of Factors Used in Analysis pursuant to A.A.C. R1-6-301(A)

Each rule required to be reviewed in this report has been analyzed according to the following factors:

1. General and specific authority, including any statute that authorizes the agency to make rules;
2. Objective of the rule, including the purpose for the existence of the rule;
3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached;
4. Consistency of the rule with state and federal statutes and other rules made by the agency;
5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement;
6. Clarity, conciseness, and understandability of the rule;
7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report;
8. A comparison of the estimated economic, small business and consumer impact with prior economic impact statement or assessment;
9. Any analysis submitted to the agency by another person regarding the rule's impact on this State's business competitiveness;
10. If applicable, how the agency completed the course of action indicated in the agency's previous five- year review report;
11. A determination that the rule's probable benefits outweigh the probable costs and that 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;
12. A determination after analysis 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;
13. For a rule adopted after July 29, 2010, that requires issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 41-1037; and
14. Course of action the agency proposes to take regarding each rule.

Identical Information for All the Rules

Pursuant to A.A.C. R1-6-301(B), rules reviewed within the same report that render identical answers for any factor or factors delineated above shall have those identical answers provided only once. The rules contained in this report are identical in the following ways:

7. Written Criticisms:

No written criticisms of this rule were received in the last five years and since the last 5YRRR was submitted to GRRC.

8. Economic impact comparison:

There is no current EIS to compare with a previous EIS. However, specific revenues and general economic impacts of activities that are governed by these rules are included in this EIS following the analyses of rules.

9. External Analysis of impact of State's business competitiveness:

The Department has not received any external analysis of the rules' impact on Arizona's business competitive position.

10. Previous 5yRR Report Course of Action:

The Department previously submitted a review of the rules in Articles 7, 8, 9, & 11 in 2017 and stated, at that time, that many of the rules should be amended. The Department intended to begin that process by March 2019. When resources allowed, the Department pursued a rulemaking for a separate set of Articles but did not attempt to amend the rules herein. Fiduciary duties to Trust beneficiaries, current economic conditions, and continuous constraints on internal resources limit the Department's allocation of resources to rulemaking.

11. Cost v. Benefit and Least Burden Analysis:

The rules impose the least regulatory burden and costs to persons regulated by them because the costs and burdens mainly lie in Department administration.

12. Comparison with Federal Law:

There are no federal laws that apply to these rules.

13. A.R.S. § 41-1037 Compliance:

The rules were adopted prior to July 29, 2010, so this factor was not analyzed for § 41-1037 Compliance.

14. Proposed Course of Action:

Fiduciary duties to Trust beneficiaries, current economic conditions, and continuous constraints on internal resources limit the Department's allocation of resources to rulemaking, so the Department does not intend to amend any of these rules at this time. As

resources and stakeholder involvement allow, the Department may consider a rulemaking to any of its rules in Chapter 5, Title 12.

ANALYSES OF RULES

Article 7. Special Leasing Provisions

A.A.C. Rule 12-5-702 Agricultural Leases

1. **Statutory Authority:**
Enabling Act, § 28; A.R.S. §§ 37-101, 37-211, 37-281, & 37-285
2. **Objective:**
The objectives of the rule are to clarify and direct the application process for agricultural leasing and agricultural leasing requirements, including development and improvement requirements.
3. **Effectiveness:**
The rule is effective in helping to articulate agricultural lease requirements for new and renewal applicants.
4. **Consistency:**
The rule's subsections are consistent except that subsection (H)(1)(b) is inconsistent with the filing fees delineated in A.A.C. R 12-5-1201, which was promulgated after this rule. The difference in the fee is \$50, and most renewal applicants are already aware of this, so the discrepancy does not cause any issue.
5. **Enforcement policy:**
The rule is enforced.
6. **Clear, concise, and understandable:**
The rule is generally clear, concise, and understandable.

A.A.C. Rule 12-5-703 Commercial Leases

- 1. Statutory Authority:**
A.R.S. § 37-132
- 2. Objective:**
The objectives of the rule are to direct the application process for commercial leases and to clarify commercial lease requirements and restrictions.
- 3. Effectiveness:**
The rule is effective in articulating commercial lease requirements.
- 4. Consistency:**
The rule is consistent with statute and agency operations.
- 5. Enforcement policy:**
The rule is enforced, and conditions and rights of lessees are articulated in lease contracts.
- 6. Clear, concise, and understandable:**
The rule is clear, concise, or understandable and informs commercial lessees information in one place of additional lease conditions and rights.

A.A.C. Rule 12-5-705 Grazing Leases

1. Statutory Authority:

A.R.S. §§ 37-132, 37-283, & 37-285

2. Objective:

The objectives of the rule are to clarify and direct the application process for grazing leases and to clarify grazing lease requirements and restrictions.

3. Effectiveness:

The rule is mostly effective in articulating grazing lease requirements. However, some subsections of the rule are ineffective where inconsistent with statute or agency operations, as noted below.

4. Consistency:

The rule is inconsistent in the following way: Subsection (C) is inconsistent in that: it specifies only one section may be applied for per application for an initial lease whereas the Department currently allows new and renewal applications to include an entire ranch unit covering multiple sections, while a fee is charged for each section covered in the application pursuant to R12-5-1201.

5. Enforcement policy:

The rule is enforced.

6. Clear, concise, and understandable:

The rule is not clear, concise, and understandable.

Article 8. Right-of-way

A.A.C. Rule 12-5-801 Right-of-way

1. Statutory Authority:

A.R.S. §§ 37-107, 37-132, 37-287 & 37-461

2. Objective:

The objective of this rule is to inform Right-of-way applicants of the application process and Right-of-way grantees of the uses and restrictions pertaining to Right-of-way instruments on State Land.

3. Effectiveness:

The rule is effective in articulating its objective, as noted below. Further, subsection (C)(5)(c)(iii) and (D)(8) articulates an overly burdensome payment method for municipalities and other government entities.

4. Consistency:

The rule is mostly consistent, yet inconsistent in the following minor ways:

Subsection (C)(2) is inconsistent with agency operations as the agency does not require an application for each county crossed because it would be overly burdensome to implement;

Subsection (C)(8)(c) is inconsistent with agency operations because the commencement date is not the date that the instrument is mailed to the applicant, as stated, but rather it is the date of in-house review, or, if required, the day after the review by the Board of Land Appeals or of the auction;

Subsection (E)(1)(a) is inconsistent with agency operations because the Department does not require applications to place improvements for Right-of-Way grantees as it does for Commercial Lessees.

5. Enforcement policy:

The rule is enforced.

6. Clear, concise, and understandable:

The rule is clear, concise, and understandable.

A.A.C. Rule 12-5-802 Reservoir Dams and Other Sites

1. Statutory Authority:

A.R.S. §§ 37-132 & 37-461

2. Objective:

The objective of this rule is to notify reservoir, dam, and other site lease applicants and lessees, as well as the public, of the Department's requirements for a reservoir, dam, and site lease application and lease, as well as the rights and obligations of such lessees.

3. Effectiveness:

The rule is effective.

4. Consistency:

The rule is consistent in part, yet inconsistent in the following way: Subsection (B) is partially inconsistent with A.R.S. § 37-461(C) in that site leases in excess of ten years are not, in fact, required to be advertised and sold at public auction – it is fifty years.

5. Enforcement policy:

The rule is enforced except as to auctions of site leases for terms over 10 years but not over 50 years.

6. Clear, concise, and understandable:

The rule is clear, concise, and understandable.

Article 9. Exchanges

A.A.C. Rule 12-5-901 Scope of Rules

- 1. Statutory Authority:**
A.R.S. § 37-604
- 2. Objective:**
The objective of the rule is to inform exchange applicants of the scope of this rule and succeeding rules, i.e. R12-5-902 et seq.
- 3. Effectiveness:**
The rule is effective in that it articulates the scope of subsequent rules.
- 4. Consistency:**
The rule is consistent.
- 5. Enforcement policy:**
The rule would be enforced as a statement of scope of purpose for subsequent rules if and when the Department executes an exchange.
- 6. Clear, concise, and understandable:**
The rule is clear, concise, and understandable.

A.A.C. Rule 12-5-902 Definitions

- 1. Statutory Authority:**
A.R.S. § 37-604
- 2. Objective:**
The purpose of this rule is to define terms used within Article 9, Chapter 5, Title 12 of the A.A.C.
- 3. Effectiveness:**
The rule is effective.
- 4. Consistency:**
The rule is consistent.
- 5. Enforcement policy:**
The rule would be enforced if and when the Department executes an exchange.
- 6. Clear, concise, and understandable:**
The rule is clear and understandable.

A.A.C. Rule 12-5-904 Application

- 1. Statutory Authority:**
A.R.S. § 37-604
- 2. Objective:**
The purpose of this rule is to inform exchange applicants of the exchange application requirements.
- 3. Effectiveness:**
The rule is effective.
- 4. Consistency:**
The rule is consistent.
- 5. Enforcement policy:**
The Department would enforce the rule if presented with an exchange applicant.
- 6. Clear, concise, and understandable:**
The rule is clear, concise, and understandable.

A.A.C. Rule 12-5-910 Maps and Photographs

- 1. Statutory Authority:**
A.R.S. § 37-604
- 2. Objective:**
The purpose of this rule is to inform exchange applicants of map and photograph requirements.
- 3. Effectiveness:**
The rule is effective.
- 4. Consistency:**
The rule is consistent with statute.
- 5. Enforcement policy:**
The Department would enforce the rule if presented with an exchange applicant.
- 6. Clear, concise, and understandable:**
The rule is clear, concise, and understandable.

A.A.C. Rule 12-5-918 Controversy as to Title or Leasehold Rights

- 1. Statutory Authority:**
A.R.S. § 37-604
- 2. Objective:**
The purpose of this rule is to give the Department the right to hold in suspension or reject an application for exchange of State Lands when there are title defects or conflicting interests.
- 3. Effectiveness:**
The rule is effective.
- 4. Consistency:**
The rule is consistent.
- 5. Enforcement policy:**
The Department would enforce the rule if presented with an exchange applicant.
- 6. Clear, concise, and understandable:**
The rule is clear, concise, and understandable.

Article 11. Special Use Provisions

A.A.C. Rule 12-5-1101 Policy; Use of Lands

- 1. Statutory Authority:**
A.R.S. § 37-132
- 2. Objective:**
The objective of this rule is to demarcate the role and use of Special Land Use Permits and to provide guidance to Special Land Use Permit applicants.
- 3. Effectiveness:**
Though the rule attempts to achieve its stated objective and has done so successfully in the past, it is inconsistent and lacks clarity.
- 4. Consistency:**
The rule itself is mostly consistent, except Subsection (12)(a) is inconsistent with A.A.C. R12-5-1201 governing fees which the Department adheres to.
- 5. Enforcement policy:**
The rule is enforced except as to the fees promulgated in R12-5-1201 that supersede this rule.
- 6. Clear, concise, and understandable:**
The rule is clear, concise, and understandable.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

As of Fiscal Year 2021, the Department held: 348 Agricultural Leases covering 157,920 acres of Trust Land which generated \$4,265,005 in income; 1,196 Grazing Leases covering 8,344,576 acres which generated \$2,749,775 in income; 273 Commercial Leases covering 70,274 acres which generated \$31,888,877 in income; 7,818 Right-of-Way Grants covering 128,567 acres which generated \$9,614,946 in income; and 652 Use Permits covering 600,900 which generated \$4,419,661 in income.

The rental payments from all of the above leases are deposited into funds managed by the State Treasurer and distributed directly to the beneficiaries on a monthly basis. In addition to the direct impacts to the 13 beneficiaries of Trust Land, activities on Trust Lands provides opportunities for the labor force and businesses that supply services and goods directly, as well as support for local businesses that sell services, consumer goods, groceries, and other personal and family needs. Economic development is increased by rights-of-way that provide for the development of roads and utilities, and taxes are paid by the companies and individuals who engage in activities on Trust Land. The taxes are then utilized by the State, county, and local governments to support schools, create infrastructure, and provide government and community services.