D-1.

DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS
Title 20, Chapter 4, Articles 9, 18 & 19

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: September 4, 2024

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

FROM: Council Staff

DATE: August 16, 2024

SUBJECT: **DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS**
Title 20, Chapter 4, Articles 9, 18 & 19

Summary

This Five-Year Review Report (5YRR) from the Department of Insurance and Financial Institutions (Department) relates to eighteen (18) rules in Title 20, Chapter 4, Article 9 regarding Mortgage Brokers, thirteen (13) rules in Article 18 regarding Mortgage Bankers, and eleven (11) rules in Article 19 regarding Commercial Mortgage Bankers.

In the prior 5YRR for these rules, which was approved by the Council in September 2019, the Department proposed to amend rules in each Article. However, the Department did not complete the prior proposed course of action either by not completing the proposed rulemaking or because, after further review of the rule, the Department has determined that the rule was clear and effective in its purpose.

Proposed Action

In the current report, the Department indicates it has prepared a Notice of Proposed Rulemaking to implement the amendments outlined in more detail below and will publish that notice and begin the rulemaking process on Articles 9, 18 and 19 as soon as it receives permission from the Governor's Office to proceed. TheDepartment indicates it hopes to enact the changes to these Articles before the end of 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 indicates it has not identified any economic impact that is significantly different from that projected in the economic impact statement for the last rulemaking on these articles. Stakeholders include the Department, mortgage brokers (Article 9), mortgage bankers (Article 18), and commercial mortgage bankers (Article 19).

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 states that the rules' benefits outweigh, within this State, the probable costs of the rules and 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.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department 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 Department indicates the rules in Articles 9, 18, and 19 are not clear, concise, and understandable as they are outdated.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Department indicates the rules in Articles 9, 18, and 19 contain inconsistent statutory citations.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department indicates the rules are generally effective in achieving their objections. However, the Department indicates the rules in Article 9 were last updated over 10 years ago. The Department indicates the rules need to be updated to reflect the current name of the Department, the replacement of "Superintendent" with "Director," to modernize the rules, to modify experience requirements, to align the fees with the statutory fee structure, to update and correct statutory and regulation cites, to allow the use of electronic recordkeeping, to reflect

federal documentation requirements and to add a reporting requirement for branch office managers.

The Department indicates the rules in Article 18 were last updated over 10 years ago, with most Sections not updated since their adoption in 1999. The Department indicates the rules need to be updated to reflect the replacement of "Superintendent" with "Director," to modernize the rules, to modify experience requirements, to remove some fees, to update and correct statutory and regulation cites, to allow the use of electronic recordkeeping, to reflect federal documentation requirements and to add a reporting requirement for branch office managers.

The Department indicates the rules in Article 18 were last updated about 25 years ago when the Department adopted the Article in 1999. The Department indicates the rules need to be updated to replace "Superintendent" with "Director," to modernize the rules, to modify experience requirements, to remove a fee, to update and correct statutory and regulation cites, to allow the use of electronic recordkeeping, and to add a reporting requirement for branch office managers.

8. Has the agency analyzed the current enforcement status of the rules?

The Department indicates it currently enforces the correct federal statutes and regulations in instances when they are not cited correctly in the rules.

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 the rules in Article 9 and 18 are not more stringent than corresponding federal laws. The Department indicates there are no corresponding federal laws for the rules in Article 19.

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 Department indicates the rules in Article 9, 18, and 19 were enacted in 1991, 1999, and 1999, respectively.

11. Conclusion

his Five-Year Review Report (5YRR) from the Department of Insurance and Financial Institutions (Department) relates to eighteen (18) rules in Article 9 regarding Mortgage Brokers, thirteen (13) rules in Article 18 regarding Mortgage Bankers, and eleven (11) rules in Article 19 regarding Commercial Mortgage Bankers. The Department indicates it has prepared a Notice of Proposed Rulemaking to implement the amendments outlined in more detail below and will publish that notice and begin the rulemaking process on Articles 9, 18 and 19 as soon as it receives permission from the Governor's Office to proceed. TheDepartment indicates it hopes to enact the changes to these Articles before the end of 2024.

Council staff recommends approval of this report.

Arizona Department of Insurance and Financial Institutions
100 North 15th Avenue, Suite 261, Phoenix, AZ 85007-2624
Phone: (602) 364-3100 | Web: https://difi.az.gov

Katie Hobbs, Governor
Barbara D. Richardson, Cabinet Executive Officer, Executive Deputy Director

June 11, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, Chair
Governor's Regulatory Review Council
100 North 15th Ave., Suite 305
Phoenix, AZ 85007

RE: Five Year Review Report
Arizona Department of Insurance and Financial Institutions ("Department")
Title 20, Chapter 4, Articles 9, 18, and 19

Dear Chairperson Klein:

Please find enclosed the Five-Year Review Report of the Department for Title 20 (Commerce, Financial Institutions, and Insurance), Chapter 4 (Department of Insurance and Financial Institutions – Financial Institutions), Articles 9 (Mortgage Brokers), 18 (Mortgage Bankers), and 19 (Commercial Mortgage Bankers) which is due on or before June 30, 2024.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Mary Kosinski at (602) 364-3476 or mary.kosinski@difi.az.gov.

Sincerely,

Barbara D. Richardson

Barbara D. Richardson
Cabinet Executive Officer
Executive Deputy Director

Department of Insurance and Financial Institutions

5 YEAR REVIEW REPORT

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 4. Department of Insurance and Financial Institutions – Financial Institutions

Article 9. Mortgage Brokers

June 2024

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 6-123(2)

Specific Statutory Authority: A.R.S. §§ 6-126, 6-901, 6-902, 6-902.01, 6-903, 6-904, 6-906, 6-907, 6-908, 6-909, 6-912, and 6-913

2. The objective of each rule:

Rule	Objective
R20-4-903	**Exemption for an Entity Regulated by an Agency of this State, Other States, or by the United States.** The objective of the rule is to clarify the persons exempted under A.R.S. § 6-902(A)(1) and the level of regulation required to qualify those persons for the exemption.
R20-4-906	**Equivalent and Related Experience.** The objective of the rule is to clarify the types and duration of experience allowed by statute to substitute for the requirement of three years' experience as a mortgage broker pursuant to A.R.S. § 6-903(C)(1) or as a responsible individual under A.R.S. § 6-903(H).
R20-4-907	**Course of Study.** The objective of the rule is to specify the subject matter included in a course of study that satisfies the statute, and to clarify the manner by which vendors shall obtain the Superintendent's approval of a course of study.
R20-4-911	**Qualified Replacement Responsible Individual.** The objective of the rule is to specify time limits imposed on a licensee to fully qualify its replacement responsible individual, and to clarify the time period within which a licensee shall cure the failure of its replacement responsible individual to qualify.
R20-4-912	**Restrictions on the Term of a Cash Alternative.** The objective of the rule is to specify the minimum term of a certificate of deposit or investment certificate placed with the Superintendent as an alternative to a surety bond.
R20-4-915	**Requirements for a Person Intended to Oversee a Branch Office.** The objective of the rule is to clarify the language of the statute requiring a licensee to designate a person to oversee the operations of each licensed branch office.
R20-4-916	**Notification of Change of Address.** The objective of the rule is to specify the form and timing of the address change notice required by statute.

R20-4-917	**Recordkeeping Requirements.** The objective of the rule is to specify the records a licensee is required to have available.
R20-4-919	**Deposit of Monies Received by a Mortgage Broker.** The objective of the rule is to specify the time frame allowed by the statute's requirement that escrow funds be deposited "immediately."
R20-4-920	**Requirements for the Testing Committee.** The objective of the rule is to specify the methods used to appoint and administer the statutory testing committee.
R20-4-921	**Authorizations to Complete Blank Spaces.** The objective of the rule is to specify a legally sufficient form of notice that may be used to advise a borrower of their rights when asked to sign a lending document containing blank spaces.
R20-4-922	**Determining Loan Amounts.** The objective of the rule is to specify what constitutes a mortgage loan amount as it relates to the statute.
R20-4-923	**Delay or Cause Delay.** The objective of the rule is to clarify the scope of the statutory prohibition on delaying or causing delay in the closing of a loan.
R20-4-924	**Receipt and Disbursement of Monies.** The objective of the rule is to clarify the scope of the statutory prohibition on receiving or disbursing monies.
R20-4-925	**Waiver of Examination and Course of Study.** The objective of the rule is to clarify that the Superintendent's statutory waiver extends to the applicant's or licensee's responsible individual.
R20-4-926	**Acquisition of Additional Interest in Licensee by Majority Owner.** The objective of the rule is to clarify the circumstances under which mere notice to the Superintendent will satisfy the Department, in spite of statutory criteria required for consent to an acquisition of an interest.
R20-4-927	**Conversion to Commercial Mortgage Broker License.** The objective of the rule is to establish the process that allows for a mortgage broker to convert their license to a commercial mortgage broker license.
R20-4-928	**Certificate of Exemption Application and Renewal.** The objective of the rule is to establish the fee for applying for and renewing a certificate of exemption.

3. Are the rules effective in achieving their objectives? **Yes X No __**

However, the last update to these rules occurred over 10 years ago (2012). The rules need to be updated to reflect the current name of the Department, the replacement of "Superintendent" with "Director," to modernize the rules, to modify experience requirements, to align the fees with the statutory fee structure, to update and correct statutory and regulation cites, to allow the use of electronic recordkeeping, to reflect federal documentation requirements and to add a reporting requirement for branch office managers.

4. Are the rules consistent with other rules and statutes? **Yes __ No _X_**

The current rules contain incorrect statutory cites.

5. Are the rules enforced as written? **Yes ___ No _X_**

The Department enforces the correct federal statutes and regulations which are not cited correctly in the rules.

6. Are the rules clear, concise, and understandable? **Yes ___ No _X_**

The current rules are confusing because they are outdated.

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 Department has not identified any economic impact that is significantly different from that projected in the economic impact statement for last rulemaking on this Article (18 A.A.R. 2622, October 19, 2012). At that time, the Department stated that "The overall economic impact of these rules on private and public business is projected to be minimal." The Department is unaware of any economic impact produced by the current, outdated rules.

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?

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

2019 Five Year Review Report Proposed Course of Action:

R20-4-907: In the previous review of this rule, the Department indicated that it would amend this rule as advised by legal counsel. After further review of the rule, the Department has determined that the rule is clear and effective in its purpose.

R20-4-915: In the previous review of this rule, the Department indicated that it would amend this rule if advised from legal counsel. After further review of the rule, the Department has determined that the rule is clear and effective in its purpose.

R20-4-917: The Department plans on amending this rule to update necessary citations to federal law after further advisement from legal counsel. The Department will request an exemption to Executive Order 2019-01 and if granted, will update the references to federal law within the rule by the end of 2020.

Response to Item 10:

The Department has prepared a rulemaking to accomplish many changes to this Article including the updates it proposed for Section R20-4-917. It submitted a request to initiate the rulemaking process for this Article to the Governor's Office on March 27, 2024.

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 rule's benefits outweigh, within this State, the probable costs of the rule and 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.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No _X_

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)?

Real Estate Settlement Procedures Act, 12 U.S.C. 2601 through 2617 and the regulations promulgated thereunder;

Consumer Credit Protection Act, 15 U.S.C. 1601 et seq., and the regulations promulgated thereunder; and the TILA-RESPA Integrated Disclosure Rules, 12 CFR 1024 and 1026.

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:

Not applicable. The rules pertaining to mortgage brokers were enacted in 1991. In addition, the statutes, not the rules, establish the requirement for a license to operate as a mortgage broker. (*See,* A.R.S. § 6-903.)

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 has prepared a Notice of Proposed Rulemaking and will publish that notice and begin the rulemaking process on Article 9 as soon as it receives permission from the Governor's Office to proceed. The Department hopes to enact the changes to Article 9 before the end of 2024.

Department of Insurance and Financial Institutions

5 YEAR REVIEW REPORT

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 4. Department of Insurance and Financial Institutions – Financial Institutions

Article 18. Mortgage Bankers

June 2024

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 6-123(2)

Specific Statutory Authority: A.R.S. §§ 6-941, 6-942, 6-943, 6-944, 6-946, 6-947, and 6-949

2. The objective of each rule:

Rule	Objective
R20-4-1801	**Exemption for an Entity Regulated by an Agency of this State, Other States, or by the United States.** The objective of the rule is to clarify the persons exempted under A.R.S. § 6-942(A)(1) and the level of regulation required to qualify those persons for the exemption.
R20-4-1802	**Equivalent and Related Experience.** The objective of the rule is to clarify the types and duration of experience allowed by statute to substitute for A.R.S. § 6-943(C)(1) requirement of three years' experience in the business of making mortgage banking loans.
R20-4-1803	**Restrictions on the Term of a Cash Alternative to a Surety Bond.** The objective of the rule is to specify the minimum term of a certificate of deposit or investment certificate placed with the Superintendent as an alternative to a surety bond.
R20-4-1804	**Requirements for a Person Intended to Oversee a Branch Office.** The objective of the rule is to clarify the language of the statute requiring a licensee to designate a person to oversee the operations of each licensed branch office.
R20-4-1805	**Notification of Change of Address.** The objective of the rule is to specify the form and timing of the notice required by statute.
R20-4-1806	**Recordkeeping Requirements.** The objective of the rule is to specify the records a licensee is required to have available.
R20-4-1807	**Providing Copies of Records.** The objective of the rule is to specify the requirement of a mortgage banker to supply copies of documents to a mortgage broker for loans closed in the name of the mortgage broker so the mortgage broker can comply with recordkeeping requirements prescribed by A.R.S § 6-906.

R20-4-1808	**Authorizations to Complete Blank Spaces.** The objective of the rule is to specify a legally sufficient form of notice that may be used to advise a borrower of their rights when asked to sign a lending document containing blank spaces.
R20-4-1809	**Determining Loan Amounts.** The objective of the rule is to specify what constitutes a mortgage banking loan amount as it relates to the statute.
R20-4-1810	**Delay or Cause Delay.** The objective of the rule is to clarify the scope of the statutory prohibition on delaying or causing delay in the closing of a loan.
R20-4-1811	**Impound Account.** The objective of the rule is to limit the amount of money a mortgage banker may retain as a "cushion" against unanticipated payments from the impound account.
R20-4-1812	**Acquisition of Additional Interest in Licensee by Majority Owner.** The objective of the rule is to clarify the requirement and timeframes within which a person that owns a majority of a mortgage banker's outstanding voting interests must report acquisitions of additional voting interest.
R20-4-1813	**Conversion to Mortgage Broker License.** The objective of the rule is to establish the application process for converting a mortgage banker license to a mortgage broker license.

3. Are the rules effective in achieving their objectives? **Yes X No __**

However, the last update to these rules occurred over 10 years ago (18 A.A.R. 2622, October 19, 2012) with most Sections not updated since their adoption in 1999. The rules need to be updated to reflect the replacement of "Superintendent" with "Director," to modernize the rules, to modify experience requirements, to remove some fees, to update and correct statutory and regulation cites, to allow the use of electronic recordkeeping, to reflect federal documentation requirements and to add a reporting requirement for branch office managers.

4. Are the rules consistent with other rules and statutes? **Yes _ No _X_**

The current rules contain incorrect statutory cites.

5. Are the rules enforced as written? **Yes __ No _X_**

The Department enforces the correct federal statutes and regulations which are not cited correctly in the rules.

6. Are the rules clear, concise, and understandable? **Yes ___ No _X_**

The current rules are confusing because they are outdated.

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 Department has not identified any economic impact that is significantly different from that projected in the economic impact statement for last rulemaking on this Article (18 A.A.R. 2622, October 19, 2012). At that time, the Department stated that "The overall economic impact of these rules on private and public business is projected to be minimal." The Department is unaware of any economic impact produced by the current, outdated rules.

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?

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

2019 Five Year Review Report Proposed Course of Action:

R20-4-1804: The Department plans on amending this rule to establish effective timeframes for designating a change in branch oversight designation after further advisement from legal counsel. If amendments are necessary, the Department will request an exception to Executive Order 2019-01 and if granted, will update the references to federal law by the end of 2020.

R20-4-1806: The Department plans on amending this rule to update necessary citations to federal law after further advisement from legal counsel. The Department will request an exemption to Executive Order 2019-01 and if granted, will update the references to federal law within the rule by the end of 2020.

R20-4-1807: The Department plans on amending this rule to update necessary citations to federal law after further advisement from legal counsel. The Department will request an exemption to Executive Order 2019-01 and if granted, will update the references to federal law within the rule by the end of 2020.

Response to Item 10:

The Department has prepared a rulemaking to accomplish many changes to this Article including the updates it proposed for Sections R20-4-1806 and R20-4-1807. Instead of establishing timeframes for designating a change in branch oversight, the Department plans to add a reporting requirement to Section R20-4-1804. It submitted a request to initiate the rulemaking process for this Article to the Governor's Office on March 27, 2024.

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 rule's benefits outweigh, within this State, the probable costs of the rule and 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.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No _X_

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)?

Real Estate Settlement Procedures Act, 12 U.S.C. 2601 through 2617 and the regulations promulgated thereunder;

Consumer Credit Protection Act, 15 U.S.C. 1601 et seq., and the regulations promulgated thereunder; and the TILA-RESPA Integrated Disclosure Rules, 12 CFR 1024 and 1026.

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:

Not applicable. The Department enacted the rules pertaining to mortgage bankers in 1999. In addition, the statutes, not the rules, establish the requirement for a license to operate as a mortgage banker. (*See,* A.R.S. § 6-943.)

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 has prepared a Notice of Proposed Rulemaking and will publish that notice and begin the rulemaking process on Article 18 as soon as it receives permission from the Governor's Office to proceed. The Department hopes to enact the changes to Article 18 before the end of 2024.

Department of Insurance and Financial Institutions

5 YEAR REVIEW REPORT

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 4. Department of Insurance and Financial Institutions – Financial Institutions

Article 19. Commercial Mortgage Bankers

June 2024

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 6-123(2)

Specific Statutory Authority: A.R.S. §§ 6-971, 6-972, 6-973, 6-975, 6-977, 6-976, 6-978, 6-979, 6-983, and 6-984

2. The objective of each rule:

Rule	Objective
R20-4-1901	**Exemption for an Institutional Investor.** The objective of the rule is to clarify criteria under which institutional investors are exempted from the commercial mortgage banker licensure requirements set forth in A.A.C. Title 20, Chapter 4, Article 19.
R20-4-1902	**Exemption for an Entity Regulated by an Agency of this State, Other States, or by the United States.** The objective of the rule is to clarify the individuals exempted under A.R.S. § 6-972 and the Department's criteria for granting the exemption.
R20-4-1903	**Equivalent and Related Experience.** The objective of the rule is to clarify the types and duration of experience allowed by statute to substitute for the A.R.S. § 6-973(D)(l) requirement of three years' experience in the commercial mortgage business.
R20-4-1904	**Restrictions on the Term of a Cash Alternative to a Surety Bond.** The objective of the rule is to specify the minimum term of a certificate of deposit or investment certificate placed with the Superintendent as an alternative to a surety bond.
R20-4-1905	**Requirements for a Person Intended to Oversee a Branch Office.** The objective of the rule is to clarify the language of the statute requiring a licensee to designate a person to oversee the operations of each licensed branch office.
R20-4-1906	**Notification of Change of Address.** The objective of the rule is to specify the form and timing of the notice required by statute.
R20-4-1907	**Recordkeeping Requirements.** The objective of the rule is to specify the records a licensee is required to have available, and conditions under which a licensee may use a computer system to maintain records.
R20-4-1908	**Impound Accounts.** The objective of the rule is to specify that the limit on the amount of money retained by a commercial mortgage banker as a "cushion" against unanticipated payment from the impound account is regulated solely by the agreement of the parties.

R20-4-1909	**Authorization to Complete Blank Spaces.** The objective of the rule is to specify a legally sufficient form of notice that may be used to advise a borrower of their rights when asked to sign a lending document containing blank spaces.
R20-4-1910	**Delay or Cause Delay.** The objective of the rule is to clarify the scope of the statutory prohibition on delaying or causing delay in the closing of a loan.
R20-4-1911	**Acquisition of Additional Interest in Licensee by Majority Owner.** The objective of the rule is to clarify the requirement and timeframes within which a person that owns a majority of a mortgage banker's outstanding voting interests must report acquisitions of additional voting interest.

3. Are the rules effective in achieving their objectives? **Yes X No __**

However, the last update to these rules occurred about 25 years ago when the Department adopted the Article in 1999 (5 A.A.R. 2094, July 2, 1999). The rules need to be updated to replace "Superintendent" with "Director," to modernize the rules, to modify experience requirements, to remove a fee, to update and correct statutory and regulation cites, to allow the use of electronic recordkeeping, and to add a reporting requirement for branch office managers.

4. Are the rules consistent with other rules and statutes? **Yes __ No _X_**

The current rules contain incorrect statutory cites.

5. Are the rules enforced as written? **Yes __ No _X_**

The Department enforces the correct federal statutes and regulations which are not cited correctly in the rules.

6. Are the rules clear, concise, and understandable? **Yes ___ No _X_**

The current rules are confusing because they are outdated.

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 Department has not identified any economic impact that is significantly different from that projected in the economic impact statement for adoption of Article 19 in 1999. At that time, the Department stated: A. The Banking Department - Income and expenses to this Agency are negligible.

B. Other Public Agencies - The State will incur normal publishing costs incident to rulemaking.
C. Private Persons and Businesses Directly Affected - Costs of services will not increase to any measurable degree.
D. Consumers - No measurable effect on consumers is expected.
E. Private and Public Employment - There is no measurable effect on private and public employment
F. State Revenues - This rulemaking will not change state revenues (5 A.A.R. 2094, July 2, 1999).
The Department is unaware of any different economic impact produced by the current, outdated rules.

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?

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

2019 Five Year Review Report Proposed Course of Action:

R20-4-1905: In the previous review of this rule, the Department indicated that it would amend this rule if advised from legal counsel. After further review of the rule, the Department has determined that the rule is clear and effective in its purpose.

R20-4-1907: In the previous review of this rule, the Department indicated that it would amend this rule if advised from legal counsel. After further review of the rule, the Department has determined that the rule is clear and effective in its purpose.

Response to Item 10:

The Department has prepared a rulemaking to accomplish many changes to this Article including replacing "Superintendent" with "Director," modernizing the rules, modifying experience requirements, removing a fee, correcting statutory citations, allowing the use of electronic recordkeeping, and adding a reporting requirement for branch office managers. It submitted a request to initiate the rulemaking process for this Article to the Governor's Office on March 27, 2024.

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 rule's benefits outweigh, within this State, the probable costs of the rule and 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.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No _X_

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)?

No federal laws are cited in Article 19.

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:

Not applicable. The rules pertaining to commercial mortgage bankers were enacted in 1999. In addition, the statutes, not the rules, establish the requirement for a license to operate as a commercial mortgage banker. (*See,* A.R.S. § 6-973.)

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 has prepared a Notice of Proposed Rulemaking and will publish that notice and begin the rulemaking process on Article 19 as soon as it receives permission from the Governor's Office to proceed. The Department hopes to enact the changes to Article 19 before the end of 2024.

final rulemaking at 29 A.A.R. 1952 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-816. Termination of Trust or Fiduciary Powers and Duties

A. Any trust department that wants to surrender its trust powers shall file with the Director a certified copy of the appropriate resolution of its board of directors or of the board's unanimous written consent. If, after investigation, the Director concludes that the trust department has no remaining fiduciary duties, the Director shall notify the trust department that it no longer has authority to exercise trust powers.

B. Any trust company that wants to surrender its certificate of authority to conduct trust business and wind up its affairs shall file with the Director a certified copy of the appropriate resolution of its board of directors or of the board's unanimous written consent. Upon receipt of the resolution or consent, the Director shall cancel the trust company's certificate of authority, and the trust company shall not accept new trust accounts.

C. After winding up its affairs, any trust company that wants to surrender its rights and obligations as a fiduciary and remove itself from the Director's supervision shall file with the Director a certified copy of the appropriate resolution of its board of directors or of the board's unanimous written consent. If, after investigation, the Director concludes that the trust company has no further fiduciary duties, the Director shall notify the trust company that it no longer has authority to exercise fiduciary powers.

D. Any trust department or trust company that surrenders its powers, rights, obligations, or certificate under this Section or that has them canceled, suspended, or revoked shall continue to be regulated under A.R.S. § 6-864 and this Article until it winds up its affairs. No action under this Section impairs any liability or cause of action, existing or incurred, against any trust department or trust company or its stockholders, directors, or officers.

Historical Note

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-816 recodified from R4-4-816 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2718, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1952 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

Appendix A. Repealed

Historical Note

Appendix A repealed by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2).

Appendix B. Repealed

Historical Note

Appendix B repealed by final rulemaking at 6 A.A.R. 2471, effective June 8, 2000 (Supp. 00-2).

ARTICLE 9. MORTGAGE BROKERS

R20-4-901. Reserved

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-901 recodified from R4-4-901 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-902. Reserved

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-902 recodified from R4-4-902 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-903. Exemption for an Entity Regulated by an Agency of this State, Other States, or by the United States

A. The exemption under A.R.S. § 6-902 (A)(1) only applies to a person whose offers to make or negotiate a mortgage loan, as defined in A.R.S. § 6-901, and all mortgage loans made or negotiated by the person are regulated directly by an agency of this state, any other state, or the United States.

B. The required regulation of the transactions listed in subsection (A) includes:

1. Rules governing a claimant's accounting and recordkeeping practices;
2. The authority to examine a claimant's books and records relating to its mortgage lending activities; and
3. The ability to place a claimant in a receivership or conservatorship with regard to the claimant's mortgage lending activities.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-903 recodified from R4-4-903 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-904. Reserved

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-904 recodified from R4-4-904 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-905. Repealed

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-905 recodified from R4-4-905 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-906. Equivalent and Related Experience

A. An applicant may satisfy the three years' experience requirement of A.R.S. § 6-903 by the types of lending-related experience listed in this subsection. The Department counts each month in the following types of work experience toward the three years required for a mortgage broker license, under A.R.S. § 6-903(B), or as a responsible individual, under A.R.S. § 6-903(E). The Department counts a fractional month of experience, at least 15 days long, as a full month.

1. Mortgage broker with an Arizona license, responsible individual, or branch manager for a licensee;
2. Mortgage banker with an Arizona license, responsible individual, or branch manager for a licensee;
3. Loan officer with responsibility primarily for loans secured by lien interests on real property;
4. Lender's branch manager with responsibility primarily for loans secured by lien interests on real property;
5. Mortgage broker with license from another state, or responsible individual for a mortgage broker licensed in another state;

6. Mortgage banker with license from another state, or responsible individual for a mortgage banker licensed in another state;
7. Attorney certified by any state as a real estate specialist.

B. An applicant with insufficient actual experience of the types listed in subsection (A) may satisfy the remainder of the three years' experience requirement of A.R.S. § 6-903 by the types of related experience listed in this subsection. The Department counts each month in the following types of work experience according to the ratio listed below, of actual experience to equivalent experience, credited towards qualifying for a license, under A.R.S. § 6-903(B), or as a responsible individual, under A.R.S. § 6-903(E). The Department counts a fractional month of experience, at least 15 days long, as a full month. An applicant receives credit in only one area listed and for not more than three years' actual experience. The remaining years of experience required to qualify for a license shall be obtained from types of work experiences listed in subsection (A).

1. Attorney without state bar certified real estate specialty...3:2
2. Paralegal with experience in real estate matters...3:2
3. Loan underwriter...3:2
4. Mortgage broker or mortgage banker from another state without license...3:2
5. Real estate broker with an Arizona license or license from a state with substantially equivalent licensing requirements...3:2
6 Escrow officer...3:2
7. Trust officer with a title company...3:2
8. Executive, supervisor, or policy maker involved in administering or operating a mortgage-related business...3:1.5
9. Title officer with a title company...3:1.5
10. Real estate broker, not qualified under subsection (B)(5)...3:1.5
11. Loan processor with responsibility primarily for loans secured by lien interests on real property...3:1.5
12. Lender's branch manager with responsibility primarily for loans not secured by lien interests on real property...3:1.5
13. Real property salesperson with an Arizona license or a license from a state with substantially equivalent licensing requirements...3:1
14. Loan officer, with responsibility primarily for loans not secured by lien interests on real property...3:1

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-906 recodified from R4-4-906 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-907. Course of Study

A. A course of study shall be satisfactorily completed if the applicant has:
1. Attended at least 24 hours of class, and
2. Received a passing grade on the final exam.

B. A course of study shall meet all the following requirements:
1. The following items shall be submitted by the school to the Superintendent on an annual basis:
   a. Course materials;
   b. Class content outlines on a session-by-session basis; and
   c. Sample final exam.
2. The following subjects shall be taught:
   a. Mortgage, deed of trust, and security agreement law;
   b. Negotiable instrument law;
   c. Mortgage broker law;
   d. Escrow agent law;
   e. Recordkeeping requirements of R20-4-917;
   f. Federal Housing Administration, Veterans Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation requirements;
   g. Ethics;
   h. Principal and agent law;
   i. Arithmetical computations common to mortgage brokerage;
   j. Real estate lending principles;
   k. Real estate law;
   l. Real Estate Settlement Procedures Act, 12 U.S.C. 2601 through 2617, and Consumer Credit Protection Act, 15 U.S.C. 1601 through 1666j; and
   m. Securities law.
3. A final exam shall be given that substantially tests the student's knowledge of the subjects described above.

C. The Superintendent shall review the items submitted to the Department and determine within 60 days of submission whether the proposed course of study is satisfactory. The Superintendent may audit a course of study at any time. If the Superintendent finds that a course of study is unsatisfactory, or if the Superintendent has not received the course materials, course content outlines, and sample final exam within the prior 13 months, the Superintendent may withhold or suspend approval.

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-907 recodified from R4-4-907 (Supp. 95-1).

R20-4-908. Reserved

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-908 recodified from R4-4-908 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-909. Reserved

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-909 recodified from R4-4-909 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-910. Reserved

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-910 recodified from R4-4-910 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-911. Qualified Replacement Responsible Individual

If a licensee chooses an individual to serve as a replacement responsible individual and that individual has not satisfactorily completed

the course of study required by A.R.S. § 6-903(B)(2) or passed the mortgage broker examination required by A.R.S. § 6-903(B)(3), and is not given the opportunity to do so prior to the expiration of the 90-day time period provided in A.R.S. § 6-903(F), but otherwise meets the requirements of A.R.S. § 6-903(B), the individual shall be qualified as a replacement responsible individual until the next course of study has been held and, if the person successfully completes the course of study, until the mortgage broker examination next following the completion of the course of study has been held and the results of the examination are available. If the individual fails to satisfactorily complete the course of study or fails the mortgage broker examination, the licensee shall then have a new 90-day time period within which to place itself under the active management of a qualified responsible individual. Notwithstanding the foregoing, a licensee shall have no longer than 180 days within which to place the license under the active management of a qualified responsible individual unless the Superintendent grants additional time to the licensee for good cause shown.

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-911 recodified from R4-4-911 (Supp. 95-1).

R20-4-912. Restrictions on the Term of a Cash Alternative
If an applicant or a licensee elects to place with the Superintendent a deposit in the form of a certificate of deposit or investment certificate, in addition to the requirements of A.R.S. § 6-903(J), the certificate of deposit or investment certificate shall not be renewable, nor expire, earlier than 12 months from the date of issuance.

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-912 recodified from R4-4-912 (Supp. 95-1).

R20-4-913. Reserved

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-913 recodified from R4-4-913 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-914. Reserved

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-914 recodified from R4-4-914 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-915. Requirements for a Person Intended to Oversee a Branch Office
A person designated to oversee the operations of a branch office shall be knowledgeable about the branch activities of the licensee, shall supervise compliance by the branch with applicable law and rules, and shall have sufficient authority to ensure such compliance. One person may oversee more than one branch.

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-915 recodified from R4-4-915 (Supp. 95-1).

R20-4-916. Notification of Change of Address
If the address of the principal place of business or of any branch office is changed, the licensee shall notify the Superintendent of the change within five business days after the occurrence of the change of location. Together with such notice, the licensee shall provide to the Department the license for the office changing addresses together with the fee required by A.R.S. § 6-126 for changing the address of an office. A copy of such license shall continue to be displayed at the place of business until a new license is issued.

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-916 recodified from R4-4-916 (Supp. 95-1).

R20-4-917. Recordkeeping Requirements

A. The Superintendent shall approve a licensee's use of a computer or mechanical recordkeeping system if the licensee gives the Superintendent advanced written notice that it intends to do so. The Department shall not require a licensee to keep a written copy of the records if the licensee can generate all information required by this Section in a timely manner for examination or other purposes. A licensee may add, delete, modify, or customize an approved computer or mechanical recordkeeping system's hardware or software components. When requested, or in response to a written notice of an examination, a licensee shall report to the Superintendent any alteration in the approved system's fundamental character, medium, or function if the alteration changes:
1. Any approved computer or mechanical system back to a paper-based system;
2. An approved mechanical system to a computer system; or
3. An approved computer system to a mechanical system.

B. In addition to any statutory requirement regarding records, a record maintained by a mortgage broker shall include the following:
1. A list of all executed loan applications or executed fee agreements that includes the following information:
   a. Applicant's name;
   b. Application date;
   c. Amount of initial loan request;
   d. Final disposition date;
   e. Disposition (funded, denied, etc.); and
   f. Name of loan officer;
2. A record, such as a cash receipts journal, of all money received in connection with a mortgage loan including:
   a. Payor's name;
   b. Date received;
   c. Amount; and
   d. Receipt's purpose, including identification of a related loan, if any;
3. A sequential listing of checks written for each bank account relating to the mortgage broker business, such as a cash disbursement journal, including:
   a. Payee's name;
   b. Amount;
   c. Date; and
   d. Payment's purpose, including identification of a related loan, if any;
4. Bank account activity source documents for the mortgage broker business including receipted deposit tickets, numbered receipts for cash, bank account statements, paid checks, and bank advices.
5. A trust subsidiary ledger for each borrower that deposits trust funds showing:
   a. Borrower's name or co-borrowers' names;
   b. Loan number, if any;
   c. Amount received;
   d. Purpose for the amount received;
   e. Date received;
   f. Date deposited into trust account;
   g. Amount disbursed;

h. Date disbursed;
i. Disbursement's payee and purpose; and
j. Balance;

6. A file for each application for a mortgage loan containing:
   a. The agreement with the customer concerning the broker's services, whether as a loan application, fee agreement, or both;
   b. Document showing the application's final disposition, such as a settlement statement, or a denial or withdrawal letter;
   c. Correspondence sent, received, or both by the licensee;
   d. Contract, agreement, and escrow instructions to or with any depository;
   e. Documents showing compliance with the Consumer Credit Protection Act's (15 U.S.C. §§ 1601 through 1666j) and the Real Estate Settlement Procedures Act's (12 U.S.C. §§ 2601 through 2617) disclosure requirements, to the extent applicable;
   f. If the loan is funded by an investor that is not a financial institution, an enterprise, a licensed real estate broker or salesman, a profit sharing or pension trust or, an insurance company, the documents provided to the investor under A.R.S. § 6-907, a copy of the executed note and executed deed of trust or mortgage, and any assignment by the broker to the investor;
   g. If the loan is closed in the mortgage broker's name, a copy of all closing documents including: closing instructions, any applicable rescission notice, HUD-1 settlement statement, final truth-in-lending disclosure, executed note, executed deed of trust or mortgage, and each assignment of beneficial interest by the licensee; and
   h. Itemized list of all fees taken in advance including appraisal fee, credit report fee, and application fee;
7. Samples of every piece of advertising relating to the mortgage broker's business in Arizona;
8. Copies of governmental or regulatory compliance reviews;
9. If the licensee is not a natural person, a file containing:
   a. Organizational documents for the entity;
   b. Minutes;
   c. A record, such as a stock or ownership transfer ledger, showing ownership of all proportional equity interests in the licensee, ascertainable as of any given record date; and
   d. Annual report, if required by law;
10. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has a felony conviction, a copy of the judgment or other record of conviction;
11. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has, in the previous seven years, been named a defendant in any civil suit, a copy of the complaint, any answer filed by the licensee, and any judgment, dismissal, or other final order disposing of the action; and
12. If the Superintendent has granted approval to maintain records outside this state, the specific address where the records are kept, and a person's name to contact for them.

C. If 10 or fewer transactions have occurred during the prior calendar quarter, a licensee shall reconcile and update all records specified in subsection (B) at least once each calendar quarter. A licensee shall reconcile and update all records specified in subsection (B) monthly if more than 10 transactions occurred during the prior calendar quarter. In addition to reconciling each trust bank account, a licensee shall verify each trust balance to each trust subsidiary ledger at each reconciliation.

D. A licensee shall retain the documents described in subsections (B)(1) and (B)(6) for the length of time provided in A.R.S. § 6-906. For the purposes of A.R.S. § 6-906, a mortgage loan's closing date, on a loan application that did not result in the making of a loan, is either:
1. The date a licensee receives a written cancellation notice from an applicant; or
2. The date a licensee mails written notice to an applicant that the application has been denied, as required by federal law.

E. A licensee shall maintain all records described in this Section, and not included in subsection (D), for at least two years.

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-917 recodified from R4-4-917 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-918. Repealed

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-918 recodified from R4-4-918 (Supp. 95-1). Section repealed by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-919. Deposit of Monies Received by a Mortgage Broker
All monies received by a mortgage broker which are required to be deposited into an escrow account with an escrow agent licensed pursuant to A.R.S. § 6-801 et seq. shall be so deposited by 5:00 p.m. on the next business day after receipt of the funds.

Historical Note
Adopted effective August 14, 1991 (Supp. 91-3). R20-4-919 recodified from R4-4-919 (Supp. 95-1).

R20-4-920. Requirements for the Testing Committee

A. No licensee shall submit more than five names as nominees to serve on the testing committee. The resumes of the nominees shall be included. The names and resumes shall be submitted to the Superintendent no later than August 1 of each even-numbered year. On or before September 30 of each even-numbered year, the Superintendent shall appoint four persons from the nominees submitted and one employee of the Department as members of the testing committee. A person may serve more than one two-year term. If the Superintendent does not find at least four persons from the list to be acceptable, the Superintendent shall solicit additional nominees from licensees.

B. In the event of a vacancy on the testing committee, the remaining members of the committee shall submit a list of nominees within 45 days of the vacancy to the Superintendent containing not less than two nominees for each vacancy. The Superintendent shall then appoint a nominee from the list to fill each vacancy for the remainder of the term. If the Superintendent does not find at least one person from the list to be acceptable to fill each vacancy, the remaining members of the committee shall, upon request, submit an additional list of nominees to the Superintendent.

C. The Superintendent may remove any member of the committee at any time without cause.

D. The committee shall review and revise questions on the test not less than once every two years. All questions used on the test shall first be submitted to and approved by the Superintendent.

E. The committee shall inform the applicant of the applicant's score on the test in writing within 30 days of administration of the test.

F. The handbook for mortgage brokers shall be updated by the committee as necessary to reflect changes in the law.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-920 recodified from R4-4-920 (Supp. 95-1).

R20-4-921. Authorizations to Complete Blank Spaces

An authorization, under A.R.S. § 6-909, allowing a licensee or escrow agent to complete certain blank spaces in a document after it is signed by a party to the transaction shall:

1. Specifically identify the document and the blank spaces to be completed;
2. Be in writing, dated, and signed by the authorizing parties; and
3. Contain the following notice, conspicuously printed on its face: YOUR SIGNATURE BELOW AUTHORIZES YOUR MORTGAGE BROKER OR ESCROW AGENT TO FILL IN SPACES YOU LEFT BLANK IN SPECIFIED LOAN DOCUMENTS YOU ARE ABOUT TO SIGN OR MAY HAVE ALREADY SIGNED. UNDER STATE LAW YOU CAN GIVE THIS AUTHORITY, BUT YOU ARE NOT REQUIRED TO DO SO. YOU CAN REFUSE TO SIGN ANY DOCUMENTS UNTIL ALL BLANKS ARE COMPLETELY FILLED IN.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-921 recodified from R4-4-921 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-922. Determining Loan Amounts

In determining the amount of a mortgage loan pursuant to A.R.S. § 6-909(D) or (G), only the principal amount of the loan shall be considered and not any points, interest, finance charges, insurance premiums of any kind, compensation paid to third parties or compensation retained by the mortgage broker or its agents.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-922 recodified from R4-4-922 (Supp. 95-1).

R20-4-923. Delay or Cause Delay

A mortgage broker shall not be deemed to have delayed or caused delay if such delay occurs due to events outside the control of the mortgage broker.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-923 recodified from R4-4-923 (Supp. 95-1).

R20-4-924. Receipt and Disbursement of Monies

A licensee is not receiving or disbursing monies in servicing or arranging a mortgage loan if the licensee, at the request of the lender or servicing agent, on an infrequent basis, assists in the collection or servicing of a mortgage loan by receiving from the borrower a check or draft payable to the lender or servicing agent and forwarding such instrument to the lender or servicing agent not later than 5:00 p.m. on the next business day after receipt by the licensee. For the purposes of this rule, an infrequent basis means, with regard to a particular loan, for not more than 25% of the regularly scheduled payments of the mortgage loan during any calendar year.

Historical Note

Adopted effective August 14, 1991 (Supp. 91-3). R20-4-924 recodified from R4-4-924 (Supp. 95-1).

R20-4-925. Waiver of Examination and Course of Study

The Superintendent's waiver of the examination and course of study requirement under A.R.S. § 6-903 extends to a person designated as a responsible individual by either an applicant or a licensee under A.R.S. § 6-903.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-926. Acquisition of Additional Interest in Licensee by Majority Owner

A person that owns 51% or more of a licensee's outstanding voting equity interests, and that acquires the power to vote additional fractional equity interests, shall deliver written notice of the acquisition to the Superintendent. The person shall deliver the notice before completing the acquisition. Within 10 days after completing the acquisition, the person shall deliver documentation evidencing the acquisition to the Superintendent.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-927. Conversion to Commercial Mortgage Broker License

A. Under A.R.S. § 6-913, a mortgage broker licensee shall only be permitted to convert his or her license to a commercial mortgage broker license during the renewal period established by A.R.S. § 6-904.

B. The licensee seeking conversion shall not be subject to the 12 continuing education units as prescribed by A.R.S. § 6-903(V).

C. The licensee seeking conversion shall submit:

1. The renewal fees required by A.R.S. § 6-126 for commercial mortgage brokers, and
2. The information and documents required by A.R.S. § 6-903.

Historical Note

New Section adopted by final rulemaking at 18 A.A.R. 2622, effective December 2, 2012 (Supp. 12-4).

R20-4-928. Certificate of Exemption Application and Renewal

A. Under A.R.S. § 6-912(C), upon application for a certificate of exemption, an applicant shall pay a nonrefundable fee of $300.

B. A person holding a certificate of exemption shall pay a renewal fee of $150.00 on or before December 31 of each year. Certificates of exemption not renewed by December 31 are automatically suspended, and the certificate holder shall not act as a registered exempt person until the certificate is renewed or a new certificate is issued pursuant to A.R.S. § 6-912. While the certificate is suspended, the licensed loan originators sponsored by the registered exempt person may not transact business as a loan originator. A registered exempt person may renew an automatically suspended certificate by paying the renewal fee plus $25.00 for each day after December 31 that a renewal fee is not received by the Superintendent and

applying for renewal as prescribed by the Superintendent. A certificate of exemption that is not renewed by January 31 expires. A certificate of exemption shall not be granted to the holder of an expired certificate of exemption except as provided in A.R.S. § 6-912 for the issuance of an original certificate of exemption. Each licensed loan originator that is sponsored by a registered exempt person whose certificate has expired shall have his or her license placed on inactive status and shall not transact business in Arizona as a loan originator pursuant to A.R.S. § 6-991.02(M).

C. In addition to the application fee, on issuance of the certificate of exemption, the Superintendent shall collect the first year's renewal fee prorated according to the number of quarters remaining until the date of the next annual renewal, as required by A.R.S. § 6-126(B).

D. The following fees are payable to the Department:
1. To change the name of the federally chartered savings bank on a certificate of exemption: $250.00.
2. To change the responsible individual for the exempt entity: $250.00.
3. To issue a duplicate or replace a lost certificate of exemption: $100.00.
4. To change the address of the federally chartered savings bank on a certificate of exemption: $50.00.

Historical Note
New Section adopted by final rulemaking at 18 A.A.R. 2622, effective December 2, 2012 (Supp. 12-4).

ARTICLE 10. SAFE DEPOSIT AND SAFEKEEPING CODE

R20-4-1001. Notice of Change of Location of Safe Deposit Repository

A. A corporation or association that moves a repository shall give written notice of the location change to the Director and to its customers.
1. A corporation or association shall provide notice of the location change to the Director by mailing the notice required under this subsection by first class mail no less than 30 days before the scheduled moving date. The corporation or association shall include a copy of the notice to customers required under subsection (B).
2. A corporation or association shall provide notice of the location change to its customers by:
   a. Publishing notice of the change of location in:
      i. An English language newspaper of general circulation in the county where the repository will be closed,
      ii. In a weekly newspaper for two consecutive publications, or
      iii. In a daily newspaper for three consecutive days; and
   b. Publishing the notice no more than 90 days, and no less than 30 days, before the scheduled moving date.

B. The corporation or association shall include all the following information in the notice:
1. The date the corporation or association intends to move the repository,
2. The earliest date a customer can remove contents and transact other business related to the move,
3. The latest date a customer can remove contents and transact other business related to the move,
4. The street address of the repository to be closed, and
5. The street address of the new repository.

Historical Note
Former Rule 1. R20-4-1001 recodified from R4-4-1001 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 5227, effective February 4, 2003 (Supp. 02-4). Preceding Historical Note entry corrected to read 2003 instead of 2002 (Supp. 03-1). Amended by final rulemaking at 29 A.A.R. 1937 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

ARTICLE 11. PUBLIC DEPOSITORIES FOR PUBLIC MONIES

R20-4-1101. Capital Structure of Banks; Defined

"Capital structure" as the term is applied to banks under Article 2.1, Chapter 2, Title 35, Arizona Revised Statutes, means the sum of the following reserves and capital accounts of the institution as stated in the institution's report of condition required by the supervisory banking authority for the year end next preceding the institution's bid for deposit:
1. Reserve for bad debt losses on loans,
2. Other reserves on loans,
3. Reserves on securities,
4. Capital notes and debentures,
5. Preferred stock – total par value,
6. Common stock – total par value,
7. Surplus,
8. Undivided profits, and
9. Reserve for contingencies and other capital reserves.

Historical Note
Adopted as an emergency effective July 29, 1975 (Supp. 75-1). Amended effective December 26, 1975 (Supp. 75-2). R20-4-1101 recodified from R4-4-1101 (Supp. 95-1). Amended by final rulemaking at 29 A.A.R. 1937 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1102. Expired

Historical Note
Adopted as an emergency effective July 29, 1975 (Supp. 75-1). Amended effective December 26, 1975 (Supp. 75-2). R20-4-1102 recodified from R4-4-1102 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 26 A.A.R. 382, effective February 5, 2020 (Supp. 20-1).

ARTICLE 12. RULES OF PRACTICE AND PROCEDURE BEFORE THE DIRECTOR

R20-4-1201. Scope of Article; Definitions

A. Scope. This Article, Title 6, Title 32, Chapters 9 and 36, and Title 44, Chapter 2.1 of the Arizona Revised Statutes govern administrative hearings before the Department. The Department shall use the authority of A.R.S. Title 41, Chapter 6, Article 10, the Office of Administrative Hearings' procedural rules and this Article to govern the initiation and conduct of administrative hearings. In an administrative hearing, special procedural requirements in state statute or another Section in this Article shall also govern the proceedings unless the requirements are inconsistent with either A.R.S. Title 41, Chapter 6, Article 10, the Office of Administrative Hearings' rules, or this Article. Except as otherwise provided in Section R20-4-1220 for rulemaking petitions, this Article does not apply to rulemaking or to investigative proceedings before the Director. Unless expressly applicable by rule or statute, the Arizona Rules of Civil Procedure do not apply to administrative hearings.

1). Section repealed by final rulemaking at 9 A.A.R. 5055, effective January 3, 2004 (Supp. 03-4).

R20-4-1604. Repealed

Historical Note
Adopted as an emergency effective September 6, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Adopted effective January 12, 1979 (Supp. 79-1). R20-4-1604 recodified from R4-4-1604 (Supp. 95-1). Section repealed by final rulemaking at 9 A.A.R. 5055, effective January 3, 2004 (Supp. 03-4).

ARTICLE 17. ARIZONA INTERSTATE BANK AND SAVINGS AND LOAN ASSOCIATION ACT

R20-4-1701. Definitions
In addition to the definitions provided in A.R.S. § 6-321, the following terms apply to this Article unless the context otherwise requires:

"Applicant" means an out-of-state financial institution that intends to acquire control of an in-state financial institution.

"Director" has the meaning stated in A.R.S. § 6-101(7).

Historical Note
Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1701 recodified from R4-4-1701 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2). Amended by final rulemaking at 29 A.A.R. 1937 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1702. Notice to the Director of Intent to Acquire Control of an In-state Financial Institution; Surrender of an Acquired Financial Institution's Charter

A. An applicant shall give written notice of an acquisition to the Director in the form of a courtesy copy of its federal application. The acquiring entity shall ensure that the notice is delivered to the Director not less than ten days before the effective date of the acquisition. No other application is required under the provisions of A.R.S. Title 6, Chapter 2, Article 7, the Arizona Interstate Bank and Savings and Loan Association Act. The Director may impose conditions on an acquisition under the authority of A.R.S. §§ 6-324 and 6-328.

B. An acquired in-state financial institution shall surrender, by delivery to the Director, all permits and certificates issued by the Director within ten days after the effective date of the acquisition unless the acquired institution intends to continue operating, after the acquisition, as a stand-alone subsidiary under the authority of its existing Arizona banking permit.

Historical Note
Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1702 recodified from R4-4-1702 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2). Amended by final rulemaking at 29 A.A.R. 1937 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1703. Repealed

Historical Note
Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1703 recodified from R4-4-1703 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

R20-4-1704. Public Notice

A. An applicant shall transmit to the Director one copy of each notice and the publisher's affidavit of publication required by the Federal Reserve Board, the Federal Deposit Insurance Corporation, or other regulatory authority that has concurrent jurisdiction.

B. An applicant shall provide the Director copies of any protests known to have been received by the Federal Reserve Board, the Federal Deposit Insurance Corporation, or other regulatory authority that has concurrent jurisdiction.

Historical Note
Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1704 recodified from R4-4-1704 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2). Amended by final rulemaking at 29 A.A.R. 1937 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-1705. Repealed

Historical Note
Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1705 recodified from R4-4-1705 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

R20-4-1706. Repealed

Historical Note
Adopted effective October 1, 1986 (Supp. 86-5). R20-4-1706 recodified from R4-4-1706 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 2031, effective July 2, 2005 (Supp. 05-2).

ARTICLE 18. MORTGAGE BANKERS

R20-4-1801. Exemption for an Entity Regulated by an Agency of this State, Other States, or by the United States

A. The exemption under A.R.S. § 6-942(A)(1) only applies to a person whose offers to make or negotiate a "mortgage banking loan" or a "mortgage loan," as those terms are defined in A.R.S. § 6-941, and all mortgage banking loans and mortgage loans made or negotiated by the person are regulated directly by an agency of this state, any other state, or the United States.

B. The required regulation of the transactions listed in subsection (A) includes:
1. Rules governing a claimant's accounting and recordkeeping practices;
2. The authority to examine a claimant's books and records relating to its mortgage banking activities or mortgage lending activities, or both; and
3. The ability to place a claimant in a receivership or conservatorship with regard to the claimant's mortgage banking activities, mortgage lending activities, or both.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1802. Equivalent and Related Experience

A. An applicant may satisfy the three years' experience requirement of A.R.S. § 6-943 by the types of lending-related experience listed in this subsection. The Department counts each month in the following types of work experience toward the three years required either for a mortgage banker license, or as a responsible individual, both under A.R.S. § 6-943(C). The Department counts a fractional month of experience, at least 15 days long, as a full month.

1. Mortgage banker with an Arizona license, responsible individual, or branch manager for a licensee;
2. Mortgage broker with an Arizona license, responsible individual, or branch manager for a licensee;
3. Loan officer with responsibility primarily for loans secured by lien interests on real property;
4. Lender's branch manager with responsibility primarily for loans secured by lien interests on real property;
5. Mortgage banker with license from another state, or responsible individual for the mortgage banker;
6. Mortgage broker with license from another state, or responsible individual for the mortgage broker;
7. Attorney certified by any state as a real estate specialist.

B. An applicant with insufficient actual experience of the types listed in subsection (A) may satisfy the remainder of the three years' experience requirement of A.R.S. § 6-943 by the types of related experience listed in this subsection. The Department counts each month in the following types of work experience according to the ratio listed below, of actual experience to equivalent experience, credited toward qualifying for a license, or as a responsible individual, both under A.R.S. § 6-943(C). The Department counts a fractional month of experience, at least 15 days long, as a full month. An applicant receives credit in only one area listed and for not more than three years' actual experience. The remaining years of experience required to qualify for a license shall be obtained from types of work experiences listed in subsection (A).

1. Attorney without state bar certified real estate specialty...3:2
2. Paralegal with experience in real estate matters...3:2
3. Loan underwriter...3:2
4. Mortgage banker or mortgage broker from another state without license...3:2
5. Real estate broker with an Arizona license or license from a state with substantially equivalent licensing requirements...3:2
6. Escrow officer...3:2
7. Trust officer with a title company...3:2
8. Executive, supervisor, or policy maker involved in administering or operating a mortgage-related business...3:1.5
9. Title officer with a title company...3:1.5
10. Real estate broker, not qualified under subsection (B)(5)...3:1.5
11. Loan processor with responsibility primarily for loans secured by lien interests on real property...3:1.5
12. Lender's branch manager with responsibility primarily for loans not secured by lien interests on real property...3:1.5
13. Real property salesperson, with an Arizona license or a license from a state with substantially equivalent licensing requirements...3:1
14. Loan officer, with responsibility primarily for loans not secured by lien interests on real property...3:1

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1803. Restrictions on the Term of a Cash Alternative to a Surety Bond

A licensee or applicant shall not place a certificate of deposit or investment certificate as a cash alternative to a surety bond with the Superintendent that is renewable or expires earlier than 12 months from the date of issuance.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1804. Requirements for a Person Intended to Oversee a Branch Office

A person designated to oversee the operations of a branch office shall be knowledgeable about the branch activities of the licensee, supervise compliance by the branch with applicable law and rules, and have sufficient authority to ensure such compliance. One person may oversee more than one branch.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1805. Notification of Change of Address

If a licensee changes the licensee's principal place of business, or the location of a branch office, the licensee shall notify the Superintendent at least five business days before the address change. With the notice, a licensee shall provide the Superintendent with the license for the office changing its address and the fee required by A.R.S. § 6-126 for changing an office address. A copy of the license shall continue to be displayed at the place of business until a new license is issued.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2). Amended by final rulemaking at 8 A.A.R. 145, effective December 10, 2001 (Supp. 01-4).

R20-4-1806. Recordkeeping Requirements

A. The Superintendent shall approve a licensee's use of a computer or mechanical recordkeeping system if the licensee gives the Superintendent advanced written notice that it intends to do so. The Department shall not require a licensee to keep a written copy of the records if the licensee can generate all information required by this Section in a timely manner for examination or other purposes. A licensee may add, delete, modify, or customize an approved computer or mechanical recordkeeping system's hardware or software components. When requested, or in response to a written notice of an examination, a licensee shall report to the Superintendent any alteration in the approved system's fundamental character, medium, or function if the alteration changes:

1. Any approved computer or mechanical system back to a paper-based system; or
2. An approved mechanical system to a computer system; or
3. An approved computer system to a mechanical system.

B. In addition to any statutory requirement regarding records, a record maintained by a mortgage banker shall include the following:

1. A list of all executed loan applications or executed fee agreements that includes the following information:
   a. Applicant's name;
   b. Application date;
   c. Amount of initial loan request;
   d. Final disposition date;
   e. Disposition (funded, denied); and
   f. Name of loan officer;

2. A record, such as a cash receipts journal, of all money received in connection with mortgage banking loans or mortgage loans including:
   a. Payor's name;
   b. Date received;
   c. Amount; and
   d. Receipt's purpose including identification of a related loan, if any;
3. A sequential listing of checks written for each bank account relating to the mortgage banker business, such as a cash disbursement journal, including:
   a. Payee's name;
   b. Amount;
   c. Date; and
   d. Payment's purpose including identification of a related loan, if any;
4. Bank account activity source documents for the mortgage banker business including receipted deposit tickets, numbered receipts for cash, bank account statements, paid checks, and bank advices;
5. A trust subsidiary ledger for each borrower that deposits trust funds showing:
   a. Borrower's name or co-borrowers' names;
   b. Loan number, if any;
   c. Amount received;
   d. Purpose for the amount received;
   e. Date received;
   f. Date deposited into trust account;
   g. Amount disbursed;
   h. Date disbursed;
   i. Disbursement's payee and purpose; and
   j. Balance;
6. A file for each application for a mortgage banking loan or a mortgage loan containing:
   a. The agreement with the customer concerning the mortgage banker's services, whether as a loan application, fee agreement, or both;
   b. Document showing the application's final disposition, such as a settlement statement, or a denial or withdrawal letter;
   c. Correspondence sent, received, or both by the licensee;
   d. Contract, agreement and escrow instructions to or with any depository;
   e. Documents showing compliance with the Consumer Credit Protection Act's (15 U.S.C. §§ 1601 through 1666j) and the Real Estate Settlement Procedures Act's (12 U.S.C. §§ 2601 through 2617) disclosure requirements, to the extent applicable;
   f. If the loan is closed in the licensee's name, and funded by a lender that is not an institutional investor as defined at A.R.S. § 6-943, a copy of the executed note, executed deed of trust or mortgage, and each assignment of beneficial interest by the licensee, if any. If any of the documents listed in this subsection have been recorded, the file shall also contain legible copies of the recorded documents, and;
   g. Itemized list of all fees taken in advance including appraisal fee, credit report fee, and application fee;
7. Samples of every piece of advertising relating to the mortgage banker's business in Arizona;
8. Copies of governmental or regulatory compliance reviews;
9. If the licensee is not a natural person, a file containing:
   a. Organizational documents for the entity;
   b. Minutes;
   c. A record, such as a stock or ownership transfer ledger, showing ownership of all proportional equity interests in the licensee, ascertainable as of any given record date; and
   d. Annual report, if required by law;
10. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has a felony conviction, a copy of the judgment or other record of conviction;
11. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has, in the previous seven years, been named a defendant in any civil suit, a copy of the complaint, any answer filed by the licensee, and any judgment, dismissal or other final order disposing of the action;
12. If the Superintendent has granted approval to maintain records outside this state, the specific address where the records are kept, and a person's name to contact for them;
13. If a licensee does business in other states, it must be able to separate Arizona loan information from information relating to other states to enable the Superintendent to conduct an examination.
14. A licensee shall produce a trial balance of the general ledger monthly to evidence the mortgage banker's net worth.

C. If 10 or fewer transactions have occurred during the prior calendar quarter, a licensee shall reconcile and update all records specified in subsection (B) at least once each calendar quarter. A licensee shall reconcile and update all records specified in subsection (B) monthly if more than 10 transactions occurred during the prior calendar quarter. In addition to reconciling each trust bank account, a licensee shall verify each trust balance to each trust subsidiary ledger at each reconciliation.

D. A licensee shall retain the documents described in subsections (B)(1) and (6) for the length of time provided in A.R.S. § 6-946. For the purposes of A.R.S. § 6-946, the mortgage banking loan's closing date, on a loan application that did not result in the making of a loan, is either:
1. The date a licensee receives a written cancellation notice from an applicant; or
2. The date a licensee mails written notice to an applicant that an application has been denied, as required by federal law.

E. A licensee shall maintain all other records described in this Section, and not included in subsection (D), for at least two years.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1807. Providing Copies of Records
For each loan closed in an Arizona mortgage broker's name with a concurrent assignment of beneficial interest to a mortgage banker, the mortgage banker licensee shall provide to the mortgage broker in whose name the loan closed a copy of:
1. The closing instructions;
2. Any applicable rescission notice;
3. The HUD-1 settlement statement;
4. The final truth-in-lending disclosure;
5. The note;
6. The executed deed of trust or mortgage; and
7. Each assignment of beneficial interest by the mortgage banker licensee.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1808. Authorization to Complete Blank Spaces
An authorization, under A.R.S. § 6-947, allowing a licensee or escrow agent to complete certain blank spaces in a document after it is signed by a party to the transaction shall:

1. Specifically identify the document and the blank spaces to be completed;
2. Be in writing, dated, and signed by the authorizing parties, and
3. Contain the following notice, conspicuously printed on its face: YOUR SIGNATURE BELOW AUTHORIZES YOUR MORTGAGE BANKER OR ESCROW AGENT TO FILL IN SPACES YOU LEFT BLANK IN SPECIFIED LOAN DOCUMENTS YOU ARE ABOUT TO SIGN OR MAY HAVE ALREADY SIGNED. UNDER STATE LAW YOU CAN GIVE THIS AUTHORITY, BUT YOU ARE NOT REQUIRED TO DO SO. YOU CAN REFUSE TO SIGN ANY DOCUMENTS UNTIL ALL BLANKS ARE COMPLETELY FILLED IN.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1809. Determining Loan Amounts
The amount of a mortgage banking loan or a mortgage loan under A.R.S. § 6-947(E) or 6-947(K), is the principal amount of the loan and does not include any points, interest, finance charges, insurance premiums of any kind, compensation paid to third parties, or compensation retained by a mortgage banker or its agents.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1810. Delay or Cause Delay
A mortgage banker does not delay or cause delay if the delay occurs due to events outside the control of the mortgage banker.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1811. Impound Account
The total of all funds retained by a mortgage banker from all periodic payments made by a borrower to maintain a cushion, as defined in R20-4-102, shall not exceed 1/6th of the estimated total annual payments from the impound account.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1812. Acquisition of Additional Interest in Licensee by Majority Owner
A person that owns 51% or more of a licensee's outstanding voting equity interests, and that acquires the power to vote additional fractional equity interests, shall deliver written notice of the acquisition to the Superintendent. The person shall deliver the notice before completing the acquisition. Within 10 days after completing the acquisition, the person shall deliver documentation evidencing the acquisition to the Superintendent.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1813. Conversion to Mortgage Broker License
Under A.R.S. § 6-949 to apply for a conversion from a mortgage banker license to a mortgage broker license, the applicant shall submit during the renewal period all applicable renewal documents and renewal fees required by A.R.S. §§ 6-126 and 6-903 for mortgage brokers.

Historical Note
New Section adopted by final rulemaking at 18 A.A.R. 2622, effective December 2, 2012 (Supp. 12-4).

ARTICLE 19. COMMERCIAL MORTGAGE BANKERS

R20-4-1901. Exemption for an Institutional Investor

A. The exemption from the licensure requirement for an institutional investor, solely as that term is used in A.R.S. §§ 6-971, 6-972, and this Article, applies only if a person claiming the exemption meets all the following criteria:
1. The claimant originates or directly or indirectly makes, negotiates, or offers to make or negotiate commercial mortgage loans that are all exclusively funded by the claimant's own resources, as defined in A.R.S. § 6-971;
2. The claimant does so in the regular course of business;
3. The claimant makes only commercial mortgage loans, as defined in A.R.S. § 6-971;
4. The claimant makes each loan on the security of commercial property, as defined in A.R.S. § 6-971; and
5. The claimant makes only loans of more than $250,000.

B. If a claimant makes even one commercial mortgage loan that does not satisfy all the above criteria, any claim of exemption is invalid, and that person shall not engage in any lending activity before obtaining a license.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1902. Exemption for an Entity Regulated by an Agency of this State, Other States, or by the United States

A. The exemption under A.R.S. § 6-972(9) only applies to a person whose offers to make or negotiate a "commercial mortgage loan," as that term is defined in A.R.S. § 6-971, and all commercial mortgage loans made or negotiated by the person are regulated directly by an agency of this state, any other state, or the United States.

B. The required regulation of the transactions listed in subsection (A) includes:
1. Rules governing a claimant's accounting and recordkeeping practices;
2. The authority to examine a claimant's books and records relating to its commercial mortgage lending activities;
3. The ability to place a claimant in a receivership or conservatorship with regard to the claimant's commercial mortgage lending activities.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1903. Equivalent and Related Experience

A. An applicant may satisfy the three years' experience requirement of A.R.S. § 6-973 by the types of lending-related experience listed in this subsection. The Department counts each month in the following types of work experience towards the

three years required either for a commercial mortgage banker license, or as a responsible individual, both under A.R.S. § 6-973(D). The Department counts a fractional month of experience, at least 15 days long, as a full month.

1. Commercial mortgage banker with an Arizona license, or Responsible Individual or branch manager for a licensee;
2. Mortgage broker with Arizona license, or Responsible Individual or branch manager for a licensee;
3. Mortgage banker with an Arizona license, or Responsible Individual or branch manager for a licensee;
4. Loan officer, with responsibility primarily for loans secured by lien interests on commercial real property;
5. Lender's branch manager, with responsibility primarily for loans secured by lien interests on commercial real property;
6. Commercial mortgage banker with license from another state, or Responsible Individual for the commercial mortgage banker;
7. Mortgage broker with license from another state, or Responsible Individual for the mortgage broker;
8. Mortgage banker with license from another state, or responsible individual for the mortgage banker;
9. Attorney certified by any state as a real estate specialist.

B. The experience of an applicant with insufficient actual experience of the types listed in subsection (A) is reviewed and evaluated on a case by case basis.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1904. Restrictions on the Term of a Cash Alternative to a Surety Bond
A licensee or applicant shall not place a certificate of deposit or investment certificate as a cash alternative to a surety bond with the Superintendent that is renewable or expires earlier than 12 months from the date of issuance.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1905. Requirements for a Person Intended to Oversee a Branch Office
A Person designated to oversee the operations of a branch office shall be knowledgeable about the branch activities of the licensee, supervise compliance by the branch with applicable law and rules, and have sufficient authority to ensure such compliance. One Person may oversee more than one branch.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1906. Notification of Change of Address
If a licensee changes the licensee's principal place of business, or the location of a branch office, the licensee shall notify the Superintendent within five business days after the address change. With the notice, a licensee shall provide the Superintendent with the license for the office changing its address and the fee required by A.R.S. § 6-126 for changing an office address. A copy of the license shall continue to be displayed at the place of business until a new license is issued.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1907. Recordkeeping Requirements

A. The Superintendent shall approve a licensee's use of a computer or mechanical recordkeeping system if the licensee gives the Superintendent advanced written notice that it intends to do so. The Department shall not require a licensee to keep a written copy of the records if the licensee can generate all information required by this Section in a timely manner for examination or other purposes. A licensee may add, delete, modify, or customize an approved computer or mechanical recordkeeping system's hardware or software components. When requested, or in response to a written notice of an examination, a licensee shall report to the Superintendent any material alteration in the approved system's fundamental character, medium, or function if the alteration changes:

1. Any approved computer or mechanical system back to a paper-based system; or
2. An approved mechanical system to a computer system; or
3. An approved computer system to a mechanical system.

B. In addition to any statutory requirement regarding records, a record maintained by a commercial mortgage banker shall include the following:

1. A list of all executed loan applications or executed fee agreements that includes the following information:
   a. Applicant's name;
   b. Application date;
   c. Amount of initial loan request;
   d. Final disposition date;
   e. Disposition (funded, denied); and
   f. Name of loan officer;
2. A record, such as a cash receipts journal, of all money received in connection with commercial mortgage loans including:
   a. Payor's name;
   b. Date received;
   c. Amount; and
   d. Receipt's purpose including identification of a related loan, if any;
3. A sequential listing of checks written for each bank account relating to the commercial mortgage banker business, such as a cash disbursement journal, including:
   a. Payee's name;
   b. Amount;
   c. Date; and
   d. Payment's purpose including identification of a related loan, if any;
4. Bank account activity source documents for the commercial mortgage banker business including receipted deposit tickets, numbered receipts for cash, bank account statements, paid checks, and bank advices.
5. A trust subsidiary ledger for each borrower that deposits trust funds showing:
   a. Borrower's name or co-borrowers' names;
   b. Loan number, if any;
   c. Amount received;
   d. Purpose for the amount received;
   e. Date received;
   f. Date deposited into trust account;
   g. Amount disbursed;
   h. Date disbursed;
   i. Disbursement's payee and purpose, and
   j. Balance.

6. A file for each application for a commercial mortgage loan containing:
   a. The agreement with the customer concerning the commercial mortgage banker's services, whether as a loan application, fee agreement, or both;
   b. The documents showing the application's final disposition, such as a settlement statements, a denial or withdrawal letter, or internal memorandum;
   c. Correspondence sent, received, or both by the licensee;
   d. Contract, agreement, and escrow instructions to or with any depository;
   e. If the loan is closed in the licensee's name, a copy of all closing documents including: closing instructions, copy of the executed note, executed deed of trust or mortgage, and each assignment of beneficial interest by the licensee, if any. If any of the documents listed in this subsection have been recorded, the file shall also contain legible copies of the recorded documents, and
   f. Itemized list of all fees taken in advance including appraisal fee, credit report fee, and application fee.
7. Samples of every piece of advertising relating to the commercial mortgage banker's business in Arizona;
8. Copies of governmental or regulatory reviews;
9. If the licensee is a not a natural person, a file containing:
   a. Organizational documents for the entity;
   b. Minutes;
   c. A record, such as a stock or ownership transfer ledger, showing ownership of all proportional equity interests in the licensee, ascertainable as of any given record date; and
   d. Annual report, if required by law;
10. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has a felony conviction, a copy of the judgment or other record of conviction.
11. If the licensee or anyone directly or indirectly owning more than 20% of the licensee has, in the previous seven years, been named a defendant in any civil suit, a copy of the complaint, any answer filed by the licensee, and any judgment, dismissal or other final order disposing of the action.
12. If the Superintendent has granted approval to maintain records outside this state, the specific address where the records are kept, and a person's name to contact for them.
13. If a licensee does business in other states, it must be able to separate Arizona loan information from information relating to other states to enable the Superintendent to conduct an examination.
14. A licensee shall produce a trial balance of the general ledger monthly to evidence the commercial mortgage banker's net worth.

C. If 10 or fewer transactions have occurred during the prior calendar quarter, a licensee shall reconcile and update all records specified in subsection (B) at least once each calendar quarter. A licensee shall reconcile and update all records specified in subsection (B) monthly if more than 10 transactions occurred during the prior calendar quarter. In addition to reconciling each trust bank account, a licensee shall verify each trust balance to each trust subsidiary ledger at each reconciliation.

D. A licensee shall retain the documents described in subsections (B)(1) and (6) for the length of time provided in A.R.S. § 6-983. For the purposes of A.R.S. § 6-983, the commercial mortgage loan's closing date, on a loan application that did not result in the making of a loan, is either:
1. The date a licensee receives a written cancellation notice from the applicant; or
2. The date a licensee mails written notice to an applicant that an application has been denied; or
3. The date of a licensee's internal memorandum closing a loan file.

E. A licensee shall maintain all other records described in this Section, and not included in subsection (D), for at least two years.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1908. Impound Accounts

The total of all funds, if any, retained by the commercial mortgage banker from all periodic payments made by the borrower to maintain a Cushion, as defined in R20-4-102, is limited only by the written agreement of the parties, if at all.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1909. Authorization to Complete Blank Spaces

An authorization, under A.R.S. § 6-984, allowing a licensee or escrow agent to complete certain blank spaces in a document after it is signed by a party to the transaction shall:
1. Specifically identify the document and the blank spaces to be completed;
2. Be in writing, dated, and signed by the authorizing party, and
3. Contain the following notice, conspicuously printed on its face: YOUR SIGNATURE BELOW AUTHORIZES YOUR COMMERCIAL MORTGAGE BANKER OR ESCROW AGENT TO FILL IN SPACES YOU LEFT BLANK IN SPECIFIED LOAN DOCUMENTS YOU ARE ABOUT TO SIGN OR MAY HAVE ALREADY SIGNED. UNDER STATE LAW YOU CAN GIVE THIS AUTHORITY, BUT YOU ARE NOT REQUIRED TO DO SO. YOU CAN REFUSE TO SIGN ANY DOCUMENTS UNTIL ALL BLANKS ARE COMPLETELY FILLED IN.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1910. Delay or Cause Delay

A commercial mortgage banker does not delay or cause delay if the delay occurs due to events outside the control of the commercial mortgage banker.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

R20-4-1911. Acquisition of Additional Interest in Licensee by Majority Owner

A person that owns 51% or more of a licensee's outstanding voting equity interests, and that acquires the power to vote additional fractional equity interests, shall deliver written notice of the acquisition to the Superintendent. The person shall deliver the notice before completing the acquisition. Within 10 days after completing the acquisition, the person shall deliver documentation evidencing the acquisition to the Superintendent.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 2094, effective June 10, 1999 (Supp. 99-2).

6-123. Deputy director; powers

In addition to the other powers, express or implied, the deputy director may:

1. Exercise all powers that are necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises.

2. In accordance with title 41, chapter 6, adopt rules that are necessary or appropriate to administer, enforce and accomplish the purposes of this title and adopt rules and issue orders that limit transactions between financial institutions or enterprises and the directors, officers or employees of the financial institutions or enterprises.

3. Require appropriate records, documents, information and reports from any financial institution or enterprise.

4. Submit to the department of public safety, or the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor, the name and fingerprints of any applicant, licensee, active manager or responsible individual or the name and fingerprints of any organizer, director or officer of any corporate applicant or licensee for:

(a) A banking permit.

(b) Permission to organize a savings and loan association or credit union.

(c) Any license.

(d) Any certificate.

(e) Authority to engage in interstate banking and branching in this state.

The department of public safety shall report the criminal record, if any, of such applicant, licensee or organizer, director or officer of such corporate applicant or licensee within ninety days after receiving the deputy director's request.

5. Employ appraisers to appraise any property that is owned or held as security by any financial institution or enterprise. The reasonable expenses and compensation of such appraisers shall be paid by the financial institution or enterprise.

6. Hold membership in, pay dues to and attend the convention of the national and regional organizations of state officials occupying like offices or performing similar functions.

7. Cooperate with other regulatory agencies and professional associations to promote the efficient, safe and sound operation and regulation of interstate banking and branching activities, including the formulation of interstate examination policies and procedures and the drafting of model rules and agreements.

8. Participate in the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116), or its successor, and use the system for all aspects of licensure pursuant to this title, title 32, chapter 9 and title 44, chapter 2.1. The deputy director may allow the system to collect licensing fees on behalf of the deputy director, to collect a processing fee for the services of the system directly from each applicant for a license or licensee and to process and maintain records on behalf of the deputy director, including information collected pursuant to this section and section 6-123.01. This paragraph does not affect the records disclosure requirements and limitations prescribed in section 6-129.01.

6-126. Application fees for financial institutions and enterprises

A. The following nonrefundable fees are payable to the department with the filing of the following:

1. To apply for a banking permit, $1,000.

2. To apply for an amendment to a banking or savings and loan association permit, $1,000.

3. To establish each banking branch office, $750.

4. To move a banking office to other than an established office of a bank, $1,000.

5. To apply for a savings and loan association permit, $5,000.

6. To establish each savings and loan association branch office, $1,500.

7. To move an office of a savings and loan association to other than an established office, $1,000.

8. To organize and establish a credit union, $100.

9. To establish each credit union branch or to move a credit union office to other than an established office of a credit union, $250.

10. To organize and establish any other financial institutions for which an application or investigation fee is not otherwise provided by law, $1,000.

11. To acquire control of a financial institution other than a consumer lender, $5,000.

12. To apply for a trust company license, $1,000.

13. To apply for a commercial mortgage banker, mortgage banker, escrow agent or consumer lender license, $1,000.

14. To apply for a mortgage broker, commercial mortgage broker, sales finance company or debt management company license, $500.

15. To apply for a collection agency license, $1,500.

16. To apply for a branch office of an escrow agent, consumer lender, commercial mortgage banker, mortgage banker or trust company, $500.

17. To apply for a branch office of a mortgage broker, commercial mortgage broker, debt management company or sales finance company, $250.

18. To apply for approval for the merger or consolidation of two or more financial institutions, $5,000 per institution.

19. To apply for approval to convert from a national bank or federal savings and loan charter to a state chartered institution, $1,000.

20. To apply for approval to convert from a federal credit union to a state chartered credit union, $500.

21. To apply for approval to merge or consolidate two or more credit unions, $500 per credit union.

22. To change the licensee name on a financial institution or enterprise license, except for a loan originator or appraiser license, not more than $250.

23. To apply for a license pursuant to chapter 12, article 1 of this title, $1,500 plus $25 for each branch office and authorized delegate to a maximum of $4,500.

24. To acquire control of a person that is licensed pursuant to chapter 12, article 1 of this title or a controlling person pursuant to chapter 12 of this title, $2,500.

25. To receive the following publications:

(a) Quarterly bank and savings and loan statement of condition, not more than $10 per copy.

(b) Monthly summary of actions report, not more than $5 per copy.

(c) A list of licensees, a monthly pending actions report and all other in-house prepared reports or listings made available to the public, not more than $1 per page.

26. To apply for a loan originator license, an amount to be determined by the deputy director.

27. To apply for a loan originator license transfer, an amount to be determined by the deputy director.

28. To apply for a conversion from a mortgage banker license to a mortgage broker license, an amount to be determined by the deputy director.

29. For a premium finance company, $300 plus $300 for each branch office.

30. For an advance fee loan broker, $50.

B. On application for a license or permit for an enterprise or consumer lender, the applicant shall pay the first year's annual assessment listed in subsection D of this section, prorated according to the number of quarters remaining until the date of the next annual assessment or renewal. If the result of the application ends in a denial, the department shall refund the prorated annual assessment that the applicant paid. Annual renewal fees are nonrefundable.

C. On issuance of a license or permit for a financial institution, the department shall collect the first year's annual assessment or renewal fee for the financial institution, except for a consumer lender that paid on application, prorated according to the number of quarters remaining until the date of the next annual assessment or renewal.

D. The following annual assessments and renewal fees shall be paid each year:

1. For an escrow agent or trust company, $1,000 plus $250 for each branch office.

2. For a debt management company or sales finance company, $500 plus $200 for each branch office.

3. For a collection agency, $600.

4. For an inactive mortgage broker or commercial mortgage broker, $250.

5. For a mortgage banker that negotiates or closes in the aggregate one hundred loans or less in the immediately preceding calendar year, $750, and for a mortgage banker that negotiates or closes in the aggregate over one hundred loans in the immediately preceding calendar year, $1,250. In addition, a mortgage banker shall pay $250 for each branch office.

6. For a commercial mortgage banker, $1,250. In addition, a commercial mortgage banker shall pay $250 for each branch office.

7. For a mortgage broker or commercial mortgage broker that negotiates or closes in the aggregate fifty loans or less in the immediately preceding calendar year, $250 and for a mortgage broker or commercial mortgage broker

that negotiates or closes in the aggregate more than fifty loans in the immediately preceding calendar year, $500. In addition, a mortgage broker or commercial mortgage broker shall pay $200 for each branch office.

8. For a consumer lender, $1,000 plus $200 for each branch office.

9. For a licensee pursuant to chapter 12, article 1 of this title, $500 plus $25 for each branch office and each authorized delegate to a maximum of $2,500.

10. For a loan originator, an amount to be determined by the deputy director.

11. For a loan originator change to inactive status, an amount to be determined by the deputy director.

12. For a premium finance company, $300 plus $300 for each branch office.

13. For an advance fee loan broker, $25.

6-901. Definitions

In this article, unless the context otherwise requires:

1. "Affiliate" means an entity which directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the entity specified.

2. "Commercial mortgage broker" means a person who for compensation or in the expectation of compensation either directly or indirectly makes, negotiates or offers to make or negotiate a commercial mortgage loan.

3. "Commercial mortgage loan" means a loan that is directly or indirectly secured by a mortgage or deed of trust or any lien interest on commercial property and that is created with the consent of the owner of the commercial property.

4. "Commercial property" means real property that is not a residential dwelling of one to four units.

5. "Compensation" means anything of value or any benefit, including points, commissions, bonuses, referral fees, loan origination fees and other similar fees but excluding periodic interest resulting from the application of the note rate of interest to the outstanding principal balance remaining unpaid from time to time.

6. "Continuing education unit" means a fifty minute period of time in a continuing education course that relates to the mortgage industry or to mortgage transactions, including courses taken to maintain recognized industry designations.

7. "Generally accepted accounting principles" means United States generally accepted accounting principles issued by the financial accounting standards board or the international financial reporting standards issued by the international accounting standards board.

8. "Investor" means a person who lends or invests money in mortgage loans.

9. "License" means a license issued under this article.

10. "Licensee" means a person licensed under this article.

11. "Loan originator" has the same meaning prescribed in section 6-991.

12. "Mortgage broker" means a person who is not exempt under section 6-902 and who for compensation or in the expectation of compensation either directly or indirectly makes, negotiates or offers to make or negotiate a mortgage loan.

13. "Mortgage loan" means a loan secured by a mortgage or deed of trust or any lien interest on real estate located in this state created with the consent of the owner of the real estate.

14. "Mortgage loan closing" means the day by which all documents relating to the mortgage loan have been executed and recorded and all monies have been accounted for under the terms of the escrow instructions.

15. "Residential mortgage loan" means a mortgage loan that has security in the form of a residential dwelling of one to four units.

6-902. Exemptions

A. This article does not apply to:

1. A person who does business under any other law of this state, or law of any other state while regulated by a state agency of such other state or the United States, relating to banks, savings banks, trust companies, savings and loan associations, profit sharing and pension trusts, credit unions, insurance companies or consumer lenders, or receivership, including directly or indirectly making, negotiating or offering to make or negotiate a mortgage loan if the mortgage transactions are regulated by the other law or are under the jurisdiction of a court. Subsidiaries and service corporations of these institutions shall not be exempt and shall be subject to the provisions of this article unless preempted by federal law.

2. A person who makes a mortgage loan:

(a) With his own monies.

(b) For his own investment.

(c) Without intent to resell.

(d) And is not engaged in the business of making mortgage loans.

3. A person who funds a mortgage loan which has been originated and processed by a licensee, by a mortgage banker licensed in this state or by a person exempt under paragraph 1 of this subsection and who meets all of the following:

(a) Does not maintain a place of business in this state in connection with funding mortgage loans.

(b) Does not directly or indirectly solicit borrowers in this state for the purpose of making mortgage loans.

(c) Does not participate in the negotiation of mortgage loans.

4. A person who, as seller of real property, receives one or more mortgages or deeds of trust as security for a purchase money obligation.

5. A person who is licensed to practice law in this state, but is not actively and principally engaged in the business of negotiating mortgage loans, if this person renders services in the course of his practice as an attorney at law.

6. A person who receives a mortgage or deed of trust on real property as security for an obligation payable on an installment or deferred payment basis and arising out of materials furnished or services rendered in the improvement of that real property or any lien created without the consent of the owner of the real property.

7. A person who is licensed pursuant to article 2 or 3 of this chapter.

8. An agency of any state or of the United States.

9. A nonprofit federally tax exempt corporation certified by the United States small business administration and organized to promote economic development within this state whose primary activity consists of providing financing for business expansion.

10. An institutional investor as defined in section 6-971 unless the institutional investor makes a mortgage loan other than a commercial mortgage loan as defined in section 6-971.

B. For the purposes of:

1. Subsection A, paragraph 3 of this section, "originate" includes loans closed in a name other than that of the licensee, a mortgage banker licensed in this state or exempt person only if the person in whose name the loan is closed meets the other requirements of subsection A, paragraph 3 of this section.

2. Subsection A, paragraph 3, subdivision (c) of this section, "negotiation of mortgage loans" does not include setting the terms under which a person may buy a mortgage loan originated by a licensee or a person exempt under subsection A, paragraph 1 of this section.

6-902.01. Exemption; responsible individual; fees; revocation; rules

A. A parent company may apply for and be granted a certificate of exemption on behalf of an entity that allows a responsible individual, as prescribed in section 6-903, subsection H, to reside out of state if the responsible individual meets the following criteria:

1. Is a natural person.

2. Meets all of the requirements pursuant to this article.

3. Receives notification from the parent company that the parent company was granted a certificate of exemption by the director.

B. The parent company must apply on behalf of the entity and submit an attestation form as prescribed by the director that the parent company meets all of the following requirements:

1. Maintains a physical presence in this state.

2. Does not have any disciplinary actions by the department.

3. Has a class of securities registered with the United States securities and exchange commission.

C. The applicant shall pay all applicable fees as prescribed in rule.

D. The director may revoke the certificate if the director finds either of the following:

1. The interests of the consumer are not met.

2. The requirements of the responsible individual prescribed by this section are not met.

E. The duration of the certificate of exemption is continuous during the license period unless the certificate of exemption is revoked pursuant to this section.

F. If the director denies the application for or revokes a certificate of exemption, the director shall issue an order outlining the findings of fact, conclusions of law and reasons for the denial or revocation. The applicant has a right to a hearing pursuant to title 41, chapter 6, article 10.

G. The director may prescribe rules to carry out this section.

6-903. Licensing of mortgage brokers required; qualifications; application; bond; fees; renewal

A. A person shall not act as a mortgage broker if the person is not licensed under this article. A person who brokers only commercial mortgage loans shall obtain either a mortgage broker license or a commercial mortgage broker license. A person who brokers residential mortgage loans shall obtain a mortgage broker license.

B. The deputy director shall not grant a mortgage broker's license or a commercial mortgage broker's license to a person, other than a natural person, that is not registered to do business in this state on the date of granting the license.

C. An applicant for an original mortgage broker's license shall:

1. Have not less than three years' experience as a mortgage broker or loan originator or equivalent lending experience in a related business during the five years immediately preceding the time of application.

2. Have satisfactorily completed a course of study approved by the deputy director during the three years immediately preceding the time of application.

3. Have passed a mortgage broker's test pursuant to section 6-908.

D. An applicant for an original commercial mortgage broker's license shall:

1. Have not less than three years' experience in the commercial mortgage broker business or equivalent lending experience in a related business during the five years immediately preceding the time of application.

2. Have made in the past or intend to make or negotiate or offer to make or negotiate commercial mortgage loans.

3. Provide the deputy director with the following:

(a) A balance sheet prepared within the immediately preceding six months and certified by the licensee. The deputy director may require a more recent balance sheet.

(b) If the applicant has begun operations, a statement of operations and retained earnings and a statement of changes in financial position.

(c) Notes to the financial statement if applicable.

E. Notwithstanding subsection D, paragraph 3 of this section, commercial mortgage broker licensees and commercial mortgage broker license applicants whose own resources are derived exclusively from correspondent contracts with institutional investors shall provide the deputy director with a current financial statement or that of its parent company prepared according to generally accepted accounting principles, including:

1. A balance sheet prepared within the immediately preceding six months and certified by the licensee. The deputy director may require a more recent balance sheet.

2. If the applicant has begun operations, a statement of operations and retained earnings and a statement of changes in financial position.

3. Notes to the financial statement if applicable.

F. A person shall apply for a license or for a renewal of a license in writing on the forms, in the manner and accompanied by the information prescribed by the deputy director. The deputy director may require additional information on the experience, background and competency of the applicant and any responsible individual designated by the applicant. If the applicant is a person other than a natural person, the deputy director may

require information as to the competency of any officer, director, shareholder or other interested party of the association, corporation or group.

G. The nonrefundable application fee and annual renewal fee are as prescribed in section 6-126. The nonrefundable application fee shall accompany each application for an original license only. The deputy director shall deposit, pursuant to sections 35-146 and 35-147, the monies in the state general fund.

H. If a licensee is a person other than a natural person, the license issued to it entitles all officers, directors, members, partners, trustees and employees of the licensed corporation, partnership, association or trust to engage in the mortgage business if one officer, director, member, partner, employee or trustee of the person or an employee of an affiliated entity or the parent company of the licensee is designated in the license as the individual responsible for the person under this article. If a licensee is a natural person, the license entitles all employees of the licensee to engage in the mortgage business. If the natural person is not a resident of this state, an employee of the licensee shall be designated in the license as the individual responsible for the licensee under this article. For the purposes of this subsection, an employee does not include an independent contractor. The responsible individual shall be a resident of this state unless the director grants an exemption pursuant to section 6-902.01, shall be in active management of the activities of the licensee governed by this article and shall meet the qualifications set forth in subsection C or D of this section for a licensee.

I. A licensee shall notify the deputy director that its responsible individual will cease to be in active management of the activities of the licensee within ten days after learning that fact. The licensee has ninety days after the notification is received by the deputy director within which to replace the responsible individual with a qualified replacement and to so notify the deputy director. If the license is not placed under active management of a qualified responsible individual and if notice is not given to the deputy director within the ninety-day period, the license of the licensee expires.

J. Every person licensed as a mortgage broker or a commercial mortgage broker shall deposit with the deputy director, before doing business as a mortgage broker or a commercial mortgage broker, a bond executed by the licensee as principal and a surety company authorized to do business in this state as surety. The bond shall be conditioned on the faithful compliance of the licensee, including the licensee's directors, officers, members, partners, trustees and employees, with this article. The bond is payable to any person injured by the wrongful act, default, fraud or misrepresentation of the licensee or the licensee's employees and to this state for the benefit of the person injured. Only one bond is required for any person, firm, association or corporation irrespective of the number of officers, directors, members, partners or trustees who are employed by or are members of such firm, association or corporation. A suit may not be commenced on the bond after the expiration of one year following the commission of the act on which the suit is based, except that claims for fraud or mistake are limited to the limitation period provided in section 12-543, paragraph 3. If an injured person commences an action for a judgment to collect from the bond, the injured person shall notify the deputy director of the action in writing at the time of the commencement of the action and shall provide copies of all documents relating to the action to the deputy director on request.

K. The bond required by this section is $10,000 for licensees whose investors are limited solely to institutional investors and $15,000 for licensees whose investors include any noninstitutional investors.

L. For the purposes of subsection K of this section:

1. "Institutional investor" means a state or national bank, a state or federal savings and loan association, a state or federal savings bank, a state or federal credit union, a federal government agency or instrumentality, a quasi-federal government agency, a financial enterprise, a licensed real estate broker or salesman, a profit sharing or pension trust or an insurance company.

2. "Investor" means any person who directly or indirectly provides to a mortgage broker funds that are, or are intended to be, used in making a loan and any person who purchases a loan or any interest in a loan from a mortgage broker or in a transaction that has been directly or indirectly arranged or negotiated by a mortgage broker.

M. Notwithstanding section 35-155, in lieu of the bond described in this section, an applicant for a license or a licensee may deposit with the deputy director a deposit in the form of cash or alternatives to cash in the same amount as the bond required under subsection J of this section. The deputy director may accept any of the following as an alternative to cash:

1. Certificates of deposits or investment certificates that are payable or assigned to the state treasurer, issued by banks or savings banks doing business in this state and fully insured by the federal deposit insurance corporation or any successor institution.

2. Certificates of deposit, investment certificates or share accounts that are payable or assigned to the state treasurer, issued by a savings and loan association doing business in this state and fully insured by the federal deposit insurance corporation or any successor institution.

3. Certificates of deposit, investment certificates or share accounts that are payable or assigned to the state treasurer, issued by a credit union doing business in this state and fully insured by the national credit union administration or any successor institution.

N. The deputy director shall deposit the cash or alternatives to cash received under this section with the state treasurer. The state treasurer shall hold the cash or alternatives to cash in the name of this state to guarantee the faithful performance of all legal obligations of the person required to post bond pursuant to this section. The person is entitled to receive any accrued interest earned from the alternatives to cash. The state treasurer may impose a fee to reimburse the state treasurer for administrative expenses. The fee shall not exceed $10 for each cash or alternatives to cash deposit and shall be paid by the applicant or licensee. The state treasurer may prescribe rules relating to the terms and conditions of each type of security provided by this section.

O. In addition to such other terms and conditions as the deputy director prescribes by rule or order, the principal amount of the deposit shall be released only on written authorization of the deputy director or on the order of a court of competent jurisdiction. The principal amount of the deposit shall not be released before the expiration of three years from the first to occur of any of the following:

1. The date of substitution of a bond for a cash alternative.

2. The surrender of the license.

3. The revocation of the license.

4. The expiration of the license.

P. A licensee or an employee of the licensee shall not advertise for or solicit mortgage business in any manner without using the license name, or other assumed name or trade name that is submitted to the department pursuant to section 6-117, and the license number. If a license is issued in the name of a natural person, the advertising or solicitation may not imply the license is in the name of another person or entity. For the purposes of this subsection, advertise does not include business cards, radio and television advertising directed at national or regional markets and promotional items except if those items contain rates or terms on which a mortgage loan may be obtained.

Q. A licensee shall not employ any person unless the licensee:

1. Conducts a reasonable investigation of the background, honesty, truthfulness, integrity and competency of the employee before hiring.

2. Keeps a record of the investigation for not less than two years after termination.

R. A license is not transferable or assignable and control of a licensee may not be acquired through a stock purchase or other device without the prior written consent of the deputy director. Written consent shall not be given if the deputy director finds that any of the grounds for denial, revocation or suspension of a license as set

forth in section 6-905 are applicable to the acquiring person. For the purposes of this subsection, "control" means the power to vote more than twenty percent of outstanding voting shares of a licensed corporation, partnership, association or trust.

S. The licensee is liable for any damage caused by any of the licensee's employees while acting as an employee of the licensee.

T. A licensee shall comply with the requirements of section 6-114 relating to balloon payments.

U. The examination and course of study requirements of this section shall be waived by the deputy director for any person applying for a license who, within the six months immediately before submitting the application, has been a licensee or a responsible person pursuant to this chapter.

V. If the applicant for renewal of a mortgage broker license is a natural person, the applicant shall have satisfactorily completed twelve continuing education units by a continuing education provider approved by the deputy director before submitting the renewal application. If the applicant is other than a natural person, the designated responsible individual shall have satisfactorily completed twelve continuing education units by a continuing education provider approved by the deputy director before submitting the renewal application. An applicant for renewal of a commercial mortgage broker license is not subject to the continuing education requirements prescribed by this article.

W. A licensee who employs a loan originator shall comply with section 6-991.03.

6-904. Issuance of license; renewal; inactive status; branch office license; application; fee

A. The deputy director, on determining that the applicant is qualified and has paid the fees, shall issue a mortgage broker's license or a commercial mortgage broker's license to the applicant which is evidenced by a continuous certificate. The deputy director shall grant or deny a license within one hundred twenty days after receipt of the completed application and fees. An applicant who has been denied a license may not reapply for such a license before one year from the date of the previous application.

B. For licenses approved on or before September 30, 2008, a licensee shall pay the renewal fee on or before September 30, 2008 and on or before December 31 for subsequent years beginning on or before December 31, 2009. Licenses not renewed by September 30, 2008 are suspended, and the licensee shall not act as a mortgage broker or a commercial mortgage broker until the license is renewed or a new license is issued pursuant to this article. A person may renew a suspended license by paying the renewal fee plus $25 for each day after September 30, 2008 that a license renewal fee is not received by the deputy director and making application for renewal as prescribed by the deputy director. Licenses which are not renewed by October 31, 2008 expire. A license shall not be granted to the holder of an expired license except as provided in this article for the issuance of an original license.

C. For licenses approved on or before September 30, 2008, a licensee may request inactive status on or before September 30, 2008 for the following license year, and the license shall be placed on inactive status after payment to the deputy director of the inactive status renewal fee prescribed in section 6-126 and the surrender of the license to the deputy director. During inactive status, an inactive licensee is not required to maintain a bond and shall not act as a mortgage broker or a commercial mortgage broker. A licensee may not be on inactive status for more than two consecutive years, nor for more than four years in any ten-year period. The license is deemed expired on violation of any of the limitations of this subsection.

D. For licenses approved after or renewed on September 30, 2008, a licensee shall pay the renewal fee on or before December 31, 2009 and on or before December 31 of each subsequent year. Licenses not renewed by December 31 are suspended, and the licensee shall not act as a mortgage broker or a commercial mortgage broker until the license is renewed or a new license is issued pursuant to this article. A person may renew a suspended license by paying the renewal fee plus $25 for each day after December 31 that a license renewal fee is not received by the deputy director and applying for renewal as prescribed by the deputy director. A license that is not renewed by January 31 expires. A license shall not be granted to the holder of an expired license except as provided in this article for the issuance of an original license.

E. For licenses approved after or renewed on September 30, 2008, beginning in 2009 and each subsequent year, a licensee may request inactive status for the following license year if the licensee makes the request on or before December 31. The license shall be placed on inactive status after the licensee pays to the deputy director the inactive status renewal fee prescribed in section 6-126 and surrenders the license to the deputy director. During inactive status, an inactive licensee is not required to maintain a bond and shall not act as a mortgage broker or a commercial mortgage broker. A licensee may not be on inactive status for more than two consecutive years or for more than four years in any ten-year period. The license expires on violation of this subsection.

F. An inactive licensee may return to active status notwithstanding the requirements of section 6-903, subsections C and D by making a written request to the deputy director for reactivation and paying the prorated portion of the annual assessment that would have been charged to the licensee. The licensee shall also provide the deputy director with proof that the licensee meets all of the other requirements for acting as a mortgage broker or a commercial mortgage broker, including required bond coverage or the deposit of a cash alternative.

G. A licensee shall prominently display the mortgage broker license or commercial mortgage broker license in the office of the mortgage broker or commercial mortgage broker.

H. Every licensed mortgage broker and licensed commercial mortgage broker shall designate and maintain a principal place of business in this state for the transaction of business. The license shall specify the address of the licensee's principal place of business. If a licensee wishes to maintain one or more locations in addition to a principal place of business, the licensee shall first obtain a branch office license from the deputy director and designate a person for each branch office to oversee the operations of that office. The licensee shall submit a fee as set forth in section 6-126 for each branch office license. If the deputy director determines that the applicant is qualified, the deputy director shall issue a branch office license indicating the address of the branch office. The licensee shall conspicuously display the branch office license in the branch office. If the address of the principal place of business or of any branch office is changed, the licensee shall immediately notify the deputy director of the change and the deputy director shall endorse the change of address on the license for a fee as prescribed in section 6-126.

6-906. Required accounting practices and records; escrow of monies; disclosure

A. Every mortgage broker shall keep and maintain at all times correct and complete records as prescribed by the deputy director that will enable the deputy director to determine whether the licensee is conducting the licensee's business in accordance with this article. A mortgage broker shall make records available to the deputy director in this state not more than three business days after demand and provide for the acceptance of collect calls or provide a toll-free telephone number to borrowers to obtain information from the records if the licensed place of business in this state cannot readily provide the information requested by the borrowers. Every mortgage broker shall maintain original documents or clearly legible copies of all mortgage loan transactions for not less than five years after the date of the mortgage loan closing.

B. Every mortgage broker shall observe generally accepted accounting principles and practices.

C. A mortgage broker shall immediately deposit all monies received by the mortgage broker in an escrow account with an escrow agent licensed pursuant to chapter 7 of this title. Withdrawals shall only be disbursed according to the terms of the escrow instructions. The escrow agent shall not be the mortgage broker. A mortgage broker, however, may accept an appraisal fee, which the mortgage broker shall only use to obtain an appraisal, a credit investigation fee and a fee in connection with an application for a mortgage loan. The mortgage broker shall not commingle the appraisal fee or credit investigation fee with other monies of the mortgage broker. A mortgage broker shall not accept any monies or documents in connection with an application for a mortgage loan in an amount of $200,000 or less, except as provided in this section and pursuant to a written agreement. The parties shall sign the written agreement and the agreement shall contain terms pertaining to the disposition of the monies and documents, whether the loan is finally consummated or not, the term for which the agreement is to remain in force before return of the monies and documents for nonperformance can be required and an itemized list of all estimated costs to the borrower of obtaining the mortgage loan, including all costs charged by third parties. The licensee shall preserve all agreements between the parties involved in the transaction and all contracts, agreements and escrow instructions to or with the depository. All documents provided by the borrower or at the expense of the borrower to the mortgage broker, including any appraisals, are the property of the borrower and, at the borrower's request, shall be returned to the borrower or transferred to any person designated by the borrower without further expense to the borrower if the loan is not consummated, provided that any such document is not prohibited by law from being transferred or returned.

D. Before a mortgage loan closing on residential real property designed principally for the occupancy of from one to four families, a licensee shall fully comply, to the extent applicable, with the real estate lending disclosure requirements of title I of the consumer credit protection act (15 United States Code sections 1601 through 1666j), the real estate settlement procedures act (12 United States Code sections 2601 through 2617) and the regulations promulgated under those acts.

6-907. Required disclosure to investors

A. Before payment of any money by an investor in connection with a mortgage loan, a licensee shall provide to an investor that is not a financial institution, state or national bank, state or federal savings and loan association, state or federal savings bank, state or federal credit union, financial enterprise, licensed real estate broker or salesman, profit sharing or pension trust or insurance company:

1. An opinion from an independent source stating the value of the property subject to the mortgage loan being made or sold. The opinion shall state the value of the property as it exists on the date of the opinion.

2. A copy of the preliminary title report that states the condition of title and discloses any encumbrances, assessments and liens of record on the property securing the mortgage loan being made or sold.

3. A disclosure statement that includes the following information:

(a) The name and address of the fee owner of the property securing the mortgage loan being made or sold.

(b) Information relative to the ability of the borrower to meet the obligations of the mortgage loan.

(c) A legal description or address of the property securing the mortgage loan being made or sold.

(d) The existence of any improvements on the property or any utilities on or adjacent to the property that will serve the property.

(e) The terms and conditions of the mortgage loan being made or sold, including the principal balance owed and the status of principal and interest payments thereon.

(f) The terms and conditions of all liens on the property securing the mortgage loan being made or sold.

(g) A statement as to whether the mortgage broker is acting as principal or agent in the transaction.

(h) Any additional information prescribed by the deputy director.

B. After using the licensee's best efforts to verify all of the information required by this section, the licensee shall sign the statement attesting to the validity of the information to the best of the licensee's knowledge and belief. The licensee shall maintain a record of acknowledgment from the lender of the receipt of this information for not less than two years from the date of the mortgage loan closing.

6-908. Testing committee; testing of applicants; approval by deputy director; definition

A. The deputy director shall establish a testing committee to create, periodically update and establish standards for passing a test for mortgage brokers. The committee shall consist of five members appointed by the deputy director once every two years. Four of the members shall be licensees appointed from nominations submitted by licensees and one of the members shall be an employee of the department. Licensees who serve as members of the committee shall serve without expense to this state. The test is subject to the approval of the deputy director.

B. Each applicant for an original license, before issuance of the license, shall personally take and pass the written test given under the supervision of the department. The test must reasonably examine the applicant's knowledge of:

1. The obligations between principal and agent, the applicable canons of business ethics, the provisions of this article and the rules adopted under this article.

2. The arithmetical computations common to mortgage brokerage.

3. The principles of real estate lending.

4. The general purposes and legal effect of mortgages, deeds of trust and security agreements.

C. The department shall administer the test to applicants for licenses not less than once every six months. The deputy director may contract for the testing of applicants. The department or the department's contractor shall reasonably prescribe the time, place and conduct of testing and collect a fee for administration of the test to be assessed to all persons taking the test. The fee is $50 per testing. If the deputy director contracts for the testing of applicants, the testing fee owed pursuant to this section is payable by the applicant directly to the contractor. The deputy director may allow a contractor to charge a reasonable testing fee that is more than the fee prescribed in this subsection. An applicant may not take the test more than four times within a twelve-month period.

D. All tests shall be given, conducted and graded in a fair and impartial manner and without unfair discrimination between individuals tested. The committee shall inform the applicant of the result of the test within thirty days.

E. For testing purposes, the department shall prepare a handbook for mortgage brokers and distribute it to all applicants for a fee of not to exceed the actual cost of producing and distributing the handbook.

F. For the purposes of this section "applicant" means a person who has submitted a completed application in the form prescribed by law, accompanied by a letter of inquiry to a surety company authorized to do business in this state regarding the procurement of a bond pursuant to section 6-903, to be issued on completion of all requirements for the granting of a license.

6-909. Prohibited acts

A. Except for employment verifications, verifications of mortgages and loans, and deposit or account verifications, a person, in connection with or incidental to the making of any mortgage loan, shall not induce, require or permit any document to be signed by a party to the transaction if such document contains any blank spaces to be filled in after it has been signed, except that the party may specifically authorize the licensee or the escrow agent handling the transaction, in writing, to complete certain blank spaces.

B. A person is not entitled to receive compensation in connection with arranging for or negotiating a mortgage loan if such person is not licensed pursuant to this article. A mortgage broker shall not pay compensation to, contract with or employ as an independent contractor a person who is acting as a mortgage broker or mortgage banker but who is not licensed under this chapter.

C. A person engaged in the mortgage business shall not knowingly advertise, display, distribute, broadcast or televise, or cause or permit to be advertised, displayed, distributed, broadcast or televised, in any manner whatever, any false, misleading or deceptive statement or representation with regard to the rates, terms or conditions for a mortgage loan. The charges or rates of charge, if stated, shall be set forth in such manner as to prevent misunderstanding by prospective borrowers.

D. A mortgage broker shall not request or require a person seeking a mortgage loan on real property designed principally for the occupancy of from one to four families in an amount of two hundred thousand dollars or less to enter into an agreement that prohibits the person from seeking the loan from another source.

E. A mortgage broker, except in good faith, shall not delay or cause delay in the closing of a loan that results in increased costs to a borrower.

F. A mortgage broker shall not record or cause to be recorded any document that would give rise to liability under section 33-420.

G. A mortgage broker shall not, for compensation, either directly or indirectly make or negotiate or offer to make or negotiate a loan that is either:

1. Less than five thousand dollars.

2. Not secured by a mortgage or deed of trust or other lien interest in real property.

H. A person who is employed by a licensee to act in the capacity of a mortgage broker shall not be concurrently employed by any other licensee to act as a mortgage broker, except with the prior written approval of all the concurrently employing licensees.

I. A mortgage broker shall not collect compensation for rendering services as a real estate broker or real estate salesman unless both of the following apply:

1. The mortgage broker is licensed pursuant to title 32, chapter 20.

2. The mortgage broker has disclosed to the person from whom the compensation is collected that the mortgage broker is receiving compensation both for mortgage broker services, if applicable, and for real estate broker or real estate salesman services.

J. A licensee shall not accept any assignment of the borrower's wages or salary in connection with activities governed by this article.

K. A mortgage broker shall not receive or disburse monies in servicing or arranging a mortgage loan except as provided in section 6-906, subsection C.

L. A mortgage broker shall not make a false promise or misrepresentation or conceal an essential or material fact in the course of the mortgage broker business.

M. A mortgage broker shall not fail to truthfully account for the monies belonging to a party to a mortgage loan transaction or fail to disburse monies in accordance with his agreements.

N. A mortgage broker shall not engage in illegal or improper business practices.

O. A mortgage broker shall not record a mortgage or deed of trust if monies are not available for the immediate disbursal to the mortgagor unless, before that recording, the mortgage broker informs the mortgagor in writing of a definite date by which payment shall be made and obtains the mortgagor's written permission for the delay.

P. A mortgage broker shall not require a person seeking a loan secured by real property to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer.

Q. A mortgage broker must reasonably supervise the activities of a loan originator who is licensed pursuant to article 4 of this chapter and who is employed by the mortgage broker.

6-912. Certificate of exemption

A. A person who is exempt from licensure pursuant to this article and articles 2 and 3 of this chapter as a federally chartered savings bank that is registered with the nationwide mortgage licensing system and registry may file a written application with the department for a certificate of exemption for the following purposes:

1. Registering with the department except that the registration shall not affect the exempt status of the applicant.

2. Sponsoring one or more mortgage loan originators.

3. Fulfilling any reporting requirements.

4. Reasonably supervising the activities of a mortgage loan originator who is licensed pursuant to article 4 of this chapter and who is employed by or under exclusive contract with the applicant.

B. A person shall apply for a certificate of exemption or renewal of a certificate of exemption in writing on the forms, in the manner and accompanied by the information prescribed by the deputy director. The deputy director may require additional information on the experience, background and competency of the applicant and the responsible individual designated by the applicant.

C. The department may charge a fee for processing the original or renewal application for a certificate of exemption and for other costs incurred by the department.

D. An exempt person shall notify the deputy director that the person has designated a responsible individual to actively manage the activities of the mortgage loan originator licensees. The responsible individual may be located in this state or in the state where the primary business of the bank is conducted and shall have at least three years of experience in the business of making mortgage loans or equivalent experience in a related business. The responsible individual may supervise one or more licensed mortgage loan originators in this state.

E. Within ten days after learning that a responsible individual will cease managing the licensees' activities, an exempt person must notify the deputy director. Within ninety days after the notification is received by the deputy director, the exempt person must replace the responsible individual with a person who meets the qualifications prescribed by subsection D of this section and must notify the deputy director of the replacement. A certificate of exemption expires if either of the following occurs:

1. The exempt person is not placed under active management of a qualified responsible individual.

2. The exempt person does not provide notice of replacement of the responsible individual to the deputy director as prescribed by this section.

F. After reviewing the application for a certificate of exemption and after verifying the submitted information, the department shall issue the certificate of exemption.

G. An exempt person who sponsors a loan originator on an exclusive contract shall comply with section 6-991.03.

H. The deputy director may deny a certificate of exemption to a person or suspend or revoke a certificate of exemption if the deputy director finds that an applicant or certificate holder has done any of the following:

1. Violated any applicable law, rule or order.

2. Refused or failed to furnish, within a reasonable time, any information or make any report that may be required by the deputy director.

3. Had a final judgment entered against the applicant or certificate holder in a civil action on grounds of fraud, deceit or misrepresentation and the conduct on which the judgment is based indicates that it would be contrary to the interest of the public to allow the applicant or certificate holder to manage a loan originator.

4. Had an order entered against the applicant or certificate holder involving fraud, deceit or misrepresentation by an administrative agency of this state, the federal government or any other state or territory of the United States and the facts relating to the order indicate that it would be contrary to the interest of the public to allow the applicant or certificate holder to manage a loan originator.

5. Made a material misstatement or suppressed or withheld information on the application for a certificate of exemption or any document required to be filed with the deputy director.

I. If a person to whom a certificate of exemption is issued or who has applied for a certificate of exemption under this article is indicted or informed against for forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy to defraud or a like offense, and a certified copy of the indictment or information or other proper evidence of the indictment or information is filed with the deputy director, the deputy director may suspend the certificate of exemption issued to the exempt person or refuse to grant a certificate of exemption to an applicant pending trial on the indictment or information.

J. Every person to whom a certification of exemption is issued pursuant to this section shall deposit with the deputy director, before doing business as a registered exempt person, a bond executed by the registered exempt person as principal and a surety company authorized to do business in this state as surety. The bond shall be conditioned on the faithful compliance of the registered exempt person, including the registered exempt person's directors, officers, members, partners, trustees and employees, with this article. The bond is payable to any person injured by the wrongful act, default, fraud or misrepresentation of the registered exempt person, or the registered exempt person's directors, officers, members, partners, trustees and employees and to this state for the benefit of the person injured. Only one bond is required for any person, firm, association or corporation irrespective of the number of officers, directors, members, partners or trustees who are employed by or are members of such firm, association or corporation. A suit may not be commenced on the bond after the expiration of one year following the commission of the act on which the suit is based, except that claims for fraud or mistake are limited to the limitation provided in section 12-543, paragraph 3. If an injured person commences an action for a judgment to collect from the bond, the injured person shall notify the deputy director of the action in writing at the time of the commencement of the action and shall provide copies of all documents relating to the action to the deputy director on request. The bond required by this section is $200,000.

6-913. Conversion to commercial mortgage broker license

Notwithstanding section 6-903, a person who holds a mortgage broker license may convert it to a commercial mortgage broker license by applying in a manner prescribed by the deputy director by rule. The approval of the conversion is at the discretion of the deputy director.

6-941. Definitions

In this article, unless the context otherwise requires:

1. "Affiliate" means an entity which directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the entity specified.

2. "Compensation" means anything of value or any benefit including points, commissions, bonuses, referral fees, loan origination fees and other similar fees but excluding periodic interest resulting from the application of the note rate of interest to the outstanding principal balance remaining unpaid from time to time.

3. "Generally accepted accounting principles" means United States generally accepted accounting principles issued by the financial accounting standards board or the international financial reporting standards issued by the international accounting standards board.

4. "License" means a license issued under this article.

5. "Licensee" means a person licensed under this article.

6. "Mortgage banker" means a person who is not exempt under section 6-942 and who for compensation or in the expectation of compensation either directly or indirectly makes, negotiates or offers to make or negotiate a mortgage banking loan or a mortgage loan.

7. "Mortgage banking loan" means a loan which is funded exclusively from the mortgage banker's own resources, which is directly or indirectly secured by a mortgage or deed of trust or any lien interest on real estate located in this state and which is created with the consent of the owner of the real property. For the purposes of this paragraph, "own resources" means any of the following:

(a) Cash, corporate capital, warehouse credit lines at commercial banks, savings banks or savings and loan associations or other sources that are liability items on the mortgage banker's financial statements for which its assets are pledged.

(b) Correspondent contracts between the mortgage banker and a bank, savings bank, trust company, savings and loan association, credit union, profit sharing or pension trust, consumer lender or insurance company.

(c) The mortgage banker's affiliates' cash, corporate capital, warehouse credit lines at commercial banks or other sources that are liability items on the affiliates' financial statements for which the affiliates' assets are pledged.

8. "Mortgage banking loan closing" means the day by which all documents relating to the mortgage banking loan or mortgage loan have been executed and recorded and all monies have been accounted for.

9. "Mortgage loan" means any loan, other than a mortgage banking loan, secured by a mortgage or deed of trust or any lien interest on real estate located in this state and created with the consent of the owner of the real estate.

6-942. Exemptions

A. This article does not apply to:

1. A person who does business under any other law of this state, or any other state while regulated by a state agency of such other state, or of the United States, relating to banks, savings banks, trust companies, savings and loan associations, profit sharing and pension trusts, credit unions, insurance companies or consumer lenders, or receiverships, including directly or indirectly making, negotiating or offering to make or negotiate a mortgage banking loan or a mortgage loan if the mortgage transactions are regulated by the other law or are under the jurisdiction of a court.

2. A person who makes a mortgage banking loan or a mortgage loan:

(a) With his own monies.

(b) For his own investment.

(c) Without intent to resell.

(d) And is not engaged in the business of making mortgage loans or mortgage banking loans.

3. A person who funds a mortgage loan or mortgage banking loan which has been originated and processed by a licensee, by a mortgage broker licensed in this state or by a person exempt under paragraph 1 of this subsection and who meets all of the following:

(a) Does not maintain a place of business in this state in connection with funding mortgage loans or mortgage banking loans.

(b) Does not directly or indirectly solicit borrowers in this state for the purpose of making mortgage loans.

(c) Does not participate in the negotiation of mortgage loans.

4. A person who, as seller of real property, receives one or more mortgages or deeds of trust as security for a purchase money obligation.

5. A person who is licensed to practice law in this state, but is not actively and principally engaged in the business of negotiating mortgage banking loans or mortgage loans, if this person renders services in the course of his practice as an attorney at law.

6. A person who receives a mortgage or deed of trust on real property as security for an obligation payable on an installment or deferred payment basis and arising out of materials furnished or services rendered in the improvement of that real property or any lien created without the consent of the owner of such real property.

7. A person who is licensed pursuant to article 1 or 3 of this chapter.

8. An agency of any state or of the United States.

9. A nonprofit federally tax exempt corporation certified by the United States small business administration and organized to promote economic development within this state whose primary activity consists of providing financing for business expansion.

10. An institutional investor as defined in section 6-971 unless the institutional investor makes either:

(a) A mortgage loan other than a commercial mortgage loan as defined in section 6-971.

(b) A mortgage banking loan other than a commercial mortgage loan as defined in section 6-971.

B. Subsidiaries and service corporations of institutions exempt under subsection A, paragraph 1 of this section shall not be exempt and shall be subject to the provisions of this article unless preempted by federal law.

C. For the purposes of:

1. Subsection A, paragraph 3 of this section, "originate" includes loans closed in a name other than that of the licensee, a mortgage broker licensed in this state or exempt person only if the person in whose name the loan is closed meets the other requirements of subsection A, paragraph 3 of this section.

2. Subsection A, paragraph 3, subdivision (c) of this section, negotiation of mortgage loans does not include setting the terms under which a person may buy a mortgage loan originated by a licensee or a person exempt under subsection A, paragraph 1 of this section.

6-943. Licensing of mortgage bankers required; qualifications; application; bond; fees; renewal

A. A person shall not act as a mortgage banker if the person is not licensed under this article.

B. The deputy director shall not grant a mortgage banker's license to a person, other than a natural person, who is not registered to do business in this state on the date of application for a license. The deputy director shall not issue a mortgage banker's license or a renewal of a license to an applicant unless the applicant meets all of the requirements prescribed in subsection C of this section. The deputy director shall determine whether the applicant meets the requirements based on the application and evidence presented at a hearing, if any, or any other evidence that the deputy director may have regarding qualifications of the applicant.

C. In order to qualify for a mortgage banker license or a renewal of a license, an applicant shall:

1. Have not fewer than three years' experience in the business of making mortgage banking loans or equivalent lending experience in a related business. If the applicant is a person other than a natural person, the responsible individual shall meet this requirement.

2. Have engaged or intend to engage in the business of making mortgage loans or mortgage banking loans.

3. Either:

(a) Be authorized to do business with any of the following:

(i) The federal housing administration.

(ii) The United States department of veterans affairs.

(iii) The federal national mortgage association.

(iv) The federal home loan mortgage corporation.

(b) Notwithstanding paragraph 5 of this subsection, at all times have and maintain a net worth of not less than $100,000.

4. Provide the deputy director with a current audited financial statement, or that of its parent company, that is prepared by an independent certified public accountant in accordance with generally accepted accounting principles and that includes:

(a) The certified public accountant's opinion as to the fairness of the presentation in conformity with generally accepted accounting principles.

(b) A balance sheet prepared within the previous six months and certified by the licensee. The deputy director may require a more recent balance sheet.

(c) A statement of operations and retained earnings and a statement of changes in financial position if the applicant has commenced operations.

(d) Notes to the financial statement, if applicable.

5. At all times have and maintain a net worth of not less than $100,000.

D. A person shall apply for a license or for a renewal of a license in writing on the forms, in the manner and accompanied by the information prescribed by the deputy director, including the requirements prescribed in subsection C of this section. The deputy director may require additional information on the experience, background and competency of the applicant and any responsible individual designated by the applicant. If the applicant is a person other than a natural person, the deputy director may require information as to the

competency of any officer, director, shareholder, member, partner, trustee, employee or other interested party of the association, corporation or group.

E. The nonrefundable application fee and annual renewal fee are as prescribed in section 6-126. The nonrefundable application fee shall accompany each application for an original license only.

F. If a licensee is a person other than a natural person, the license issued to it entitles all officers, directors, members, partners, trustees and employees of the licensed corporation, partnership, association or trust to engage in the mortgage banking business if one officer, director, member, partner, employee or trustee of the person is designated in the license as the individual responsible for the person under this article. If a licensee is a natural person, the license entitles all employees of the licensee to engage in the mortgage banking business. If the natural person is not a resident of this state, an employee of the licensee shall be designated in the license as the individual responsible for the licensee under this article. For the purposes of this article, an employee does not include an independent contractor. For the purposes of this article, the responsible individual shall be a resident of this state, shall be in active management of the activities of the licensee governed by this article and shall have not less than three years' experience in the business of making mortgage banking loans or equivalent experience in a related business.

G. A licensee shall notify the deputy director that its responsible individual will cease to be in active management of the licensee within ten days after learning that fact. Not more than ninety days after the deputy director receives the notice, the licensee shall place itself under the active management of a qualified responsible person and notify the deputy director. If the licensee is not placed under active management of a qualified responsible individual and if notice is not received by the deputy director within the ninety-day period, the license of the licensee expires.

H. Every person licensed as a mortgage banker shall deposit with the deputy director, before doing business as a mortgage banker, a bond executed by the licensee as principal and a surety company authorized to do business in this state as surety. The bond shall be conditioned on the faithful compliance of the licensee, including the licensee's directors, officers, members, partners, trustees and employees, with this article. Only one bond is required for a person, firm, association or corporation irrespective of the number of officers, directors, members, partners or trustees who are employed by or are members of the firm, association or corporation. The bond is payable to any person injured by the wrongful act, default, fraud or misrepresentation of the licensee and to this state for the benefit of any injured person. The coverage shall be maintained in the minimum amount prescribed in this subsection, computed on a base consisting of the total assets of the licensee plus the unpaid balance of loans it has contracted to service for others as of the end of the licensee's fiscal year.

Base	Minimum Bond
Not over $1,000,000	$25,000 for the first $500,000 plus $5,000 for each $100,000 or fraction thereof over $500,000
$1,000,001 to $10,000,000	$50,000 plus $5,000 for each $1,800,000 or fraction thereof over $1,000,000
$10,000,001 to $100,000,000	$75,000 plus $5,000 for each $18,000,000 or fraction thereof over $10,000,000
$100,000,001 and over	$100,000

A suit may not be commenced on the bond after the expiration of one year following the commission of the act on which the suit is based, except that claims for fraud or mistake are limited to the limitation period provided in

section 12-543, paragraph 3. If any injured person commences an action for a judgment to collect on the bond, the injured person shall notify the deputy director of the action in writing at the time of the commencement of the action and shall provide copies of all documents relating to the action to the deputy director on request.

I. Notwithstanding subsection H of this section, the bond required is $25,000 for licensees whose investors are limited solely to institutional investors.

J. For the purposes of subsection I of this section:

1. "Institutional investor" means a state or national bank, a state or federal savings and loan association, a state or federal savings bank, a state or federal credit union, a federal government agency or instrumentality, a quasi-federal government agency, a financial enterprise, a licensed real estate broker or salesman, a profit sharing or pension trust, or an insurance company.

2. "Investor" means any person who directly or indirectly provides to a mortgage banker funds that are, or are intended to be, used in the making of a loan, and any person who purchases a loan, or any interest therein, from a mortgage banker or in a transaction that has been directly or indirectly arranged or negotiated by a mortgage banker.

K. Notwithstanding section 35-155, in lieu of the bond described in this section, an applicant for a license or a licensee may deposit with the deputy director a deposit in the form of cash or alternatives to cash in the amount prescribed in subsection H or I of this section, as applicable. The deputy director may accept any of the following as an alternative to cash:

1. Certificates of deposit or investment certificates that are payable or assigned to the state treasurer, issued by banks or savings banks doing business in this state and fully insured by the federal deposit insurance corporation or any successor institution.

2. Certificates of deposit, investment certificates or share accounts that are payable or assigned to the state treasurer, issued by a savings and loan association doing business in this state and fully insured by the federal deposit insurance corporation or any successor institution.

3. Certificates of deposit, investment certificates or share accounts that are payable or assigned to the state treasurer, issued by a credit union doing business in this state and fully insured by the national credit union administration or any successor institution.

L. The deputy director shall deposit the cash or alternatives to cash received under this section with the state treasurer. The state treasurer shall hold the cash or alternatives to cash in the name of this state to guarantee the faithful performance of all legal obligations of the person required to post bond pursuant to this section. The person is entitled to receive any accrued interest earned from the alternatives to cash. The state treasurer may impose a fee to reimburse the state treasurer for administrative expenses. The fee shall not exceed $10 for each cash or alternatives to cash deposit and shall be paid by the applicant or licensee. The state treasurer may prescribe rules relating to the terms and conditions of each type of security provided by this section.

M. In addition to such other terms and conditions as the deputy director prescribes by rule or order, the principal amount of the deposit shall be released only on written authorization of the deputy director or on the order of a court of competent jurisdiction. The principal amount of the deposit shall not be released before the expiration of three years from the first to occur of any of the following:

1. The date of substitution of a bond for a cash alternative.

2. The surrender of the license.

3. The revocation of the license.

4. The expiration of the license.

N. A licensee or an employee of the licensee shall not advertise for or solicit mortgage banking business in any manner without using the license name, or other assumed name or trade name that is submitted to the department pursuant to section 6-117, and the license number. If a license is issued in the name of a natural person, the advertising or solicitation may not imply that the license is in the name of another person or entity. For the purposes of this subsection, advertise does not include business cards, radio and television advertising directed at national or regional markets and promotional items except if those items contain rates or terms on which a mortgage loan or mortgage banking loan may be obtained.

O. A licensee shall not employ any person unless the licensee:

1. Conducts a reasonable investigation of the background, honesty, truthfulness, integrity and competency of the employee before hiring.

2. Keeps a record of the investigation for not less than two years after termination.

P. The licensee is liable for any damage caused by any of the licensee's employees while engaged in the business of making mortgage loans or mortgage banking loans.

Q. A licensee shall comply with the requirements of section 6-114 relating to balloon payments.

R. Notwithstanding subsection C, paragraph 4 of this section, licensees and applicants whose own resources are derived exclusively from correspondent contracts between mortgage bankers and banks, savings banks, trust companies, savings and loan associations, credit unions, profit sharing or pension trusts, consumer lenders or insurance companies shall provide the deputy director with a current financial statement, or that of its parent company, that is prepared in accordance with generally accepted accounting principles and that includes:

1. A balance sheet prepared within the previous six months and certified by the licensee. The deputy director may require a more recent balance sheet.

2. A statement of operations and retained earnings and a statement of changes in financial position if the applicant has commenced operations.

3. Notes to the financial statement if applicable.

S. In addition to the grounds specified in section 6-945, subsection A, failure of a licensee to operate the business of making mortgage loans or mortgage banking loans for a continuous period of twelve months or more shall constitute grounds for revocation of such a license. The deputy director, on good cause shown, may extend the time for operating such a business for a single fixed period, which shall not exceed twelve months.

T. If the applicant for renewal of a mortgage banker license is a natural person, the applicant shall have satisfactorily completed twelve continuing education units by a continuing education provider approved by the deputy director before submitting the renewal application. If the applicant is other than a natural person, the designated responsible individual shall have satisfactorily completed twelve continuing education units by a continuing education provider approved by the deputy director before submitting the renewal application.

U. A licensee who employs a loan originator shall comply with section 6-991.03.

6-944. Issuance of license; renewal; branch office license; application; fee

A. If the deputy director determines that the applicant has met the requirements set forth in section 6-943, subsection C, is qualified and has paid the fees, the deputy director shall issue a mortgage banker's license to the applicant evidenced by a continuous certificate. The license is not transferable or assignable. An applicant who has been denied a license may not reapply for such a license before one year from the date of the previous application. A person may not acquire control of a licensee through a stock purchase or other device without the prior written consent of the deputy director. Written consent shall not be given if the deputy director finds that any of the grounds for denial, revocation or suspension of a license as set forth in section 6-945 are applicable to the acquiring person. For the purposes of this subsection, "control" means the power to vote more than twenty percent of outstanding voting shares of a licensed corporation, partnership, association or trust.

B. For licenses approved on or before March 31, 2009, a licensee shall make an application and pay the renewal fee set forth in section 6-126 on or before March 31, 2009 but not sooner than February 1, 2009 and on or before December 31 for subsequent years beginning in 2009. Licenses not renewed by March 31, 2009 are suspended, and the licensee shall not act as a mortgage banker until the license is renewed or a new license is issued pursuant to this article. A person may renew a suspended license by paying the renewal fee plus $25 for each day after March 31, 2009 that a license renewal fee is not received by the department and making application for renewal as prescribed by the deputy director. Licenses which are not renewed by April 30, 2009 expire. A license shall not be granted to the holder of an expired license except as provided in this article for the issuance of an original license.

C. For licenses approved after or renewed on March 31, 2009, a licensee shall pay the renewal fee on or before December 31, beginning in 2009. Licenses not renewed by December 31 are suspended, and the licensee shall not act as a mortgage banker until the license is renewed or a new license is issued pursuant to this article. A person may renew a suspended license by paying the renewal fee plus $25 for each day after December 31 that a license renewal fee is not received by the deputy director and applying for renewal as prescribed by the deputy director. Licenses that are not renewed by January 31 expire. A license shall not be granted to the holder of an expired license except as provided in this article for the issuance of an original license.

D. A licensee shall prominently display the mortgage banker license in the office of the mortgage banker.

E. Every licensed mortgage banker shall designate and maintain a principal place of business in this state for the transaction of business. The license shall specify the address of the principal place of business. If a licensee wishes to maintain one or more locations in addition to a principal place of business, the licensee shall first obtain a branch office license from the deputy director and designate a person for each branch office to oversee the operations of that office. The licensee shall submit a fee as prescribed in section 6-126 for each branch office license. If the deputy director determines that the applicant is qualified, the deputy director shall issue a branch office license indicating the address of the branch office. The licensee shall conspicuously display the branch office license in the branch office. If the address of the principal place of business or of any branch office is changed, the licensee shall notify the deputy director before the change and the deputy director shall endorse the change of address on the license for a fee as prescribed in section 6-126.

6-946. Required accounting practices and records; refundable deposits; periodic impoundment payments; disclosure

A. Every mortgage banker shall keep and maintain at all times correct and complete records clearly reflecting the financial condition of the business as prescribed by the deputy director that will enable the deputy director to determine whether the licensee is conducting the licensee's business in accordance with this article. A mortgage banker shall make records available to the deputy director in this state not more than three business days after demand and provide for the acceptance of collect calls or provide a toll-free telephone number to borrowers to obtain information from the records if the licensed places of business in this state cannot readily provide the information requested by the borrowers. Every mortgage banker shall maintain original documents, or clearly legible copies, of all mortgage banking loan transactions and mortgage loan transactions, unless the mortgage banking loan or mortgage loan is paid in full or the mortgage banking loan or mortgage loan and its servicing are sold, for not less than two years after the date of the mortgage banking loan closing or the date of the last disbursement of monies by the licensee, whichever occurs last. A licensee that uses a computer or mechanical recordkeeping system is not required to keep a written copy of the records if the licensee is able to generate all information required by this section in a timely manner for examination or for other purposes.

B. Every mortgage banker shall observe generally accepted accounting principles and practices.

C. If a mortgage banker requires an advance or fee to be paid in connection with an application for a mortgage banking loan or mortgage loan, there shall be a written agreement. The parties shall sign the written agreement, and the agreement shall contain terms pertaining to the payment of the fee or disposition of the advance or fee, whether the loan is finally consummated or not, and the term for which the agreement is to remain in force before return of the advance or fee for nonperformance can be required. Advances or fees shall be immediately deposited in a trust account in a bank, savings bank or savings and loan association that is fully insured by the federal deposit insurance corporation or any successor agency and shall not be commingled with other monies. The trust account shall designate the licensee as trustee and shall provide for withdrawal of the monies without previous notice. Withdrawals shall only be disbursed according to the terms of the agreement. A licensee who receives advances or fees shall preserve and on request make available to the deputy director all deposits, withdrawal receipts and statements of account rendered by the bank or savings and loan association. The licensee shall further preserve all agreements between the parties involved in the transaction and all contracts, agreements and instructions to or with the depository and shall keep an accurate accounting of each separate bank account in which the trust funds have been deposited. If the loan is declined by or on behalf of the lender or cancelled by the applicant, all documents provided by or at the expense of the applicant, including any appraisal, are the property of the applicant. At the applicant's discretion, said documents shall be returned or transferred to any financial institution or enterprise so designated without additional consideration except for fees for which the applicant has previously contracted, provided that any such document is not prohibited by law from being transferred or returned.

D. If periodic payments are to be collected from the mortgagor to provide for payments by the mortgagee of taxes, assessments, insurance premiums, ground rents or other current charges against the real estate security, the estimated payment amount stated to the mortgagor by the mortgage banker shall be such that the total of these payments collected for each category during the tax or other period will approximate the actual tax or other payment when due. All such periodic payments of taxes, assessments, insurance premiums, ground rents and other current charges shall be accounted for annually to the borrower and, to the extent monies have been collected for payment, shall be paid promptly by the mortgage banker.

E. Before a mortgage banking loan closing on residential real property designed principally for the occupancy of from one to four families, a licensee shall fully comply, to the extent they apply, with the real estate lending disclosure requirements of title I of the consumer credit protection act (15 United States Code sections 1601 through 1666j), the real estate settlement procedures act (12 United States Code sections 2601 through 2617) and the regulations promulgated under those acts.

6-947. Prohibited acts

A. Except for employment verifications and deposit or account verifications, a person in connection with or incidental to the making of any mortgage banking loan or mortgage loan shall not induce, require or permit any document to be signed by a party to the transaction if the document contains any blank spaces to be filled in after it has been signed, except that the party may specifically authorize the licensee or the escrow agent handling the transaction, in writing, to complete blank spaces in certain documents.

B. A person is not entitled to receive compensation in connection with arranging for or negotiating a mortgage banking loan or mortgage loan if the person is not licensed pursuant to this article. A mortgage banker shall not pay compensation to, contract with or employ as an independent contractor a person who is acting as a mortgage broker or mortgage banker but who is not licensed under this chapter.

C. A mortgage banker may not commingle monies of borrowers or monies held for the benefit of borrowers with monies of the mortgage banker.

D. A person engaged in the mortgage banking business shall not knowingly advertise, display, distribute, broadcast or televise, or cause or permit to be advertised, displayed, distributed, broadcast or televised, in any manner whatever, any false, misleading or deceptive statement or representation with regard to the rates, terms or conditions for a mortgage banking loan or mortgage loan. The charges or rates of charge, if stated, shall be set forth in a clear and concise manner.

E. A mortgage banker shall not request or require a person seeking a mortgage banking loan or mortgage loan, on real property designed principally for the occupancy of from one to four families, in an amount of two hundred thousand dollars or less to enter into an agreement which prohibits the person from seeking the loan from another source.

F. A mortgage banker shall not, except in good faith, delay or cause delay in the closing of a loan that results in increased costs to a borrower.

G. A mortgage banker shall not record or cause to be recorded any document which would give rise to liability under section 33-420.

H. A person who is employed by a licensee to act in the capacity of a mortgage banker shall not be concurrently employed by any other licensee to act in the capacity of a mortgage banker, except with the prior written approval of all such concurrently employing licensees.

I. A mortgage banker shall not collect compensation for rendering services as a real estate broker or real estate salesman unless both of the following apply:

1. The mortgage banker is licensed pursuant to title 32, chapter 20.

2. The mortgage banker has disclosed to the person from whom the compensation is collected that the mortgage banker is receiving compensation both for mortgage banker services, if applicable, and for real estate broker or real estate salesman services.

J. A licensee shall not accept any assignment of the borrower's wages or salary in connection with activities governed by this article.

K. A mortgage banker shall not, for compensation, either directly or indirectly make or negotiate or offer to make or negotiate a loan of money in an amount of ten thousand dollars or less that is not secured by a mortgage or deed of trust or other lien interest in real property.

L. A mortgage banker shall not make a false promise or misrepresentation or conceal an essential or material fact in the course of the mortgage banker business.

M. A mortgage banker shall not fail to truthfully account for the monies belonging to a party to a mortgage loan or mortgage banking loan transaction or fail to disburse monies in accordance with his agreements.

N. A mortgage banker shall not record a mortgage or deed of trust if monies are not available for the immediate disbursal to the mortgagor unless, before that recording, the mortgage banker informs the mortgagor in writing of a definite date by which payment shall be made and obtains the mortgagor's written permission for the delay.

O. A mortgage banker shall not require a person seeking a loan secured by real property to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer.

P. A mortgage banker must reasonably supervise the activities of a loan originator who is licensed pursuant to article 4 of this chapter and who is employed by the mortgage banker.

6-949. Conversion to mortgage broker license

Notwithstanding any other law, a licensee who funds in the aggregate one hundred fifty or fewer loans in the immediately preceding calendar year may apply at the time of license renewal to the department for a conversion to a mortgage broker license issued pursuant to article 1 of this chapter. The conversion application shall be in a manner prescribed by the deputy director by rule. The approval of the conversion is at the discretion of the deputy director.

6-971. Definitions

In this article, unless the context otherwise requires:

1. "Affiliate" means an entity that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the specified entity.

2. "Commercial mortgage banker" means a person who engages in the following:

(a) Originating commercial mortgage loans.

(b) Servicing commercial mortgage loans.

(c) Either directly or indirectly making, negotiating or offering to make or negotiate commercial mortgage loans.

3. "Commercial mortgage loan" means a loan that is directly or indirectly secured by a mortgage or deed of trust or any lien interest on commercial property and created with the consent of the owner of the commercial property.

4. "Commercial mortgage loan closing" means the day by which all documents relating to the commercial mortgage loan have been executed and recorded and all monies have been accounted for under the terms of the escrow instructions.

5. "Commercial property" means real estate that is located in this state and that is not used for a one to four family residence.

6. "Compensation" means anything of value or any benefit including points, commissions, bonuses, referral fees, loan origination fees and other similar fees but excluding periodic interest resulting from the application of the note rate of interest to the outstanding principal balance remaining unpaid from time to time.

7. "Generally accepted accounting principles" means United States generally accepted accounting principles issued by the financial accounting standards board or the international financial reporting standards issued by the international accounting standards board.

8. "Institutional investor" means a person who in the regular course of business makes commercial mortgage loans of more than two hundred fifty thousand dollars that are funded exclusively from the institutional investor's own resources.

9. "Investor" means a person who directly or indirectly provides monies to a commercial mortgage banker that are, or are intended to be, used to make a loan, and any person who purchases a loan, or any interest in a loan, from a commercial mortgage banker or in a transaction that has been directly or indirectly arranged or negotiated by a commercial mortgage banker.

10. "License" means a license issued under this article.

11. "Licensee" means a person who is licensed under this article.

12. "Own resources" means any of the following:

(a) Cash, corporate capital, warehouse credit lines at commercial banks, savings banks or savings and loan associations or other sources that are liability items on the person's financial statements.

(b) Correspondent contracts between the commercial mortgage banker and an institutional investor, bank, savings bank, trust company, savings and loan association, credit union, profit sharing or pension trust, consumer lender or insurance company.

(c) The person's affiliates' cash, corporate capital, warehouse credit lines at commercial banks or other sources that are liability items on the affiliates' financial statements for which the affiliates' assets are pledged.

13. "Servicing commercial mortgage loans" means collecting payments at a location in this state on commercial mortgage loans, including:

(a) Principal.

(b) Interest.

(c) Trust items such as hazard insurance premiums, taxes and various reserves on an obligation under the terms of the obligation.

(d) Operational procedures covering accounting, bookkeeping, insurance, tax records, loan payment follow-up, delinquency loan follow-up, loan analysis and property valuation.

6-972. Exemptions

This article does not apply to:

1. Institutional investors.

2. A person who funds a commercial mortgage loan that was originated and processed by a licensee or by an institutional investor and who meets all of the following conditions:

(a) Does not maintain a place of business in this state in connection with funding commercial mortgage loans.

(b) Does not directly or indirectly solicit borrowers in this state for the purpose of making commercial mortgage loans.

(c) Does not participate in negotiating commercial mortgage loans. For purposes of this subdivision, "negotiating commercial mortgage loans" does not include setting the terms under which a person may buy or make a commercial mortgage loan originated by a licensee, a mortgage banker or a mortgage broker licensed pursuant to article 1 or 2 of this chapter, or an institutional investor.

3. A person who as a seller of commercial property receives one or more mortgages or deeds of trust as security for a purchase money obligation.

4. A person who is licensed to practice law in this state but is not actively and principally engaged in the business of negotiating commercial mortgage loans, if this person renders services in the course of his practice as an attorney at law.

5. A person who receives a mortgage or deed of trust on commercial property as security for an obligation payable on an installment or deferred payment basis and arising out of materials furnished or services rendered in improving that commercial property or any lien created without the consent of the owner of commercial property.

6. A person who is licensed pursuant to article 1 or 2 of this chapter.

7. An agency of any state or of the United States.

8. A nonprofit federally tax exempt corporation certified by the United States small business administration, organized to promote economic development in this state and whose primary activity consists of providing financing for business expansion.

9. A bank, savings bank, trust company, savings and loan association, profit sharing trust, pension trust, credit union, insurance company, consumer lender or receivership if it is regulated by this state, another state, the United States or a court with respect to its commercial mortgage business.

6-973. Licensing commercial mortgage bankers required; qualifications

A. A person shall not act as a commercial mortgage banker without a license issued under this article.

B. A person who engages in commercial mortgage banking need not be licensed under article 1 or 2 of this chapter or chapter 7 of this title if the person is licensed under this article.

C. The deputy director shall not grant a commercial mortgage banker's license to a person, other than a natural person, who is not registered to do business in this state on the date the license is granted. The deputy director shall not issue to or renew a commercial mortgage banker's license of an applicant unless the applicant meets all of the requirements prescribed in subsection D of this section. The deputy director shall determine whether the applicant meets the requirements based on the application, and evidence presented at a hearing, if any, or any other evidence that the deputy director may have regarding the applicant's qualifications.

D. In order to qualify for a commercial mortgage banker's license or a renewal of such a license an applicant shall:

1. Have at least three years' experience in the commercial mortgage business or equivalent experience in a related business. If the applicant is not a natural person, the responsible individual as prescribed by section 6-976 shall meet this requirement.

2. Have made in the past or intend to make or negotiate or offer to make or negotiate commercial mortgage loans.

3. Provide the deputy director with a current audited financial statement or that of its parent company prepared by an independent certified public accountant according to generally accepted accounting principles including:

(a) The certified public accountant's opinion as to the fairness of the presentation according to generally accepted accounting principles.

(b) A balance sheet prepared within the immediately preceding six months and certified by the licensee. The deputy director may require a more recent balance sheet.

(c) If the applicant has begun operations, a statement of operations and retained earnings and a statement of changes in financial position.

(d) Notes to the financial statement if applicable.

4. Have and maintain at all times a net worth of at least $100,000.

E. Notwithstanding subsection D, paragraph 3 of this section, licensees and applicants whose own resources are derived exclusively from correspondent contracts with institutional investors shall provide the deputy director with a current financial statement or that of its parent company prepared according to generally accepted accounting principles including:

1. A balance sheet prepared within the immediately preceding six months and certified by the licensee. The deputy director may require a more recent balance sheet.

2. If the applicant has begun operations, a statement of operations and retained earnings and a statement of changes in financial position.

3. Notes to the financial statement if applicable.

6-975. Bond or other security

A. Each licensed commercial mortgage banker shall deposit with the deputy director, before doing business as a commercial mortgage banker, a bond executed by the licensee as principal and a surety company authorized to do business in this state as surety. The bond shall be conditioned on the licensee's faithful compliance, including the directors, officers, members, partners, trustees and employees, with this article. Only one bond is required for any person, firm, association or corporation regardless of the number of officers, directors, members, partners or trustees who are employed by or are members of the firm, association or corporation.

B. The bond is payable to any person who is injured by the wrongful act, default, fraud or misrepresentation of the licensee or the licensee's employees and to this state for the benefit of the person injured. No suit may be commenced on the bond after the expiration of one year following the commission of the act on which the suit is based, except that claims for fraud or mistake are limited to the limitation period prescribed in section 12-543, paragraph 3. If an injured person commences an action for a judgment to collect on the bond, the injured person shall notify the deputy director of the action in writing when the action is commenced and shall provide copies of all documents relating to the action to the deputy director on request.

C. The bond required by this section is $25,000 for licensees whose investors are limited solely to institutional investors and $100,000 for licensees whose investors include any other investors.

D. Notwithstanding section 35-155, in lieu of the bond described in this section, an applicant for a license or a licensee may deposit with the deputy director a deposit in the form of cash or alternatives to cash in the same amount as the bond required under subsection C of this section. The deputy director may accept any of the following as an alternative to cash:

1. Certificates of deposit, investment certificates or share accounts that are payable or assigned to the state treasurer, issued by banks, savings banks or savings and loan associations doing business in this state and fully insured by the federal deposit insurance corporation or any successor institution.

2. Certificates of deposit, investment certificates or share accounts that are payable or assigned to the state treasurer, issued by a credit union doing business in this state and fully insured by the national credit union administration or any successor institution.

E. The deputy director shall deposit the cash or alternatives to cash received under this section with the state treasurer. The state treasurer shall hold the cash or alternatives to cash in the name of this state to guarantee the faithful performance of all legal obligations of the person required to post bond pursuant to this section. The person is entitled to receive any accrued interest earned from the alternatives to cash. The state treasurer may impose a fee to reimburse the state treasurer for administrative expenses. The fee shall be paid by the applicant or licensee. The state treasurer may prescribe rules relating to the terms and conditions of each type of security provided by this section.

F. In addition to such other terms and conditions as the deputy director prescribes by rule or order, the principal amount of the deposit shall be released only on written authorization of the deputy director or on the order of a court of competent jurisdiction. The principal amount of the deposit shall not be released before the expiration of three years after the first to occur of any of the following:

1. The date of substitution of a bond for a cash alternative.

2. The surrender of the license.

3. The revocation of the license.

4. The expiration of the license.

6-976. Responsible individual; employees

A. A license entitles the licensee and all officers, directors, members, partners, trustees and employees of the licensee to engage in commercial mortgage banking if one officer, director, member, partner, employee or trustee of the person or an employee of an affiliated entity or the parent company of the licensee is designated in the license as the individual responsible for the licensee under this article. If the natural person is not a resident of this state, an employee of the licensee shall be designated in the license as the individual responsible for the licensee under this article. For the purposes of this subsection, employee does not include an independent contractor.

B. The responsible individual shall be active in managing the activities of the licensee governed by this article and shall meet the qualifications prescribed by section 6-973, subsection D, paragraph 1 for a licensee. A licensee shall notify the deputy director that its responsible individual will cease to be active in managing the activities of the licensee within ten days after learning of that fact. Within ninety days after the notification is received by the deputy director, the licensee shall replace the responsible individual with a qualified replacement and notify the deputy director. If the license is not placed under active management of a qualified responsible individual and if notice is not given to the deputy director within the ninety-day period, the license of the licensee expires.

C. A licensee shall not employ any person unless the licensee:

1. Conducts a reasonable investigation of the background, honesty, truthfulness, integrity and competency of the employee before hiring.

2. Keeps a record of the investigation for at least two years after termination.

D. The licensee is liable for any damages caused by any employee while acting as an employee of the licensee.

6-977. Displaying and using license number

A. A licensee shall prominently display the commercial mortgage banker license in the office of the commercial mortgage banker.

B. A licensee or an employee of the licensee shall not advertise for or solicit commercial mortgage loans in any manner without using the license name, or other assumed name or trade name that is submitted to the department pursuant to section 6-117, and the license number. If a license is issued in the name of a natural person, the advertising or solicitation may not imply that the license is in the name of another person or entity. For the purposes of this subsection, advertise does not include business cards, radio and television advertising directed at national or regional markets and promotional items unless those items contain rates or terms on which a commercial mortgage loan may be obtained.

6-979. Principal place of business; branch office license; change of address

A. Each licensed commercial mortgage banker shall designate and maintain a principal place of business in this state to transact business. The license shall specify the address of the licensee's principal place of business.

B. If a licensee wishes to maintain one or more locations in addition to a principal place of business, the licensee shall first obtain a branch office license from the deputy director and designate a person for each branch office to oversee the operations of that office.

C. If the deputy director determines that the licensee is qualified, the deputy director shall issue a branch office license indicating the address of the branch office. The licensee shall conspicuously display the branch office license in the branch office.

D. If the address of the principal place of business or of any branch office is changed, the licensee shall immediately notify the deputy director of the change and the deputy director shall endorse the change of address on the license.

6-983. Required accounting practices and records; escrow of monies; disclosure

A. A commercial mortgage banker shall keep and maintain at all times correct and complete records as prescribed by the deputy director that will enable the deputy director to determine whether the licensee is complying with this article. A commercial mortgage banker shall make records available to the deputy director in this state not more than three business days after demand and shall provide for the acceptance of collect calls or provide a toll-free telephone number to borrowers to obtain information from the records if the licensed place of business in this state cannot readily provide the information requested by the borrowers. A commercial mortgage banker shall maintain original documents or clearly legible copies of all commercial mortgage loan transactions for at least two years after the date of the commercial mortgage loan closing.

B. A commercial mortgage banker shall observe generally accepted accounting principles and practices.

C. If a commercial mortgage banker requires an advance or fee to be paid in connection with an application for a commercial mortgage loan, there shall be a written agreement. The parties shall sign the written agreement, and the agreement shall contain terms pertaining to the payment of the fee or disposition of the advance or fee, whether the loan is finally consummated or not, and a term for which the agreement is to remain in force before return of the advance or fee for nonperformance can be required. The licensee shall immediately deposit advances or fees in a trust account in a bank, savings bank or savings and loan association that is fully insured by the federal deposit insurance corporation or any successor agency, and the advances or fees shall not be commingled with other monies. The trust account shall designate the licensee as trustee and shall provide for withdrawing the monies without previous notice. Withdrawals shall only be disbursed according to the terms of the agreement. A licensee who receives advances or fees shall preserve and on request make available to the deputy director all deposits, withdrawal receipts and statements of account rendered by the bank, savings bank or savings and loan association. The licensee shall further preserve all agreements between the parties involved in the transaction and all contracts, agreements and instructions to or with the depository and shall keep an accurate accounting of each separate bank account in which the trust monies have been deposited. If the loan is declined by or on behalf of the lender or canceled by the applicant, all documents provided by or at the expense of the applicant, including any appraisal, are the property of the applicant. At the applicant's discretion, the documents shall be returned or transferred to any designated financial institution or enterprise without additional consideration except for fees for which the applicant has previously contracted, if the document is not prohibited by law from being transferred or returned.

D. If periodic payments are to be collected from the mortgagor to provide for payments by the mortgagee of taxes, assessments, insurance premiums, ground rents or other current charges against the real estate security, the estimated payment amount stated to the mortgagor by the commercial mortgage banker shall be such that the total of these payments collected for each category during the tax or other period will approximate the actual tax or other payment when due. The licensee shall annually account to the borrower for all such periodic payments of taxes, assessments, insurance premiums, ground rents and other current charges and, to the extent monies have been collected for payment, shall pay them promptly.

6-984. Prohibited acts

A. Except for employment verifications and deposit or account verifications, a person shall not induce, require or permit any document in connection with making a commercial mortgage loan to be signed by a party to the transaction if the document contains any blank spaces to be filled in after it has been signed unless the party has specifically authorized the licensee or the escrow agent in writing to complete those blank spaces.

B. A person is not entitled to receive compensation in connection with arranging for or negotiating a commercial mortgage loan if the person is not licensed pursuant to or is not exempt from this article, except that a commercial mortgage banker, mortgage banker or mortgage broker licensed pursuant to this article or article 1 or 2 of this chapter may compensate a person who is a resident of another state and who meets the licensing requirements, if any, of the other state in connection with arranging for or negotiating a commercial mortgage loan.

C. A commercial mortgage banker may not commingle monies of borrowers or monies held for the benefit of borrowers with monies of the commercial mortgage banker.

D. A person engaged in commercial mortgage banking shall not knowingly advertise, display, distribute, broadcast or televise, or cause or permit to be advertised, displayed, distributed, broadcast or televised, in any manner whatever, a false, misleading or deceptive statement or representation with regard to the rates, terms or conditions for a commercial mortgage loan. The charges or rates of charge, if stated, shall be set forth in a clear and concise manner.

E. A commercial mortgage banker shall not, except in good faith, delay or cause delay in the closing of a loan that results in increased costs to a borrower.

F. A commercial mortgage banker shall not record or cause to be recorded a document that would give rise to liability under section 33-420.

G. A person who is employed by a licensee to act in the capacity of a commercial mortgage banker shall not be concurrently employed by any other licensee to act in the capacity of a commercial mortgage banker, except with the prior written approval of all concurrently employing licensees.

H. A commercial mortgage banker shall not collect compensation for rendering services as a real estate broker or real estate salesperson unless both of the following apply:

1. The commercial mortgage banker is licensed pursuant to title 32, chapter 20.

2. The commercial mortgage banker has disclosed to the person from whom the compensation is collected that the commercial mortgage banker is receiving compensation both for commercial mortgage banking and for services as a real estate broker or salesperson.

I. A licensee shall not accept any assignment of the borrower's wages or salary in connection with activities governed by this article.

J. A commercial mortgage banker shall not make or negotiate or offer to make or negotiate, for compensation, either directly or indirectly, a loan of money that is not secured by a mortgage or deed of trust or any other lien interest in real property or if the real estate security is a one to four family residence.

K. A commercial mortgage banker shall not make a false promise or misrepresentation or conceal an essential or material fact in the course of the commercial mortgage banker business.

L. A commercial mortgage banker shall not fail to truthfully account for the monies belonging to a party to a commercial mortgage loan or commercial mortgage banking loan transaction or fail to disburse monies in accordance with the agreements.

M. A commercial mortgage banker shall not record a mortgage or deed of trust if monies are not available for the immediate disbursal to the mortgagor unless, before that recording, the commercial mortgage banker informs the mortgagor in writing of a definite date by which payment shall be made and obtains the mortgagor's written permission for the delay.

D-2.

DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS
Title 20, Chapter 6, Articles 11 & 21

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: September 4, 2024

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

FROM: Council Staff

DATE: August 15, 2024

SUBJECT: **DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS**
Title 20, Chapter 6, Articles 11 & 21

Summary

This Five-Year Review Report (5YRR) from the Department of Insurance and Financial Institutions (Department) relates to one (1) rule in Title 20, Chapter 6, Article 11 regarding Medicare Supplemental Insurance and four (4) rules Title 20, Chapter 6, Article 21 regarding Customer Information Security Program. Specifically, the rule in Article 11 incorporates by reference the National Association of Insurance Commissioners (NAIC) Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act (Model Regulation) with some modifications that are necessary to address Arizona statutory and rule standards. The rules in Article 21 outlines implementation of a comprehensive written customer information security program that will protect customer information.

In the prior 5YRR for these rules, which was approved by the Council in August 2019, with regards to Article 11 the Department indicates it completed a rulemaking to amend R20-6-1101 to remain compliant with A.R.S. § 41-1028 and the mandate in A.R.S. § 20-1133, by amending its rules to reflect the changes made by the NAIC to the Model Regulation. The Department also sought to amend this rule to update the addresses for the Department and the NAIC in order to remain compliant with A.R.S. § 41-1028(D). The final rulemaking was approved by the Council on July 2, 2019 and became effective September 8, 2019. Since that time, the Department has engaged in another rulemaking and has updated the rule again to

incorporate the most recent version of the model regulation. The most recent rulemaking became effective on May 6, 2024. The Department did not propose any amendment to the rules in Article 21 in the prior 2019 report.

Proposed Action

In the current report, the Department does not propose any amendments to the rules.

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:

For both Articles 11 and Article 21, the Department has not identified any economic impact that is significantly different from what was originally anticipated.

Stakeholders include the Department, insurers, and customers throughout the state.

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 benefits of the rules 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 objective.

Furthermore, the Department states that the rule for Article 11 incorporates by reference the NAIC Model Regulation to implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act. This process provides uniformity among the states so insurers can realize compliance savings. Also, by adopting the Model Regulation, the Department imposes the least burden on regulated persons because the insurers can be confident that the regulation adopted by Arizona is consistent with the same regulation in other states.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department 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 Department indicates the rules are clear, concise, and understandable.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Department indicates the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department 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 Department indicates that the rules in Article 11 are not more stringent than corresponding federal law found in 42 U.S.C. § 1395ss. The Department indicates the rules in Article 21 are not more stringent than corresponding federal law found in 15 U.S.C. 6801, 6805(b) and 6807 (Gramm-Leach-Bliley Act).

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?

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(12), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

A.R.S. § 41-1001(12) defines "general permit" to mean "a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing."

For the rules in Article 11, the Department indicates insurance companies issuing Medicare Supplement insurance must receive a Certificate of Authority from the Department. The Department indicates a general permit is not applicable to this type of business As such, the issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements. *See* A.R.S. § 41-1037(A)(3). For the rules in Article 21, the Department indicates they were all adopted prior to 2010. As such, Council staff believes the Department is in compliance with A.R.S. § 41-1037.

11. Conclusion

This 5YRR from the Department relates to one (1) rule in Title 20, Chapter 6, Article 11 regarding Medicare Supplemental Insurance and four (4) rules Title 20, Chapter 6, Article 21 regarding Customer Information Security Program. Specifically, the rule in Article 11 incorporates by reference the NAIC Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act (Model Regulation) with some modifications that are necessary to address Arizona statutory and rule standards. The rules in Article 21 outlines implementation of a comprehensive written customer information security program that will protect customer information.

The Department indicates the rules are clear, concise, understandable, consistent, effective, and enforced as written. As such, the Department does not propose any amendments to the rules.

Council staff recommends approval of this report.

Arizona Department of Insurance and Financial Institutions
100 North 15th Avenue, Suite 261, Phoenix, AZ 85007-2624
Phone: (602) 364-3100 | Web: https://difi.az.gov

Katie Hobbs, Governor
Barbara D. Richardson, Cabinet Executive Officer, Executive Deputy Director

May 21, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, Chair
Governor's Regulatory Review Council
100 North 15th Ave., Suite 305
Phoenix, AZ 85007

RE: Arizona Department of Insurance and Financial Institutions ("Department")
Five-Year Review Report

Dear Chairperson Klein:

Please find enclosed the Department's Five-Year Review Report for Title 20 (Commerce, Financial Institutions, and Insurance), Chapter 6 (Department of Insurance and Financial Institutions – Insurance Division), Articles 11 (Medicare Supplement Insurance) and 21 (Customer Information Security Program) which is due on or before May 31, 2024.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Mary Kosinski at (602) 364-3476 or mary.kosinski@difi.az.gov.

Sincerely,

Barbara D. Richardson

Barbara D. Richardson
Cabinet Executive Officer
Executive Deputy Director

Department of Insurance and Financial Institutions

5 YEAR REVIEW REPORT

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 6. Department of Insurance and Financial Institutions – Insurance Division

Article 11. Medicare Supplement Insurance

May 2024

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 20-143

Specific Statutory Authority: A.R.S. § 20-1133

2. The objective of each rule:

Rule	Objective
R20-6-1101	Incorporation by Reference and Modifications. The purpose and objective of this rule is to incorporate by reference the National Association of Insurance Commissioners (NAIC) Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act (Model Regulation) with some modifications that are necessary to address Arizona statutory and rule standards. The overall purpose of this rule is to benefit consumers by providing for the standardization of coverage and simplification of terms and benefits of Medicare supplement policies, as well as to facilitate public understanding and comparison of policies. The rule also provides uniformity with other states that will also adopt this Model Regulation making compliance easier for insurers who will not have to meet different requirements in each state.

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 Department has not identified any economic impact that is significantly different from that projected in the economic impact statement for the original rulemaking. The last action on this rule occurred this year (2024). At that time, the Department submitted an Economic Impact Statement which anticipated minimal economic impact to insurers, none of whom qualify as small businesses.

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?

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

2019 Five Year Review Report Proposed Course of Action:

The Department filed a Docket Opening and Notice of Proposed Rulemaking which the Secretary of State published in the Arizona Administrative Register on April 12, 2019 (25 A.A.R. 896 – Docket Opening and 25 A.A.R. 880 – Proposed Rulemaking). As of May 12, 2019, no one requested a hearing or submitted a comment. On May 15, 2019, the Department submitted the Final Rulemaking to GRRC for placement on the July 2, 2019 Council Agenda. If approved by GRRC, the Department will submit the Final Rulemaking to the Secretary of State for publication on or about July 3, 2019.

Response to Item 10:

The Department completed the rulemaking in 2019 with an effective date of September 8, 2019. Since that time, the Department has engaged in another rulemaking and has updated the rule again to incorporate the most recent version of the model regulation. The most recent rulemaking became effective on May 6, 2024 (30 A.A.R. 479, March 22, 2024).

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 rule's benefits outweigh, within this State, the costs of the rule and 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.

This rule is adopted from the Model Regulation and provides guidance to health insurers who write Medicare Supplement insurance about the various plans that the Centers for Medicare & Medicaid Services (CMS) allow insurers to issue. Because insurers are subject to regulation by each state and territory, the NAIC (Arizona is a member) promulgates model rules which can be adopted by the states with minor modifications.

This process provides uniformity among the states so insurers can realize compliance savings. Also, by adopting the Model Regulation, the Department imposes the least burden on regulated persons because the insurers can be confident that the regulation adopted by Arizona is consistent with the same regulation in other states. And, in this case, is consistent with CMS guidance.

12. **Are the rules more stringent than corresponding federal laws?** **Yes ___ No _X_**

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)?

42 U.S.C. § 1395ss

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:**

Not applicable. Insurance companies issuing Medicare Supplement insurance must receive a Certificate of Authority from the Department. A general permit is not applicable to this type of business.

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 will continue to monitor the incorporated by reference Model Regulation and update its rule as the NAIC promulgates new versions of the Model Regulation. Currently, the most recent version of the model regulation is referenced and is posted on the Department's website.

Department of Insurance and Financial Institutions

5 YEAR REVIEW REPORT

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 6. Department of Insurance and Financial Institutions – Insurance Division

Article 21. Customer Information Security Program

May 2024

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 20-143

Specific Statutory Authority: A.R.S. § 20-2121

2. The objective of each rule:

Rule	Objective
R20-6-2101	Definitions. This rule contains definitions for Article 21 to make the article clearer and more understandable.
R20-6-2102	Customer Information Security Program. This rule provides for implementation of a comprehensive written customer information security program that will protect customer information.
R20-6-2103	Objectives of Customer Information Security Program. This rule contains objectives for a customer information security program so that a licensee will know and understand the objectives of the security program that the licensee must institute.
R20-6-2104	Guidelines for Methods of Development and Implementation. This rule contains guidelines for methods of development and implementation of a customer information security program to give illustrations to the licensee of the types of actions and procedures that may be implemented to protect customer information.

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 Department has not identified any economic impact that is significantly different from that projected in the economic impact statement for this rulemaking. The last action on this Article occurred in 2004 when the Department adopted the Article. (10 A.A.R. 2260, June 4, 2004) At that time, the Department stated: "These rules should result in a program that produces greater efficiency and improved methodology for keeping customer information secure. A more efficient security program could result in lower administrative costs for insurers, which could, in turn, be passed on to customers. Conversely, some licensees will incur costs for putting in place a customer information security program and those costs could be passed on to the customers. These impacts are the result of federal mandates, rather than state rules." In the interim period, no changes have been made to either the federal or state laws and the Department has not received any information from insurers on any economic impact resulting from the rules.

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?

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

Previous Course of Action (2014):

The Department proposes no action on these rules at this time. If changes are made to the federal law, necessitating changes to these rules, the Department will seek an exception to the rulemaking moratorium to conduct a rulemaking.

Response to Item 10:

No changes have been made to the federal law (Gramm-Leach-Bliley Act; 15 U.S.C. §§ 6801, 6805(b) and 6807) which would prompt the Department to seek changes to the rules.

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 rules' benefits outweigh, within this State, the costs of the rule and 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.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No _X_

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)?

15 U.S.C. 6801, 6805(b) and 6807 (Gramm-Leach-Bliley Act)

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:

Not applicable. The Department adopted this Article and all the rules in this Article prior to 2010.

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 proposes no action on these rules at this time. If changes are made to the federal law, the state law, or to the National Association of Insurance Commissioner's model regulation from which these rules are taken, the Department will seek permission from the Governor's Office to conduct a rulemaking.

(c) [Non-institutional benefits, by skill level.]
(d) Eligibility for Payment of Benefits
[Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and shall be defined and described as part of the outline of coverage.]
[Any additional benefit triggers shall be explained in this Section. If these triggers differ for different benefits, explanation of the triggers shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified.]

10. LIMITATIONS AND EXCLUSIONS.
[Describe:
(a) Preexisting conditions;
(b) Non-eligible facilities and providers;
(c) Non-eligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.);
(d) Exclusions and exceptions;
(e) Limitations.]
[This Section shall provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in paragraph 6 above.]

THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.

11. RELATIONSHIP OF COST OF CARE AND BENEFITS. Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. [As applicable, indicate the following:
(a) That the benefit level will not increase over time;
(b) Any automatic benefit adjustment provisions;
(c) Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;
(d) If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations;
(e) Describe whether there will be any additional premium charge imposed, and how that is to be calculated.]
12. ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.
[State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.]
13. PREMIUM.
[(a)State the total annual premium for the policy;
(b) If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.]
14. ADDITIONAL FEATURES.
[(a)Indicate if medical underwriting is used;
(b)Describe other important features.]
15. CONTACT THE STATE SENIOR HEALTH INSURANCE ASSISTANCE PROGRAM IF YOU HAVE GENERAL QUESTIONS REGARDING LONG-TERM CARE INSURANCE. CONTACT THE INSURANCE COMPANY IF YOU HAVE SPECIFIC QUESTIONS REGARDING YOUR LONG-TERM CARE INSURANCE POLICY OR CERTIFICATE.

Historical Note

New Appendix J renumbered from Appendix C and amended by final rulemaking at 10 A.A.R. 4661, effective January 3, 2005 (Supp. 04-4). Amended by final exempt rulemaking at 23 A.A.R. 1119, effective November 10, 2017 (Supp. 17-2).

ARTICLE 11. MEDICARE SUPPLEMENT INSURANCE

R20-6-1101. Incorporation by Reference and Modifications

A. The Department incorporates by reference the Model Regulation to Implement the National Association of Insurance Commissioners (NAIC) Medicare Supplement Insurance Minimum Standards Model Act, Fall 2023 (Model Regulation), and no future editions or amendments, which is on file with the Department of Insurance, 100 N. 15th Ave., Suite 261, Phoenix, AZ 85007-2630 and available on its website at: https://difi.az.gov/insurance-division-rulemaking. The Model Regulation is also available from the National Association of Insurance Commissioners, Publications Department, 1100 Walnut Street, Suite 1500, Kansas City, MO 64106-2197.

B. The Model Regulation is modified as follows:

1. In addition to the terms defined in the Model Regulation, the following definitions apply:
   a. "Agent" means an insurance producer as defined in A.R.S. § 20-281(5).
   b. "Commissioner" means the Director of the Arizona Department of Insurance and Financial Institutions.
   c. "HMO" and "health maintenance organization" mean a health care services organization as defined in A.R.S. § 20-1051(6).
   d. "Regulation" means Article.
2. Section 3(A)(2) reads:

   (2) All certificates issued under group Medicare supplement policies, which certificates have been delivered or issued for delivery in this state including association plans.

3. Section 8(A)(7)(c) reads:

   c. Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862(b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstituted (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within 90 days after the date of the loss of the group health plan and pays the premium attributable to the sup-

plemental policy period, effective as of the date of termination of enrollment in the group health plan.

4. Section 8.1 is revised to insert the citation to A.R.S. § 20-1133 as follows:

   The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards. No issuer may offer any [1990 Standardized Medicare supplement benefit plan] for sale on or after June 1, 2010. Benefit standards applicable to Medicare supplement policies and certificates issued before June 1, 2010 remain subject to the requirements of A.R.S. § 20-1133.

5. Section 8.1(A)(7)(c) is revised to read as follows:

   Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862(b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstituted (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within 90 days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan.

6. Section 9.1 is revised to insert the citation to A.R.S. § 20-1133 as follows:

   The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit plan standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued before June 1, 2010 remain subject to the requirements of A.R.S. § 20-1133.

7. Section 9.2 is revised to insert the citation to A.R.S. § 20-1133 as follows:

   The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) requires the following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state to individuals newly eligible for Medicare on or after January 1, 2020. No policy or certificate that provides coverage of the Medicare Part B deductible may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate to individuals newly eligible for Medicare on or after January 1, 2020. All policies must comply with the following benefit standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued to individuals eligible for Medicare before January 1, 2020, remain subject to the requirements of A.R.S. § 20-1133.

8. Section 15(G) is revised as follows:

   An insurer shall not file or request approval of a rate structure for its Medicare supplement policies or certificates based upon attained-age rating as a structure or methodology.

9. Section 23 is revised as follows:

   A. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy or certificate to the extent such time was spent under the original policy.

   B. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods and probationary periods.

Historical Note

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1101 recodified from R4-14-1101 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed; new Section made by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 15 A.A.R. 996, effective June 2, 2009 (Supp. 09-2). Amended by final rulemaking at 25 A.A.R. 1923, effective September 8, 2019 (Supp. 19-3). Amended by final rulemaking at 30 A.A.R. 479 (March 22, 2024), effective May 6, 2024 (Supp. 24-1).

R20-6-1102. Repealed

Historical Note

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted with changes effective May 28, 1992 (Supp. 92-2). R20-6-1102 recodified from R4-14-1102 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Amended by final rulemaking at 5 A.A.R. 618, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 5 A.A.R. 910, effective March 3, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed by final rulemaking

at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

R20-6-1102.01 Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 618, effective February 4, 1999 (Supp. 99-1). Amended by final rulemaking at 5 A.A.R. 910, effective March 3, 1999 (Supp. 99-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

R20-6-1103. Repealed

Historical Note

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1103 recodified from R4-14-1103 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

R20-6-1104. Repealed

Historical Note

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1104 recodified from R4-14-1104 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

R20-6-1105. Repealed

Historical Note

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1105 recodified from R4-14-1105 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

R20-6-1106. Repealed

Historical Note

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1106 recodified from R4-14-1106 (Supp. 95-1). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 910 effective March 3, 1999 (Supp. 99-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

R20-6-1107. Repealed

Historical Note

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted with changes effective May 28, 1992 (Supp. 92-2). R20-6-1107 recodified from R4-14-1107 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

R20-6-1108. Repealed

Historical Note

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1108 recodified from R4-14-1108 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Amended by final rulemaking at 5 A.A.R. 910 effective March 3, 1999 (Supp. 99-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

R20-6-1109. Repealed

Historical Note

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1109 recodified from R4-14-1109 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

R20-6-1110. Repealed

Historical Note

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1110 recodified from R4-14-1110 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Amended effective August 16, 1996 (Supp. 96-3). Amended effective June 15, 1998 (Supp. 98-2). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

R20-6-1111. Repealed

Historical Note

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1111 recodified from R4-14-

1111 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

R20-6-1112. Repealed

Historical Note

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1112 recodified from R4-14-1112 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

R20-6-1113. Repealed

Historical Note

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1113 recodified from R4-14-1113 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 910 effective March 3, 1999 (Supp. 99-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

R20-6-1114. Repealed

Historical Note

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1114 recodified from R4-14-1114 (Supp. 95-1). Amended effective August 16, 1996 (Supp. 96-3). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

R20-6-1115. Repealed

Historical Note

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1115 recodified from R4-14-1115 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

R20-6-1116. Repealed

Historical Note

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1116 recodified from R4-14-1116 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

R20-6-1117. Repealed

Historical Note

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1117 recodified from R4-14-1117 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

R20-6-1118. Repealed

Historical Note

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1118 recodified from R4-14-1118 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

R20-6-1119. Repealed

Historical Note

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1119 recodified from R4-14-1119 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

R20-6-1120. Repealed

Historical Note

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). R20-6-1120 recodified from R4-14-1120 (Supp. 95-1). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

R20-6-1121. Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 910, effective March 3, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Section repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

Appendix A. Repealed

Historical Note

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again and correction made to heading of form on last page of Appendix A effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). Appendix A repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

Appendix B. Repealed

Historical Note

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again and corrections made to Plan C (Medicare (Part B) - Medical Services - Per Calendar Year) and Plan J (Other Benefits) effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). Amended effective August 16, 1996 (Supp. 96-3). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 910, effective March 3, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 2454, effective May 13, 2002 (Supp. 02-2). Appendix B repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

Appendix C. Repealed

Historical Note

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). Amended effective August 16, 1996 (Supp. 96-3). Appendix C repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

Appendix D. Repealed

Historical Note

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). Amended effective August 16, 1996 (Supp. 96-3). Appendix D repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

Appendix E. Repealed

Historical Note

Emergency rule adopted effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective March 17, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Adopted effective May 28, 1992 (Supp. 92-2). Appendix E repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

Appendix F. Repealed

Historical Note

Appendix F adopted effective August 16, 1996 (Supp. 96-3). Amended effective June 15, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 910, effective March 3, 1999 (Supp. 99-1). Appendix F repealed by final rulemaking at 11 A.A.R. 3671, effective November 12, 2005 (Supp. 05-3).

ARTICLE 12. HIV/AIDS: PROHIBITED AND REQUIRED PRACTICES

R20-6-1201. Definitions

A. "AIDS" means Acquired Immune Deficiency Syndrome.

B. "Applicant" means an applicant for a life or disability insurance policy or coverage under a health care plan, as well as any potential certificate holder or dependent covered under such policy or plan.

C. "Insurer" means life and disability insurers (including but not limited to health insurers), hospital and medical service corporations, and health care services organizations, including all employees, contractors, and agents thereof.

D. "Person" means any individual, company, insurer, association, organization, society, reciprocal or inter-insurance exchange, partnership, syndicate, business trust, corporation, or entity.

Historical Note

Adopted effective March 7, 1994 (Supp. 94-1). R20-6-1201 recodified from R4-14-1201 (Supp. 95-1).

R20-6-1202. Applications for Insurance

A. Insurers shall not use questions on applications for life or disability policies or health care plans that inquire directly or indirectly about:

1. The sexual orientation of an applicant;
2. An applicant's receipt of transfusions of blood or blood products; or
3. Whether or not the applicant has had any HIV-related test, except as provided in subsection (B) of this rule.

B. Insurers may include specific questions on applications for life or disability insurance policies or health care plans asking if the applicant has ever been diagnosed or treated for AIDS or AIDS-related conditions or tested positive for the presence of HIV antibodies, antigens, or the virus. No adverse underwriting decision shall be made on the basis of any prior positive HIV-related test or tests unless the insurer has verified that the prior test(s) consisted of both a positive screening test such as enzyme-linked immunoassay (ELISA) and a positive supplemental test such as a Western Blot. All such tests used shall be approved and licensed by the Food and Drug Administration and conducted in accordance with the manufacturer's directions for use, including but not limited to the manufacturers' specified interpretation of positivity.

Historical Note

Adopted effective March 7, 1994 (Supp. 94-1). R20-6-1202 recodified from R4-14-1202 (Supp. 95-1).

R20-6-1203. Testing for HIV; Consent Form

A. An insurer may test for HIV infection in the same way that the insurer tests for other conditions that affect mortality and morbidity. No adverse underwriting decision shall be made on the basis of a positive result to an HIV-related test unless the result

Historical Note
New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

R20-6-1917. Geographic Availability in an Urban Area
An HCSO shall provide each enrollee living in an urban area of the HCSO's service area the following:
1. Primary care services from a contracted PCP located within 10 miles or 30 minutes of the enrollee's home;
2. High profile specialty care services from a contracted SCP located within 15 miles or 45 minutes of the enrollee's home; and
3. Inpatient care in a contracted general hospital, or contracted special hospital, within 25 miles or 75 minutes of the enrollee's home.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

R20-6-1918. Geographic Availability in a Suburban Area
Each HCSO shall provide each enrollee member living in a suburban area within the HCSO's service area the following:
1. Primary care from a contracted PCP located within 15 miles or 45 minutes of the enrollee's home;
2. High profile specialty care services from a contracted SPC within 20 miles or 60 minutes of the enrollee's home; and
3. Inpatient care in a contracted hospital, or a contracted special hospital within 30 miles or 90 minutes of the enrollee's home.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

R20-6-1919. Geographic Availability in a Rural Area
An HCSO shall provide each enrollee living in a rural area with primary care services from a contracted physician or practitioner within 30 miles or 90 minutes of the enrollee's home.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

R20-6-1920. Travel Requirements
A. An HCSO may require an enrollee to travel a greater distance in-area to obtain covered services from a contracted provider than the enrollee would have to travel to obtain equivalent services from a non-contracted provider, except where a network exception is medically necessary. Nothing in this Section creates an exception to R20-6-1918 through R20-6-1920.
B. If the HCSO prior-authorizes services that require an enrollee to travel outside the HCSO service area because the services are not available in the area, the HCSO shall reimburse the enrollee for travel expenses. Except as provided under R20-6-1904(E)(6), an HCSO is not required to reimburse an enrollee for travel expenses the enrollee incurs to obtain covered services in-area.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

R20-6-1921. Enforcement Consideration
In determining the appropriate enforcement action or penalties for failure to comply with these rules, the Department shall consider any documentation the HCSO provides regarding:
1. Whether seasonal shifts in demand affect access and availability of covered services;
2. Whether the HCSO's demographic information has changed significantly since the HCSO's most recent report;
3. Whether an enrollee has refused to accept covered services the HCSO has offered in the time-frames or locations required of the HCSO by this Article;
4. Whether an enrollee has requested and obtained covered services from a contracted provider whose location, or appointment availability, or capacity result in the HCSO's non-compliance; and
5. Whether market factors indicate that on a short-term basis, compliance is not possible. Market factors include shortage of providers, enrollee or provider location, and provider practice or contracting patterns.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 4861, effective December 31, 2005 (Supp. 05-4).

ARTICLE 20. CAPTIVE INSURERS

R20-6-2001. Reserved

R20-6-2002. Fees; Examination Costs
A. A corporation applying for a license to do business as a captive insurer shall pay a nonrefundable fee of $1,000.00 to the Department for issuance of the license under A.R.S. § 20-1098.01(J). A captive insurer that is a protected cell captive insurer, as defined in A.R.S. § 20-1098, also shall pay to the Department a nonrefundable fee of $1,000 for each participant contract application that establishes a protected cell under A.R.S. § 20-1098.05(B)(9). The fee is payable in full at the time the applicant submits the application for license to the Department under A.R.S. § 20-1098.01.
B. A captive insurer shall pay a nonrefundable annual renewal fee of $5,500.00 to the Department at the time of filing its annual report under A.R.S. § 20-1098.07. Under A.R.S. § 20-1098.01(J), a captive insurer that is a protected cell captive insurer also shall pay to the Department a nonrefundable annual renewal fee of $2,500.00 for each protected cell at the time of filing its annual report under A.R.S. § 20-1098.07.
C. A captive insurer shall pay a nonrefundable fee of $200.00 to the Department at the time of filing for issuance of an amended certificate of authority.
D. In addition to the fees prescribed in subsections (A), (B), and (C), an applicant for a captive insurer license or a licensed captive insurer shall pay the costs of any examination the Director conducts, under A.R.S. § 20-1098.08.

Historical Note
New Section made by final rulemaking at 8 A.A.R. 2478, effective July 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 2977, effective September 13, 2005 (Supp. 05-3). Subsection (A) corrected at request of the Department, Office File No. M11-252, filed July 20, 2011 (Supp. 11-3). Section amended by final rulemaking at 29 A.A.R. 3621 (November 24, 2023), effective January 7, 2024 (Supp. 23-4). Effective date corrected (Supp. 23-4, Ver. 2).

ARTICLE 21. CUSTOMER INFORMATION SECURITY PROGRAM

Article 21, consisting of R20-6-2101 through R20-6-2104, made by final rulemaking at 10 A.A.R. 2260, effective July 13, 2004

(Supp. 04-2).

R20-6-2101. Definitions

The following definitions apply in this Article:

1. "Consumer" means an individual, or the individual's legal representative, who seeks to obtain, obtains, or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes, and about whom the licensee has nonpublic personal information. Consumer can include a prospective applicant, policyholder, certificateholder, insured, or claimant.
2. "Customer" means a consumer who has a continuing relationship with a licensee under which the licensee provides one or more insurance products or services to the consumer that are used primarily for personal, family, or household purposes.
3. "Customer information" means nonpublic personal information and privileged information about a customer whether in paper, electronic, or other form, that is maintained by or on behalf of an insurance institution, insurance producer, or insurance support organization.
4. "Customer information systems" means the electronic, or physical methods used to access, collect, store, use, transmit, protect, or dispose of customer information.
5. "Insurance institution" has the meaning prescribed in A.R.S. § 20-2102(10).
6. "Insurance producer" means a person required to be licensed under A.R.S. Title 20, Chapter 2, Article 3 to sell, solicit, or negotiate insurance and includes a managing general agent as defined in A.R.S. § 20-311.
7. "Insurance support organization" has the meaning prescribed in A.R.S. § 20-2102(13).
8. "Licensee" means an insurance institution, insurance producer, or insurance support organization, but does not include a purchasing group or an unauthorized insurer in regard to the excess line business conducted under Title 20, Chapter 2, Article 5.
9. "Personal information" has the meaning prescribed in A.R.S. § 20-2102(19).
10. "Privileged information" has the meaning prescribed in A.R.S. § 20-2102(22).
11. "Service provider" means a person that maintains, processes, or otherwise is permitted access to customer information through its provision of services directly to a licensee.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2260, effective July 13, 2004 (Supp. 04-2).

R20-6-2102. Customer Information Security Program

A licensee shall implement a comprehensive written customer information security program that includes administrative, technical, and physical safeguards for the protection of customer information. The administrative, technical, and physical safeguards included in the information security program shall be appropriate to the size and complexity of the licensee and the nature and scope of its activities.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2260, effective July 13, 2004 (Supp. 04-2).

R20-6-2103. Objectives of Customer Information Security Program

A licensee's customer information security program shall be designed to:

1. Ensure the security and confidentiality of customer information;
2. Protect against any anticipated threats or hazards to the security or integrity of the information; and
3. Protect against unauthorized access to or use of the information.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2260, effective July 13, 2004 (Supp. 04-2).

R20-6-2104. Guidelines for Methods of Development and Implementation

A licensee may implement the requirements of R20-6-2102 and R20-6-2103 by the actions and procedures prescribed in this Section, which are non-exclusive illustrations:

1. A licensee may assess risk by:
   a. Identifying reasonably foreseeable internal or external threats that could result in unauthorized disclosure, misuse, alteration, or destruction of customer information or customer information systems;
   b. Assessing the likelihood and potential damage of these threats, taking into consideration the sensitivity of customer information; and
   c. Assessing the sufficiency of policies, procedures, customer information systems, and other safeguards in place to control risks.
2. A licensee may manage and control risk by:
   a. Designing its information security program to control the identified risks, commensurate with the sensitivity of the information, as well as the complexity and scope of the licensee's activities;
   b. Training staff to implement the licensee's information security program; and
   c. Regularly testing or otherwise regularly monitoring the key controls, systems and procedures of the information security program. The licensee shall determine the frequency and nature of these tests or other monitoring practices by the licensee's risk assessment.
3. A licensee may oversee service provider arrangements by:
   a. Exercising appropriate due diligence in selecting its service providers; and
   b. Requiring its service providers to implement measures designed to meet the objectives of this Article, and, where indicated by the licensee's risk assessment, taking appropriate steps to confirm that its service providers have satisfied these obligations.
4. A licensee may monitor, evaluate, and adjust, as appropriate, its information security program in light of any relevant changes in technology, the sensitivity of its customer information, internal or external threats to information, and the licensee's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements, and changes to customer information systems.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2260, effective July 13, 2004 (Supp. 04-2).

20-143. Rule-making power

A. The director may make reasonable rules necessary for effectuating any provision of this title.

B. The director shall make rules concerning proxies, consents or authorizations in respect of securities issued by domestic stock insurance companies having a class of equity securities held of record by one hundred or more persons to conform with the requirements of section 12(g)(2)(G)(ii) of the securities exchange act of 1934, as amended, and as may be amended. Such rule shall not apply to any such company having a class of equity securities which are registered or are required to be registered pursuant to section 12 of the securities exchange act of 1934, as amended, or as may be amended. Whenever such equity securities of any such company are registered or are required to be registered pursuant to section 12 of the securities exchange act of 1934, as amended, or as may be amended, then, no person shall solicit or permit the use of his name to solicit, in any manner whatsoever, any proxy, consent or authorization in respect of any equity security of such company without having first complied with the rules prescribed by the securities and exchange commission pursuant to section 14 of the securities exchange act of 1934, as amended, or as may be amended.

C. All rules made pursuant to this section shall be subject to title 41, chapter 6.

D. In addition to any other penalty provided, wilful violation of any rule made by the director is a violation of this title.

20-1133. Medicare supplement insurance; early enrollment discounts; applicability

A. The director shall adopt rules necessary to comply with the requirements of the social security disability amendments of 1980 (P.L. 96-265; 42 United States Code section 1395ss) and any federal laws or regulations pertaining to that section, so that this state may retain its full authority to regulate minimum standards for medicare supplement insurance.

B. For the purposes of this section, an insurer may file for medicare supplement rates that include an early enrollment discount that will not be considered an attained age rating structure. An early enrollment discount shall diminish over a period of time and is only available to enrollees who purchase the plan within the early enrollment period designated by the insurer. Insurers shall disclose to all applicants how the early enrollment discount will diminish over time.

C. Subject to the other limitations provided in this subsection, a benefit mandated in this title for health insurance policies does not apply to medicare supplement insurance policies unless the mandated policy benefit is set forth in rules adopted pursuant to this section or unless the statute mandating the policy benefit expressly states that it is made specifically applicable to medicare supplement insurance policies. A medicare supplement insurance policy may not contain any exclusion for services provided by any type of properly licensed health care provider if the provider's services are eligible for medicare reimbursement and if the specific services in question would be covered by medicare. The scope of benefits of a medicare supplement policy may not be less than the minimum level of benefits established by federal law.

D. Notwithstanding any other provision of this title, rules adopted pursuant to this section apply to insurance provided under disability insurance policies, under subscription contracts of hospital, medical, dental or optometric service corporations, under certificates of fraternal benefit societies, under evidences of coverage of health care services organizations and under coverages issued by any other insurer, which policies, contracts, certificates, membership coverages, evidences of coverage and coverages are delivered or issued for delivery in this state on or after the effective date of rules adopted pursuant to subsection A of this section. In adopting the rules required by subsection A of this section, the director shall prescribe an effective date of the rules that will allow insurers sufficient time to bring their forms and practices into compliance with the requirements of the rule.

20-2121. Enforcement of privacy provisions of Gramm Leach Bliley act

A. The department may enforce title V, subtitle A of the Gramm Leach Bliley act (15 United States Code sections 6801 through 6809) related to privacy and protection of nonpublic personal information.

B. The director may adopt rules pursuant to title 41, chapter 6 to carry out this section.

ARIZONA BOARD OF PHARMACY
Title 4, Chapter 23, Article 11

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: September 4, 2024

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

FROM: Council Staff

DATE: **August 15, 2024**

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 1, Articles 1-3

Summary

This Five Year Review Report (5YRR) from the Department of Health Services covers nine (9) rules in Title 9, Chapter 1, Articles 1-3 related to Administration of the Department. Specifically, Article 1 relates to Rules of Practice and Procedure; Article 2 relates to Public Participation in Rulemaking; and Article 3 relates to Disclosures of Medical Records, Payment Records, and Public Health Records. The Office of Administrative Counsel and Rules (OACR) is the program/unit within the Department responsible for the monitoring and enforcement of the rules identified in this report.

The Department completed its course of action proposed in its 5YRR approved by Council in September of 2019.

Proposed Action

The Department anticipates submitting a Notice of Final Rulemaking to the Council to address the issues identified in this report by April 2025.

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 Board states that in the 5YRR of Article 11 approved by the Council on May 7, 2019, the Board indicated the economic impact of the rules was consistent with that projected when the rules were made. The Board states that it has received no information causing it to change that conclusion and no appeal of an economic impact statement has been filed under A.R.S. § 41-1056.01. Stakeholders include pharmacy permittees, pharmacists, pharmacy technicians and the Board. The Board indicates that there are currently 11,404 licensed pharmacy technicians and 7,980 registered pharmacy technician trainees.

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 believes the probable benefits of the rules, which include complying with statute and protecting the public health and safety, outweigh the probable costs and impose the least burden and cost possible on those regulated by the rules.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Department has not received written criticism of the rules in the past five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Department indicates that the rules are generally not clear, concise, and understandable and the rules would be improved with the following:

- R9-1-201: certain definitions should be removed and terms should be defined where used
- R9-1-202: if information regarding the process for requesting a review of rulemaking records was added
- R9-1-301: terms should be defined where used; definition of emancipated minor could be made clearer; outbreak has an incorrect cross reference; the term Patient should be removed
- R9-1-303: acknowledgement is misspelled and subsections need to be clarified

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Department states the rules are generally consistent with other rules and statutes with the following exceptions:

- R9-1-102: Subsection (B) is inconsistent with A.R.S. § 41-1092.08

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Department states 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 generally not enforced as written and the rules would be improved with the following:

- R9-1-302: subsection (D)(4) should be updated as current practice does not require the requestor's address unless it is being requested that the records be mailed; subsection (E) should be updated to show that the Department may respond to records requests by either mail or email; subsection (E)(3) should be updated to reflect that record requests may take longer than the 30 days
- R9-1-303: Subsection (B)(7) should be updated as the requirement for "signature" is not current practice; subsection (B)(8) should be deleted; subsection (C) should be updated as agreements between the requestor and the Department about time-frames is not current practice.

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 states that there is no corresponding federal law related to these 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?**

The Department indicates this section does not apply as the rules do not require the issuance of a regulatory permit, license, or agency authorization.

11. **Conclusion**

This Five Year Review Report from the Department of Health Services covers nine rules in Title 9, Chapter 1, Articles 1-3 related to Administration of the Department. As indicated above, the rules are effective in achieving its objectives and generally consistent with other rules and statutes. The Department completed its course of action proposed in its 5YRR approved by Council in September of 2019 and anticipates submitting a Notice of Final Rulemaking to the Council to address the issues identified in this report by April 2025.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

Arizona State Board of Pharmacy

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June 10, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Arizona Board of Pharmacy
Five-year-review Report
4 A.A.C. 23, Article 11

Dear Ms. Klein:

The Arizona Pharmacy Board submits the referenced 5YRR for Council's review and approval. The report is due under an extension on July 29, 2024.

The Board certifies it complies with A.R.S. § 41-1091.

For questions about this report, please contact me at KGandhi@AZPharmacy.gov or 602-771-2740.

Sincerely,

Dr. Kamlesh Gandhi, PharmD
Executive Director

Five-year-review Report
A.A.C. Title 4. Professions and Occupations
Chapter 23. Arizona Board of Pharmacy
Article 11. Pharmacy Technicians
Submitted for August 6, 2024

INTRODUCTION

The Arizona Board of Pharmacy protects the health, safety, and welfare of Arizona citizens by regulating the practice of pharmacy and the distribution, sale, and storage of prescription medications and devices and non-prescription medications.

The rules in Article 11 deal with regulation of pharmacy technicians, who are required to be licensed by the Board, and pharmacy technician trainees, who are required to register with the Board (See A.R.S. § 32-1923.01).

Since the last review of the rules in Article 11, the Board has amended the rules four times. A.R.S. §§ 32-1923.01(B)[1] and 32-1924(F) have been amended regarding registration rather than licensing of pharmacy technician trainees and the fee the Board is authorized to charge for the registration.

Statute that generally authorizes the agency to make rules: A.R.S. § 32-1904(A)(1) and (B)(7)

1. Specific statute authorizing the rule:
   R4-23-1101. Licensure and Eligibility: A.R.S. §§ 32-1923.01 and 32-1925
   R4-23-1102. Pharmacy Technician Licensure: A.R.S. §§ 32-1923.01 and 32-1925
   R4-23-1103. Pharmacy Technician Trainee Licensure: A.R.S. § 32-1923.01

[1] Note that the definition of pharmacy technician trainee at A.R.S. § 32-1901 is inconsistent with the amended A.R.S. § 32-1923.01(B). The Board addressed this inconsistency in a substantive policy statement.

R4-23-1104. Pharmacy Technicians and Pharmacy Technician Trainees: A.R.S. § 32-1961
R4-23-1104.01. Technology-assisted verification of Product: A.R.S. § 32-1961
R4-23-1105. Pharmacy Technician Trainee Training Program, Pharmacy Technician Drug Compounding Training Program, and Alternative Pharmacy Technician Training: A.R.S. § 32-1923.01
R4-23-1106. Continuing Education Requirements: A.R.S. § 32-1925(H)

2. Objective of the rules:

R4-23-1101. Licensure and Eligibility: The objective of the rule is to specify a license is required to work as a pharmacy technician or pharmacy technician trainee, the qualifications for licensure, and procedures for reinstating a delinquent pharmacy technician license.

R4-23-1102. Pharmacy Technician Licensure: The objective of the rule is to specify qualifications for licensure as a pharmacy technician, application procedures, license renewal requirements, time frames for Board action on an application, and verification of licensure requirement.

R4-23-1103. Pharmacy Technician Trainee Licensure: The objective of the rule is to specify qualifications for licensure as a pharmacy technician trainee, application procedures, time frames for Board action on an application, and verification of licensure requirement.

R4-23-1104. Pharmacy Technicians and Pharmacy Technician Trainees: The objective of the rule is to specify tasks that may and may not be performed by a pharmacy technician or pharmacy technician trainee and require policies and procedures be developed and implemented regarding the pharmacy technician and pharmacy technician trainee tasks.

R4-23-1104.01. Technology-assisted Verification of Product: The objective of the rule is to establish requirements for a retail, institutional, or limited-service pharmacy to implement a technology-assisted verification of product program for licensed pharmacy technicians.

R4-23-1105. Pharmacy Technician Trainee Training Program, Pharmacy Technician Drug Compounding Training Program, and Alternative Pharmacy Technician Training: The objective of the rule is to establish requirements for training programs for pharmacy technicians and pharmacy technician trainees.

R4-23-1106. Continuing Education Requirements: The objective of the rule is to establish standards for pharmacy technician continuing education acceptable to the Board for meeting the statutory requirement.

3. Are the rules effective in achieving their objectives? Generally yes

The rules are generally effective in achieving their objectives as evidenced by the Board's ability to license and regulate 11,404 pharmacy technicians and register and regulate 7,980 pharmacy technician trainees. However, the Board determined the rules could be improved and initiated a rulemaking that repeals or amends all the rules in Article 11. The Notice of Proposed Rulemaking can be reviewed at 30 A.A.R. 2159, July 5, 2024. In the proposed rulemaking, the Board reduces regulatory burdens by repealing unnecessarily prescriptive requirements in several Sections. The proposed rules also add flexibility regarding pharmacy technician training and examinations.

4. Are the rules consistent with other rules and statutes? Mostly yes

Because of recent statutory changes to A.R.S. §§ 32-1923.01(B) and 32-1924(F), regarding registration rather than licensing of pharmacy technician trainees and the fee the Board is authorized to charge for the registration, the rules are inconsistent with statute. This inconsistency is addressed in the rulemaking being conducted by the Board.

5. Are the rules enforced as written? No

The rules are enforced in a manner consistent with statute.

6. Are the rules clear, concise, and understandable? Yes

Although the rules are clear, concise, and understandable, in the rulemaking being conducted by the Board, important improvements are made to address the clarity of the rules. In the

proposed rulemaking available at 30 A.A.R. 2159, July 5, 2024, the Board makes the rules more clear, concise, and understandable by separating the licensing requirements regarding pharmacy technicians from those regarding pharmacy technician trainees.

7. Has the agency received written criticisms of the rules within the last five years? No

8. Economic, small business, and consumer impact comparison:

In the 5YRR of Article 11 approved by Council on May 7, 2019, the Board indicated the economic impact of the rules was consistent with that projected when the rules were made. The Board has received no information causing it to change that conclusion and no appeal of an economic impact statement has been filed under A.R.S. § 41-1056.01.

In four rulemakings completed since May 7, 2019, the Board amended R4-23-1102, R4-23-1103, R4-23-1104, R4-23-1105, and R4-23-1106. There are currently 11,404 licensed pharmacy technicians and 7,980 registered pharmacy technician trainees.

25 A.A.R. 1015, June 1, 2019

The EIS for this rulemaking was available for review. In this rulemaking, the Board made minor clarity changes to R4-23-1103 and R4-23-1105. In R4-23-1105, the Board added a provision requiring the pharmacist-in-charge to provide written documentation of training hours completed to a pharmacy technician who leaves a training program before completing the training program. The Board correctly anticipated the economic impact of this provision would be minimal for the pharmacist-in-charge and provide an important benefit for the pharmacy technician seeking to leave the training program.

26 A.A.R. 223, March 14, 2020

The EIS for this rulemaking was available for review. In this rulemaking, the Board amended R4-23-1103. The Board specified the approved pharmacy technician licensing examinations and repealed a provision dealing with re-application for licensure by a pharmacy technician trainee. The repeal was done to be consistent with A.R.S. § 32-1924(F), which established a non-renewable 36-month license for a pharmacy technician trainee. The Board correctly

indicated that approximately 25 percent of pharmacy technician trainees will not complete training or pass the required examination during the 36 months provided.

28 A.A.R. 995, May 13, 2022

The EIS for this rulemaking was available for review. In this rulemaking, the Board amended R4-23-1104 to expand the tasks a pharmacy technician is allowed to perform if the task is not related to professional judgment and is delegated to the pharmacy technician by the pharmacist on duty. The rulemaking also specified tasks that were not delegable. The Board correctly indicated that expanding the tasks to be performed by a pharmacy technician would free the time of pharmacists for activities involving the exercise of professional judgment and enable pharmacy permittees to serve the public more efficiently and effectively.

29 A.A.R. 2191, September 22, 2023

The EIS for this rulemaking was available for review. In this rulemaking, the Board amended R4-23-1104 again and R4-23-1106. The amendment to R4-23-1104 authorized a pharmacy technician to administer a vaccine under specified circumstances. R4-23-1106 was amended to require a pharmacy technician who administers vaccines take two contact hours of continuing education related to administration of vaccines during each license renewal period. The Board correctly expected the amendments would have economic impact. A pharmacy permittee that chose to allow a pharmacy technician to administer vaccines incurred the cost of ensuring the pharmacy technician was trained and working under the supervision of the pharmacist on duty. A pharmacy technician who administers vaccines had to redirect two contact hours of continuing education biennially to education about the administration of vaccines.

9. Has the agency received any business competitiveness analyses of the rules? No

10. Has the agency completed the course of action indicated in the agency's previous 5YRR: Yes
    In the 5YRR of Article 11 approved by the Council on May 7, 2019, the Board proposed no rulemaking to address the minor issues identified. However, in the four rulemakings completed since that time, the Board addressed the identified issues.

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 believes the probable benefits of the rules, which include complying with statute and protecting public health and safety, outweigh the probable costs and impose the least burden and costs possible on those regulated by the rules. The rules impose minimal economic cost on applicants and licensees who are regulated by the rules. The rules require applicants to submit an application form and certain documents but these are necessary to comply with statutory requirements. To comply with statute, the rules require a pharmacy technician renew the license biennially and participate in continuing education. To protect the public, the rules require a pharmacy permittee develop, implement, review, and revise policies and procedures regarding tasks appropriate for a pharmacy technician and pharmacy technician trainee. To protect the public, pharmacy permittees voluntarily choosing to implement a technology-assisted verification of product program are required to develop a written description of the program, ensure appropriate training is provided, and supervise the work of a pharmacy technician engaged in technology-assisted verification of product.

12. Are the rules more stringent than corresponding federal laws? No

There is no federal law directly applicable to any of the reviewed 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:

All of the reviewed rules were made after July 29, 2010. The Board does not issue general permits. Rather, the Board issues individual licenses as required by the Board's statutes to each individual who is qualified by statute and rule. In Article 11, the applicable statute is A.R.S. § 32-1923.01.

14. Proposed course of action:

The Board will complete the rulemaking it has started. The rulemaking repeals or amends all the rules in Article 11. The NPR was published at30 A.A.R. 2159, July 5, 2024. An oral

proceeding occurred on August 6, 2024. The Board is seeking approval to submit the NFR to GRRC. The Board expects to submit the NFR to GRRC by October 22, 2024.

ARTICLE 11. PHARMACY TECHNICIANS

Article 11, consisting of R4-23-1101 through R4-23-1105, made by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1).

R4-23-1101. Licensure and Eligibility

A. License required. A person shall not work as a pharmacy technician or pharmacy technician trainee in Arizona, unless the person possesses a pharmacy technician or pharmacy technician trainee license issued by the Board.

B. Eligibility.

1. To be eligible for licensure as a pharmacy technician trainee, a person shall:
   a. Be of good moral character,
   b. Be at least 18 years of age, and
   c. Have a high school diploma or the equivalent of a high school diploma.
2. To be eligible for licensure as a pharmacy technician, a person shall:
   a. Meet the requirements of subsection (B)(1),
   b. Complete a pharmacy technician training program that meets the standards prescribed in R4-23-1105, and
   c. Pass the Pharmacy Technician Certification Board (PTCB) examination or another Board-approved pharmacy technician examination.

C. A pharmacy technician delinquent license. Before an Arizona pharmacy technician license will be reinstated, a pharmacy technician whose Arizona pharmacy technician license is delinquent for five or more consecutive years shall furnish to the Board satisfactory proof of fitness to be licensed as a pharmacy technician and pay all past due biennial renewal fees and penalty fees. Satisfactory proof includes:

1. For a person with a delinquent license who is practicing as a pharmacy technician out-of-state with a pharmacy technician license issued by another jurisdiction:
   a. Proof of current, unrestricted pharmacy technician licensure in another jurisdiction; and
   b. Proof of employment as a pharmacy technician during the last 12 months; or
2. For a person with a delinquent license who did not practice as a pharmacy technician within the last 12 months:
   a. Take and pass a Board-approved pharmacy technician examination, and
   b. Complete 20 contact hours or two CEUs of continuing education activity sponsored by an approved provider, including at least two contact hours or 0.2 CEUs of continuing education activity in pharmacy law.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 102, effective March 10, 2013 (Supp. 13-1).

R4-23-1102. Pharmacy Technician Licensure

A. Eligibility. An applicant for licensure as a pharmacy technician shall provide the Board proof the applicant is eligible under R4-23-1101(B)(2), including documentation that the applicant:

1. Completed a pharmacy technician training program that meets the standards prescribed in R4-23-1105(B)(2); and
2. Passed the Pharmacy Technician Certification Board (PTCB) examination or another Board-approved pharmacy technician examination; or
3. Meets the requirements of R4-23-1105(D)(1) or (2).

B. Application.

1. An applicant for licensure as a pharmacy technician shall:
   a. Submit a completed application electronically or manually on a form furnished by the Board, and
   b. Submit with the application form:
      i. The documents specified in the application form,
      ii. The initial licensure fee specified in R4-23-205, and
      iii. The wall license fee specified in R4-23-205.
2. The Board office shall deem an application form received on the date the Board office electronically or manually date-stamps the form.

C. Licensure.

1. If an applicant is found to be ineligible for pharmacy technician licensure under statute and rule, the Board office shall issue a written notice of denial to the applicant.
2. If an applicant is found to be eligible for pharmacy technician licensure under statute and rule, the Board office shall issue a certificate of licensure and a wall license. An applicant who is assigned a license number and who has been

granted "open" status on the Board's license verification site may begin practice as a pharmacy technician before receiving the certificate of licensure.

3. An applicant who is assigned a license number and who has a "pending" status on the Board's license verification site shall not practice as a pharmacy technician until the Board office issues a certificate of licensure as specified in subsection (C)(2).
4. A licensee shall maintain the certificate of licensure in the practice site for inspection by the Board or its designee or review by the public.

D. License renewal.

1. To renew a license, a pharmacy technician shall submit a completed license renewal application electronically or manually on a form furnished by the Board with the biennial renewal fee specified in R4-23-205.
2. If the biennial renewal fee is not paid by November 1 of the renewal year specified in A.R.S. § 32-1925, the pharmacy technician license is suspended and the licensee shall not practice as a pharmacy technician. The licensee shall pay a penalty as provided in A.R.S. § 32-1925 and R4-23-205 to vacate the suspension.
3. A licensee shall maintain the renewal certificate of licensure in the practice site for inspection by the Board or its designee or review by the public.

E. Time frames for pharmacy technician licensure and license renewal. The Board office shall follow the time frames established in R4-23-202(F).

F. Verification of license. A pharmacy permittee or pharmacist-in-charge shall not permit a person to practice as a pharmacy technician until the pharmacy permittee or pharmacist-in-charge verifies the person is currently licensed by the Board as a pharmacy technician.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 102, effective March 10, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 2911, effective November 10, 2013 (Supp. 13-3). Amended by final rulemaking at 25 A.A.R. 1015, effective June 1, 2019 (Supp. 19-2).

R4-23-1103. Pharmacy Technician Trainee Licensure

A. Eligibility. An applicant for licensure as a pharmacy technician trainee shall provide the Board proof the applicant is eligible under R4-23-1101(B)(1).

B. Application.

1. An applicant for licensure as a pharmacy technician trainee shall:
   a. Submit a completed application electronically or manually on a form furnished by the Board, and
   b. Submit with the application form:
      i. The documents specified in the application form,
      ii. The licensure fee specified in R4-23-205, and
      iii. The wall license fee specified in R4-23-205.
2. The Board office shall deem an application form received on the date the Board office electronically or manually date-stamps the form.

C. Licensure.

1. If an applicant is found to be ineligible for pharmacy technician trainee licensure under statute and rule, the Board office shall issue a written notice of denial to the applicant.
2. If an applicant is found to be eligible for pharmacy technician trainee licensure under statute and rule, the Board office shall issue a certificate of licensure and a wall license. An applicant who is assigned a license number and who has been granted "open" status on the Board's license verification site may begin practice as a pharmacy technician trainee before receiving the certificate of licensure.
3. An applicant who is assigned a license number and who has a "pending" status on the Board's license verification site shall not practice as a pharmacy technician trainee until the Board office issues a certificate of licensure as specified in subsection (C)(2).
4. A licensee shall maintain the certificate of licensure in the practice site for inspection by the Board or its designee or review by the public.
5. A pharmacy technician trainee license is valid for 36 months from the date issued. A pharmacy technician trainee who does not complete the prescribed training program and pass a Board-approved pharmacy technician examination before the pharmacy technician trainee's license expires is not eligible for licensure as a pharmacy technician and shall not

practice as a pharmacy technician or pharmacy technician trainee. The Board has approved the following pharmacy technician examinations:

a. Pharmacy Technician Certification Board (PTCB) Exam, and
b. Exam for the Certification of Pharmacy Technicians (ExCPT).

D. Time frames for pharmacy technician trainee licensure. The Board office shall follow the time frames established in R4-23-202(F).

E. Verification of license. A pharmacy permittee or pharmacist-in-charge shall not permit a person to practice as a pharmacy technician trainee until the pharmacy permittee or pharmacist-in-charge verifies that the person is currently licensed by the Board as a pharmacy technician trainee.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 2911, effective November 10, 2013 (Supp. 13-3). Amended by final rulemaking at 25 A.A.R. 1015, effective June 1, 2019 (Supp. 19-2). Amended by final rulemaking at 26 A.A.R. 223, effective March 14, 2020 (Supp. 20-1).

R4-23-1104. Pharmacy Technicians and Pharmacy Technician Trainees

A. Permissible tasks of a pharmacy technician trainee. Acting in compliance with all applicable statutes and rules and under the supervision of a pharmacist, a pharmacy technician trainee licensed under R4-23-1103 may assist an intern or pharmacist with the following when applicable to the pharmacy practice site:

1. Record on the original prescription order the serial number of the prescription medication and date dispensed;
2. Initiate or accept verbal or electronic refill authorization from a medical practitioner or medical practitioner's agent and record, on the original prescription order or by an alternative method approved by the Board or its designee, the medical practitioner's name, patient name, name and quantity of prescription medication, specific refill information, and name of medical practitioner's agent, if any;
3. Record information in the refill record or patient profile;
4. Enter information for a new or refill prescription medication as required under A.R.S. § 32-1964;
5. Type and affix a label for the prescription medication. A pharmacist or intern working under the supervision of a pharmacist shall verify the accuracy of the label as described under R4-23-402(A)(11);
6. Reconstitute a prescription medication, if a pharmacist checks the ingredients and procedure before reconstitution and verifies the final product after reconstitution;
7. Retrieve, count, or pour a prescription medication, if a pharmacist verifies the contents of the prescription medication against the original prescription medication container or by an alternative drug identification method approved by the Board or its designee;
8. Prepackage drugs in accordance with R4-23-402(A); and
9. Measure, count, pour, or otherwise prepare and package a drug needed for hospital inpatient dispensing, if a pharmacist verifies the accuracy, measuring, counting, pouring, preparing, packaging, and safety of the drug before the drug is delivered to a patient care area.

B. Permissible tasks of a pharmacy technician. Acting in compliance with all applicable statutes and rules and under the supervision of a pharmacist, a pharmacy technician licensed under R4-23-1102 may:

1. Perform the tasks listed in subsection (A);
2. After completing a pharmacy technician drug compounding training program developed by the pharmacy permittee or pharmacist-in-charge under R4-23-1105(C), assist a pharmacist or intern in compounding prescription medications and sterile or non-sterile pharmaceuticals in accordance with written policies and procedures, if the preparation, accuracy, and safety of the final product is verified by a pharmacist before dispensing;
3. Perform a final technology-assisted verification of product if the pharmacy technician is qualified under R4-23-1104.01(D);
4. If technology-assisted verification is performed, type and affix a label for the prescription medication. A pharmacist or intern shall verify the accuracy of the label as described under R4-23-402(A)(12);
5. Administer a vaccine when:
   a. Administration of the vaccine is done under an order that complies with A.R.S. § 32-1974 and R4-23-411;
   c. Administration of the vaccine is delegated by and done under the supervision of a pharmacist on duty who is certified under A.R.S. § 32-1974 to administer vaccines; and
   d. There is documentation by the permittee that the pharmacy technician has completed the following:

i. A practical training program that is approved by the Accreditation Council for Pharmacy Education and includes hands-on injection technique and recognition and treatment of emergency reactions to vaccines; and
ii. Current certification in basic cardiopulmonary resuscitation.

6. Perform a task not related to professional judgment if the task is delegated to the pharmacy technician by the pharmacist on duty after the pharmacist on duty ensures the pharmacy technician is trained to do the task and there is documentation by the permittee of the training; and
7. A pharmacist on duty shall not delegate or attempt to delegate the following tasks to a pharmacy technician:
   a. Administering an emergency medication,
   b. Counseling a patient,
   c. Conducting a drug utilization review,
   d. Performing any task that requires the exercise of clinical judgment,
   e. Issuing a prescription order,
   f. Receiving a new prescription order for a controlled substance, or
   g. Transferring by telephone an existing prescription order for a controlled substance.

C. A trained and licensed pharmacy technician or pharmacy technician trainee who performs a task as authorized under subsections (A) and (B) shall ensure the task is performed accurately.

D. Prohibited activities. A pharmacy technician or pharmacy technician trainee shall not perform a professional practice reserved for a pharmacist or intern in accordance with R4-23-402 or R4-23-653 unless otherwise allowed by rule.

E. A pharmacy technician or pharmacy technician trainee shall wear a badge indicating name and title while on duty.

F. Before employing a pharmacy technician or pharmacy technician trainee, a pharmacy permittee or pharmacist-in-charge shall develop, implement, review, and revise in the manner described in R4-23-653(A) and comply with policies and procedures outlined in subsection (G) for pharmacy technician and pharmacy technician trainee tasks.

G. A pharmacy permittee or pharmacist-in-change shall ensure policies and procedures required under subsection (F) include the following:

1. For all practice sites:
   a. Supervisory controls and verification procedures to ensure the quality and safety of pharmaceutical service;
   b. Employment performance expectations for a pharmacy technician and pharmacy technician trainee;
   c. The tasks a pharmacy technician or pharmacy technician trainee may perform as specified under subsections (A) and (B);
   d. Pharmacist and patient communication;
   e. Reporting, correcting, and avoiding medication and dispensing errors;
   f. Security procedures for:
      i. Confidentiality of patient prescription records, and
      ii. The pharmacy area;
   g. Automated medication distribution system;
   h. Compounding procedures for pharmacy technicians; and
   i. Brief overview of state and federal pharmacy statutes and rules;
2. For community and limited-service pharmacy practice sites:
   a. Prescription dispensing procedures for:
      i. Accepting a new written prescription order,
      ii. Accepting a refill request,
      iii. Selecting a drug product,
      iv. Counting and pouring,
      v. Labeling, and
      vi. Obtaining refill authorization; and
   b. Computer data-entry procedures for:
      i. New and refill prescriptions,
      ii. Patient’s drug allergies,
      iii. Drug-drug interactions,
      iv. Drug-food interactions,
      v. Drug-disease state contraindications,
      vi. Refill frequency,
      vii. Patient’s disease and medical condition,
      viii. Patient’s age or date of birth and gender, and

ix. Patient profile maintenance; and

3. For hospital pharmacy practice sites:
   a. Medication order procurement and data entry,
   b. Drug preparation and packaging,
   c. Outpatient and inpatient drug delivery, and
   d. Inspection of drug storage and preparation areas and patient care areas.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 19 A.A.R. 102, effective March 10, 2013 (Supp. 13-1). Amended by final rulemaking at 23 A.A.R. 3257, effective January 8, 2018 (Supp. 17-4). Amended by final rulemaking at 28 A.A.R. 994 (May 13, 2022), effective July 2, 2022 (Supp. 22-2). Section made by emergency rulemaking at 29 A.A.R. 1196 (May 26, 2023), with an immediate effective date of May 4, 2023; effective for 180 days (Supp. 23-2). Amended by final rulemaking at 29 A.A.R. 2191 (September 22, 2023), with an immediate effective date of September 6, 2023 (Supp. 23-3).

R4-23-1104.01 Technology-assisted Verification of Product

A. By complying with this Section, the permittee of a retail, institutional, or limited-service pharmacy may implement a technology-assisted verification of product program that allows a pharmacy technician licensed under R4-23-1102 and qualified under subsection (D) to perform final product verification.

B. Written program description required. Before implementing a technology-assisted verification of product program the permittee of a retail, institutional, or limited-service pharmacy shall prepare a written program description that includes the following:
   1. Responsibility of both the pharmacist in charge and permittee to ensure compliance with this Section;
   2. Responsibility of the permittee to design, implement, and monitor a process that ensures the accuracy and safety of the product dispensed;
   3. Duties of a verification technician;
   4. The training necessary to qualify and remain qualified as a verification technician;
   5. The monitoring and evaluation procedures to be used to ensure competency of the verification technician; and
   6. Prohibition of a verification technician performing a final accuracy check of a completed prescription label.

C. The permittee of a retail, institutional, or limited-service pharmacy implementing a technology-assisted verification of product program shall:
   1. Post the written program description required under subsection (B) in the pharmacy area;
   2. Provide a copy of the written program description to the pharmacist in charge and verification technician;
   3. Obtain the signature of the pharmacist in charge and verification technician on a copy of the written program description and place the signed copy in the personnel file of the pharmacist in charge and verification technician;
   4. Ensure scanning technology used in the technology-assisted verification program captures both product and patient information; and
   5. Update the written program description as needed and repeat subsections (C)(1) through (4) after each update.

D. Verification technician training: The permittee of a retail, institutional, or limited-service pharmacy implementing a technology-assisted verification of product program shall ensure a pharmacy technician does not perform the duties of a verification technician unless the pharmacy technician has the following qualifications:
   1. Is licensed under R4-23-1102;
   2. Has at least 1,000 hours of pharmacy technician work experience in the same kind of pharmacy practice site in which the technology-assisted verification of product will be performed;
   3. Completes a training program that includes at least the following:
      a. Role of a verification technician in the dispensing process,
      b. Legal requirements of a verification technician,
      c. How to use the technology-assisted verification system,
      d. Primary causes of medication errors, and
      e. Identifying and resolving dispensing errors; and
   4. Completes at least four hours of the continuing education required under R4-23-1106 on patient safety.

E. The permittee of a retail, institutional, or limited-service pharmacy implementing a technology-assisted verification of product program shall ensure the pharmacy practice site has a computer data storage and retrieval system that meets the standards in R4-23-408(B).

F. The permittee of a retail, institutional, or limited-service pharmacy implementing a technology-assisted verification of product program shall ensure a verification technician verifies only the following:
1. A product with scanning technology that identifies product, or
2. A robotically prepared unit-dose product.

G. The permittee of a retail, institutional, or limited-service pharmacy implementing a technology-assisted verification of product program shall ensure a verification technician does not verify the following:
1. A product that involves a combination of drugs resulting from compounding or mixing two or more ingredients or products,
2. A product that involves or results from an alteration of a drug, or
3. A DEA schedule II controlled substance.

H. The permittee of a retail, institutional, or limited-service pharmacy implementing a technology-assisted verification of product program shall perform an unannounced evaluation of the competency of a verification technician at least twice a year and take steps to remediate any deficiencies identified including removing verification duties from the technician.

I. The permittee of a retail, institutional, or limited-service pharmacy implementing a technology-assisted verification of product program shall maintain the following records:
1. Date the pharmacy technician was designated as a verification technician,
2. Date the pharmacy technician completed the training required under subsection (D)(3),
3. Dates and results of the evaluations conducted under subsection (H), and
4. Date and reason for any disciplinary action against the verification technician arising from performing the duties of a verification technician.

J. A verification technician shall wear identification that includes the title "Verification Technician" while on duty.

K. As used in this Section, the term "verification technician" means an individual who:
1. Is qualified under subsection (D),
2. Uses a combination of scanning technology and visual confirmation to verify a product prepared to be dispensed is the product prescribed and indicated on the prescription label, and
3. Performs verification of work performed by other pharmacy technicians before a pharmacist or graduate or pharmacy intern working under the supervision of a pharmacist performs the final accuracy check required under R4-23-402(A).

Historical Note

New Section made by final rulemaking at 23 A.A.R. 3257, effective January 8, 2018 (Supp. 17-4).

R4-23-1105. Pharmacy Technician Trainee Training Program, Pharmacy Technician Drug Compounding Training Program, and Alternative Pharmacy Technician Training

A. Nothing in this Section prevents additional offsite training of a pharmacy technician.

B. Pharmacy technician trainee training program.
1. A pharmacy permittee or pharmacist-in-charge shall develop, implement, review, revise in the same manner described in R4-23-653(A), and comply with a pharmacy technician trainee training program based on the needs of the individual pharmacy.
2. A pharmacy permittee or pharmacist-in-charge shall ensure the pharmacy technician trainee training program includes training guidelines that:
   a. Define the specific tasks a pharmacy technician trainee is expected to perform,
   b. Specify how and when the pharmacist-in-charge will assess the pharmacy technician trainee's competency, and
   c. Address the policies and procedures specified in R4-23-1104(G) and the permissible activities specified in R4-23-1104(A).
3. A pharmacist-in-charge shall:
   a. Document the date a pharmacy technician trainee successfully completed the training program, and
   b. Maintain the documentation required in this subsection for inspection by the Board or its designee.
4. A pharmacy technician trainee shall perform only those tasks, listed in R4-23-1104(A), for which training and competency has been demonstrated.

C. Pharmacy technician drug compounding training program.
1. A pharmacy permittee or pharmacist-in-charge shall develop, implement, review, revise in the same manner described in R4-23-653(A), and comply with a pharmacy technician drug compounding training program based on the needs of the individual pharmacy;
2. A pharmacy permittee or pharmacist-in-charge shall ensure the pharmacy technician drug compounding training program includes training guidelines that:

a. Define the specific tasks a pharmacy technician is expected to perform,
b. Specify how and when the pharmacist-in-charge will assess the pharmacy technician's competency, and
c. Address the following procedures and tasks:
i. Area preparation,
ii. Component preparation,
iii. Aseptic technique and product preparation,
iv. Packaging and labeling, and
v. Area cleanup;

3. A pharmacist-in-charge shall:
a. Document the date a pharmacy technician successfully completed the pharmacy technician drug compounding training program, and
b. Maintain the documentation required in this subsection for inspection by the Board or its designee.

D. Alternative pharmacy technician training.

1. An individual who has passed the required Board-approved pharmacy technician examination, but has not followed the normal path to pharmacy technician licensure by obtaining a pharmacy technician trainee license and working while completing a pharmacy technician trainee training program as specified in subsection (B), may obtain a pharmacy technician license, if the individual has employment in pharmacy and completes an on-the-job training program as part of the individual's employment orientation that includes: reading and discussing with the pharmacist-in-charge of the pharmacy where employed, the Board rules concerning pharmacy technicians and pharmacy technician trainees, the pharmacy technician and pharmacy technician trainee job description, and the policies and procedures manual of that pharmacy.
2. An individual who has completed a pharmacy technician certificate program and has passed the required Board-approved pharmacy technician examination, but has not followed the normal path to pharmacy technician licensure by obtaining a pharmacy technician trainee license and working while completing a pharmacy technician trainee training program as specified in subsection (B), may obtain a pharmacy technician license, if the individual has employment in pharmacy and completes an on-the-job training program as part of the individual's employment orientation that includes: reading and discussing with the pharmacist-in-charge of the pharmacy where employed, the Board rules concerning pharmacy technicians and pharmacy technician trainees, the pharmacy technician and pharmacy technician trainee job description, and the policies and procedures manual of that pharmacy.
3. A pharmacist-in-charge shall:
a. Document the date an individual licensed under subsection (D)(1) or (2) successfully completed the on-the-job training program as part of the individual's employment orientation as required under subsection (D)(1) or (2), and
b. Maintain the documentation required in this subsection for inspection by the Board or its designee.

E. A pharmacy technician shall perform only those tasks, listed in R4-23-1104(B), for which training and competency has been demonstrated.

F. If a pharmacy technician leaves a training program described under subsection (B), (C), or (D) before successfully completing the training program, the pharmacist-in-charge shall provide the pharmacy technician with written documentation of the hours of training completed and the tasks for which competence was demonstrated by the pharmacy technician.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1192, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 19 A.A.R. 102, effective March 10, 2013 (Supp. 13-1). Amended by final rulemaking at 25 A.A.R. 1015, effective June 1, 2019 (Supp. 19-2).

R4-23-1106. Continuing Education Requirements

A. General. According to A.R.S. § 32-1925(H), the Board shall not renew a pharmacy technician license unless the licensee has during the two years preceding the application for renewal:

1. Participated in 20 contact hours or two CEUs of continuing education activity sponsored by an Approved Provider, as defined in R4-23-110, and
2. A pharmacy technician licensee is exempt from the continuing education requirement in subsection (A)(1) between the time of initial licensure and first renewal.

B. Special continuing education requirement. During each license renewal period, a pharmacy technician shall not administer a vaccine under R4-23-1104(B)(5) unless the pharmacy technician has participated in at least two contact hours of continuing education activity approved by the Accreditation Council for Pharmacy Education and related to administration of vaccines.

C. Valid CEUs. The Board shall:

1. Accept CEUs for continuing education activities sponsored only by an Approved Provider;
2. Accept CEUs accrued during only the two-year period immediately before licensure renewal;
3. Not allow CEUs accrued in a biennial renewal period to be carried forward to the succeeding biennial renewal period;
4. Allow a pharmacy technician who leads, instructs, or lectures to a group of health professionals on pharmacy-related topics in a continuing education activity sponsored by an Approved Provider to receive CEUs for a presentation by following the same attendance procedures as any other attendee of the continuing education activity; and
5. Not accept as a CEU a pharmacy technician's normal teaching duties within a learning institution if the pharmacy technician's primary responsibility is the education of health professionals.

D. Continuing education records and reporting CEUs. A pharmacy technician shall:

1. Maintain continuing education records that:
   a. Verify the continuing education activities the pharmacy technician participated in during the preceding five years; and
   b. Consist of a statement of credit or a certificate issued by an Approved Provider at the conclusion of a continuing education activity;
2. At the time of licensure renewal, attest to the number of CEUs the pharmacy technician participated in during the renewal period on the biennial renewal form; and
3. When requested by the Board office, submit proof of continuing education participation within 20 days of the request.

E. The Board shall deem a pharmacy technician's failure to comply with the continuing education participation, recording, or reporting requirements of this Section as unprofessional conduct and grounds for disciplinary action by the Board under A.R.S. § 32-1927.01.

F. A pharmacy technician who is aggrieved by any decision of the Board concerning continuing education units may request a hearing before the Board.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1105, effective April 30, 2005 (Supp. 05-1). Amended by final rulemaking at 26 A.A.R. 223, effective March 14, 2020 (Supp. 20-1). Section made by emergency rulemaking at 29 A.A.R. 1196 (May 26, 2023), with an immediate effective date of May 4, 2023; effective for 180 days (Supp. 23-2). Amended by final rulemaking at 29 A.A.R. 2191 (September 22, 2023), with an immediate effective date of September 6, 2023 (Supp. 23-3).

32-1904. Powers and duties of board; immunity

A. The board shall:

1. Make bylaws and adopt rules that are necessary to protect the public and that pertain to the practice of pharmacy, the manufacturing, wholesaling or supplying of drugs, devices, poisons or hazardous substances, the use of pharmacy technicians and support personnel and the lawful performance of its duties.

2. Fix standards and requirements to register and reregister pharmacies, except as otherwise specified.

3. Investigate compliance as to the quality, label and labeling of all drugs, devices, poisons or hazardous substances and take action necessary to prevent the sale of these if they do not conform to the standards prescribed in this chapter, the official compendium or the federal act.

4. Enforce its rules. In so doing, the board or its agents have free access, during the hours reported with the board or the posted hours at the facility, to any pharmacy, manufacturer, wholesaler, third-party logistics provider, nonprescription drug permittee or other establishment in which drugs, devices, poisons or hazardous substances are manufactured, processed, packed or held, or to enter any vehicle being used to transport or hold such drugs, devices, poisons or hazardous substances for the purpose of:

(a) Inspecting the establishment or vehicle to determine whether any provisions of this chapter or the federal act are being violated.

(b) Securing samples or specimens of any drug, device, poison or hazardous substance after paying or offering to pay for the sample.

(c) Detaining or embargoing a drug, device, poison or hazardous substance in accordance with section 32-1994.

5. Examine and license as pharmacists and pharmacy interns all qualified applicants as provided by this chapter.

6. Require each applicant for an initial license to apply for a fingerprint clearance card pursuant to section 41-1758.03. If an applicant is issued a valid fingerprint clearance card, the applicant shall submit the valid fingerprint clearance card to the board with the completed application. If an applicant applies for a fingerprint clearance card and is denied, the applicant may request that the board consider the application for licensure notwithstanding the absence of a valid fingerprint clearance card. The board, in its discretion, may approve an application for licensure despite the denial of a valid fingerprint clearance card if the board determines that the applicant's criminal history information on which the denial was based does not alone disqualify the applicant from licensure.

7. Issue duplicates of lost or destroyed permits on the payment of a fee as prescribed by the board.

8. Adopt rules to rehabilitate pharmacists and pharmacy interns as provided by this chapter.

9. At least once every three months, notify pharmacies regulated pursuant to this chapter of any modifications on prescription writing privileges of podiatrists, dentists, doctors of medicine, registered nurse practitioners, osteopathic physicians, veterinarians, physician assistants, optometrists and homeopathic physicians of which it receives notification from the state board of podiatry examiners, state board of dental examiners, Arizona medical board, Arizona state board of nursing, Arizona board of osteopathic examiners in medicine and surgery, Arizona state veterinary medical examining board,

Arizona regulatory board of physician assistants, state board of optometry or board of homeopathic and integrated medicine examiners.

10. Charge a permittee a fee, as determined by the board, for an inspection if the permittee requests the inspection.

11. Issue only one active or open license per individual.

12. Allow a licensee to regress to a lower level license on written explanation and review by the board for discussion, determination and possible action.

13. Open an investigation only if the identifying information regarding a complainant is provided or the information provided is sufficient to conduct an investigation.

14. Provide notice to an applicant, licensee or permittee using only the information provided to the board through the board's licensing database.

B. The board may:

1. Employ chemists, compliance officers, clerical help and other employees subject to title 41, chapter 4, article 4 and provide laboratory facilities for the proper conduct of its business.

2. Provide, by educating and informing the licensees and the public, assistance in curtailing abuse in the use of drugs, devices, poisons and hazardous substances.

3. Approve or reject the manner of storage and security of drugs, devices, poisons and hazardous substances.

4. Accept monies and services to assist in enforcing this chapter from other than licensees:

(a) For performing inspections and other board functions.

(b) For the cost of copies of the pharmacy and controlled substances laws, the annual report of the board and other information from the board.

5. Adopt rules for professional conduct appropriate to the establishment and maintenance of a high standard of integrity and dignity in the profession of pharmacy.

6. Grant permission to deviate from a state requirement for modernization of pharmacy practice, experimentation or technological advances.

7. Adopt rules for the training and practice of pharmacy interns, pharmacy technicians and support personnel.

8. Investigate alleged violations of this chapter, conduct hearings in respect to violations, subpoena witnesses and take such action as it deems necessary to revoke or suspend a license or a permit, place a licensee or permittee on probation or warn a licensee or permittee under this chapter or to bring notice of violations to the county attorney of the county in which a violation took place or to the attorney general.

9. By rule, approve colleges or schools of pharmacy.

10. By rule, approve programs of practical experience, clinical programs, internship training programs, programs of remedial academic work and preliminary equivalency examinations as provided by this chapter.

11. Assist in the continuing education of pharmacists and pharmacy interns.

12. Issue inactive status licenses as provided by this chapter.

13. Accept monies and services from the federal government or others for educational, research or other purposes pertaining to the enforcement of this chapter.

14. By rule, except from the application of all or any part of this chapter any material, compound, mixture or preparation containing any stimulant or depressant substance included in section 13-3401, paragraph 6, subdivision (c) or (d) from the definition of dangerous drug if the material, compound, mixture or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, provided that such admixtures are included in such combinations, quantity, proportion or concentration as to vitiate the potential for abuse of the substances that do have a stimulant or depressant effect on the central nervous system.

15. Adopt rules for the revocation, suspension or reinstatement of licenses or permits or the probation of licensees or permittees as provided by this chapter.

16. Issue a certificate of free sale to any person that is licensed by the board as a manufacturer for the purpose of manufacturing or distributing food supplements or dietary supplements as defined in rule by the board and that wants to sell food supplements or dietary supplements domestically or internationally. The application shall contain all of the following:

(a) The applicant's name, address, email address, telephone and fax number.

(b) The product's full, common or usual name.

(c) A copy of the label for each product listed. If the product is to be exported in bulk and a label is not available, the applicant shall include a certificate of composition.

(d) The country of export, if applicable.

(e) The number of certificates of free sale requested.

17. Establish an inspection process to issue certificates of free sale or good manufacturing practice certifications. The board shall establish in rule:

(a) A fee to issue certificates of free sale.

(b) A fee to issue good manufacturing practice certifications.

(c) An annual inspection fee.

18. Delegate to the executive director the authority to:

(a) If the president or vice president of the board concurs after reviewing the case, enter into an interim consent agreement with a licensee or permittee if there is evidence that a restriction against the license or permit is needed to mitigate danger to the public health and safety. The board may subsequently formally adopt the interim consent agreement with any modifications the board deems necessary.

(b) Take no action or dismiss a complaint that has insufficient evidence that a violation of statute or rule governing the practice of pharmacy occurred.

(c) Request an applicant or licensee to provide court documents and police reports if the applicant or licensee has been charged with or convicted of a criminal offense. The executive director may do either of the following if the applicant or licensee fails to provide the requested documents to the board within thirty business days after the request:

(i) Close the application, deem the application fee forfeited and not consider a new application complete unless the requested documents are submitted with the application.

(ii) Notify the licensee of an opportunity for a hearing in accordance with section 41-1061 to consider suspension of the licensee.

(d) Pursuant to section 36-2604, subsection B, review prescription information collected pursuant to title 36, chapter 28, article 1.

C. At each regularly scheduled board meeting, the executive director shall provide to the board a list of the executive director's actions taken pursuant to subsection B, paragraph 18, subdivisions (a), (c) and (d) of this section since the last board meeting.

D. The board may issue nondisciplinary civil penalties or delegate to the executive director the authority to issue nondisciplinary civil penalties. The nondisciplinary civil penalties shall be prescribed by the board in rule and issued using a board-approved form. If a licensee or permittee fails to pay a nondisciplinary civil penalty that the board has imposed on it, the board shall hold a hearing on the matter. In addition to any other nondisciplinary civil penalty adopted by the board, either of the following acts or omissions that is not an imminent threat to the public health and safety is subject to a nondisciplinary civil penalty:

1. An occurrence of either of the following:

(a) Failing to submit a remodel application before remodeling a permitted facility.

(b) Failing to notify the board of the relocation of a business.

2. The occurrence of any of the following violations or any of the violations adopted by the board in rule, with three or more violations being presented to the board as a complaint:

(a) The licensee or permittee fails to update the licensee's or permittee's online profile within ten days after a change in contact information, address, telephone number or email address.

(b) The licensee fails to update the licensee's online profile within ten days after a change in employment.

(c) The licensee fails to complete the required continuing education for a license renewal.

(d) The licensee fails to update the licensee's online profile to reflect a new pharmacist in charge within fourteen days after the position change.

(e) The permittee fails to update the permittee's online profile to reflect a new designated representative within ten days after the position change.

(f) The licensee or permittee fails to notify the board of a new criminal charge, arrest or conviction against the licensee or permittee in this state or any other jurisdiction.

(g) The licensee or permittee fails to notify the board of a disciplinary action taken against the licensee or permittee by another regulating agency in this state or any other jurisdiction.

(h) A licensee or permittee fails to renew a license or permit within sixty days after the license or permit expires. If more than sixty days have lapsed after the expiration of a license or permit, the licensee or permittee shall appear before the board.

(i) A new pharmacist in charge fails to conduct a controlled substance inventory within ten days after starting the position.

(j) A person fails to obtain a permit before shipping into this state anything that requires a permit pursuant to this chapter.

(k) Any other violations of statute or rule that the board or the board's designee deems appropriate for a nondisciplinary civil penalty.

E. The board shall develop substantive policy statements pursuant to section 41-1091 for each specific licensing and regulatory authority the board delegates to the executive director.

F. The executive director and other personnel or agents of the board are not subject to civil liability for any act done or proceeding undertaken or performed in good faith and in furtherance of the purposes of this chapter.

32-1923.01. Pharmacy technicians; pharmacy technician trainees; qualifications; remote dispensing site pharmacies

A. An applicant for licensure as a pharmacy technician must:

1. Be at least eighteen years of age.

2. Have a high school diploma or the equivalent of a high school diploma.

3. Complete a training program prescribed by board rules.

4. Pass a board-approved pharmacy technician examination.

B. An applicant to register as a pharmacy technician trainee must:

1. Be at least eighteen years of age.

2. Register with the board via an online application.

C. Before a pharmacy technician prepares, compounds or dispenses prescription medications at a remote dispensing site pharmacy, the pharmacy technician shall:

1. Complete, in addition to any other board-approved mandatory continuing professional education requirements, a two-hour continuing education program on remote dispensing site pharmacy practices provided by an approved provider.

2. Have at least one thousand hours of experience working as a pharmacy technician in an outpatient pharmacy setting under the direct supervision of a pharmacist.

D. A pharmacy technician working at a remote dispensing site pharmacy:

1. Shall maintain an active, nationally recognized pharmacy technician certification approved by the board.

2. May not perform extemporaneous sterile or nonsterile compounding but may prepare commercially available medications for dispensing, including the reconstitution of orally administered powder antibiotics.

32-1924. Licenses; fees; rules; signatures; registration; online profiles

A. An applicant for licensure as a pharmacist shall pay the board an initial licensure fee of not more than $500.

B. An applicant for licensure as a pharmacist, intern or pharmacy technician shall pay a fee prescribed by the board that does not exceed $50 for issuance of a wall license. On payment of a fee of not more than $50, the board may issue a replacement wall license to a licensee who requests a replacement because the original was damaged or destroyed, because of a change of name or for other good cause as prescribed by the board.

C. An applicant for licensure as an intern shall pay a fee of not more than $75. A license issued pursuant to this subsection expires five years after it is issued. The board shall adopt rules to prescribe the requirements for the renewal of a license that expires before the pharmacy intern completes the education or training required for licensure as a pharmacist.

D. An applicant for reciprocal licensure as a pharmacist shall pay a fee of not more than $500 for the application and expense of investigating the applicant's pharmaceutical standing in the jurisdiction in which the applicant is licensed.

E. All pharmacist licenses shall bear the signatures of the executive director and a majority of the members of the board.

F. An applicant to register as a pharmacy technician trainee shall submit with the application a fee prescribed by the board that does not exceed $25. A pharmacy technician trainee may apply for licensure as a pharmacy technician within thirty-six months after registering as a pharmacy technician trainee. A pharmacy technician trainee registration may not be renewed or reissued.

G. An applicant for licensure as a pharmacy technician shall submit with the application a fee prescribed by the board that does not exceed $100.

H. A licensee or registrant shall create an online profile using the board's licensing software.

32-1925. Renewal of license of pharmacists, interns and pharmacy technicians; fees; expiration dates; penalty for failure to renew; continuing education

A. Except for interns and pharmacy technician trainees, the board shall assign all persons who are licensed under this chapter to one of two license renewal groups. Except as provided in section 32-4301, a holder of a license certificate designated in the licensing database as even by way of verbiage or numerical value shall renew it biennially on or before November 1 of the even-numbered year, two years after the last renewal date. Except as provided in section 32-4301, a holder of a license certificate designated in the licensing database as odd by way of verbiage or numerical value shall renew it biennially on or before November 1 of the odd-numbered year, two years after the last renewal date. Failure to renew and pay all required fees on or before November 1 of the year in which the renewal is due suspends the license. The board shall vacate a suspension when the licensee pays all past due fees and reinstatement penalties. Reinstatement penalties shall not exceed $350. The board may waive collection of a fee or reinstatement penalty due after suspension under conditions established by a majority of the board.

B. A person shall not apply for license renewal more than sixty days before the expiration date of the license.

C. A person who is licensed as a pharmacist or a pharmacy technician and who has not renewed the license for five consecutive years shall furnish to the board satisfactory proof of fitness to be licensed as a pharmacist or a pharmacy technician. A person whose license has lapsed for two or more renewal cycles shall pay the fees for the two most recent renewal cycles and the penalties before being reinstated.

D. Biennial renewal fees for licensure shall be not more than:

1. For a pharmacist, $250.

2. For a pharmacy technician, $100.

3. For a duplicate renewal license, $25.

E. Fees that are designated to be not more than a maximum amount shall be set by the board for the following two fiscal years beginning November 1. The board shall establish fees approximately proportionate to the maximum fee allowed to cover the board's anticipated expenditures for the following two fiscal years. Variation in a fee is not effective except at the expiration date of a license.

F. The board shall not renew a license for a pharmacist unless the pharmacist has complied with the mandatory continuing professional pharmacy education requirements of sections 32-1936 and 32-1937.

G. The board shall prescribe intern licensure renewal fees that do not exceed $75. The license of an intern who does not receive specific board approval to renew the intern license or who receives board approval to renew but who does not renew and pay all required fees before the license expiration date is suspended after the license expiration date. The board shall vacate a suspension if the licensee pays all past due fees and penalties. Penalties shall not exceed $350. The board may waive collection of a fee or penalty due after suspension under conditions established by the board.

H. The board shall not renew a license for a pharmacy technician unless that person has a current board-approved license and has complied with board-approved mandatory continuing professional education requirements. If a pharmacy technician prepares, compounds or dispenses prescription medications at a remote dispensing site pharmacy, the pharmacy technician shall complete, in addition to any other board-approved mandatory continuing professional education requirements, a two-hour continuing education program on remote dispensing site pharmacy practices provided by an approved provider.

32-1961. Limit on dispensing, compounding and sale of drugs

A. Except as otherwise provided in this chapter, it is unlawful for any person to compound, sell or dispense any drugs or to dispense or compound the prescription orders of a medical practitioner, unless that person is a pharmacist or a pharmacy intern acting under the direct supervision of a pharmacist. This subsection does not prevent a pharmacy technician or support personnel from assisting in the dispensing of drugs if this is done pursuant to rules adopted by the board and under the direct supervision of a licensed pharmacist or under remote supervision by a pharmacist.

B. Except as otherwise provided in this chapter, it is unlawful for any person, without placing a pharmacist in active personal charge at each place of business, to:

1. Open, advertise or conduct a pharmacy.

2. Stock, expose or offer drugs for sale at retail, except as otherwise specifically provided.

3. Use or exhibit the title "drug", "drugs", "drugstore", "pharmacy", "apothecary" or "prescription" or any combination of these words or titles or any title, symbol or description of like import or any other term designed to take its place.

INDUSTRIAL COMMISSION OF ARIZONA
Title 20, Chapter 5, Article 1

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: September 4, 2024

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

FROM: Council Staff

DATE: August 16, 2024

SUBJECT: **INDUSTRIAL COMMISSION OF ARIZONA**
Title 20, Chapter 5, Article 1

Summary

This Five-Year Review Report (5YRR) from the Industrial Commission of Arizona (Commission) relates to sixty-five (65) rules in Title 20, Chapter 5, Article 1 regarding Workers' Compensation Practice and Procedures. Specifically, Article 1 sets forth procedures for workers' compensation proceedings before the Commission, general filing requirements for workers' compensation documents submitted to the Commission, required content for various workers' compensation forms used by the Commission, and other procedural directives pertaining to workers' compensation. The rules in Article 1 pertain to workers' compensation actions and proceedings before the Commission resulting from workplace injuries that occurred on or after January 1, 1969.

In the prior 5YRR for these rules, which was approved by the Council in September 2019, the Commission indicated that it incorporated a new Claims and Administrative Law Judge (ALJ) computer system, which offers alternative methods of communicating with the Commission, including webforms, document upload, electronic fax, and a secured file transfer protocol. The system also allows parties in worker's compensation cases to have web-based access to the Claim and ALJ records.

The Commission created a committee that includes members from the ALJ division, claims division, legal division, and outside stakeholders from both the applicant bar and defense bar to study the effect of the new system. The Commission indicated that it planned to study the effect of the new system, and upon approval of the committee's recommendations to the Commission, would initiate a rulemaking within the next year to modernize any impacted rules in Article 1. The Commission expected the recommendation would be completed by December 2019. Additionally, the Commission proposed to resolve inconsistencies identified in the prior report.

However, the Commission did not complete the previous proposed course of action. The Commission indicates the Committee developed five years ago to review Article 1 has continued to meet, done a thorough review of the rules, and is now seeking to update most of the rules contained in Article 1 as outlined in the current report to add clarity and modernize them and make them easier to navigate. Additionally, the Commission indicates the Committee was delayed somewhat by statutory changes that have caused the Committee to pause and evaluate rulemaking such as the statutory changes affecting guardian ad litem and the creation of a workers compensation fraud unit.

Proposed Action

In the current report, the Commission indicates the Committee has developed drafts of the proposed rules with changes that address the concerns regarding clarity, conciseness, understandability, and consistency outlined in more detail below. The Commission estimates it will finalize notices of proposed rulemaking and submit the notices for publication by the Secretary of State by September 2024, with final documents submitted to the Council in November 2024.

1. Has the agency analyzed whether the rules are authorized by statute?

The Commission cites both general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

Article 1 sets forth procedures for workers' compensation proceedings before the Commission, general filing requirements for workers' compensation documents submitted to the Commission, required content for various workers' compensation forms used by the Commission, and other procedural directives pertaining to workers' compensation. The Commission believes that the current estimated economic, small business, and consumer impact of the rules is not substantially different from that set out in the 2001 Economic Impact Statement addressing the entirety of Article 1.

Stakeholders are identified as individuals engaged with, or who may engage with, workers' compensation and the Commission.

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 Commission has determined that the probable benefits of the rules in Article 1 significantly outweigh the probable costs, and that the rules impose the least burden and costs on the regulated community.

4. Has the agency received any written criticisms of the rules over the last five years?

The Commission indicates it received no written criticisms in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Commission is planning to reorganize the existing rules in Article 1, so that Article 1 will only contain rules [aka Sections] that apply directly to ICA Claims Division duties. The reorganization will reduce the number of rules in Article 1 from 65 to 30 and make rules easier to find and understand. Separate articles, specifically Articles 2, 3, and 7, will be proposed to make Commission rules easier to find. Article 2 will contain rules that pertain to ICA ALJ Division duties governing the hearing process and hearing procedures. There will be a new section [definitions] and modernized provisions regarding the appointment of a Guardian Ad-Litem. Article 3 will contain rules that pertain to Commission duties. Article 7 will contain rules that pertain to ICA Legal Division duties. In addition to the reorganization the Commission has identified the following rules require modernization for understandability and clarity of the rules:

- R20-5-102 amend to update cross-reference and definitions.
- R20-5-103 amend to delete unnecessary language and update for internal consistency.
- R20-5-104 amend to clarify that written communication is required.
- R20-5-105 amend to reference defined term and delete subsections (D) & (E) [moving to
- Article 2].
- R20-5-106 amend to reference forms used, instructions, and website address.
- R20-5-107 amend to update language and delete duplicative language.
- R20-5-108 amend to reflect that only parties or a non-party with a court order or written
- authorization of claimant may obtain a Claims file.
- R20-5-109 move to Article 2 and renumber.
- R20-5-110 renumber and amend to modernize and correct citation.
- R20-5-111 renumber.
- R20-5-112 renumber and amend, using the name of the form, rather than a form number.
- R20-5-113 renumber and amend to require a claimant's current work status, correct a citation, and require a medical records release.
- R20-5-114 renumber.
- R20-5-115 renumber and amend to list the definitions in the order they appear in A.R.S. § 23-1071(A).
- R20-5-117 renumber.
- R20-5-118 renumber.
- R20-5-119 renumber.

- R20-5-120 renumber.
- R20-5-121 move to Article 3, renumber and amend to update incorporated materials.
- R20-5-122 move to Article 3 and renumber.
- R20-5-124 renumber.
- R20-5-125 renumber.
- R20-5-126 renumber.
- R20-5-127 renumber and amend to update the rule by referring to the Commission's vendor, the National Council on Compensation Insurance.
- R20-5-129 renumber and amend to clearly address self-insured employers.
- R20-5-130 renumber and amend to remove subsection (F) as notification of the Commission by carriers, self-insured employers, and self-insured WC pools may not have more than one designated representative.
- R20-5-131 renumber and amend to remove subsection (G), which will be added to R20-5-112.
- R20-5-132 renumber.
- R20-5-133 repeal text at R20-5-133 because duplicative and unnecessary
- R20-5-134 move to Article 2, renumber, and amend to specify Guardian Ad-Litem appointment procedures.
- R20-5-135 move to Article 2, renumber, and amend to specify the qualifications, role, and authority of the Guardian Ad-Litem.
- R20-5-136 expired.
- R20-5-137 move to Article 2, renumber, and amend, using pronoun "their."
- R20-5-138 move to Article 2 and renumber.
- R20-5-139 move to article 2, renumber, and amend to specify that a written stipulation may be used to resolve issues without filing a request for hearing or convening a hearing.
- R20-5-140 move to Article 2 and renumber.
- R20-5-141 move to Article 2, renumber, and amend to remove headings, reduce the number of subsection levels, and correct internal cross-references.
- R20-5-142 move to Article 2, renumber, and amend to specify that fees and costs associated with taking a deposition are borne by the party taking the deposition and that an administrative law judge may exercise discretion in canceling or continuing a hearing when a party fails to take or complete a deposition.
- R20-5-143 move to Article 2, renumber, and amend to reduce unnecessary verbiage.
- R20-5-144 move to Article 2 and renumber.
- R20-5-145 move to Article 2, renumber, and amend subsection (E) for brevity and add subsection (G), which was previously addressed in R20-5-105(E).
- R20-5-147 repeal text at R20-5-147 as rule is outdated and no longer necessary.
- R20-5-148 move to Article 2, renumber, and amend subsection (A), using the pronoun "their."
- R20-5-149 move to Article 2, renumber, and amend to remove "the party's authorized representative" as a source of reimbursement for hearing expenses and costs, making the rule more concise.
- R20-5-150 move to Article 2, renumber, and amend to use the broader term "entity" when referring to business entities, making the rule more concise, and allowing for a response to a motion to join.

- R20-5-151 move to Article 2 and renumber.
- R20-5-153 move to Article 2 and renumber.
- R20-5-154 move to Article 2 and renumber.
- R20-5-155 move to Article 2, renumber, and amend to allow for submission of evidence after the time periods addressed in subsections (A) and (B) upon a showing of good cause [reason] or if the other parties agree.
- R20-5-156 move to Article 2 and renumber.
- R20-5-157 move to Article 2 and renumber.
- R20-5-158 move to Article 2, renumber, and amend to specify that this rule applies with respect to service from the Commission and add electronic methods available in the "Community" portal.
- R20-5-159 move to Article 2 and renumber.
- R20-5-160 move to Article 7, renumber, and amend to specify that an application for attorney fees be filed with the ICA Legal Division.
- R20-5-161 move to Article 2 and renumber.
- R20-5-162 move to Article 2 and renumber.
- R20-5-163 renumber.
- R20-5-164 renumber and amend subsections (F) and (G) to reflect the name of the correct form.
- R20-5-165 move to Article 3 and renumber.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Commission indicates there are no federal statutes or rules specific to administrative procedures related to Arizona workers' compensation claims. The Commission indicates the following rules have a consistency issue with Arizona Revised Statutes and should be reorganized and amended:

- R20-5-101 language deleted in R20-5-101 [Requests for hearing under A.R.S. §§ 23-907(H), (I), and (J).] will be placed in an Article 2 rule, R20-5-201, as these matters are heard by the ALJ Division.
- R20-5-102 defines the "Act" as A.R.S. Title 23, Ch. 6, Articles 1 through 11, but should say "A.R.S. Title 23, Ch. 6, Articles 1 through 12."
- R20-5-110 renumber and amend to modernize and correct citation to R20-5-629.
- R20-5-113 renumber and amend to delete form contents, require a claimant's current work status, correct citation from "A.R.S. § 23-908(E)" to "A.R.S. § 23-908(F)".
- R20-5-116 renumber and amend to list subsection (A) of A.R.S. § 23-1026.
- R20-5-123 renumber and amend to list subsection (B) of A.R.S. § 23-906.
- R20-5-128 renumber and amend to correct citation in subsection (A) [to A.R.S. § 23-908(D)] and account for clerical costs of providing electronic medical records.
- R20-5-133 repeal text at R20-5-133 [adding a new rule at R20-5-224 addressing Guardian Ad- Litem Definitions to implement A.R.S. § 23-905(A)].
- R20-5-134 move to Article 2, renumber, and amend to specify Guardian Ad-Litem appointment procedures to implement A.R.S. § 23-905(A).

- R20-5-135 move to Article 2, renumber, and amend to specify the qualifications, role, and authority of the Guardian Ad-Litem to provide information regarding appointment under A.R.S. § 23-905(A).
- R20-5-152 move to Article 2, renumber, and amend to account for a "full and final settlement" consistent with A.R.S. § 23-941.01.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Commission indicates the rules are generally effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

The Commission 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 Commission indicates there are no corresponding 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?

The Commission indicates there have been no rules adopted after July 29, 2010, which require the issuance of a regulatory permit, license, or agency authorization.

11. Conclusion

This Five-Year Review Report (5YRR) from the Industrial Commission of Arizona (Commission) relates to sixty-five (65) rules in Title 20, Chapter 5, Article 1 regarding Workers' Compensation Practice and Procedures. Specifically, Article 1 sets forth procedures for workers' compensation proceedings before the Commission, general filing requirements for workers' compensation documents submitted to the Commission, required content for various workers' compensation forms used by the Commission, and other procedural directives pertaining to workers' compensation. The rules in Article 1 pertain to workers' compensation actions and proceedings before the Commission resulting from workplace injuries that occurred on or after January 1, 1969.

The Commission indicates it has developed drafts of the proposed rules with changes that address the concerns regarding clarity, conciseness, understandability, and consistency outlined above. The Commission estimates it will finalize notices of proposed rulemaking and submit the notices for publication by the Secretary of State by September 2024, with final documents submitted to the Council in November 2024.

Council staff recommends approval of this report.

THE INDUSTRIAL COMMISSION OF ARIZONA

LEGAL DIVISION

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June 10, 2024

Sent via e-mail to grrc@azdoa.gov
Jessica Klein, Chairperson
Governor's Regulatory Review Council
Arizona Department of Administration
100 North 15th Avenue, Suite 302
Phoenix, Arizona 85007

Re: A.A.C. Title 20, Chapter 5, Article 1, Five-year Review Report

Dear Ms. Klein:

The Industrial Commission of Arizona (the "Commission") submits for approval by the Governor's Regulatory Review Council (the "Council") the attached Five-year Review Report on 20 A.A.C. 5, Article 1. The Commission has timely filed this report on or before Friday, June 28, 2024, after receiving a 120-day extension from the Council.

An electronic copy of this cover letter, the Report, the rules being reviewed [existing rules], and the general and specific statutes authorizing the rules, are concurrently submitted by e-mail to Simon Larscheidt. The Commission believes that the Report complies with the requirements of A.R.S. § 41-1056.

The Commission has reviewed all rules in Article 1 and, with this letter, I certify that the Commission is in compliance with A.R.S. § 41-1091. Should you have any questions concerning the report, please contact Chief Counsel Afshan Peimani at (602)-542-5905 or Attorney Scott J. Cooley at (602)-542-6905.

Sincerely,

Gaetano Testini
Executive Deputy Director

SJC/kh
Enclosures

FIVE-YEAR-REVIEW REPORT
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA
ARTICLE 1. WORKERS' COMPENSATION PRACTICE AND PROCEDURE

FIVE-YEAR-REVIEW REPORT

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 1. WORKERS' COMPENSATION PRACTICE AND PROCEDURE

FIVE-YEAR REVIEW SUMMARY

The Industrial Commission of Arizona (the "Commission" or "ICA") was created in 1925 as a result of legislation implementing the constitutional provisions establishing a workers' compensation system. From 1925 to 1969, the workers' compensation system consisted of the State Compensation Fund, which was then a part of the Commission, and self-insured employers which generally comprised the mining and the railroad companies. In 1969, the workers' compensation system reorganized and expanded to include private insurance companies. The State Compensation Fund was split off from the Commission and established as a separate agency responsible for providing workers' compensation insurance coverage until 2014, when it became a private mutual insurance company, CopperPoint. The Commission retained both its responsibility and authority over the processing of workers' compensation claims. Since that time, the role of the Commission has grown to include other labor-related issues, such as occupational safety and health, youth employment, resolution of wage-related disputes, minimum wage, vocational rehabilitation, workers' compensation coverage for claimants of uninsured employers, and self-insured employers.

Certification Regarding Compliance with A.R.S. § 41-1091

In the cover letter for this report, the Commission's Director certifies that the Commission has complied with A.R.S. § 41-1091 with respect to substantive policy statements relating to the rules in Article 1, as well as other substantive policy statements in the Commission's online Substantive Policy Statement Directory.

About Article 1

Article 1 sets forth procedures for workers' compensation proceedings before the Commission, general filing requirements for workers' compensation documents submitted to the Commission, required content for various workers' compensation forms used by the Commission, and other procedural directives pertaining to workers' compensation. The rules in Article 1 pertain to workers' compensation actions and proceedings before the Commission resulting from workplace injuries that occurred on or after January 1, 1969.

Rulemaking Related to Article 1

The Commission has not completed any rulemaking for Article 1 since the last five-year review report however, the Commission intends to submit notices of proposed rulemaking that will comprehensively amend Article 1, updating and modernizing the rules and reorganizing the existing rules in Article 1 by July 2024.

FIVE-YEAR-REVIEW REPORT
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA
ARTICLE 1. WORKERS' COMPENSATION PRACTICE AND PROCEDURE

1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.

The rules in Article 1 have general and specific authorization under: (1) A.R.S. § 23-107(A)(1), which states that the Commission "has full power, jurisdiction, and authority to . . . [f]ormulate and adopt rules . . . for effecting the purposes of [A.R.S. Title 23, Chapter 1, Article 1]"; (2) A.R.S. § 23-921(B), which states that "[t]he Commission may make and declare all rules and regulations which are reasonably required in the performance of its duties, including but not limited to rules of practice and procedure in connection with hearing and review proceedings"; (3) A.R.S. § 23-930(E), which states that "[t]he Commission shall adopt by rule a definition of unfair claim processing practices and bad faith"; (4) A.R.S. § 23-1044(G), which states that "[t]he Commission may adopt a schedule for rating loss of earning capacity and reasonable and proper rules to carry out this section"; and (5) A.R.S. § 23-1062.03, which states that "[t]he Commission shall develop and implement a process for the use of evidence-based medical treatment guidelines."

2. Objective of the rules, including the purposes for the existence of the rules.

The Commission's overarching objectives regarding Article 1, in no particular order with respect to priority, are to: (1) set forth the procedural framework for a just and humane compensation law in the State of Arizona, for the relief and protection of injured workers, their widows, children or dependents, from the burdensome, expensive and litigious remedies for injuries to, or death of, such workers; (2) minimize burden upon the regulated community; and (3) incentivize compliance with established procedures.

R20-5-101. Application of the Article; Notice of Rules; Part of Record

R20-5-101. This rule provides the types of actions and proceedings relating to Article 1, that the Article is part of the record in each action without reference thereto, that all parties are deemed to have knowledge of the rules of procedure, and that a copy of the Article is available from the Commission free of charge.

R20-5-102. Definitions

R20-5-102. This rule defines terms utilized in R20-5-101 through R20-5-165.

R20-5-103. Location of Industrial Commission Offices and Office Hours

R20-5-103. This rule states the location of the offices of the Commission and the hours of operation.

R20-5-104. Address of Claimant and Uninsured Employer

R20-5-104. This rule gives notice to claimants and uninsured employers against whom a workers' compensation claim has been filed that they have a duty to keep the Commission, insurance carrier (if applicable), self-insured employer (if applicable), and Special Fund (if applicable) advised of their address, and that providing the address of their attorney is insufficient to comply with the rule.

R20-5-105. Filing Requirements; Time for Filing; Computation of Time; Response to Motion

R20-5-105. This rule provides the procedure for computing time for filing pleadings, reports, documents, instruments, a response to a motion to join, and other written matters with the Commission. The rule also sets forth the requirement that motions involving discovery matters must include a statement that good faith efforts to resolve the dispute have been exhausted.

R20-5-106. Commission Forms

R20-5-106. This rule provides a list with requirements of Commission forms that are either required or optional. This rule also specifies that forms may not be changed, amended, or otherwise altered without the approval of the Commission.

R20-5-107. Manner of Completion of Forms and Documents

R20-5-107. This rule provides that forms must be completed legibly, signed by the party or party's authorized representative, and the procedures for incomplete forms.

R20-5-108. Confidentiality of a Commission Claims File; Reproduction and Inspection of a Commission Claims File

R20-5-108. This rule sets forth the parameters for when a Claims file is available for inspection and copying, as well as the applicable charge for copies.

R20-5-109. Admission into Evidence of Documents Contained in a Commission Claims File

R20-5-109. This rule allows for the entry into evidence documents contained in a Commission claims file.

R20-5-110. Employer Duty to Report Fatality

R20-5-110. This rules sets forth an employer's duty to report a fatality as a result of an injury by accident arising out of and in the course and scope of employment to the Commission's Claims Division. The rule sets forth the manner of reporting, details to be reported, and time frame for the reporting.

R20-5-111. Request for Autopsy

R20-5-111. This rule provides that the requesting party shall bear the cost of an autopsy.

R20-5-112. Physician's Initial Report of Injury

R20-5-112. This rule sets forth the requirements for completion of Form 102.

R20-5-113. Physician's Duty to Provide Signed Reports; Rating of Impairment of Function; Restriction Against Interruption or Suspension of Benefits; Change of Physician

R20-5-113. This rule describes the relationship between a treating physician and an injured worker, as well as the obligations of a treating physician during the period of time in which the physician is treating the injured worker. Subsection (A) imposes a duty upon the treating physician to keep the insurance carrier, the self-insured

employer, or Special Fund Division informed of the injured worker‘s medical condition by completing a progress report every 30 days. Subsection (B) states that upon medical discharge, the physician is also required to complete a final discharge report establishing the details of the rating of impairment and the clinical findings that support the rating. All these reports are required to be signed by the treating physician. Subsection (C) of the rule states that a carrier, self-insured employer, or the Special Fund Division shall not interrupt or suspend a claimant's temporary disability compensation benefits because a physician fails to comply with the requirements of the rule. Subsection (D) of the rule establishes that a carrier, self-insured employer or the Special Fund Division may withhold payments to a physician until the physician complies with Subsection (A) and submits progress reports. Subsection (E) sets forth the procedure to change treating physicians.

R20-5-114. Examination at Request of Commission, Carrier or Employer; Motion for Relief

R20-5-114. This rule sets forth the guidelines for requested examinations, the consequences of unreasonably failing to attend the examination, the disclosure of the examination report, and the process to secure a protective order against a notice of examination.

R20-5-115. Request to Leave the State

R20-5-115. This rule sets forth the effective date of an order granting or denying a request to leave the state and defines terms in A.R.S. § 23-1071(A).

R20-5-116. Payment of Claimant's Travel Expenses When Directed to Report for Medical Examination or Treatment

R20-5-116. This rule allows for advanced payment of travel expenses for a claimant directed to report for a medical examination or treatment in a locality other than the claimant's current place of residence or employment, based upon the current reimbursement rate paid to a state employee.

R20-5-117. Medical, Surgical, Hospital, and Burial Expenses

R20-5-117. This rule provides the manner in which medical, surgical, hospital, and burial bills should be presented for payment, allows for reimbursement if bills are paid, and disallows balance billing.

R20-5-118. Effective Date of Notices of Claim Status and Other Determinations; Attachments to Notices of Claim Status; Form of Notices of Claim Status

R20-5-118. This rule requires that once a Notice of Claim Status has gone final accepting a claim for benefits, any subsequent Notice of Claim Status affecting the amount of, or entitlement to, compensation or medical, surgical, or hospital benefits can have a maximum retroactive date of 30 days from issuance. This rule also requires that Notices based upon a medical report must include a copy of the medical report when sent to the Commission or served upon a party, except for a mental examination which may be served upon the treating doctor.

R20-5-119. Notice of Third-party Settlement

R20-5-119. This rule requires notification to a carrier, self-insured employer, or Special Fund Division of a third-party settlement or judgment, and copies of all pleadings and offers of settlement.

R20-5-120. Settlement Agreements, Compromises and Releases

R20-5-120. This rule requires that any compromise and settlement of a workers' compensation claim is not valid unless approved by the Commission. The rule clarifies that an insurance carrier will not be relieved of its obligations under the Arizona Workers' Compensation Act if a monetary settlement is made without the approval of the Commission. Furthermore, the insurance carrier will not be entitled to a credit unless the Commission approves the settlement.

R20-5-121. Present Value and Basis of Calculation of Lump Sum Commutation Awards

R20-5-121. This rule requires that a permanent disability award commuted to a lump sum pursuant to A.R.S. § 23-1067, is to be calculated based upon the present value of the award. The rule provides the date on which the present value shall be calculated

and that the United States Life Tables shall be used in the calculation of the present value.

R20-5-122. Lump Sum Commutation

R20-5-122. This rule sets forth the prerequisites and substantive requirements for a lump sum commutation

R20-5-123. Rejection of the Act

R20-5-123. This rule requires that an employer shall keep a copy of the employee's rejection of the Workers' Compensation Act as part of its business records.

R20-5-124. Rejection Not Applicable to New Employment

R20-5-124. This rule provides that a rejection of the Workers' Compensation Act remains in effect if an employer changes carriers or employer entity, but the rejection ceases if the employee goes to a new employer or terminates employment with the prior employer and is subsequently rehired.

R20-5-125. Rejection Before an Employer Complies with A.R.S. §§ 23-961(A) and 23-906(D)

R20-5-125. This rule allows employees to reject coverage under the Workers' Compensation Act prior to the time that their employer procures workers' compensation insurance.

R20-5-126. Revocation of Rejection

R20-5-126. This rule provides the procedure to revoke a rejection of coverage under the Workers' Compensation Act.

R20-5-127. Insurance Carrier Notification to Commission of Coverage

R20-5-127. This rule requires an insurance carrier to notify the Commission within five days of new coverage, but failure to comply with the rule does not affect the validity of the coverage.

R20-5-128. Medical Information Reproduction Cost Limitation; Definition of Medical Information

R20-5-128. This rule defines "medical information" and sets forth the permissible charges for a health care provider supplying copies of these records.

R20-5-129. Carrier or Workers' Compensation Pool Determinations Binding upon its Insured or Members; Self-Rater Exception

R20-5-129. The rule informs employers that their insurance carrier or workers' compensation pool is the employer's agent, and that the carrier's or pool's decisions are binding upon the employer. However, the rule recognizes an employer may disagree with a carrier or pool's actions and may file a timely protest of a notice in writing.

R20-5-130. Claims Office Location and Function; Requirements of Maintaining an Out-of-State Claims Office

R20-5-130. This rule requires that insurance carriers that have, or are underwriting workers' compensation insurance in Arizona, and each employer and workers' compensation pool that has been granted authority to act as a self-insurer, have a claims office in Arizona. A carrier, self-insured employer, and self-insured workers' compensation pool are required to notify the Commission of the address of the claim's office. The rule requires that claims be paid within the State of Arizona unless permission is obtained from the Commission to do otherwise. The rule also provides that a carrier or self-insured employer may request authorization to maintain an out-of-state claims office under certain conditions specified in the rule. The rule also permits carriers, self-insured employers, or workers' compensation pools to have more than one designated representative, with appropriate notification to the Commission.

R20-5-131. Maintenance of Carrier and Self-insured Employer Claims Files; Contents; Inspection and Copying; Exchange of Medical Reports; Authorization to Obtain Medical Records

R20-5-131. This rule sets forth the requirement for carriers and self-insured employers to maintain a file, and to make that file available for inspection and copying within five days for in-state carriers, and ten days for out-of-state carriers

R20-5-132. Parties' Notice to Commission of Intention to Impose Liability upon A.R.S. § 23-1065 Special Fund

R20-5-132. This rule provides that the Commission shall not be bound by prior testimony and evidence presented at any hearing which relates to imposition of liability upon the Special Fund if the notices required by A.R.S. § 23-1065 are not given.

R20-5-133. Claimant's Petition to Reopen Claim

R20-5-133. This rule sets forth the applicable timelines and required medical documentation for the processing of Petitions to Reopen under A.R.S. § 23-1061(H), as well as the procedure for objecting to out-of-state physician medical reports and the consequences of such an objection.

R20-5-134. Petition for Rearrangement or Readjustment of Compensation Based Upon Increase or Reduction of Earning Capacity

R20-5-134. This rule sets forth the procedure and necessary documentation for filing a Petition for Rearrangement or Readjustment. The rule also provides that, if a self-insured employer, carrier, Special Fund Division, or uninsured employer requests a hearing protesting the Commission's determination under A.R.S. § 23-1044(F), and the claimant resides outside of Arizona, the Commission may order the self-insured employer, carrier, Special Fund Division, or uninsured employer to pay the transportation and living expenses of the claimant to attend any scheduled hearing.

R20-5-135. Requests for Hearing; Form

R20-5-135. This rule states that a request for hearing shall be in writing and details the form available upon request from the Commission.

R20-5-137. Service of a Request for Hearing

R20-5-137. The rule states that a party requesting a hearing shall serve a copy of the request upon all other parties at the same time that the request is filed with the Commission.

R20-5-138. Hearing Calendar and Assignment to Administrative Law Judge; Notification of Hearing

R20-5-138. This rule states that the Chief Administrative Law Judge shall maintain a hearing calendar ensuring that requests for hearing are placed on the hearing calendar and assigned to a presiding administrative law judge.

R20-5-139. Administrative Resolution of Issues by Stipulation Before Filing a Request for Hearing

R20-5-139. This rule states that the issues in dispute may be resolved prior to filing a request for hearing by filing a stipulation with the Commission. The Commission may then approve the stipulation, or other such action as may be appropriate, including issuing an award without the necessity of a formal hearing.

R20-5-140. Informal Conferences

R20-5-140. This rule sets forth the procedures for informal conferences with an Administrative Law Judge. This rule also sets forth procedures for hearings set to address unresolved issues after the informal conference.

R20-5-141. Subpoena Requests for Witnesses; Objection to Documents or Reports Prepared by Out-of-State Witness

R20-5-141. This rule sets forth the procedures to request subpoenas for medical and non-medical witnesses, for the submission of out-of-state medical reports, for witness fees and objections to an out-of-state physician's report, and documents prepared by out-of-state non-medical witnesses.

R20-5-142. In-State Oral Depositions

R20-5-142. The rule sets forth the procedures for the taking of depositions of witnesses who reside in the State of Arizona, including applicable objections, the requisite time

frames, and payment and expenses. It also describes how depositions may be used in a hearing before the Commission. The rule also refers to the taking of telephonic depositions. The rule also states that no scheduled hearing shall be canceled or continued for failure to take or complete a deposition and that the Arizona Rules of Civil Procedure govern the taking of depositions.

R20-5-143. Out-of-State Oral Depositions

R20-5-143. The rule sets forth the procedures for the taking of depositions of out-of-state witnesses, which are similar to those provided in R20-5-142.

R20-5-144. Written Interrogatories

R20-5-144. The rule sets forth the procedures for submitting written interrogatories, including time frames, instructions, and the purposes for which written interrogatories may be used. It also states that no scheduled hearing shall be canceled or continued for failure to answer interrogatories.

R20-5-145. Refusal to Answer or Attend; Motion to Compel; Sanctions Imposed

R20-5-145. This rule describes the procedures to follow when a party or other deponent refuses to answer any questions either in deposition or by interrogatory and sets forth that sanctions may be imposed for a willful failure to appear or answer, including related costs and expenses that may be assessed against the party obstructing discovery.

R20-5-147. Videotape Recordings and Motion Pictures

R20-5-147. This rule provides the procedures to offer a videotape recording or motion picture into evidence. The rule does not apply if the videotape recording or motion picture is obtained for surveillance purposes or is a depiction of a medical procedure performed by a physician. The rule also provides that no scheduled hearing shall be canceled or continued for failure to view the videotape recording or motion picture.

R20-5-148. Burden of Presentation of Evidence; Offer of Proof

R20-5-148. This rule provides that, when a dispute arises, the Administrative Law Judge shall direct who has the burden of proof, and if a witness is prohibited from providing testimony, the Administrative Law Judge must permit an offer of proof by avowal or in writing.

R20-5-149. Presence of Claimant at Hearing; Notice of a Parties' Non-Appearance at Hearing; Assessment of Hearing Costs for Non-Appearance

R20-5-149. The rule informs injured workers that their presence is required at the hearing before the Commission unless excused by the Administrative Law Judge. The rule permits a party to notify the presiding Administrative Law Judge three days before a hearing of the non-appearance of a party or party's representative which will require the judge to cancel or reschedule the hearing and the consequences of failing to so notify the presiding Administrative Law Judge.

R20-5-150. Joinder of a Party

R20-5-150. The rule provides the procedure and relevant time frames by which a party may apply to the Administrative Law Judge for the joinder of any person, firm, corporation, or other entity against which a right of relief may exist. The rule also allows for the Administrative Law Judge to join a party sua sponte.

R20-5-151. Special Appearance

R20-5-151. The rule sets forth that a party against whom a claim before the Commission may appear to exist, may file a special appearance without invoking the jurisdiction of the Commission.

R20-5-152. Resolution of Issues by Stipulation After the Filing of a Request for Hearing; Notice of Resolution; Assessment of Hearing Costs

R20-5-152. This rule allows for resolution by stipulation, either orally or in writing after a request for hearing has been filed, if the stipulation is reasonably supported by the facts in evidence. Where the written stipulation is filed less than three working

days before a hearing, the rule allows the Administrative Law Judge to assess costs related to the hearing.

R20-5-153. Exclusion of Witnesses

R20-5-153. This rule provides for the exclusion of witnesses during the course of a hearing until such time as they are called to testify. The rule instructs the Administrative Law Judge to admonish the witnesses not to discuss their testimony with anyone other than the attorneys on the case.

R20-5-154. Correspondence to Administrative Law Judge

R20-5-154. The rule provides that correspondence, including requests for subpoenas, may be directed to the Administrative Law Judge with simultaneous copies sent to the other parties. The rule also sets forth that, absent agreement by all parties, neither correspondence nor subpoena requests will be considered as evidence.

R20-5-155. Filing of Medical and Non-Medical Reports Into Evidence; Request for Subpoena to Cross-examine Author of Report Submitted into Evidence; Failure to Timely Request Subpoena for Author

R20-5-155. This rule sets forth the time frame within which medical and non-medical reports are required to be submitted to an Administrative Law Judge, but allows an Administrative Law Judge discretionary authority to suspend the time limits. This rule also requires contemporaneous copies to all parties for reports submitted to an Administrative Law Judge. The rule also provides that a subpoena for cross-examination must be received to preserve the right to cross-examine a witness.

R20-5-156. Continuance of Hearing

R20-5-156. This rule provides the Administrative Law Judge discretion in continuing hearings, and sets forth the circumstances in which a further hearing may be granted for the introduction of further evidence. This rule also provides the process for resetting filing deadlines when a hearing has been rescheduled.

R20-5-157. Sanctions

R20-5-157. This rule sets forth the procedures for an Administrative Law Judge to order sanctions or set aside sanctions.

R20-5-158. Service of Awards and Other Matters

R20-5-158. The rule provides that the Commission will serve documents upon an interested party and his authorized representative, deeming service upon the authorized representative as service upon the party. The rule sets forth the manner of service and when service is completed.

R20-5-159. Record for Award or Decision of Review

R20-5-159. The rule provides that the Administrative Law Judge's decisions shall be based upon the record, as it exists at the conclusion of the hearing and any subsequent memoranda.

R20-5-160. Application to Set Attorney Fees Under A.R.S. § 23-1069

R20-5-160. This rule sets forth the procedures for an attorney or claimant to submit a petition to the Commission regarding attorney fees.

R20-5-161. Stipulations for Extensions of Time

R20-5-161. This rule states stipulations for extensions of time in which to file papers or briefs in the various courts shall be received and signed by the Chief Counsel or other members of the Legal Department.

R20-5-162. Legal Division Participation

R20-5-162. This rule provides that the Chief Counsel and other members of the legal staff of the Commission who participate in proceedings or matters under the Act and this Article do so on behalf of the Commission.

R20-5-163. Bad Faith and Unfair Claim Processing Practices

R20-5-163. This rule sets forth the definitions of "Bad Faith," and "Unfair Claim Processing Practices" and provides the procedure for processing such a complaint. The rule also allows for the Commission to initiate a claim for bad faith or unfair claim processing.

R20-5-164. Human Immunodeficiency Virus, Hepatitis C**,** Methicillin-resistant Staphylococcus Aureus, Spinal Meningitis and Tuberculosis; Significant Exposure; Employee Notification; Reporting; Documentation; Forms

R20-5-164. This rule provides for the implementation of A.R.S. §§ 23-1043.02, 23-1043.03 and 23-1043.04. The rule requires employers to inform their employees of the requirements of the statutes and to provide to employees the forms necessary to comply with the statutes. The rule also specifies the relevant time frames for the submission of a written report of a significant exposure by an employee. The rule also mandates that when investigating an allegation of exposure, an employer, insurance carrier, or any employees, agents or contractors of the employer or carrier, shall not disclose, except as authorized or required by law, details of the exposure.

R20-5-165. Calculation of Maximum Average Monthly Wage

R20-5-165. This rule sets forth the appropriate index for the Commission to utilize when it sets the annual maximum average monthly wage.

3. <u>Effectiveness of the rules in achieving their objectives, including a summary of any available data supporting the conclusion reached.</u>

The rules reviewed are generally effective in achieving their respective objectives. In the past five years, over 449,000 claims for workers' compensation benefits were filed with the Commission. Despite a heavy volume of work, no written complaints were received regarding the rules in Article 1. Except as noted in this Report, the rules in Article 1 establish an effective procedural framework for processing of workers' compensation claims and disputes. The Commission expects that

reorganization of the rules into more than one Article, together with amendments discussed in this report, will make the rules easier to use, improving their effectiveness.

4. Consistency of the rules 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.

There are no federal statutes or rules specific to administrative procedures related to Arizona workers' compensation claims. The following rules have a consistency issue with Arizona Revised Statutes and should be reorganized and amended:

R20-5-101 language deleted in R20-5-101 [Requests for hearing under A.R.S. §§ 23-907(H), (I), and (J).] will be placed in an Article 2 rule, R20-5-201, as these matters are heard by the ALJ Division.

R20-5-102 defines the "Act" as A.R.S. Title 23, Ch. 6, Articles 1 through 11, but should say "A.R.S. Title 23, Ch. 6, Articles 1 through 12."

R20-5-110 renumber and amend to modernize and correct citation to R20-5-629.

R20-5-113 renumber and amend to delete form contents, require a claimant's current work status, correct citation from "A.R.S. § 23-908(E)" to "A.R.S. § 23-908(F)".

R20-5-116 renumber and amend to list subsection (A) of A.R.S. § 23-1026.

R20-5-123 renumber and amend to list subsection (B) of A.R.S. § 23-906.

R20-5-128 renumber and amend to correct citation in subsection (A) [to A.R.S. § 23-908(D)] and account for clerical costs of providing electronic medical records.

R20-5-133 repeal text at R20-5-133 [adding a new rule at R20-5-224 addressing Guardian Ad-Litem Definitions to implement A.R.S. § 23-905(A)].

R20-5-134 move to Article 2, renumber, and amend to specify Guardian Ad-Litem appointment procedures to implement A.R.S. § 23-905(A).

R20-5-135 move to Article 2, renumber, and amend to specify the qualifications, role, and authority of the Guardian Ad-Litem to provide information regarding appointment under A.R.S. § 23-905(A).

R20-5-152 move to Article 2, renumber, and amend to account for a "full and final settlement" consistent with A.R.S. § 23-941.01.

5. Agency enforcement policy, including whether the rules are currently being enforced and, if so, whether there are any problems with enforcement.

The rules reviewed are enforced as written. The Commission is not aware of any problems with enforcement of the rules in Article 1.

6. Clarity, conciseness, and understandability of the rules.

The Commission is planning to reorganize the existing rules in Article 1, so that Article 1 will only contain rules [aka Sections] that apply directly to ICA Claims Division duties. The reorganization will reduce the number of rules in Article 1 from 65 to 30 and make rules easier to find and understand. Separate articles, specifically Articles 2, 3, and 7, will be proposed to make Commission rules easier to find. Article 2 will contain rules that pertain to ICA ALJ Division duties governing the hearing process and hearing procedures. There will be a new section [definitions] and modernized provisions regarding the appointment of a Guardian Ad-Litem. Article 3 will contain rules that pertain to Commission duties. Article 7 will contain rules that pertain to ICA Legal Division duties. In addition to the reorganization the Commission has identified the following rules require modernization for understandability and clarity of the rules:

R20-5-102 amend to update cross-reference and definitions.

R20-5-103 amend to delete unnecessary language and update for internal consistency.

R20-5-104 amend to clarify that written communication is required.

R20-5-105 amend to reference defined term and delete subsections (D) & (E) [moving to Article 2].

R20-5-106 amend to reference forms used, instructions, and website address.

R20-5-107 amend to update language and delete duplicative language.

R20-5-108 amend to reflect that only parties or a non-party with a court order or written authorization of claimant may obtain a Claims file.

R20-5-109 move to Article 2 and renumber.

R20-5-110 renumber and amend to modernize and correct citation.

R20-5-111 renumber.

R20-5-112 renumber and amend, using the name of the form, rather than a form number.

R20-5-113 renumber and amend to require a claimant's current work status, correct a citation, and require a medical records release.

R20-5-114 renumber.

R20-5-115 renumber and amend to list the definitions in the order they appear in A.R.S. § 23-1071(A).

R20-5-117 renumber.

R20-5-118 renumber.

R20-5-119 renumber.

R20-5-120 renumber.

R20-5-121 move to Article 3, renumber and amend to update incorporated materials.

R20-5-122 move to Article 3 and renumber.

R20-5-124 renumber.

R20-5-125 renumber.

R20-5-126 renumber.

R20-5-127 renumber and amend to update the rule by referring to the Commission's vendor, the National Council on Compensation Insurance.

R20-5-129 renumber and amend to clearly address self-insured employers.

R20-5-130 renumber and amend to remove subsection (F) as notification of the Commission by carriers, self-insured employers, and self-insured WC pools may not have more than one designated representative.

R20-5-131 renumber and amend to remove subsection (G), which will be added to R20-5-112.

R20-5-132 renumber.

R20-5-133 repeal text at R20-5-133 because duplicative and unnecessary

R20-5-134 move to Article 2, renumber, and amend to specify Guardian Ad-Litem appointment procedures.

R20-5-135 move to Article 2, renumber, and amend to specify the qualifications, role, and authority of the Guardian Ad-Litem.

R20-5-136 expired.

R20-5-137 move to Article 2, renumber, and amend, using pronoun "their."

R20-5-138 move to Article 2 and renumber.

R20-5-139 move to article 2, renumber, and amend to specify that a written stipulation may be used to resolve issues without filing a request for hearing or convening a hearing.

R20-5-140 move to Article 2 and renumber.

R20-5-141 move to Article 2, renumber, and amend to remove headings, reduce the number of subsection levels, and correct internal cross-references.

R20-5-142 move to Article 2, renumber, and amend to specify that fees and costs associated with taking a deposition are borne by the party taking the deposition and that an administrative law judge may exercise discretion in cancelling or continuing a hearing when a party fails to take or complete a deposition.

R20-5-143 move to Article 2, renumber, and amend to reduce unnecessary verbiage.

R20-5-144 move to Article 2 and renumber.

R20-5-145 move to Article 2, renumber, and amend subsection (E) for brevity and add subsection (G), which was previously addressed in R20-5-105(E).

R20-5-147 repeal text at R20-5-147 as rule is outdated and no longer necessary.

R20-5-148 move to Article 2, renumber, and amend subsection (A), using pronoun "their."

R20-5-149 move to Article 2, renumber, and amend to remove "the party's authorized representative" as a source of reimbursement for hearing expenses and costs, making the rule more concise.

R20-5-150 move to Article 2, renumber, and amend to use the broader term "entity" when referring to business entities, making the rule more concise, and allowing for a response to a motion to join.

R20-5-151 move to Article 2 and renumber.

R20-5-153 move to Article 2 and renumber.

R20-5-154 move to Article 2 and renumber.

R20-5-155 move to Article 2, renumber, and amend to allow for submission of evidence after the time periods addressed in subsections (A) and (B) upon a showing of good cause [reason] or if the other parties agree.

R20-5-156 move to Article 2 and renumber.

R20-5-157 move to Article 2 and renumber.

R20-5-158 move to Article 2, renumber, and amend to specify that this rule applies with respect to service from the Commission and add electronic methods available in the "Community" portal.

R20-5-159 move to Article 2 and renumber.

R20-5-160 move to Article 7, renumber, and amend to specify that an application for attorney fees be filed with the ICA Legal Division.

R20-5-161 move to Article 2 and renumber.

R20-5-162 move to Article 2 and renumber.

R20-5-163 renumber.

R20-5-164 renumber and amend subsections (F) and (G) to reflect the name of the correct form.

R20-5-165 move to Article 3 and renumber.

7. Written criticisms of the rules received by the agency within the five years immediately preceding the five-year review report.

There have been no written criticisms of the rules received by the Commission within the last 5 years.

8. A comparison of the estimated economic, small business, and consumer impact of the rules with the economic, small business, and consumer impact statement prepared on the last making of the rules or, if no economic, small business, and consumer impact statement was prepared on the last making of the rules, an assessment of the actual economic, small business, and consumer impact of the rules.

Although a narrow Economic Impact Statement was prepared as part of the 2018 rulemaking that amended R20-5-106, the most recent Economic Impact Statement addressing the entirety of Article 1 is from 2001. The current estimated economic, small business, and consumer impact of the rules is not substantially different from that set out in the 2001 Economic Impact Statement.

9. Any analysis submitted to the agency by another person regarding the rules' impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

No business competitiveness analysis has been submitted to the Commission regarding Article 1.

10. If applicable, whether the agency completed the course of action indicated in the agency's previous five-year-review report.

The agency did not complete the previous Article 1 Five-Year Review Report proposed course of action. A Commission Committee developed five years ago to review Article 1 has continued to meet, done a thorough review of the rules, and is now seeking to update most of the rules contained in Article 1 as outlined above to add clarity and modernize them and make them easier to navigate. Additionally, the Committee was delayed somewhat by statutory changes that have caused the Committee to pause and evaluate rulemaking such as the statutory changes affecting guardian ad litem and the creation of a workers compensation fraud unit.

11. A determination after analysis that probable benefits outweigh probable costs and that the rules impose the least burden and costs on persons regulated.

The probable benefits of the rules in Article 1 significantly outweigh the probable costs. In addition, the rules impose the least burden and costs on the regulated community.

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.

The rules in Article 1 implement state law, specifically Title 23, Chapter 6 of Arizona Revised Statutes. There is no corresponding federal law specific to Arizona workers' compensation administration.

13. For rules adopted 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.

There have been no rules adopted after July 29, 2010, which require the issuance of a regulatory permit, license, or agency authorization.

14. Proposed course of action.

The Committee has developed drafts of the proposed rules with changes that address the concerns outlined in subsections four and six of this report. The Commission estimates it will finalize notices of proposed rulemaking and submit the notices for publication by the Secretary of State by September of 2024, with final documents submitted to the Council in November 2024.

RULES REVIEWED

Arizona Administrative CODE
www.azsos.gov
Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

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
July 1, 2023 through September 30, 2023

Appendix A, Arizona Physicians' and Pharmaceutical Fee Schedule repealed; new Appendix A, Arizona Physicians' and Pharmaceutical Fee Schedule made by exempt rulemaking at 29 A.A.R. 2537 (October 20, 2023), effective October 1, 2023 (Supp. 23-3). The new schedule starts on page 103 of this Chapter.

Questions about these rules? Contact:

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The release of this Chapter in Supp. 23-3 replaces Supp. 23-1, 1-358 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. § 41-5505.

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.

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Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.

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TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

Authority: A.R.S. §§ 23-107(A)(1) and 23-405(4)

Supp. 23-3

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ARTICLE 1. WORKERS' COMPENSATION PRACTICE AND PROCEDURE 8

ARTICLE 2. REPEALED

Article 2, consisting of Sections R20-5-201 through R20-5-224, repealed by final rulemaking at 28 A.A.R. 3435 (October 28, 2022), with an immediate effective date of October 5, 2022 (Supp. 22-4).

Article 2, consisting of Sections R4-13-201 through R4-13-222, adopted effective July 6, 1993 (Supp. 93-3).

Article 2, consisting of Sections R4-13-201 through R4-13-224, repealed effective July 6, 1993 (Supp. 93-3).

ARTICLE 3. EXPIRED

Article 3, consisting of Sections R20-5-301 through R20-5-329, expired under A.R.S. § 41-1056(J) at 23 A.A.R. 297, effective January 3, 2017 (Supp. 17-1).

ARTICLE 4. ARIZONA BOILERS AND LINED HOT WATER HEATERS

ARTICLE 5. ELEVATOR AND CONVEYANCE SAFETY

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

ARTICLE 7. REPEALED

Article 7, consisting of Sections R20-5-701 through R20-5-739, repealed by final rulemaking at 28 A.A.R. 3435 (October 28, 2022), with an immediate effective date of October 5, 2022 (Supp. 22-4).

Article 7, consisting of new Sections R20-5-701 through R20-5-739, adopted effective September 9, 1998 (Supp. 98-3).

R20-5-701 through R20-5-708 recodified from R4-13-701 through R4-13-708 (Supp. 95-1).

Article 7, consisting of Sections R4-13-701 through R4-13-708, transferred to the Department of Agriculture, Title 3, Chapter 8, Article 7, Sections R3-8-201 through R3-8-208, pursuant to Laws 1990, Ch. 374, Sec. 445 (Supp. 91-3).

New Article 7 adopted effective July 13, 1989. (Supp. 89-3)

Laws 1981, Ch. 149, effective January 1, 1982, provided for the transfer of the Office of Fire Marshal from the Industrial Commission to the Department of Emergency and Military Affairs, Division of Emergency Services (Supp. 82-2).

Section

ARTICLE 8. OCCUPATIONAL SAFETY AND HEALTH RULES OF PROCEDURE BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA

Section

ARTICLE 9. EXPIRED

Article 9, consisting of Sections R20-5-901 through R20-5-914, expired pursuant to A.R.S. § 41-1056(E), filed in the Office of the Secretary of State February 4, 2000 (Supp. 00-1).

Former Article 9 consisting of Sections R4-13-901 through R4-13-906 repealed effective May 27, 1977. R20-5-901 through R20-5-914 recodified from R4-13-901 through R4-13-914 (Supp. 95-1).

Article 9 consisting of Sections R4-13-901 through R4-13-914 adopted effective May 27, 1977.

Section

ARTICLE 10. WAGE CLAIMS

ARTICLE 11. REPEALED

Article 11, consisting of Sections R20-5-1101 through R20-5-1136, repealed by final rulemaking at 28 A.A.R. 3435 (October 28, 2022), with an immediate effective date of October 5, 2022 (Supp. 22-4).

Article 11, consisting of Sections R20-5-1101 through R20-5-1136, made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

ARTICLE 12. ARIZONA MINIMUM WAGE AND EARNED PAID SICK TIME PRACTICE AND PROCEDURE

Article 12, consisting of Sections R20-5-1201 through R20-5-1220, made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3).

Article 12, consisting of Sections R20-5-1201 through R20-5-1220, made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1).

ARTICLE 13. TREATMENT GUIDELINES

Article 13, consisting of Sections R20-5-1301 through R20-5-1312, made by final rulemaking at 22 A.A.R. 1730, effective October 1, 2016 (Supp. 16-2).

ARTICLE 14. MUNICIPAL FIREFIGHTER CANCER REIMBURSEMENT FUND AND FIREFIGHTER AND FIRE INVESTIGATOR CANCER CLAIM REPORTING

Article 14, consisting of Sections R20-5-1401 through R20-5-1404, made by final exempt rulemaking at 27 A.A.R. 2920 (December 17, 2021), effective January 1, 2022 (Supp. 21-4).

ARTICLE 15. WORKERS' COMPENSATION SELF-INSURANCE

Article 15, consisting of Sections R20-5-1501 through R20-5-1541, made by final rulemaking at 28 A.A.R. 3952 (December 17, 2022), with an immediate effective date of December 7, 2022 (Supp. 22-4).

APPENDIX A. ARIZONA PHYSICIANS' AND PHARMACEUTICAL FEE SCHEDULE 2023/2024

Appendix A, Arizona Physicians' and Pharmaceutical Fee Schedule repealed; new Appendix A, Arizona Physicians' and Pharmaceutical Fee Schedule made by exempt rulemaking at 29 A.A.R. 2537 (October 20, 2023), effective October 1, 2023 (Supp. 23-3).

Appendix A, Arizona Physicians' and Pharmaceutical Fee Schedule repealed; new Appendix A, Arizona Physicians' and Pharmaceutical Fee Schedule made by exempt rulemaking at 28 A.A.R. 2645 (October 7, 2022), effective October 1, 2022 (Supp. 22-3).

Appendix A, Arizona Physicians' and Pharmaceutical Fee Schedule repealed; new Appendix A, Arizona Physicians' and Pharmaceutical Fee Schedule made by exempt rulemaking at 27 A.A.R. 1685, effective October 1, 2021 (Supp. 21-3).

Appendix A, Arizona Physicians' and Pharmaceutical Fee Schedule repealed; new Appendix A, Arizona Physicians' and

Pharmaceutical Fee Schedule made by exempt rulemaking at 26 A.A.R. 2119, effective October 1, 2020 (Supp. 20-3).

Appendix A, Arizona Physicians' and Pharmaceutical Fee Schedule made by exempt rulemaking at 25 A.A.R. 2624, effective October 1, 2019; Appendix A will remain in effect though September 30, 2020 (Supp. 19-3).

ARTICLE 1. WORKERS' COMPENSATION PRACTICE AND PROCEDURE

R20-5-101. Application of the Article; Notice of Rules; Part of Record

A. This Article applies to all actions and proceedings before the Commission resulting from:
1. Injuries that occurred on or after January 1, 1969;
2. Petitions to Reopen or Petitions for Readjustment or Rearrangement of Compensation filed on or after that date; and
3. Requests for hearing under A.R.S. §§ 23-907(H), (I), and (J).

B. This Article is part of the record in each action or proceeding without reference to the Article.

C. The Commission deems all parties to have knowledge of this Article.

D. The Commission shall provide a copy of this Article upon request to any person free of charge.

Historical Note

Former Rule 1. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-101 recodified from R4-13-101 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 4530, effective, December 2, 2008 (Supp. 08-4).

R20-5-102. Definitions

In this Article, unless the context otherwise requires:

"Act" means the Arizona Workers' Compensation Act, A.R.S. Title 23, Ch. 6, Articles 1 through 11.

"Authorized representative" means an individual authorized by law to act on behalf of a party who files with the Commission a written instrument advising of the individual's authority to act on behalf of the party.

"Carrier" or "insurance carrier" means the state compensation fund and every insurance carrier authorized by the Arizona Department of Insurance to underwrite workers' compensation insurance in Arizona.

"Claimant" means an employee who files a claim for workers' compensation.

"Filing" means actual receipt of a report, document, instrument, videotape, audiotape, or other written matter at a Commission office during office hours as set forth in R20-5-103.

"Physician" means a licensed physician or other licensed practitioner of the healing arts.

"Self-insured employer" means an employer or workers' compensation pool granted authority by the Commission to self-insure for workers' compensation.

"Uninsured employer" or "noncomplying employer" means an employer that is subject to and fails to comply with A.R.S. §§ 23-961 or 23-962.

"Working days" means all days except Saturdays, Sundays, and state legal holidays.

Historical Note

Former Rule 2. R20-5-102 recodified from R4-13-102 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-103. Location of Industrial Commission Offices and Office Hours

The main office of the Industrial Commission of Arizona is located in Phoenix, Arizona. An office is also located in Tucson, Arizona. The offices are open for business from 8:00 a.m. until 5:00 p.m. every day except Saturdays, Sundays, and state legal holidays.

Historical Note

Former Rule 3. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-103 recodified from R4-13-103 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-104. Address of Claimant and Uninsured Employer

A. A claimant shall advise the Commission and carrier or self-insured employer of the claimant's current mailing address and place of residence. If a claimant files a workers' compensation claim against an uninsured employer, the claimant shall advise the special fund division of the claimant's current mailing address and place of residence.

B. An uninsured employer against whom a claimant files a workers' compensation claim shall advise the special fund division of the uninsured employer's current mailing address and place or places of residence.

C. Providing the address of a claimant's or uninsured employer's attorney or authorized representative is not sufficient to meet the requirements of this Section.

Historical Note

Former Rule 4. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-104 recodified from R4-13-104 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-105. Filing Requirements; Time for Filing; Computation of Time; Response to Motion

A. A report, document, instrument, videotape, audiotape, or other written matter required to be filed with the Commission under A.R.S. § 23-901 et seq. and this Article shall be filed at a Commission office within the time required by law and this Article.

B. For purposes of computing time under this Article, the following applies:
1. The Commission shall not include in the computation of time the day of the act or event from which the designated period begins to run.
2. The Commission shall include in the computation of time the last day of the designated period, unless the last day is a Saturday, Sunday, or state legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or state legal holiday.
3. If this Article or other law requires that a report, document, instrument, videotape, audiotape, or other written matter be filed within a designated period of time before hearing, the Commission shall not include the day of the act or event from which the designated period of time begins to run. The Commission shall include the last day of the designated period unless that day is a Saturday, Sunday, or state legal holiday, in which event the period runs to the end of the next day that is not a Saturday, Sunday, or state legal holiday.
4. If the period of time prescribed is less than 11 days, the Commission shall not include intermediate Saturdays, Sundays, or state legal holidays in the computation of time.

C. The Commission shall deem a report, document, instrument, videotape, audiotape, or other written matter filed at the Tucson office as filed at the main office for purposes of computing time.

D. A person upon whom a motion to join is filed under this Article may file a response to the motion within 10 days after the motion is filed.

E. The Commission shall not consider a discovery motion unless the moving party attaches a separate statement to the discovery motion certifying that after good faith efforts to do so, the moving party has been unable to satisfactorily resolve the matter giving rise to the discovery motion with the opposing party.

Historical Note

Former Rule 5. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-105 recodified from R4-13-105 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-106. Commission Forms

A. The following forms shall be used when applicable:

1. Employer's report of industrial injury (form 101) shall contain:
   a. Employee, employer, and carrier identification;
   b. Description of employment;
   c. Description of accident and injury;
   d. Description of medical treatment received by employee;
   e. Employee's wage data;
   f. Date, signature, and title of employer or the employer's representative; and
   g. Statement doubting the validity of the claim, if the employer doubts the validity of the claim.
2. The physician's portion of the worker's and physician's report of injury (form 102) shall contain:
   a. Name and address of physician;
   b. Information regarding preexisting conditions;
   c. Information regarding the industrial injury, treatment, and prognosis;
   d. Statement authorizing the attachment of a medical report that contains the information required in form 102; and
   e. Physician's signature and date.
3. Notice of supportive medical benefits (form 103) shall contain:
   a. Employee, employer, insurance carrier, and claim identification;
   b. Description of authorized medical benefits;
   c. Date the notice is mailed;
   d. Name and telephone number of the individual issuing the notice; and
   e. Statement regarding reopening and appeal rights including filing requirements.
4. Notice of claim status (form 104) shall contain:
   a. Employee, employer, insurance carrier, and claim identification;
   b. Status of the claim;
   c. Date the notice is mailed;
   d. Name and telephone number of the individual issuing the notice; and
   e. Statement of a party's hearing and appeal rights including filing requirements.
5. Notice of suspension of benefits (form 105) shall contain:
   a. Employee, employer, insurance carrier, and claim identification;
   b. Effective date of the suspension;
   c. Reasons for the suspension;
   d. Date the notice is mailed;
   e. Name and telephone number of the individual issuing the notice; and
   f. Statement of a party's hearing and appeal rights including filing requirements.
6. Notice of permanent disability or death benefits (form 106) shall contain:
   a. Employee, employer, insurance carrier, and claim identification;
   b. Applicable statutory authority under which compensation is paid;
   c. Disability and compensation information;
   d. Date the notice is mailed;
   e. Name and telephone number of the individual issuing the notice; and
   f. Statement regarding hearing and appeal rights including filing requirements.
7. Notice of permanent disability and request for determination of benefits (form 107) shall contain:
   a. Employee, employer, insurance carrier, and claim identification;
   b. Type of disability;
   c. Applicable statutory authority for designated disability;
   d. Designation of dependents where death is involved;
   e. Designation of advanced payments and amount of the advance;
   f. Date the notice is mailed; and
   g. Name and telephone number of the individual issuing the notice.
8. Carrier's recommended average monthly wage calculation (form 108) shall contain:
   a. Employee, employer, insurance carrier, and claim identification;
   b. Employment and wage history;
   c. Designation of dependents; and
   d. Carrier's calculations for the recommended average monthly wage and the basis for the calculation.
9. Notice of permanent compensation payment plan (form 111) shall contain:
   a. Employee, employer, and carrier identification;
   b. Amount of permanent compensation and description of payment plan;
   c. Name of the responsible entity contracted by the carrier to administer the payment plan;
   d. Statement that the carrier remains the responsible party for payment;
   e. Statement regarding supportive care and reopening rights;
   f. Date the notice is mailed; and
   g. Name and telephone number of the individual issuing the notice.
10. Report of insurance coverage (form 0006) shall contain:
    a. Name and address of the carrier;
    b. Legal name of entity that the carrier insures;
    c. All other insured names or subsidiary entities under which the carrier's insured does business inArizona;
    d. Address of all insured entities with insurance policy information for each address; and
    e. Employer Identification Number (EIN), Taxpayer Identification Number (TIN), or Federal Identification Number (FIN) assigned to each insured person or entity.

11. Report of significant work exposure to bodily fluids or other infectious material shall contain:
    a. The requirements set forth in A.R.S. §§ 23-1043.02(B), 23-1043.03(B), and 23-1043.04(B);
    b. Employee identification,
    c. Employer identification,
    d. Source of exposure person identification (if known),
    e. Details of the exposure including:
        i. Date of exposure,
        ii. Time of exposure,
        iii. Place of exposure,
        iv. How exposure occurred,
        v. Type of bodily fluid or fluids,
        vi. Source of bodily fluid or fluids,
        vii. Part or parts of body exposed to bodily fluid or fluids,
        viii. Presence of break or rupture in skin or mucous membrane, and
        ix. Witnesses (if known), and
    f. Dated signature of employee or the employee's authorized representative.
12. The medical treatment preauthorization form (MRO-1.1) shall contain five sections, as follows:
    a. Section I (Provider Request for Preauthorization) shall contain:
        i. Injured employee identification, including name, date of injury, date of birth, and payer claim number (if known);
        ii. Provider identification, including name, phone number, provider medical specialty, preferred method of contact, and contact information;
        iii. Payer identification, including name and contact information (i.e., mailing address, fax number, or e-mail address);
        iv. Information regarding requested medical treatment and/or services, including:
            (1) Applicable diagnosis and/or ICD codes;
            (2) A detailed statement of the treatment or services requested;
            (3) Applicable Current Procedural Terminology (CPT) codes and/or National Drug Codes (NDC);
            (4) Type of request (i.e., routine or urgent); and
            (5) An indication as to whether the provider has attached documentation to support the medical necessity and appropriateness of the requested treatment and/or services; and
        v. Dated signature or electronic signature of provider or provider's authorized representative.
    b. Section II (Payer Decision on Request for Preauthorization) shall contain:
        i. Payer's preferred method of contact and contact information;
        ii. Date request for preauthorization is received;
        iii. The Commission claim number;
        iv. The payer's decision (i.e., approved, partial denial, denied, request for preauthorization incomplete, or IME requested);
        v. An indication as to whether the payer has attached a statement of what treatment and/or services have been authorized, including, if applicable, a partial authorization, and, if the request for preauthorization is denied, in whole or in part, a statement of explanation that includes the medical reason supporting the payer's decision; and
        vi. Dated signature or electronic signature of payer or payer's authorized representative.
    c. Section III (Provider or Employee Request for Reconsideration of Payer Decision) shall contain:
        i. An indication as to whether the provider or injured employee has attached a statement of the specific reasons and justifications to support the request for reconsideration;
        ii. An indication as to whether the provider or injured employee has attached documentation to support the medical necessity and appropriateness of the requested treatment and/or services, if not previously provided; and
        iii. Dated signature or electronic signature of provider, provider's authorized representative, injured employee, or injured employee's authorized representative.
    d. Section IV (Payer Decision on Request for Reconsideration) shall contain:
        i. Date request for reconsideration received;
        ii. The payer's decision (e.g., approved, partial denial, denied, or IME requested);
        iii. An indication as to whether the payer has attached a statement of what has been authorized, including if applicable, a partial authorization, and, if the request for preauthorization is denied, in whole or in part, a statement of explanation that includes the medical reason supporting the payer's decision; and
        iv. Dated signature or electronic signature of payer or payer's authorized representative.
    e. Section V (Provider or Employee Request for Administrative Peer Review) shall contain:
        i. An indication of the basis for the request for administrative peer review (e.g., payer non-response, denial (in whole or in part) of requested treatment or services, the payer's decision on the request for preauthorization denied treatment or services that are subject to R20-5-1304(B));
        ii. An indication as to whether the provider or injured employee has attached copies of relevant medical records and, if applicable, documentation related to the payer's non-response;
        iii. An indication as to whether the provider or injured employee has attached all documentation and statements previously attached to Sections I-IV; and
        iv. Dated signature or electronic signature of provider, provider's authorized representative, injured employee, or injured employee's authorized representative.

B. The following forms may be used:
1. The workers' portion of the worker's and physician's report of injury (form 102) requests:
    a. Employee, employer, insurance carrier, and physician identification;
    b. Description of the accident, including date of injury; and
    c. Date and signature of the employee or the employee's authorized representative.
2. Worker's report of injury (form 407) requests:

a. Employee and employer identification,
b. Job title,
c. Employment description,
d. Employee's wage data,
e. Date of injury,
f. Accident and injury descriptions,
g. Medical treatment information,
h. Information concerning prior injuries of the employee,
i. Disability income, and
j. Date and signature of the employee or the employee's authorized representative.

3. Worker's annual report of income (form 110-A) requests:
   a. Employee, employer, insurance carrier, and claim identification;
   b. Employment and wage history for the preceding 12 months;
   c. Date and signature of the employee or the employee's authorized representative attesting to the truthfulness of the employment and wage information; and
   d. Statement that failure to submit an annual report of income may result in a suspension of benefits by the carrier or self-insured employer.
4. Notice of intent to suspend (form 110-B) requests:
   a. Employee, employer, insurance carrier, and claim identification;
   b. Employment and wage history for the preceding 12 months;
   c. Date and signature of the employee or the employee's authorized representative attesting to the truthfulness of the employment and wage information;
   d. Statement that failure to submit an annual report within 30 days of the date of the notice shall result in a suspension of benefits by the carrier or self-insured employer.
5. Request for hearing requests:
   a. Names of the employee, employer, and insurance carrier;
   b. Claim identification;
   c. Identification of the award, notice, order, or determination protested and reason(s) for the protest;
   d. Estimated length of time for hearing and city or town in which hearing is requested;
   e. Name and address of any witness for whom a subpoena is requested; and
   f. Date and signature of party or the party's authorized representative.
6. Petition to reopen requests:
   a. Names of the employee, employer, and insurance carrier;
   b. Claim identification;
   c. Identification or description of the new, additional, or previously undiscovered temporary or permanent disability or medical condition justifying the reopening of the claim; and
   d. Employee's medical and employment history.
7. Petition for rearrangement or readjustment of compensation requests:
   a. Names of the employee, employer, and insurance carrier;
   b. Claim identification;
   c. Income and employment history;
   d. Medical history; and
   e. Statement of the basis for the increase or decrease in earning capacity.
8. Claim for dependent's benefits-fatality form requests:
   a. Identification of dependent filing claim;
   b. Identification of deceased;
   c. Date of death;
   d. Date of injury, if different than date of death;
   e. Name and address of employer at time of deceased's death;
   f. Statement of cause of death;
   g. Names and addresses of health care providers rendering treatment to deceased in two years before death;
   h. Conditions treated by health care providers in the two years before deceased's death;
   i. If claim is for spousal benefits, the form requests:
      i. Name, address, and date of birth of spouse;
      ii. Copy of marriage certificate;
      iii. Date and place of marriage to deceased;
      iv. History of prior marriages of deceased and deceased's spouse, including copies of divorce decrees; and
      v. Statement of living arrangements at time of deceased's death, including reason for living apart at time of death, if applicable;
   j. If claim is for a dependent child, the form requests:
      i. Name, date of birth, and address of child at time of deceased's death;
      ii. List of children in care and custody of current spouse; and
      iii. Statement of whether unborn child is expected and date expected;
   k. If claim is for dependent other than a child, the form requests:
      i. Name and address of other dependent,
      ii. Relationship of other dependent to deceased, and
      iii. Statement of the nature and extent of dependency; and
   l. Date, telephone number, and signature of dependent or authorized representative of dependent.
9. Request to leave the state form requests:
   a. Employee, insurance carrier, and claim identification;
   b. Reason for requesting to leave Arizona;
   c. Dates leaving and returning to Arizona;
   d. Out-of-state address;
   e. Name and telephone number of attending physician; and
   f. Date and signature of the employee or the employee's authorized representative.
10. Request to change doctors form requests:
    a. Employee, insurance carrier, and claim identification;
    b. Reason for requesting change of doctor;
    c. Name and phone number of claimant's current doctor;
    d. Name and phone number of doctor claimant requests to change to; and
    e. Date and signature of the employee or the employee's authorized representative.
11. Complaint of bad faith and unfair claim processing practices requests:
    a. Employee, employer, and insurance carrier identification;

b. Description of the alleged bad faith or unfair claim processing practices;
c. Date of the complaint; and
d. Name, address, and telephone number of the person signing the complaint.

12. Certification of employer's drug and alcohol testing policy requests:
a. Employer's certification as described under A.R.S. § 23-1021(F),
b. Name and federal identification number of the employer, and
c. Name of all subsidiaries and locations of the employer.

C. Optional use of a form described in subsection (B) does not affect any requirement under the Act or this Article.

D. Forms or format for the forms described in this Section are available from the Commission.

E. Forms prescribed under this Section shall not be changed, amended, or otherwise altered without the prior written approval of the Commission.

Historical Note

Former Rule 6. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). Amended effective August 28, 1992 (Supp. 92-3). R20-5-106 recodified from R4-13-106 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3). Amended by final rulemaking at 15 A.A.R. 991, effective June 2, 2009 (Supp. 09-2). Amended by final rulemaking at 24 A.A.R. 2069, effective October 1, 2018 (Supp. 18-3).

R20-5-107. Manner of Completion of Forms and Documents

A. An individual completing a form or document shall fill out the form or document legibly in ink or by typewriter.

B. A party or a party's authorized representative shall sign any form or document that is required by the Act, this Article, or other law to be signed.

C. Unless otherwise provided in this Article, if a party is required to sign a form or document, the Commission shall not accept a typewritten name or stamped signature.

D. If, within the time period prescribed by law, a party files an incomplete form or document, or files an instrument other than a form or document when a form or document is required, the Commission shall serve notice to the party that the form or document fails to comply with this Section. The Commission deems the report or document timely filed if the party files a properly completed and signed form or document within 14 days after the Commission serves the notice described in this subsection.

Historical Note

Former Rule 7. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-107 recodified from R4-13-107 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-108. Confidentiality of a Commission Claims File; Reproduction and Inspection of a Commission Claims File

A. Except as provided in this Section, a claims file maintained by the Commission is private and confidential and the Commission shall not make the claims file available for inspection and copying. For purposes of this Section, "claims file" means the official record maintained by the Commission for a claimant's industrial injury including the worker's report of injury, employer's report of injury, worker and physician's report of injury, and all other reports, records, instruments, videotapes, audiotapes, transcripts, and other matters scanned or otherwise placed into the file.

B. Except as provided in subsections (D) and (E), the Commission shall make a Commission claims file relating to a current or prior claim of a claimant available for inspection and copying by any party to any proceeding currently or previously before the Commission involving the same claimant.

C. Except as provided in subsections (D) and (E), the Commission shall not make a Commission claims file available to a non-party for inspection and copying unless the Commission receives a court order or written authorization signed by the affected claimant or the affected claimant's authorized representative.

D. The Commission shall make a transcript contained in a Commission claims file available for inspection and copying if:
1. The person requesting to inspect and copy the transcript is a person authorized under subsections (B) or (C); and
2. The transcript concerns a hearing related to a claim that is not in litigation.

E. The Commission shall make a transcript contained in a Commission claims file available only for inspection if:
1. The person requesting to inspect and copy the transcript is a person authorized under subsections (B) or (C); and
2. The transcript concerns a hearing related to a claim currently in litigation.

F. The Commission shall provide copies at a charge of $.25 per page.

G. A Commission claims file shall not be removed from a Commission office unless in the custody of an authorized representative of the Commission.

Historical Note

Former Rule 8. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). Amended effective August 28, 1992 (Supp. 92-3). R20-5-108 recodified from R4-13-108 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-109. Admission into Evidence of Documents Contained in a Commission Claims File

A. If a party or an administrative law judge considers a document contained in a Commission claims file, including a transcript of a prior proceeding, necessary or appropriate for hearing purposes, the administrative law judge shall receive a copy of the document into evidence if the document is otherwise admissible.

B. With the permission of the administrative law judge, instead of submitting a copy of the document into evidence, a party may refer to the document's location on the Commission's optical disk imaging system by providing an accurate description of the document that includes the claimant's claim number and image document identification number the Commission assigns to the document.

Historical Note

Former Rule 9. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-109 recodified from R4-13-109 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-110. Employer Duty to Report Fatality

If an employee dies as a result of an injury by accident arising out of and in the course of employment, the employer shall report the death to the Commission's claims division by telephone, telegram,

or electronic filing, no later than the next business day following the death. The report shall state the name of the employee, when, how, and where the accident occurred, and the nature of the condition causing the accident. This Section does not limit or affect an employer's duty to report a death to the Arizona Occupational Safety and Health Division of the Commission as required under R20-5-637.

Historical Note

Former Rule 10. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-110 recodified from R4-13-110 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-111. Request for Autopsy

If a claim is filed for compensation for death from an industrial injury and an autopsy is requested, the expense of the autopsy shall be borne by the requesting party.

Historical Note

Former Rule 11. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-111 recodified from R4-13-111 (Supp. 95-1).

R20-5-112. Physician's Initial Report of Injury

A. A physician shall complete and file with the Commission a physician's initial report of injury under A.R.S. § 23-908(A) within eight days after first providing treatment to an injured worker. The physician shall report the injury:
1. Using Commission form 102 (worker's and physician's report of injury), or
2. Attaching to form 102 a medical report that contains the information required in form 102.

B. The physician shall sign and date form 102 or the medical report attached to form 102. The signature of the physician may be typewritten or stamped on this form.

C. If a claimant uses form 102 to initiate a claim, either the injured worker or the injured worker's authorized representative shall sign the worker's portion of form 102.

Historical Note

Former Rule 12. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). Amended effective August 28, 1992 (Supp. 92-3). R20-5-112 recodified from R4-13-112 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-113. Physician's Duty to Provide Signed Reports; Rating of Impairment of Function; Restriction Against Interruption or Suspension of Benefits; Change of Physician

A. If a claimant's disability extends beyond seven days, every physician who attends, treats, or examines the claimant shall provide to the insurance carrier, self-insured employer, or special fund division, at least once every 30 days while the claimant's disability continues, a personally signed report describing the:
1. Claimant's condition,
2. Nature of treatment,
3. Expected duration of disability, and
4. Claimant's prognosis.

B. When a physician discharges a claimant from treatment, the physician:
1. Shall determine whether the claimant has sustained any impairment of function resulting from the industrial injury. The physician should rate the percentage of impairment using the standards for the evaluation of permanent impairment as published by the most recent edition of the American Medical Association in Guides to the Evaluation of Permanent Impairment, if applicable; and
2. Shall provide a final signed report to the insurance carrier, self-insured employer, or special fund division that details the rating of impairment and the clinical findings that support the rating.

C. A carrier, self-insured employer, and special fund division shall not interrupt or suspend a claimant's temporary disability compensation benefits because a physician fails to comply with any requirement of subsection (A).

D. A carrier, self-insured employer, and special fund division may withhold payment to a physician for services rendered to a claimant until the physician complies with subsection (A).

E. Upon application of a party, the Commission shall authorize a change of physician if:
1. The Commission determines that the health, life, or recovery of a claimant is retarded, endangered, or impaired;
2. The attending physician agrees to the change or is unavailable to continue treatment;
3. The Commission determines that the relationship between the attending physician and claimant renders further progress or improvement unlikely;
4. The Commission determines that the claimant's recovery may be expedited by a change of physician or conditions of treatment; or
5. The insurance carrier agrees to the change.

F. Except as provided in A.R.S. § 23-1070 and this subsection, a claimant who is examined by a physician under A.R.S. § 23-908(E) is not required to obtain written authorization to change to another physician. If, however, the claimant continues to see, or treat with, a physician who the claimant initially saw or treated with under A.R.S. § 23-908(E), then that physician is an attending physician and the claimant shall obtain written authorization to change under A.R.S. § 23-1071(B) if the claimant seeks to change to another physician.

Historical Note

Former Rule 13. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-113 recodified from R4-13-113 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-114. Examination at Request of Commission, Carrier or Employer; Motion for Relief

A. If the Commission or a party requests an examination of a claimant by a physician, the party requesting the examination shall serve the claimant, or if represented, the claimant's attorney, with notice of the time, date, place, and physician conducting the examination at least 15 days before the scheduled date of the examination.

B. If a claimant unreasonably fails to attend or promptly advise of the claimant's inability to attend an examination under this Section, the party requesting the examination may charge the claimant or deduct from the claimant's entitlement to present or future temporary or permanent disability compensation, any reasonable expense of the missed appointment.

C. A party adverse to a party who schedules a medical examination may offer into evidence the report of any medical examination as provided in R20-5-155 or within five days after the adverse party receives the report, subject to the right of cross-examination by the party who scheduled the examination.

D. If a carrier, self-insured employer, or special fund division requests an examination of a claimant's mental or physical condition under A.R.S. § 23-1026, the carrier, self-insured employer, or special fund division shall immediately, upon receipt of the report of the examination, provide a copy of the report to the claimant or the claimant's authorized representative. If the mental condition of an unrepresented claimant is examined under A.R.S. § 23-1026, the carrier, self-insured employer, or special fund division may, in its discretion, provide the report to the claimant's treating physician rather than to the claimant.

E. To protect a claimant from annoyance, embarrassment, oppression, or undue burden or expense, the Commission may order, upon good cause shown, one or both of the following:
1. That the examination not be held; or
2. That the examination may be conducted only on specified terms and conditions, including a designation of the time, place, and examining physician.

F. A claimant requesting protection under subsection (E) shall file a motion with the presiding administrative law judge or chief administrative law judge if a judge has not been assigned to the case, within three days after the claimant receives notice of the examination. The claimant shall serve a copy of the motion on all parties. The party requesting the examination shall have three days after receiving the motion to file a response. The party shall serve the response on the claimant or, if represented, the claimant's attorney of record.

Historical Note

Former Rule 14. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-114 recodified from R4-13-114 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-115. Request to Leave the State

A. The effective date of an order granting or denying a request to leave the state under A.R.S. § 23-1071(A) is the date a claimant files a request to leave the state with the Commission.

B. For purposes of A.R.S. § 23-1071(A):
1. "While the necessity of having medical treatment continues" means the period of time in which a claimant asserts an entitlement to temporary compensation, or active medical, surgical, or hospital benefits;
2. "Leave the state" means to travel across the state border, except when the logical or nearest medical facility is situated across the state border; and
3. "From the date the employee first requested the written approval" means from the date the claimant's request is filed with the Commission.

Historical Note

Former Rule 15. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-115 recodified from R4-13-115 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-116. Payment of Claimant's Travel Expenses When Directed to Report for Medical Examination or Treatment

A. If a claimant is directed by a carrier, self-insured employer, or special fund division to report for a medical examination or treatment in a locality other than either the claimant's current place of residence or employment, the carrier, self-insured employer, or special fund division shall pay, in advance, the claimant's travel expenses from either the claimant's current place of residence or employment, whichever route of travel is required.

B. For purposes of this Section, "travel expenses" means those expenses required to be paid under A.R.S. § 23-1026.

C. The carrier, self-insured employer, or special fund division shall calculate travel expenses using the current rates applicable to state employees.

Historical Note

Former Rule 16. Amended subsections (A) and (B) effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). Correction to subsection (A) as certified effective March 1, 1987 (Supp. 88-4). R20-5-116 recodified from R4-13-116 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-117. Medical, Surgical, Hospital, and Burial Expenses

A. A carrier, self-insured employer, or special fund division, shall pay bills for medical, surgical, and hospital benefits provided under A.R.S. § 23-901 et seq. according to applicable medical and surgical fee schedules adopted by the Commission and in effect at the time the services are rendered. A physician or provider of nursing, hospital, drug or other medical services shall itemize and submit a bill for payment only to the responsible carrier, self-insured employer, or special fund division.

B. A claimant shall not be responsible to pay any disputed amounts between the medical provider and the carrier, self-insured employer, or special fund division.

C. If a claimant pays a bill described in subsection (A), the responsible carrier, self-insured employer, or special fund division shall reimburse the claimant the amount allowed by the fee schedules, provided that the claimant presents receipted vouchers or other proof of payment to support the claim for reimbursement.

D. If an insured employer pays a bill described in subsection (A), the responsible carrier or self-insured employer shall reimburse the employer the amount allowed by the fee schedules, provided that the employer presents receipted vouchers or other proof of payment to support the claim for reimbursement.

E. An insurance carrier, self-insured employer, or special fund division may pay any authorized burial expenses directly to the funeral service professional.

F. If an employee's dependent pays burial expenses, the responsible carrier, self-insured employer, or special fund division shall reimburse the dependent the amount authorized by A.R.S. § 23-1046 provided that the dependent presents proof of payment to support the claim for reimbursement.

G. If an insured employer pays burial expenses, the responsible carrier or self-insured employer shall reimburse the employer to the extent authorized by A.R.S. § 23-1046 provided that the employer presents proof of payment to support the claim for reimbursement.

Historical Note

Former Rule 17. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-117 recodified from R4-13-117 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-118. Effective Date of Notices of Claim Status and Other Determinations; Attachments to Notices of Claim Status; Form of Notices of Claim Status

A. If a notice of claim status accepting a claim for benefits is final, any subsequent notice of claim status that changes a

claimant's amount of, or entitlement to, compensation or medical, surgical, or hospital benefits shall not have a retroactive effect for more than 30 days from the date a carrier or self-insured employer issues the subsequent notice of claim status. This subsection does not apply to a subsequent notice that affects the entitlement to or amount of death benefits. The Commission may for good cause relieve a carrier or self-insured employer of the effect of this subsection.

B. If a notice of claim status or other determination issued by a carrier, self-insured employer, or special fund division, is based upon a physician's report:

1. The carrier or self-insured employer shall attach a copy of the physician's complete report to the notice of claim status or other determination sent to the Commission; and
2. The carrier, self-insured employer, or special fund division shall attach a copy of the physician's complete report to the notice of claim status or other determination served on a party, except as provided in R20-5-114(D).

C. If a carrier, self-insured employer, or special fund division pays compensation to a claimant:

1. The carrier or self-insured employer shall close the claim by issuing a notice of claim status; and
2. The special fund division shall close the claim by issuing a notice of determination.

D. The inadvertent failure of a carrier, self-insured employer, or special fund division to comply with subsection (B) shall not affect the validity of a notice or determination if the carrier, self-insured employer, or special fund division issuing the notice or determination had in its possession at the time the notice or determination is issued a medical report consistent with the notice or determination.

Historical Note

Former Rule 18. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). Amended effective August 28, 1992 (Supp. 92-3). R20-5-118 recodified from R4-13-118 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-119. Notice of Third-party Settlement

A. Except as otherwise provided by law, if an employer is insured for workers' compensation insurance and a claimant, or in the event of death, the claimant's dependent, elects to proceed against a third party, the claimant shall notify the appropriate workers' compensation carrier, or self-insured employer, of any settlement or judgment in the third party suit and the basis upon which the claimant and third party agree to disburse the proceeds of the settlement or judgment.

B. If an employer is uninsured for workers' compensation insurance and a claimant, or in the event of death, the claimant's dependent, elects to proceed against a third party, the claimant shall notify the special fund division of any settlement or judgment in the third party suit and the basis upon which the claimant and third party agree to disburse the proceeds of the settlement or judgment.

C. If a lawsuit is filed against a third party, the claimant or the claimant's attorney shall provide copies of pleadings and all offers of settlement to the workers' compensation carrier, self-insured employer, or special fund division to whom notice is required under subsections (A) and (B).

Historical Note

Former Rule 19. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-119 recodified from R4-13-119 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-120. Settlement Agreements, Compromises and Releases

A. No settlement agreement, compromise, or waiver of rights of a workers' compensation claim, will be valid unless approved by the Commission.

B. The acceptance of any payments or the signing of a settlement agreement, compromise, release or waiver of rights, unless approved by the Commission, shall not release the employer or his insurance carrier from any obligation imposed by the Workers' Compensation Law.

C. The carrier or employer shall not be entitled to a credit for any sums paid to an employee under a settlement agreement which has not been approved by the Commission.

Historical Note

Former Rule 20. Amended subsections (A) and (B) effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-120 recodified from R4-13-120 (Supp. 95-1).

R20-5-121. Present Value and Basis of Calculation of Lump Sum Commutation Awards

A. The Commission shall calculate the present value of an award that is commuted to a lump sum under R20-5-122. The Commission shall not include in the present value calculation compensation paid before the filing of a lump sum commutation petition. The Commission shall use the filing date of a lump sum commutation petition to compute the present value of an award.

B. The Commission shall calculate the present value of an award at least annually, whether payable for a period of months or based upon the life of the employee, using the United States Life Tables, 2003, National Vital Statistics Reports, Vol. 54, Number 14, April 19, 2006, revised March 28, 2007, Table 1 incorporated by reference, and discounted at the rate established by the Commission. This incorporation does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Commission and may be obtained from the U.S. Department of Health and Human Services, Centers for Disease Control. The rate established by the Commission is based on the following formula: The mean average of the three-month Treasury Bill rate on December 31 of each of the five years prior to July 1 of the current year. The rate, once calculated, is effective until the Commission calculates a new rate under this subsection. The discount rate is published in the minutes of the Commission meeting establishing the rate and is available upon request from the Commission.

Historical Note

Former Rule 21. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-121 recodified from R4-13-121 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3). Amended by final rulemaking at 10 A.A.R. 724, effective February 3, 2004 (Supp. 04-1). Amended by final rulemaking at 11 A.A.R. 2973, effective July 12, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 4139, effective November 6, 2007 (Supp. 07-4).

R20-5-122. Lump Sum Commutation

A. A petition for a lump sum commutation in an unscheduled case shall not be approved unless the carrier approves of such petition.

B. If the lump sum commutation petition is approved by the carrier, the Commission's primary consideration in passing upon the petition will be whether more net income per month will be generated after receipt of the lump sum than the applicant is presently receiving. The granting of a lump sum petition will only be granted if the facts demonstrate a reasonable basis for financial betterment or rehabilitation of the claimant.

C. The burden of proving that the commutation of compensation satisfies the criteria in (B) is on the applicant.

Historical Note

Former Rule 22. Amended subsections (A) and (B) effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-122 recodified from R4-13-122 (Supp. 95-1).

R20-5-123. Rejection of the Act

If an employee serves upon an employer written notice under A.R.S. § 23-906, rejecting the provisions of the Act, the employer shall keep one copy of the rejection in the employer's business records.

Historical Note

Former Rule 23. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-123 recodified from R4-13-123 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-124. Rejection Not Applicable to New Employment

A. An election by an employee to reject the Act is not binding upon the employee in a new employment by another employer or following re-employment by the same employer.

B. If an employee is continuously employed and the employer changes workers' compensation insurance carriers, or form of doing business, the prior rejection is valid and remains in full force and effect.

Historical Note

Former Rule 24. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-124 recodified from R4-13-124 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-125. Rejection Before an Employer Complies with A.R.S. §§ 23-961(A) and 23-906(D)

An employee's rejection of the Act received by an employer before the employer complies with the requirements of A.R.S. §§ 23-961(A) or 23-906(D) is valid and continues in full force and effect whether the employer subsequently obtains workers' compensation coverage under A.R.S. § 23-961(A), posts the notice required under A.R.S. § 23-906(D), or makes available the forms required under A.R.S. § 23-906(D).

Historical Note

Former Rule 25. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-125 recodified from R4-13-125 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-126. Revocation of Rejection

A. An employee who rejects the Act may revoke that rejection by serving upon the employee's employer an original and one copy of a written notice of revocation. The written revocation shall state that the employee revokes the employee's prior rejection of the Act.

B. Within five days after receiving a written notice of revocation, an insured employer shall file with the employer's carrier, or workers' compensation pool, a copy of the notice of revocation. The employee has all rights to compensation and benefits provided by the Act for any injury that occurs after the employee serves the revocation notice upon the employer.

Historical Note

Former Rule 26. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-126 recodified from R4-13-126 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-127. Insurance Carrier Notification to Commission of Coverage

A. Every insurance carrier authorized to underwrite workers' compensation insurance in Arizona shall, within five days after undertaking to insure an employer, report that information to the Commission. The carrier shall provide the information on or in the same format as Commission form 0006. Form 0006 is available upon request from the Commission.

B. Failure to comply with this Section does not affect the validity of coverage.

Historical Note

Former Rule 27. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). Amended effective August 28, 1992 (Supp. 92-3). R20-5-127 recodified from R4-13-127 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-128. Medical Information Reproduction Cost Limitation; Definition of Medical Information

A. A health care provider shall not charge more than $.25 per page plus $10 per hour in associated clerical costs for reproduction of medical information when a party, an authorized representative of a party, or an entity that is authorized by a claimant in a workers' compensation matter makes a request for that information under A.R.S. § 23-908(C).

B. This Section applies to all A.R.S. § 23-908(B) health care providers providing medical services to injured claimants including health care providers that contract with copying services, recordkeeping services, or other similar services for the reproduction of medical information. For purposes of this Section, fees for reproduction of medical information charged by these services are considered the same as if the reproduction fees are charged by a health care provider.

C. For purposes of this Section, "medical information" means:

1. A communication recorded in any form or medium and maintained for the purpose of patient care, diagnosis, or treatment, including a report, note, order, test result, photograph, videotape, X-ray, and billing record;
2. A report of an independent medical examination that describes patient care or treatment;
3. A psychological record;
4. A medical record held by a health care provider including a medical record prepared by another provider; and
5. A recorded communication between emergency medical personnel and medical personnel concerning the care or treatment of a person.

D. For purposes of this Section, "medical information" does not include:

1. Materials that are prepared in connection with utilization review, peer review, or quality assurance activities, including records that a health care provider prepares under A.R.S. §§ 36-441, 36-445 or 36-2402; and

2. Recorded telephone and radio calls to and from a publicly operated emergency dispatch office relating to requests for emergency services or reports of suspected criminal activity.

Historical Note

Former Rule 28. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-128 recodified from R4-13-128 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-129. Carrier or Workers' Compensation Pool Determinations Binding upon its Insured or Member; Self-Rater Exception

A. The Commission deems an insurance carrier or workers' compensation pool the agent of an employer insured by the carrier or workers' compensation pool.

B. The Commission also deems any action or determination taken or made by the insurance carrier or workers' compensation pool binding upon the employer. The employer may not protest or petition the Commission for relief concerning an action or determination taken by the employer's insurance carrier or workers' compensation pool unless the employer notifies the carrier or workers' compensation pool, and the Commission in writing that the employer disagrees with the carrier's or worker's compensation pool's action or determination within the time described in A.R.S. § 23-947.

C. This Section does not apply to employers insured under a Self-Rating Insurance Plan.

Historical Note

Former Rule 29. Amended subsection (A) effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-129 recodified from R4-13-129 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-130. Claims Office Location and Function; Requirements of Maintaining an Out-of-State Claims Office

A. Except as provided in subsection (B), each carrier that has or is underwriting workers' compensation insurance in Arizona, and each employer and workers' compensation pool that has been granted authority to act as a self-insurer by the Commission, shall maintain a workers' compensation claims office in Arizona. A carrier, self-insured employer, and self-insured workers' compensation pool shall process and pay workers' compensation claims and maintain the workers' compensation claims files described in R20-5-131 in its Arizona office. A carrier, self-insured employer, and self-insured workers' compensation pool shall notify the claims division of the Commission of the address of the Arizona claims office.

B. Except as provided in subsections (C) and (D), a carrier or self-insured employer may request authorization from the Commission to maintain an out-of-state claims office. The Commission shall grant a carrier or self-insured employer authorization to maintain an out-of-state claims office no later than 20 days after the carrier or self-insured employer provides satisfactory evidence of the following:

1. Existence of a toll-free telephone line to the out-of-state claims office;
2. Completion of Commission claims division's training by the individuals responsible for claims processing at the out-of-state office; and
3. Designation of a financial institution located in Arizona that will cash on demand checks issued by the out-of-state claims office.

C. The Commission shall not permit a self-insured workers' compensation pool to maintain a claims office out-of-state.

D. The Commission shall rescind its authorization to maintain an out-of-state claims office if a carrier or self-insured employer no longer meets the requirements of subsection (B) or fails to process and pay claims as required under the Act and this Article.

E. A carrier or self-insured employer maintaining an out-of-state claims office shall print the carrier's or self-insured employer's toll-free telephone number to the out-of-state claims office on all notices of claim status or other determinations issued by the out-of-state claims office. Failure to print the toll-free telephone number on a notice or other determination as required by this subsection does not affect the validity of the notice or determination.

F. For claims processing purposes, a carrier, self-insured employer, or self-insured workers' compensation pool may have more than one designated representative provided the carrier, self-insured employer, or self-insured workers' compensation pool:

1. Notifies the Commission at the time an insurance policy is issued or authorization to self-insure is granted; and
2. Notifies the Commission each time that the insurance policy or authorization to self-insure is renewed.

Historical Note

Former Rule 30. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-130 recodified from R4-13-130 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-131. Maintenance of Carrier and Self-insured Employer Claims Files; Contents; Inspection and Copying; Exchange of Medical Reports; Authorization to Obtain Medical Records

A. A carrier and self-insured employer shall maintain a workers' compensation claims file for each claimant. A carrier and self-insured employer shall include in a workers' compensation claims file all employer's reports, medical and hospital reports, awards, orders, notices of claims status, wage data, and all other items affecting the claim required by law to be maintained by a carrier or self-insured employer.

B. Subject to subsection (C), all parties, authorized representatives of parties, and authorized representatives of the Commission may inspect and copy items contained in a carrier's or self-insured employer's claims file within five days from the date the item is filed in the claims file.

C. If a carrier or self-insured employer maintains a claims file at an out-of-state claims office, the carrier or self-insured employer shall make the claims file available for copying and inspection to the persons listed in subsection (B) within 10 days after receiving a request for the file at a location in Arizona designated by the carrier or self-insured employer.

D. A carrier or self-insured employer shall furnish copies of a claims file within 10 days after receiving a request from any party, authorized representative of a party, and authorized representative of the Commission at a charge not to exceed $.25 per page. A carrier or self-insured employer may require prepayment of the copying charges if the requester or authorized representative has an account with the carrier or self-insured employer that is more than 30 days overdue.

E. A carrier or self-insured employer is not required to maintain in a claims file, or produce for inspection and copying:

1. Documents or matters representing the work product of the carrier or self-insured employer;

2. Documents or matters representing the work product of a carrier's or self-insured's attorney; or
3. Investigation and rehabilitation reports.

F. All medical records concerning a claimant's mental or physical condition that are in a party's possession shall be furnished, upon request, to another party in the same Commission proceeding.

G. Within 10 days of a request, a claimant shall provide to a party in a Commission proceeding involving the claimant, a release of information authorizing any attending, treating, or examining physician to provide records described in A.R.S. § 23-908(C).

Historical Note
Former Rule 31. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-131 recodified from R4-13-131 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-132. Parties' Notice to Commission of Intention to Impose Liability upon A.R.S. § 23-1065 Special Fund
If the notices required by A.R.S. § 23-1065 are not given to the Commission, the Commission shall not be bound by the testimony and evidence presented at a hearing as it relates to the imposition of liability upon the special fund.

Historical Note
Former Rule 32. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-132 recodified from R4-13-132 (Supp. 95-1).

R20-5-133. Claimant's Petition to Reopen Claim

A. A petition to reopen filed with the Commission under A.R.S. § 23-1061(H) shall be in writing, signed, and dated by the claimant or the claimant's authorized representative. A petition to reopen form is available from the Commission upon request.

B. A claimant shall provide to the Commission a copy of a medical report supporting the disability or condition justifying the reopening of the claim.

C. If the Commission does not receive the medical report described in subsection (B) within 14 days of receipt of a petition to reopen, the Commission shall notify all parties, in writing, that it has received a petition to reopen without the required medical report. A carrier or self-insured employer is not required to act on a petition to reopen that is received without the required medical report.

D. If the Commission receives a medical report in support of a petition to reopen and a claimant does not file a petition to reopen within 14 days of receipt of the medical report, the Commission shall forward the medical report to the carrier or self-insured employer for information purposes only. A carrier or self-insured employer is not required to take any action upon receipt of the medical report.

E. If the Commission receives a medical report in support of a petition to reopen from an out-of-state physician and a party objects to the report at least 20 days before a scheduled hearing, the Commission shall not consider the report or place the report in evidence unless the party submitting the report produces the author of the report for cross-examination either at the hearing or at a deposition. The party submitting into evidence the medical report prepared by an out-of-state physician shall pay the expenses of a deposition under this subsection.

Historical Note
Former Rule 33. Amended subsections (A), (C), (D) and (E) effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). Amended effective August 28, 1992 (Supp. 92-3). R20-5-133 recodified from R4-13-133 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-134. Petition for Rearrangement or Readjustment of Compensation Based Upon Increase or Reduction of Earning Capacity

A. A petition for rearrangement or readjustment of compensation filed with the Commission under A.R.S. § 23-1044(F) shall be in writing. A form is available from the Commission upon request.

B. A party or a party's authorized representative shall sign a petition for rearrangement or readjustment and include in the petition:
1. A statement of the basis upon which the rearrangement or readjustment of compensation is sought, and
2. Documentation in support of the petition.

C. The petition shall be signed by the employee or the employee's authorized representative, the employer, or, in the case of an insurance carrier, by its authorized representative, and shall include a statement of the basis upon which the rearrangement of compensation is sought accompanied by supportive documentary evidence.

D. If a self-insured employer, carrier, special fund division, or uninsured employer requests a hearing protesting the Commission's determination under A.R.S. § 23-1044(F) and the claimant resides outside of Arizona, the Commission may order the self-insured employer, carrier, special fund division, or uninsured employer to pay the claimant's transportation and living expenses to attend any scheduled hearing.

Historical Note
Former Rule 34. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). Amended effective August 28, 1992 (Supp. 92-3). R20-5-134 recodified from R4-13-134 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-135. Requests for Hearing; Form

A. Any interested party or the party's authorized representative, except as otherwise provided by law or this Article, may request a hearing on a claim. A request for hearing shall be in writing.

B. A Request for Hearing form is available upon request from the Commission and requests the following:
1. Employee, employer, insurance carrier, authorized representative, and claim identification;
2. Issue upon which the request for hearing is filed;
3. Requests for subpoenas of witnesses;
4. Desired location and length of time for the hearing;
5. Signature and address of requesting party.

Historical Note
Former Rule 35. Amended subsections (A) and (B) effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). Amended effective August 28, 1992 (Supp. 92-3). R20-5-135 recodified from R4-13-135 (Supp. 95-1).

R20-5-136. Expired

Historical Note
Former Rule 36. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-136 recodified from R4-13-136 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3). Section expired under

A.R.S. § 41-1056(J) at 22 A.A.R. 3475, effective November 8, 2016 (Supp. 16-4).

R20-5-137. Service of a Request for Hearing

A party filing a request for hearing shall serve a copy of the party's request for hearing upon all other parties at the same time that the party files the request for hearing with the Commission. The failure to serve a copy of a request for hearing upon other parties does not affect the validity of the hearing request.

Historical Note

Former Rule 37. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-137 recodified from R4-13-137 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-138. Hearing Calendar and Assignment to Administrative Law Judge; Notification of Hearing

A. The chief administrative law judge shall maintain a hearing calendar. The chief administrative law judge shall ensure that a request for hearing filed in accordance with this Article is:
1. Placed on the hearing calendar, and
2. Assigned to an administrative law judge who is designated as the presiding administrative law judge.

B. A presiding administrative law judge may hold a hearing at an earlier date than required under A.R.S. § 23-941(D), if all parties to the proceeding agree.

Historical Note

Former Rule 38. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-138 recodified from R4-13-138 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-139. Administrative Resolution of Issues by Stipulation Before Filing a Request for Hearing

A. At any time before the filing of a request for hearing, parties may resolve issues by written stipulation. The parties shall file the stipulation with the Commission for approval or other action as may be appropriate.

B. If the Commission determines that a written stipulation is reasonably supported by the facts, the Commission may approve the stipulation or enter an appropriate award without a request for hearing or hearing.

Historical Note

Former Rule 39. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-139 recodified from R4-13-139 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-140. Informal Conferences

A. A presiding administrative law judge may hold an informal conference to:
1. Resolve and dispose of disputed issues;
2. Narrow or limit the scope of the issues to be considered at a subsequent hearing;
3. Simplify the method of proof at a hearing; or
4. Eliminate the need for hearing if the facts appear to be uncontested.

B. A party may request that a pending hearing be disposed of by an informal conference, by filing a written request that:
1. Specifies the purpose for the conference consistent with subsection (A), and
2. Does not contain any argument regarding the merits of the case.

C. If the presiding administrative law judge determines that an informal conference is appropriate, the judge shall give notice to the parties of the time and place of the conference. The presiding administrative law judge may, without a request from a party, schedule an informal conference by giving five days notice to the parties of the time, place, and subject matter of the informal conference. The parties may waive the five day notice requirement of this subsection.

D. If a presiding administrative law judge disposes of issues in controversy at an informal conference, the presiding administrative law judge may enter an award without convening a hearing.

E. If a presiding administrative law judge disposes of, narrows, or limits some, but not all issues in controversy, the presiding administrative law judge shall prepare and mail to the parties a statement setting forth the issues to be resolved at a hearing. The presiding administrative law judge shall limit the hearing to the issues contained in the statement unless at the hearing all parties and, the presiding administrative law judge agree that the judge may consider issues beyond the scope of the statement.

F. Upon request by a party or upon a presiding administrative law judge's own motion, the presiding administrative law judge may order the parties to file a joint statement listing the disputed issues to be considered at formal hearing. The presiding administrative law judge shall give the parties at least 10 days to file the statement and shall order the parties to file the statement three to 10 days before the first scheduled hearing.

Historical Note

Former Rule 40. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-140 recodified from R4-13-140 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-141. Subpoena Requests for Witnesses; Objection to Documents or Reports Prepared by Out-of-State Witness

A. Subpoena requests for witnesses.
1. Subpoena request for non-medical witness. A party may request a presiding administrative law judge to issue a subpoena to compel the appearance of a non-medical witness by filing a written request with the presiding administrative law judge at least 10 days before the date of the first scheduled hearing.
2. Subpoena request for expert medical witness. A party may request a presiding administrative law judge to issue a subpoena to compel the appearance of an expert medical witness by filing a written request with the presiding administrative law judge at least 20 days before the date of the first scheduled hearing.
3. Statement of expected testimony. In the discretion of the presiding administrative law judge, the judge may order the party requesting a subpoena to file within five days of the order a written statement summarizing the substance of the testimony expected of the witness.
4. Issuance of Subpoena. A presiding administrative law judge shall issue a subpoena requested under this Section if the judge determines that the testimony of the witness is material and necessary and, if applicable:
   a. The party files a timely statement under subsection (A)(3); or
   b. The party shows at or before the first scheduled hearing that good cause exists for the party's failure

to respond timely to the judge's order under subsection (A)(3).

5. Service of a subpoena. The Commission may serve a subpoena by mail unless the party requesting the subpoena requests personal service. If a party requests personal service of a subpoena, the Commission shall prepare the subpoena and the party requesting personal service shall:
   a. Ensure that the subpoena is served in the same manner as in a civil action; and
   b. Pay all expenses of the service.

B. A presiding administrative law judge shall not grant a party a continued hearing because a subpoenaed witness fails to appear at hearing unless the party filed a timely request for subpoena as required by subsection (A). If a party timely requested a subpoena for a witness who fails to appear at a scheduled hearing, the presiding administrative law judge may grant a continued hearing if the party requesting the subpoena demonstrates that:
1. The testimony of the witness is material and necessary, and
2. Good cause is shown as to why the witness failed to appear.

C. Witness Fees.
1. If a non-medical witness requests a witness fee, the party requesting the subpoena shall pay the non-medical witness fees and mileage provided for witnesses in civil actions in the Superior Court. If more than one party subpoenas the same witness, the parties shall divide the witness fee equally.
2. The Commission shall pay the witness fee to a medical witness under the Commission's medical fee schedule after the presiding administrative law judge approves the fee.

D. Objection to an out-of-state physician's report.
1. A presiding administrative law judge shall not consider or place into evidence a timely filed physician's report authored by a physician residing outside Arizona if a party files an objection to that report at least 20 days before the scheduled hearing, unless the party submitting the report produces the author for cross-examination either at the hearing or at a deposition.
2. Nothing in R20-5-143(G) precludes a party from taking or submitting into evidence a deposition of a physician taken under this subsection.
3. The party submitting into evidence a report of an out-of-state physician shall pay the expenses of a deposition taken under this subsection.

E. Objection to document prepared by out-of-state non-medical witness.
1. A presiding administrative law judge shall not consider or place into evidence a timely filed document prepared by a non-medical witness who resides outside Arizona if a party files an objection to that document at least seven days before the scheduled hearing unless the party submitting the document produces the author for cross-examination either at the hearing or at a deposition.
2. Nothing in R20-5-143 precludes a party from taking or submitting into evidence a deposition within the time limits set by a presiding administrative law judge.
3. The party submitting into evidence a document prepared by an out-of-state non-medical witness shall pay the expenses of a deposition taken under this subsection.

F. If a presiding administrative law judge approves, the testimony of a party's out-of-state non-medical or expert medical witness may be taken telephonically.

Historical Note
Former Rule 41. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-141 recodified from R4-13-141 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-142. In-State Oral Depositions

A. A party may take the oral deposition of another party or a witness residing in Arizona by serving a Notice of Deposition by Oral Examination upon the deponent and every party at least 10 days before the date of the oral deposition and at least 40 days before the first scheduled hearing.

B. A party may file with the presiding administrative law judge a written objection to the taking of an oral deposition within five days after service of the Notice of Deposition. If no request for hearing has been filed, a party shall file the written objection with the chief administrative law judge. The party objecting to the deposition shall:
1. State the basis for objecting to the deposition; and
2. Serve a copy of the party's objections on all parties.

C. The oral deposition shall not commence until the presiding administrative law judge rules on the written objection. The presiding administrative law judge shall rule on the written objection to the taking of an oral deposition within seven days after a party files a written objection by:
1. Ordering the deposition to proceed;
2. Ordering the deposition not be taken; or
3. Entering any other appropriate protective order.

D. The party taking the deposition shall comply with the Arizona Rules of Civil Procedure governing the taking of depositions.

E. The expense of any deposition shall be borne by the party taking the deposition but shall not include the expense of any other interested party.

F. A presiding administrative law judge shall not cancel or continue a hearing because a party fails to take or complete a deposition under this Section.

G. A deposition taken under this Section shall only be used to impeach a witness during a hearing, except that, in the exercise of discretion, the presiding administrative law judge may admit a deposition into evidence for another purpose if:
1. The deponent is deceased at the time of the hearing, or
2. All parties agree.

H. A party may take a telephonic deposition under this Section either by agreement of the parties or by order of the presiding administrative law judge in the exercise of the judge's discretion.

Historical Note
Former Rule 42. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-142 recodified from R4-13-142 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-143. Out-of-State Oral Depositions

A. A party shall obtain permission from a presiding administrative law judge before taking an out-of-state oral deposition of another party or a witness by filing a written request with the presiding administrative law judge that contains:
1. The name and address of the party or witness to be deposed, and
2. Each reason why the party's or witness' testimony is necessary.

B. The party requesting permission to take the out-of-state deposition shall serve a copy of the request upon each party.

C. If no objection to the request for permission to take the deposition is filed under subsection (D) the presiding administrative law judge shall, within seven days from the date of the request, grant or deny permission to take the deposition.

D. A party may file with the presiding administrative law judge a written objection to the taking of an out-of-state oral deposition within five days after being served with a request to take the out-of-state deposition. The party objecting to the out-of state deposition shall:
1. State the basis for objecting to the deposition; and
2. Serve a copy of the party's objections on each party.

E. The oral deposition shall not commence until the presiding administrative law judge rules on the written objection. The presiding administrative law judge shall rule on the written objection to the taking of an out-of-state oral deposition within seven days after a party files the written objection by:
1. Ordering the deposition to proceed,
2. Ordering the deposition not be taken, or
3. Entering any other appropriate protective order.

F. A party shall not take more than two depositions per hearing under this Section unless a presiding administrative law judge, upon a showing of good cause, approves the taking of additional depositions.

G. In the exercise of discretion, the presiding administrative law judge may admit into evidence a deposition taken under this Section if the transcript of the deposition is filed with the Commission at least five days before any scheduled hearing or as otherwise directed by the presiding administrative law judge. If the transcript of the deposition is not timely filed under this subsection, the administrative law judge shall not consider the deposition for any purpose unless the parties and the administrative law judge agree that the deposition may be considered.

H. Parties may take telephonic depositions under this Section either by agreement of the parties or by order of a presiding administrative law judge in the exercise of the administrative law judge's discretion.

I. A party taking a deposition taken under this Section shall comply with R20-5-142(A), (D), (E) and (F).

Historical Note

Former Rule 43. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-143 recodified from R4-13-143 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-144. Written Interrogatories

A. After a party files a request for hearing with the Commission, any party may serve written interrogatories upon another party. A party shall serve written interrogatories at least 40 days before the scheduled hearing.

B. A party shall not serve more than 25 interrogatories, including subsections.

C. A party shall serve answers to the interrogatories upon all parties within 10 days after service of the interrogatories. A party shall not file answers to the interrogatories with the Commission.

D. A presiding administrative law judge shall not cancel or continue a hearing because a party fails to answer interrogatories under this Section.

E. A party shall only use written interrogatories served under this Section to impeach a witness during a hearing, except that, in the exercise of discretion, the presiding administrative law judge may admit the interrogatory answers into evidence for another purpose if the party answering the interrogatories is deceased at the time of the scheduled hearing.

Historical Note

Former Rule 44. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-144 recodified from R4-13-144 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-145. Refusal to Answer or Attend; Motion to Compel; Sanctions Imposed

A. If a party or deponent refuses to answer any question asked at a deposition under R20-5-142 or R20-5-143, the party asking the question shall either complete the deposition in other matters or adjourn the deposition. With notice to all persons affected by the deponent's refusal to answer a question, the party asking the question may apply to the presiding administrative law judge for an order compelling the deponent to answer the question.

B. If a party refuses to answer an interrogatory served under R20-5-144, the party serving the interrogatory may submit the interrogatory to the presiding administrative law judge and apply for an order compelling the answer.

C. If a presiding administrative law judge issues an order compelling an answer under subsection (A) or (B) and finds that a refusal to answer is without substantial justification, the presiding administrative law judge shall require the party or witness refusing to answer or the authorized representative advising that party or witness not to answer, or both of them, to pay to the party asking the question:
1. Reasonable attorney's fees incurred to obtain the order compelling the answer, and
2. Reasonable expenses that will be incurred to obtain the requested answer.

D. If a presiding administrative law judge denies a motion to compel an answer under subsection (A) or (B), and finds that the motion was made without substantial justification, the presiding administrative law judge shall require the party filing the motion, or the parties' authorized representative advising that party to make the motion, or both of them, to pay to the party or witness refusing to answer, reasonable attorney's fees incurred in opposing the motion.

E. In addition to the sanctions authorized under R20-5-157, a presiding administrative law judge may, upon a party's motion, impose the following sanctions upon a party if the party, or an officer or managing agent of that party, willfully fails to appear for a deposition after being served with proper notice of the deposition, or fails to serve answers to interrogatories after proper service of the interrogatories:
1. Strike out all or any part of a document filed by the party;
2. Dismiss the action or proceeding, or any part of the action or proceeding;
3. Order the suspension or forfeiture of compensation; or
4. Preclude the introduction of evidence.

F. The party filing a motion under subsections (A), (B), or (E) shall attach to the motion:
1. The statement required under R20-5-105(E) and
2. A proposed order that includes the relief requested and a service page with the names and addresses of all parties served.

Historical Note

Former Rule 45. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-145 recodified from R4-13-145 (Supp. 95-1). Amended by final

rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-146. Repealed

Historical Note
Former Rule 46. R20-5-146 recodified from R4-13-146 (Supp. 95-1). Section repealed by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-147. Videotape Recordings and Motion Pictures

A. A party proposing to offer a videotape recording or motion picture into evidence at a Commission hearing shall provide written notice to the Commission and all parties at least 40 days before the first scheduled hearing.

B. If a party serves a written request to view a videotape recording or motion picture upon the party proposing to submit the videotape recording or motion picture into evidence, the party proposing to offer the videotape recording or motion picture into evidence shall provide the necessary facilities and equipment to allow the other party to view the videotape recording or motion picture no later than 25 days before the first scheduled hearing.

C. A presiding administrative law judge may admit into evidence a videotape recording or motion picture if the videotape recording or motion picture:
1. Is a reasonable and accurate representation of the scene, person, object, or action portrayed; and
2. Will aid in the understanding of the issues before the presiding administrative law judge.

D. The party submitting the videotape recording or motion picture into evidence shall ensure that commentary, interrogation, dialogue, or testimony are not a part of the videotape recording or motion picture.

E. A presiding administrative law judge shall not cancel or continue a hearing because a party fails to view a videotape recording or motion picture as provided in this Section.

F. This Section does not apply to:
1. Videotape recordings or motion pictures obtained by surveillance, or
2. Videotape recordings or motion pictures of medical procedures performed by a physician.

Historical Note
Former Rule 47. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-147 recodified from R4-13-147 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-148. Burden of Presentation of Evidence; Offer of Proof

A. A party shall rest at the conclusion of the presentation of the party's evidence. If there is a dispute as to which party has the burden of proof, the presiding administrative law judge shall direct who has the burden of proof.

B. If a presiding administrative law judge prohibits a witness from answering a question, the presiding administrative law judge shall permit an offer of proof in the form of an avowal or in writing.

Historical Note
Former Rule 48. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-148 recodified from R4-13-148 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-149. Presence of Claimant at Hearing; Notice of a Parties' Non-Appearance at Hearing; Assessment of Hearing Costs for Non-Appearance

A. A claimant, whether or not represented by an attorney, shall appear personally at any hearing without the necessity of subpoena unless excused by the presiding administrative law judge.

B. Subject to subsection (A), at least three days before a scheduled hearing a party shall notify the presiding administrative law judge of any non-appearance by a party or party's authorized representative that requires the judge to cancel or reschedule the hearing.

C. If a party fails to notify the presiding administrative law judge as required under subsection (B), the presiding administrative law judge may order the party or the party's authorized representative to reimburse the Commission for hearing expenses and costs incurred by the Commission including fees of expert medical witnesses and other witness fees.

Historical Note
Former Rule 49. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-149 recodified from R4-13-149 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-150. Joinder of a Party

A. An administrative law judge may join as a party any person, firm, corporation, or other entity in favor of whom or against whom a right to relief may exist and over whom the Commission may acquire jurisdiction.

B. Joinder may be made upon application of any party or upon the presiding administrative law judge's own motion.

C. A party seeking to join another person, firm, corporation, or other entity shall file a motion requesting joinder with the presiding administrative law judge at least 30 days before hearing. The moving party shall serve a copy of the motion upon the person, firm, corporation, or other entity for whom joinder is requested, and upon all other parties.

D. If the requirements of this Section are met, the presiding administrative law judge shall join as a party the person, firm, corporation, or other entity for whom joinder is requested and shall issue a notice advising the parties of the joinder.

Historical Note
Former Rule 50. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-150 recodified from R4-13-150 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-151. Special Appearance

Any party against whom a claim may exist under the Act, or against whom a contingent liability may exist under the Act, and over whom the Commission has not acquired jurisdiction, may enter a special appearance. A special appearance made under this Section does not invoke the jurisdiction of the Commission.

Historical Note
Former Rule 51. R20-5-151 recodified from R4-13-151 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-152. Resolution of Issues by Stipulation After the Filing of a Request for Hearing; Notice of Resolution; Assessment

of Hearing Costs

A. Subject to the requirement of subsection (D), parties may stipulate to any fact or issue after a party files a request for hearing. The stipulation may be in writing or made orally at the time of hearing.

B. A stipulation is binding upon the parties unless a presiding administrative law judge or the Commission grants the parties permission to withdraw the stipulation.

C. If a stipulation is not reasonably supported by the evidence, a presiding administrative law judge or the Commission, may set aside or refuse to accept the stipulation and proceed to determine the true facts.

D. A party shall notify a presiding administrative law judge of any stipulation, compromise or settlement agreement, or withdrawal of a hearing request that makes a hearing unnecessary at least three days before a scheduled hearing.

E. The presiding administrative law judge may order a party or parties to reimburse the Commission for hearing expenses and costs incurred by the Commission including fees of expert medical witnesses and other witness fees if a party fails to notify the presiding administrative law judge as required under subsection (D).

Historical Note

Former Rule 52. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-152 recodified from R4-13-152 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-153. Exclusion of Witnesses

Any party may request that all other witnesses except the parties be excluded from the hearing until called to testify. The presiding administrative law judge may, in the judge's discretion, grant or deny the request. If the request is granted, the presiding administrative law judge shall admonish each witness not to discuss the witness's testimony with anyone other than attorneys on the case.

Historical Note

Former Rule 53. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-153 recodified from R4-13-153 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-154. Correspondence to Administrative Law Judge

A person submitting correspondence, including subpoena requests, to an administrative law judge concerning a matter pending before the administrative law judge, shall contemporaneously serve a copy of the correspondence upon all other parties, or if represented, the parties' authorized representatives. The administrative law judge shall not consider correspondence or subpoena requests to be evidence except by agreement of all parties to the matter.

Historical Note

Former Rule 54. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-154 recodified from R4-13-154 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-155. Filing of Medical and Non-Medical Reports Into Evidence; Request for Subpoena to Cross-examine Author of Report Submitted into Evidence; Failure to Timely Request Subpoena for Author

A. Except as provided in R20-5-114(C), a party filing a medical report or hospital record into evidence ("medical report") that is not already contained in the Commission's claims file, shall file the medical report with the presiding administrative law judge at least 25 days before the first scheduled hearing.

B. A party filing into evidence a document, report, instrument, or other written matter not described in subsection (A) ("non-medical report") that is not already contained in the Commission's claims file, shall file the non-medical report with the presiding administrative law judge at least 15 days before the first scheduled hearing.

C. The party filing a medical or non-medical report into evidence shall serve a copy of the report to all other parties.

D. A presiding administrative law judge shall not receive into evidence any medical or non-medical report that is not filed as required under this Section. If the report has been placed in the Commission's claims file, the presiding administrative law judge shall remove the report from the Commission's claims file and return the report to the filing party.

E. The presiding administrative law judge may suspend the requirements of this Section;

1 Upon a showing of good cause; or

2. If the parties agree that the judge may accept the medical or non-medical report into evidence.

F. The party filing a medical or non-medical report under this Section shall file a cover letter with the report stating:

1. The party's identity;
2. The reports filed; and
3. Proof of service of the reports upon the other parties.

G. A party seeking to cross-examine the author of any medical or non-medical report filed into evidence shall request a subpoena under R20-5-141.

H. If a party fails to timely request a subpoena under this Section and R20-5-141, the party waives the right to cross-examine the author of any medical or non-medical report filed into evidence and the presiding administrative law judge shall admit the medical or non-medical report in evidence.

Historical Note

Former Rule 55. Amended subsections (A) and (D) effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-155 recodified from R4-13-155 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-156. Continuance of Hearing

A. A party may request a continuance of a scheduled hearing. If a party shows good cause, a presiding administrative law judge may grant a request that a hearing be continued.

B. If at the conclusion of a hearing a party seeks to continue the hearing to introduce additional evidence, the party shall state specifically and in detail:

1. The nature and substance of the additional evidence,
2. The names and addresses of additional witnesses, and
3. The reason the party was unable to produce the evidence or witnesses at the hearing.

C. A presiding administrative law judge may deny a request for a continuance under subsection (B) if the presiding administrative law judge determines that, with the exercise of due diligence, the evidence or testimony could have been produced or the evidence or testimony would be cumulative, immaterial, or unnecessary.

D. A presiding administrative law judge may, on the judge's own motion, continue a hearing and order further examinations or investigations that the judge determines are warranted.

E. If more than 40 days before the first scheduled hearing, a presiding administrative law judge reschedules the hearing discovery and filing deadlines under this Article shall be calculated with respect to the new hearing date.

F. If less than 40 days before the first scheduled hearing, a presiding administrative law judge reschedules the hearing discovery and filing deadlines under this Article shall be calculated with respect to the original hearing date.

Historical Note
Former Rule 56. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-156 recodified from R4-13-156 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-157. Sanctions

A. A presiding administrative law judge may impose the following sanctions against any party or authorized representative of a party who fails to comply with this Article or fails to comply with an order of the presiding administrative law judge or Commission:
1. Dismissal of the party's request for hearing;
2. Refusal to permit the introduction of evidence by the party; or
3. Assessment of reasonable attorney's fees and costs against the sanctioned party or authorized representative of a party.

B. If a party shows good cause, a presiding administrative law judge or the Commission may relieve a party of sanctions imposed under subsection (A).

Historical Note
Former Rule 57. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-157 recodified from R4-13-157 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-158. Service of Awards and Other Matters

A. An award, decision, order, subpoena, notice, document, or other matter required by the Act, this Article, or other law to be served shall be made upon a party or, if represented, the party's authorized representative. Service upon the authorized representative is service upon the party.

B. Service may be made and is deemed complete by:
1. Depositing the document or matter in the United States mail, with postage prepaid, addressed to the party served at the address as shown by the records of the Commission; or
2. Personal service in the same manner as a summons is served in a civil action.

C. Proof of service may be made by an affidavit or oral testimony of the person making such service.

Historical Note
Former Rule 58. Amended subsection (C) effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-158 recodified from R4-13-158 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-159. Record for Award or Decision on Review

A presiding administrative law judge's award or decision under A.R.S. § 23-942 or award or decision upon review under A.R.S. § 23-943 shall be based upon:
1. The record as it exists at the conclusion of the hearings, and
2. Any memoranda provided under A.R.S. § 23-943(E) or requested by the presiding administrative law judge.

Historical Note
Former Rule 59. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-159 recodified from R4-13-159 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-160. Application to Set Attorney Fees Under A.R.S. § 23-1069

A. For purposes of A.R.S. § 23-1069, "final disposition of a case" occurs when all compensation benefits have been released to a claimant.

B. A claimant or attorney filing an application for attorney's fees under A.R.S. § 23-1069 shall serve notice of the application to all parties, including if applicable, the insurance carrier, self-insured employer, or special fund division.

C. Upon the filing of an application, the attorney and claimant shall, provide information to the Commission to enable the Commission to award reasonable attorney's fees.

D. Attorney's fees awarded under this Section shall be set by the Commission, an administrative law judge, or other authorized representative of the Commission.

Historical Note
Former Rule 60. Amended effective March 1, 1987, filed February 26, 1987 (Supp. 87-1). R20-5-160 recodified from R4-13-160 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-161. Stipulations for Extensions of Time

Stipulations for extensions of time in which to file papers or briefs in the various courts shall be received and signed by the Chief Counsel or other members of the Legal Department.

Historical Note
Former Rule 61. R20-5-161 recodified from R4-13-161 (Supp. 95-1).

R20-5-162. Legal Division Participation

The chief counsel and other members of the legal staff of the Commission who participate in proceedings or matters under the Act and this Article do so on behalf of the Commission.

Historical Note
Former Rule 62. R20-5-162 recodified from R4-13-162 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-163. Bad Faith and Unfair Claim Processing Practices

A. For purposes of A.R.S. § 23-930, an employer, self-insured employer, insurance carrier, or claims processing representative commits "bad faith" if the employer, self-insured employer, insurance carrier, or claims processing representative:
1. Institutes a proceeding or interposes a defense that is not:
   a. Well-grounded in fact;
   b. Warranted by existing law; or
   c. A good faith argument for the extension, modification, or reversal of existing law;
2. Unreasonably delays:
   a. Payment of benefits; or
   b. Authorization for, or receipt of, medical benefits or treatment;
3. Unreasonably underpays benefits;
4. Unreasonably terminates benefits;

5. Intentionally misleads a claimant as to applicable statutes of limitation, benefits, or remedies available to the claimant under the Act or under this Article; or
6. Unreasonably interferes with or obstructs the claimant's right to choose the claimant's attending physician, except in cases involving a self-insured employer under A.R.S. § 23-1070.

B. For purposes of A.R.S. § 23-930, an employer, self-insured employer, insurance carrier, or claims processing representative commits "unfair claim processing practices" if the employer, self-insured employer, insurance carrier, or claims processing representative:
1. Unreasonably issues a notice of claim status without adequate supporting information in its possession or available to it;
2. Unreasonably fails to acknowledge communications from the Commission, an unrepresented claimant, or a claimant's attorney with respect to a claim;
3. Fails to act reasonably and promptly upon communications from the Commission, an unrepresented claimant, or a claimant's attorney with respect to a claim;
4. Directly advises a claimant not to consult or obtain the services of an attorney; or
5. Communicates directly, for an improper purpose, with a claimant represented by an attorney.

C. A person alleging bad faith or unfair claim processing practices ("complainant") shall file a written complaint with the claims manager of the Commission. The complainant, or the complainant's authorized representative, shall sign the complaint.

D. The complaint shall describe the specific actions of the employer, self-insured employer, insurance carrier, or claims processing representative, that are alleged to constitute bad faith or unfair claim processing practices. A complaint form is available upon request from the Commission.

E. Upon receipt of a complaint under this subsection, the claims manager of the Commission shall serve the complaint upon all parties.

F. If the Commission acts on its own motion under A.R.S. § 23-930(A), the claims manager shall mail a notice of alleged bad faith or unfair claim processing practices to the claimant or the claimant's authorized representative and the:
1. Employer;
2. Self-insured employer;
3. Insurance carrier; or
4. Claims processing representative.

G. The person or entity named in a complaint or notice served under A.R.S. § 23-930 and this Section shall file with the claims manager a written response to the complaint or notice, within 30 days after service by the Commission of the complaint or notice.

H. The person or entity filing a written response shall serve a copy of the response upon the complainant, or the complainant's authorized representative, if represented.

I. If the person or entity named in a complaint or notice served under A.R.S. § 23-930 and this Section fails to file a written response, the Commission shall consider the absence of a response a denial of the allegations of the complaint or notice.

J. Upon receipt of a written response, or upon the expiration of 30 days if no response is filed, the Commission shall enter an award as it deems, in its discretion, appropriate under A.R.S. §§ 23-930(B) or (C).

Historical Note

Adopted as an emergency effective February 1, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Amended and readopted as an emergency effective April 29, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-2). Readopted without change as an emergency effective August 1, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Readopted without change as an emergency effective November 9, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Amended and readopted as an emergency effective July 11, 1989 (Supp. 89-3). Adopted as a permanent rule effective October 4, 1989 (Supp. 89-4). R20-5-163 recodified from R4-13-163 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3).

R20-5-164. Human Immunodeficiency Virus, Hepatitis C, Methicillin-resistant *Staphylococcus Aureus*, Spinal Meningitis and Tuberculosis; Significant Exposure; Employee Notification; Reporting; Documentation; Forms

A. An employer subject to the Act shall notify its employees of the requirements of A.R.S. §§ 23-1043.02, 23-1043.03, and 23-1043.04 by posting the Commission notices titled "Work Exposure to Bodily Fluids" and "Work Exposure to methicillin-resistant *Staphylococcus Aureus* (MRSA), Spinal Meningitis, or Tuberculosis (TB)" in a conspicuous place immediately next to the "Notice to Employees" notice required under A.R.S. § 23-906(D).

B. Properly posted "Work Exposure to Bodily Fluids" and "Work Exposure to Methicillin-resistant *Staphylococcus Aureus* (MRSA), Spinal Meningitis, or Tuberculosis (TB)" notices constitute sufficient notice to employees of the requirements of a prima facie case under A.R.S. §§ 1043.02(B), 23-1043.03(B), and 23-1043.04(B).

C. An employer's insurance carrier, claims processor, or workers' compensation pool shall provide the notices specified in subsection (A) to the employer. These notices are also available from the Commission upon request.

D. An employer shall make readily available to its employees the Commission form described in R20-5-106 titled "Report of Significant Work Exposure to Bodily Fluids or Other Infectious Material." An employer's insurance carrier, claims processor, or workers' compensation pool shall provide the "Report of Significant Work Exposure to Bodily Fluids or Other Infectious Material" to the employer. This form is also available from the Commission upon request.

E. If an employee sustains a significant exposure as defined in A.R.S. §§ 23-1043.02(G), 23-1043.03(G), or 23-1043.04(H)(2), the employee shall complete, date, and sign a "Report of Significant Work Exposure to Bodily Fluids or Other Infectious Material" form. The employee or employee's authorized representative shall give to the employer the completed, dated, and signed form. The employer shall return one copy of the completed form to the employee or to the employee's authorized representative. Nothing in this subsection limits the requirements to report an injury or file a claim under the Act.

F. If an employee submits a written report of a significant exposure to an employer, but does not use the Commission form titled "Report of Significant Work Exposure to Bodily Fluids or Other Infectious Material," the employer shall provide the employee the Commission form within five calendar days after receiving the employee's initial written report.

G. The date of the receipt by the employer or its authorized representative of the employee's initial report is the date used to

compute the time period prescribed in A.R.S. §§ 23-1043.02(B)(2), 23-1043.03(B)(2), and 23-1043.04(B)(2) if:

1. The initial report contains the information required in the "Report of Significant Work Exposure to Bodily Fluids or Other Infectious Material" form, or
2. The employee gives to the employer the completed Commission form within 10 calendar days after the employee's receipt of the Commission form.

H. Failure or refusal by the employer to provide the Commission form to the employee shall not be a defense to a prima facie claim under A.R.S. §§ 23-1043.02(B), 23-1043.03(B), and 23-1043.04(B).

I. In investigating the circumstances and facts surrounding an employee's report to an employer of a significant exposure under A.R.S. §§ 23-1043.02(C), 23-1043.03(C), and 23-1043.04(C), the employer, or its carrier, or any employees, agents or contractors of either the employer or carrier, shall not disclose to any person, except as authorized or required by law, that the reporting employee, or any witness or alleged source of exposure, may have or did contract the human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, methicillin-resistant *Staphylococcus aureus*, spinal meningitis, or tuberculosis. However, an employer, its carrier or their respective attorneys, may:

1. Direct an agent to investigate the employee's report of significant exposure, and
2. Communicate with the investigating agent about the conduct and results of the investigation.

J. As required under the federal Occupational Safety and Health Standard for Bloodborne Pathogens, 29 CFR 1910.1030, an employer shall pay for the testing required by A.R.S. § 23-1043.02.

Historical Note
Adopted effective April 9, 1992 (Supp. 92-2). R20-5-163 recodified from R4-13-163 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 3966 and 7 A.A.R. 4995, effective August 17, 2001 (Supp. 01-3). Amended by final rulemaking at 15 A.A.R. 991, effective June 2, 2009 (Supp. 09-2).

R20-5-165. Calculation of Maximum Average Monthly Wage
In using the Bureau of Labor Statistics Employment Cost Index to adopt the amount of an increase to the maximum average monthly wage under A.R.S. § 23-1041(E), the Commission shall use the *Bureau of Labor Statistics, Employment Cost Index for Wages and Salaries, for Civilian Workers, by Occupational Group and Industry, All Workers*, available at http://www.bls.gov/.

Historical Note
New Section made by final rulemaking at 19 A.A.R. 1925, effective July 10, 2013 (Supp. 13-3).

ARTICLE 2. REPEALED

R20-5-201. Repealed

Historical Note
Former Rule I. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-201 recodified from R4-13-201 (Supp. 95-1). Amended effective October 9, 1998 (Supp. 98-4). Section repealed by final rulemaking at 28 A.A.R. 3435 (October 28, 2022), with an immediate effective date of October 5, 2022 (Supp. 22-4).

R20-5-202. Repealed

Historical Note
Former Rule II. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-202 recodified from R4-13-202 (Supp. 95-1). Section repealed by final rulemaking at 28 A.A.R. 3435 (October 28, 2022), with an immediate effective date of October 5, 2022 (Supp. 22-4).

R20-5-203. Repealed

Historical Note
Former Rule III. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-203 recodified from R4-13-203 (Supp. 95-1). Section repealed by final rulemaking at 28 A.A.R. 3435 (October 28, 2022), with an immediate effective date of October 5, 2022 (Supp. 22-4).

R20-5-204. Repealed

Historical Note
Former Rule IV. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-204 recodified from R4-13-204 (Supp. 95-1). Section repealed by final rulemaking at 28 A.A.R. 3435 (October 28, 2022), with an immediate effective date of October 5, 2022 (Supp. 22-4).

R20-5-205. Repealed

Historical Note
Former Rule V. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-205 recodified from R4-13-205 (Supp. 95-1). Section repealed by final rulemaking at 28 A.A.R. 3435 (October 28, 2022), with an immediate effective date of October 5, 2022 (Supp. 22-4).

R20-5-206. Repealed

Historical Note
Former Rule VI; Amended effective February 27, 1975 (Supp. 75-1). Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-206 recodified from R4-13-206 (Supp. 95-1). Section repealed by final rulemaking at 28 A.A.R. 3435 (October 28, 2022), with an immediate effective date of October 5, 2022 (Supp. 22-4).

R20-5-207. Repealed

Historical Note
Former Rule VII. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-207 recodified from R4-13-207 (Supp. 95-1). Section repealed by final rulemaking at 28 A.A.R. 3435 (October 28, 2022), with an immediate effective date of October 5, 2022 (Supp. 22-4).

R20-5-208. Repealed

Historical Note
Former Rule VIII. Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). R20-5-208 recodified from R4-13-208 (Supp. 95-1). Section repealed by final rulemaking at 28 A.A.R. 3435 (October 28, 2022), with an immediate effective date of October 5, 2022 (Supp. 22-4).

GENERAL AND SPECIFIC STATUTES

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 1. Industrial Commission (Refs & Annos)
Article 1. In General (Refs & Annos)

A.R.S. § 23-107

§ 23-107. General powers

Currentness

A. The commission has full power, jurisdiction and authority to:

1. Formulate and adopt rules and regulations for effecting the purposes of this article.

2. Administer and enforce all laws for the protection of life, health, safety and welfare of employees in every case and under every law when such duty is not specifically delegated to any other board or officer, and, when such duty is specifically delegated, to counsel, advise and assist in the administration and enforcement of such laws and for such purposes may conduct investigations.

3. Promote the voluntary arbitration, mediation and conciliation of disputes between employers and employees.

4. License and supervise the work of private employment offices, bring together employers seeking employees and working people seeking employment, and make known the opportunities for employment in the state.

5. Collect, collate and publish all statistical and other information relating to employees, employers, employments and places of employment with other appropriate statistics.

6. Act as the regulatory agency insuring that workers' compensation carriers are processing claims in accordance with chapter 6 of this title. [1]

7. Provide nonpublic, confidential or privileged documents, materials or other information to another state, local or federal regulatory agency for the purpose of the legitimate administrative needs of the programs administered by that agency if the recipient agency agrees and warrants that it has the authority to maintain and will maintain the confidentiality and privileged status of the documents, materials or other information.

8. Receive nonpublic documents, materials and other information from another state, local or federal regulatory agency to properly administer programs of the commission. The commission shall maintain as confidential or privileged any document, material or other information that is identified by the exchange agency as confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.

9. Enter into agreements that govern the exchange of nonpublic documents, materials and other information that are consistent with paragraphs 7 and 8. The commission may request nondisclosure of information that is identified as privileged or confidential. Any disclosure pursuant to paragraph 7 or 8 or this paragraph is not a waiver of any applicable privilege or claim of confidentiality in the documents, materials or other information.

B. Upon petition by any person that any employment or place of employment is not safe or is injurious to the welfare of any employee, the commission has power and authority, with or without notice, to make investigations necessary to determine the matter complained of.

C. The members of the commission may confer and meet with officers of other states and officers of the United States on matters pertaining to their official duties.

D. Notwithstanding any other law, the commission may protect from public inspection the financial information that is received from a private entity that applies to self-insure or that renews its self-insurance plan pursuant to § 23-961, subsection A if the information is kept confidential by the private entity in its ordinary and regular course of business.

Credits

Amended by Laws 1968, 4th S.S., Ch. 6, § 7, eff. Jan. 2, 1969; Laws 1974, Ch. 184, § 2, eff. May 17, 1974; Laws 1984, Ch. 188, § 21; Laws 2004, Ch. 96, § 1.

Notes of Decisions (54)

Footnotes

1 Section 23-901 et seq.

A. R. S. § 23-107, AZ ST § 23-107

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. T. 23, Ch. 6, Refs & Annos
Currentness

Editors' Notes

GENERAL NOTES

<Laws 1984, Ch. 188, § 20, subsection A substituted “Workers' Compensation” for “Workmen's Compensation” as the heading for this chapter.>

A. R. S. T. 23, Ch. 6, Refs & Annos, AZ ST T. 23, Ch. 6, Refs & Annos
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. T. 23, Ch. 6, Art. 1, Refs & Annos
Currentness

Editors' Notes

GENERAL NOTES

<Laws 1984, Ch. 188, § 20, subsection B substituted “Scope of Workers' Compensation” for “Scope of Workmen's Compensation” as the heading for this article.>

A. R. S. T. 23, Ch. 6, Art. 1, Refs & Annos, AZ ST T. 23, Ch. 6, Art. 1, Refs & Annos
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 1. Scope of Workers' Compensation (Refs & Annos)

A.R.S. § 23-901

§ 23-901. Definitions

Effective: September 29, 2021
Currentness

In this chapter, unless the context otherwise requires:

1. “Award” means the finding or decision of an administrative law judge or the commission as to the amount of compensation or benefit due an injured employee or the dependents of a deceased employee.

2. “Client” means an individual, association, company, firm, partnership, corporation or any other legally recognized entity that is subject to this chapter and that enters into a professional employer agreement with a professional employer organization.

3. “Co-employee” means every person employed by an injured employee's employer.

4. “Commission” means the industrial commission of Arizona.

5. “Compensation” means the compensation and benefits provided by this chapter.

6. “Employee”, “workman”, “worker” and “operative” means:

(a) Every person in the service of this state or a county, city, town, municipal corporation or school district, including regular members of lawfully constituted police and fire departments of cities and towns, whether by election, appointment or contract of hire.

(b) Every person in the service of any employer subject to this chapter, including aliens and minors legally or illegally allowed to work for hire, but not including a person whose employment is both:

(i) Casual.

(ii) Not in the usual course of the trade, business or occupation of the employer.

(c) Lessees of mining property and the lessees' employees and contractors engaged in the performance of work that is a part of the business conducted by the lessor and over which the lessor retains supervision or control are within the meaning of this paragraph employees of the lessor, and are deemed to be drawing wages as are usually paid employees for similar work. The lessor may deduct from the proceeds of ores mined by the lessees the premium required by this chapter to be paid for such employees.

(d) Regular members of volunteer fire departments organized pursuant to title 48, chapter 5, article 1, [1] regular firefighters of any volunteer fire department, including private fire protection service organizations, organized pursuant to title 10, chapters 24 through 40, [2] volunteer firefighters serving as members of a fire department of any incorporated city or town or an unincorporated area without pay or without full pay and on a part-time basis, and voluntary policemen and volunteer firefighters serving in any incorporated city, town or unincorporated area without pay or without full pay and on a part-time basis, are deemed to be employees, but for the purposes of this chapter, the basis for computing wages for premium payments and compensation benefits for regular members of volunteer fire departments organized pursuant to title 48, chapter 5, article 1, or organized pursuant to title 10, chapters 24 through 40, regular members of any private fire protection service organization, volunteer firefighters and volunteer policemen of these departments or organizations shall be the salary equal to the beginning salary of the same rank or grade in the full-time service with the city, town, volunteer fire department or private fire protection service organization, provided if there is no full-time equivalent then the salary equivalent shall be as determined by resolution of the governing body of the city, town or volunteer fire department or corporation.

(e) Members of the department of public safety reserve, organized pursuant to § 41-1715, are deemed to be employees. For the purposes of this chapter, the basis for computing wages for premium payments and compensation benefits for a member of the department of public safety reserve who is a peace officer shall be the salary received by officers of the department of public safety for the officers' first month of regular duty as an officer. For members of the department of public safety reserve who are not peace officers, the basis for computing premiums and compensation benefits is $400 a month.

(f) Any person placed in on-the-job evaluation or in on-the-job training under the department of economic security's temporary assistance for needy families program or vocational rehabilitation program shall be deemed to be an employee of the department for the purpose of coverage under the state workers' compensation laws only. The basis for computing premium payments and compensation benefits shall be $200 per month. Any person receiving vocational rehabilitation services under the department of economic security's vocational rehabilitation program whose major evaluation or training activity is academic, whether as an enrolled attending student or by correspondence, or who is confined to a hospital or penal institution, shall not be deemed to be an employee of the department for any purpose.

(g) Regular members of a volunteer sheriff's reserve, which may be established by resolution of the county board of supervisors, to assist the sheriff in the performance of the sheriff's official duties. A roster of the current members shall monthly be certified to the clerk of the board of supervisors by the sheriff and shall not exceed the maximum number authorized by the board of supervisors. Certified members of an authorized volunteer sheriff's reserve shall be deemed to be employees of the county for the purpose of coverage under the Arizona workers' compensation laws and occupational disease disability laws and shall be entitled to receive the benefits of these laws for any compensable injuries or disabling conditions that arise out of and occur in the course of the performance of duties authorized and directed by the sheriff. Compensation benefits and premium payments shall be based on the salary received by a regular full-time deputy sheriff of the county involved for the first month of regular patrol duty as an officer for each certified member of a volunteer sheriff's reserve. This subdivision does not provide compensation

coverage for any member of a sheriff's posse who is not a certified member of an authorized volunteer sheriff's reserve except as a participant in a search and rescue mission or a search and rescue training mission.

(h) A working member of a partnership may be deemed to be an employee entitled to the benefits provided by this chapter on written acceptance, by endorsement, at the discretion of the insurance carrier for the partnership of an application for coverage by the working partner. The basis for computing premium payments and compensation benefits for the working partner shall be an assumed average monthly wage of not less than $600 or more than the maximum wage provided in § 23-1041 and is subject to the discretionary approval of the insurance carrier. Any compensation for permanent partial or permanent total disability payable to the partner is computed on the lesser of the assumed monthly wage agreed to by the insurance carrier on the acceptance of the application for coverage or the actual average monthly wage received by the partner at the time of injury.

(i) The sole proprietor of a business subject to this chapter may be deemed to be an employee entitled to the benefits provided by this chapter on written acceptance, by endorsement, at the discretion of the insurance carrier of an application for coverage by the sole proprietor. The basis for computing premium payments and compensation benefits for the sole proprietor is an assumed average monthly wage of not less than $600 or more than the maximum wage provided by § 23-1041 and is subject to the discretionary approval of the insurance carrier. Any compensation for permanent partial or permanent total disability payable to the sole proprietor shall be computed on the lesser of the assumed monthly wage agreed to by the insurance carrier on the acceptance of the application for coverage or the actual average monthly wage received by the sole proprietor at the time of injury.

(j) A member of the Arizona national guard, Arizona state guard or unorganized militia shall be deemed a state employee and entitled to coverage under the Arizona workers' compensation law at all times while the member is receiving the payment of the member's military salary from this state under competent military orders or on order of the governor. Compensation benefits shall be based on the monthly military pay rate to which the member is entitled at the time of injury, but not less than a salary of $400 per month or more than the maximum provided by the workers' compensation law. Arizona compensation benefits shall not inure to a member compensable under federal law.

(k) Certified ambulance drivers and attendants who serve without pay or without full pay on a part-time basis are deemed to be employees and entitled to the benefits provided by this chapter and the basis for computing wages for premium payments and compensation benefits for certified ambulance personnel shall be $400 per month.

(l) Volunteer workers of a licensed health care institution may be deemed to be employees and entitled to the benefits provided by this chapter on written acceptance by the insurance carrier of an application by the health care institution for coverage of such volunteers. The basis for computing wages for premium payments and compensation benefits for volunteers shall be $400 per month.

(m) Personnel who participate in a search or rescue operation or a search or rescue training operation that carries a mission identifier assigned by the division of emergency management as provided in § 35-192.01 and who serve without compensation as volunteer state employees. The basis for computation of wages for premium purposes and compensation benefits is the total volunteer man-hours recorded by the division of emergency management in a given quarter multiplied by the amount determined by the appropriate risk management formula.

(n) Personnel who participate in emergency management training, exercises or drills that are duly enrolled or registered with the division of emergency management or any political subdivision as provided in § 26-314, subsection C and who serve without

compensation as volunteer state employees. The basis for computation of wages for premium purposes and compensation benefits is the total volunteer man-hours recorded by the division of emergency management or political subdivision during a given training session, exercise or drill multiplied by the amount determined by the appropriate risk management formula.

(o) Regular members of the Arizona game and fish department reserve, organized pursuant to § 17-214. The basis for computing wages for premium payments and compensation benefits for a member of the reserve is the salary received by game rangers and wildlife managers of the Arizona game and fish department for the game rangers' and wildlife managers' first month of regular duty.

(p) Every person employed pursuant to a professional employer agreement.

(q) A working member of a limited liability company who owns less than fifty percent of the membership interest in the limited liability company.

(r) A working member of a limited liability company who owns fifty percent or more of the membership interest in the limited liability company may be deemed to be an employee entitled to the benefits provided by this chapter on the written acceptance, by endorsement, of an application for coverage by the working member at the discretion of the insurance carrier for the limited liability company. The basis for computing wages for premium payments and compensation benefits for the working member is an assumed average monthly wage of $600 or more but not more than the maximum wage provided in § 23-1041 and is subject to the discretionary approval of the insurance carrier. Any compensation for permanent partial or permanent total disability payable to the working member is computed on the lesser of the assumed monthly wage agreed to by the insurance carrier on the acceptance of the application for coverage or the actual average monthly wage received by the working member at the time of injury.

(s) A working shareholder of a corporation who owns less than fifty percent of the beneficial interest in the corporation.

(t) A working shareholder of a corporation who owns fifty percent or more of the beneficial interest in the corporation may be deemed to be an employee entitled to the benefits provided by this chapter on the written acceptance, by endorsement, of an application for coverage by the working shareholder at the discretion of the insurance carrier for the corporation. The basis for computing wages for premium payments and compensation benefits for the working shareholder is an assumed average monthly wage of $600 or more but not more than the maximum wage provided in § 23-1041 and is subject to the discretionary approval of the insurance carrier. Any compensation for permanent partial or permanent total disability payable to the working shareholder is computed on the lesser of the assumed monthly wage agreed to by the insurance carrier on the acceptance of the application for coverage or the actual average monthly wage received by the working shareholder at the time of injury.

7. “General order” means an order applied generally throughout this state to all persons under jurisdiction of the commission.

8. “Heart-related or perivascular injury, illness or death” means myocardial infarction, coronary thrombosis or any other similar sudden, violent or acute process involving the heart or perivascular system, or any death resulting therefrom, and any weakness, disease or other condition of the heart or perivascular system, or any death resulting therefrom.

9. “Insurance carrier” means every insurance carrier duly authorized by the director of the department of insurance and financial institutions to write workers' compensation or occupational disease compensation insurance in this state.

10. “Interested party” means the employer, the employee, or if the employee is deceased, the employee's estate, the surviving spouse or dependents, the commission, the insurance carrier or their representative.

11. “Mental injury, illness or condition” means any mental, emotional, psychotic or neurotic injury, illness or condition.

12. “Order” means and includes any rule, direction, requirement, standard, determination or decision other than an award or a directive by the commission or an administrative law judge relative to any entitlement to compensation benefits, or to the amount of compensation benefits, and any procedural ruling relative to the processing or adjudicating of a compensation matter.

13. “Personal injury by accident arising out of and in the course of employment” means any of the following:

(a) Personal injury by accident arising out of and in the course of employment.

(b) An injury caused by the wilful act of a third person directed against an employee because of the employee's employment, but does not include a disease unless resulting from the injury.

(c) An occupational disease that is due to causes and conditions characteristic of and peculiar to a particular trade, occupation, process or employment, and not the ordinary diseases to which the general public is exposed, and subject to § 23-901.01 or 23-901.09 or, for heart-related, perivascular or pulmonary cases, § 23-1105.

14. “Professional employer agreement” means a written contract between a client and a professional employer organization:

(a) In which the professional employer organization expressly agrees to co-employ all or a majority of the employees providing services for the client. In determining whether the professional employer organization employs all or a majority of the employees of a client, any person employed pursuant to the terms of the professional employer agreement after the initial placement of client employees on the payroll of the professional employer organization shall be included.

(b) That is intended to be ongoing rather than temporary in nature.

(c) In which employer responsibilities for worksite employees, including hiring, firing and disciplining, are expressly allocated between the professional employer organization and the client in the agreement.

15. “Professional employer organization” means any person engaged in the business of providing professional employer services. Professional employer organization does not include a temporary help firm or an employment agency.

16. “Professional employer services” means the service of entering into co-employment relationships under this chapter to which all or a majority of the employees providing services to a client or to a division or work unit of a client are covered employees.

17. “Serve” or “service” means either:

(a) Mailing to the last known address of the receiving party.

(b) Transmitting by other means, including electronic transmission, with the written consent of the receiving party.

18. “Special order” means an order other than a general order.

19. “Weakness, disease or other condition of the heart or perivascular system” means arteriosclerotic heart disease, cerebral vascular disease, peripheral vascular disease, cardiovascular disease, angina pectoris, congestive heart trouble, coronary insufficiency, ischemia and all other similar weaknesses, diseases and conditions, and also previous episodes or instances of myocardial infarction, coronary thrombosis or any similar sudden, violent or acute process involving the heart or perivascular system.

20. “Workers' compensation” means workmen's compensation as used in article XVIII, section 8, Constitution of Arizona.

Credits

Amended by Laws 1964, Ch. 48, § 1; Laws 1964, Ch. 70, § 1; Laws 1968, Ch. 54, § 1; Laws 1968, 45th S.S., Ch. 6, § 11, eff. Jan. 2, 1969; Laws 1970, Ch. 187, § 1; Laws 1971, Ch. 173, § 6; Laws 1972, Ch. 26, § 1; Laws 1973, Ch. 53, § 1; Laws 1973, Ch. 136, § 1, eff. Jan. 1, 1974; Laws 1974, Ch. 178, § 1; Laws 1976, Ch. 120, § 1; Laws 1976, Ch. 162, § 41; Laws 1979, Ch. 215, § 4; Laws 1980, Ch. 246, § 17; Laws 1981, Ch. 199, § 1; Laws 1982, Ch. 215, § 2; Laws 1984, Ch. 188, § 22; Laws 1985, Ch. 136, § 1; Laws 1985, Ch. 190, § 34; Laws 1985, Ch. 349, § 1; Laws 1992, Ch. 156, § 2; Laws 1992, Ch. 185, § 1; Laws 1994, Ch. 223, § 95, eff. Jan. 1, 1996; Laws 1999, Ch. 297, § 28, eff. May 18, 1999; Laws 2000, Ch. 280, § 1; Laws 2000, Ch. 393, § 1; Laws 2002, Ch. 331, § 1, eff. July 1, 2006; Laws 2003, Ch. 180, §§ 2, 3; Laws 2004, Ch. 185, § 1, eff. July 1, 2006; Laws 2007, Ch. 129, § 2; Laws 2008, Ch. 187, § 2; Laws 2011, Ch. 27, § 6; Laws 2011, Ch. 157, § 4, eff. Jan. 1, 2013; Laws 2017, Ch. 325, § 1; Laws 2018, Ch. 175, § 1; Laws 2020, Ch. 37, § 126; Laws 2021, Ch. 229, § 4; Laws 2021, Ch. 333, § 1.

Notes of Decisions (372)

Footnotes

1 Section 48-802 et seq.

2 Sections 10-3101 et seq. through 10-11701 et seq.

A. R. S. § 23-901, AZ ST § 23-901
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

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Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 1. Scope of Workers' Compensation (Refs & Annos)

A.R.S. § 23-901.01

§ 23-901.01. Occupational disease; proximate causation; definition

Effective: September 29, 2021
Currentness

A. The occupational diseases as defined by § 23-901, paragraph 13, subdivision (c) shall be deemed to arise out of the employment only if all of the following six requirements exist:

1. There is a direct causal connection between the conditions under which the work is performed and the occupational disease.

2. The disease can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment.

3. The disease can be fairly traced to the employment as the proximate cause.

4. The disease does not come from a hazard to which workers would have been equally exposed outside of the employment.

5. The disease is incidental to the character of the business and not independent of the relation of employer and employee.

6. The disease after its contraction appears to have had its origin in a risk connected with the employment, and to have flowed from that source as a natural consequence, although it need not have been foreseen or expected.

B. Notwithstanding subsection A of this section and § 23-1043.01, any disease, infirmity or impairment of a peace officer's health that is caused by brain, bladder, rectal or colon cancer, lymphoma, leukemia or adenocarcinoma or mesothelioma of the respiratory tract and that results in disability or death is presumed to be an occupational disease as defined in § 23-901, paragraph 13, subdivision (c) and is deemed to arise out of employment.

C. The presumption provided in subsection B of this section is granted if all of the following apply:

1. The peace officer passed a physical examination before employment and the examination did not indicate evidence of cancer.

2. The peace officer was assigned to hazardous duty for at least five years.

D. Subsection B of this section applies to both of the following:

1. Peace officers currently in service.

2. Former peace officers who are sixty-five years of age or younger and who are diagnosed with a cancer that is listed in subsection B of this section not more than fifteen years after the peace officer's last date of employment as a peace officer.

E. Subsection B of this section does not apply to cancers of the respiratory tract if there is evidence that the peace officer's exposure to cigarettes or tobacco products outside of the scope of the peace officer's official duties is a substantial contributing cause in the development of the cancer.

F. The presumption provided in subsection B of this section may be rebutted by clear and convincing evidence that there is a specific cause of the cancer other than an occupational exposure to a carcinogen as defined by the international agency for research on cancer.

G. For the purposes of this section, "peace officer" means a full-time peace officer who was regularly assigned to hazardous duty as a part of a special operations, special weapons and tactics, explosive ordinance disposal or hazardous materials response unit.

Credits

Added by Laws 1973, Ch. 53, § 2. Amended by Laws 1980, Ch. 246, § 18; Laws 2001, Ch. 192, § 1; Laws 2003, Ch. 47, § 1; Laws 2003, Ch. 180, § 4; Laws 2017, Ch. 318, § 1; Laws 2021, Ch. 229, § 5.

Notes of Decisions (66)

A. R. S. § 23-901.01, AZ ST § 23-901.01

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. § 23-901.02

§ 23-901.02. Liability of last employer; exception

Currentness

Where compensation is payable for an occupational disease the only employer liable shall be the employer in whose employment the employee was last injuriously exposed to the hazards of such disease but in the case of silicosis or asbestosis the only employer liable shall be the employer in whose employment the employee was last exposed to harmful quantities of silicon dioxide (SiO_2) dust during a period of two years or more.

Credits

Added by Laws 1973, Ch. 53, § 2.

Notes of Decisions (8)

A. R. S. § 23-901.02, AZ ST § 23-901.02
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. § 23-901.03

§ 23-901.03. Appointment of committee of medical consultants for claims; qualifications, powers, duties and compensation

Currentness

A. For each case submitted by a claimant for compensation the commission may, or if requested by an interested party shall, appoint a committee of expert consultants on occupational diseases, three licensed physicians in good professional standing, each of whom shall have had at the time of appointment, and immediately prior thereto, at least five years' practice in the diagnosis, care and treatment of the particular disease or diseases for which the claim is submitted and the interpretation of x-ray films thereof.

B. The Arizona state medical association may, at least annually, certify to the commission the names of all licensed physicians within the state who have the qualifications specified in this section, and if such certification is made, then the appointment shall be made from the list so certified by the medical association.

C. There also shall be appointed by the commission an industrial hygienist to serve as an advisor to the committee. Such industrial hygienist shall render reports to the committee when asked to do so by the committee or the commission.

D. After filing a claim for compensation under this chapter for an occupational disease, the commission may, or if requested by an interested party shall, direct an examination of and report upon the claimant by the committee of expert consultants, or one of them, including such x-ray and other pathological examinations and tests as in their opinion may be necessary for the purpose of determining diagnosis, disablement, causal relation to the employment and the nature and type of medical treatment, hospitalization and other care required. If the claim is not controverted as to any medical fact, the examination and report of one member of the committee shall be deemed the examination and report of the committee. If the claim is controverted as to any medical fact, the report shall be made by the full committee after a physical examination by at least one member thereof. The findings and opinions of a majority of the committee shall constitute the findings and opinion of the committee. The contents of the report of the committee when placed in the record shall constitute prima facie evidence of fact as to the matter contained therein. The committee or any member thereof making the report shall be subject to examination upon demand of any interested party. Copies of the report shall be sent to all parties interested.

E. The committee, or any member thereof, in order to assist in reaching a conclusion may require the attending physician or director of a hospital or sanitarium or other place in which treatment or care is being given, or has been given, to attend at a convenient time and place to consult with the committee or any member thereof, and describe the nature and type of care and treatment and furnish any other evidence which the committee, or any member thereof, desires.

F. When a claim for death benefits is filed, the committee may examine all available evidence pertaining to the claim and may make findings and report thereon. The report shall constitute prima facie evidence of fact as to the matters contained therein.

G. The commission upon the application of an interested party shall direct the committee or a member thereof, to make examinations of claimants, review the findings of special medical examiners, read and review the files of compensation cases when necessary and render to the commission an opinion as to the findings in such cases.

H. The commission shall fix the compensation of the members of the committees and advisors for services rendered which shall be paid from the administrative fund.

Credits
Added by Laws 1973, Ch. 53, § 2.

Notes of Decisions (4)

A. R. S. § 23-901.03, AZ ST § 23-901.03
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-901.04

§ 23-901.04. Compensation precluded by misconduct, self-exposure or disobedience of orders of commission; definition

Effective: July 24, 2014
Currentness

A. Notwithstanding any other provision of this chapter, no employee or dependent of an employee shall be entitled to receive compensation for disability from an occupational disease, as defined by § 23-901, paragraph 13, subdivision (c), when such disability was caused either wholly or partly by the wilful misconduct, wilful self-exposure or disobedience to such reasonable rules and regulations adopted by the employer and which have been and are kept posted in conspicuous places in and about the premises of the employer, or otherwise brought to the attention of the employee.

B. As used in this section the term "wilful self-exposure" includes:

1. Failure or omission on the part of an employee or applicant for employment truthfully to state in writing to the best of his knowledge in answer to an inquiry made by the employer, the place, duration and nature of previous employment.

2. Failure or omission on the part of an applicant for employment truthfully to state in writing to the best of his knowledge in answer to an inquiry made by the employer, whether or not he had previously been a person with a disability, laid off or compensated in damages or otherwise because of any physical disability.

3. Failure or omission on the part of an employee or applicant for employment truthfully to give in writing to the best of his knowledge in answer to an inquiry made by the employer, full information about the previous status of his health, previous medical and hospital attention and direct and continuous exposure to active pulmonary tuberculosis.

Credits
Added by Laws 1973, Ch. 53, § 2. Amended by Laws 1980, Ch. 246, § 19; Laws 2003, Ch. 180, § 5; Laws 2014, Ch. 215, § 65.

Notes of Decisions (4)

A. R. S. § 23-901.04, AZ ST § 23-901.04
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-901.05

§ 23-901.05. Occupational disease aggravated by other disease or other disease aggravated by occupational disease; effect on compensation

Currentness

Where an occupational disease, as defined by § 23-901, paragraph 13, subdivision (c), is aggravated by any other disease or infirmity not itself compensable, or where disability or death from any other cause not itself compensable is aggravated, prolonged, accelerated or in anywise contributed to by an occupational disease, the compensation payable under this chapter shall be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death, as such occupational disease as a causative factor bears to all the causes of such disability or death.

Credits
Added by Laws 1973, Ch. 53, § 2. Amended by Laws 1980, Ch. 246, § 20; Laws 2003, Ch. 180, § 6.

Notes of Decisions (4)

A. R. S. § 23-901.05, AZ ST § 23-901.05
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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Title 23. Labor
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A.R.S. § 23-901.06

§ 23-901.06. Volunteer workers

Currentness

In addition to persons defined as employees under § 23-901, volunteer workers of a county, city, town, or other political subdivision of the state may be deemed to be employees and entitled to the benefits provided by this chapter upon the passage of a resolution or ordinance by the political subdivision defining the nature and type of volunteer work and workers to be entitled to such benefits. The basis for computing compensation benefits and premium payments shall be four hundred dollars per month.

Credits

Added by Laws 1982, Ch. 64, § 1, eff. April 9, 1982. Amended by Laws 2003, Ch. 180, § 7.

A. R. S. § 23-901.06, AZ ST § 23-901.06
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. § 23-901.07

§ 23-901.07. Persons with disabilities in vocational training; definition

Effective: July 24, 2014
Currentness

A. Notwithstanding § 23-901, a qualified client of a nonprofit organization which provides vocational training to persons with disabilities is an employee of the nonprofit organization for the purposes of this chapter if the nonprofit organization elects to have the qualified client treated as an employee.

B. For the purposes of this section, "qualified client" means a person with a disability who is enrolled in a vocational training program with a nonprofit organization, who works as part of this program for the nonprofit organization or for another person under a contract with the nonprofit corporation and who receives compensation for the work from the nonprofit organization.

Credits
Added by Laws 1987, Ch. 72, § 1. Amended by Laws 2014, Ch. 215, § 66.

A. R. S. § 23-901.07, AZ ST § 23-901.07
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. § 23-901.08

§ 23-901.08. Professional employer organizations

Effective: September 30, 2009
Currentness

A. A person engaged in the business of providing professional employer services is subject to this chapter regardless of whether the person uses the term professional employer organization, PEO, staff leasing company, registered staff leasing company, employee leasing company or any other name.

B. As long as the professional employer organization's professional employer agreement with a client remains in force, the professional employer organization shall be regarded as a co-employer of the employee.

C. The professional employer organization and its client shall be considered the employer for the purpose of coverage under this chapter and both the professional employer organization and its client shall be entitled to protection of the exclusive remedy set forth in § 23-1022. Both the professional employer organization and its client shall comply with §§ 23-906 and 23-964.

D. When a professional employer organization enters into a professional employer agreement with a client in this state, the professional employer organization shall notify its workers' compensation insurance carrier and the commission. The notification shall be on a form approved by the commission and shall include the following information:

1. The name and business address of the client employer.

2. Whether all or a majority of the client employer's workforce is covered by the professional employer agreement.

3. Unless all of the client employer's workforce is covered by the professional employer agreement, the name of the client employer's workers' compensation insurance carrier that is insuring the client employer's obligation to secure compensation under § 23-961 for any employees who are not covered by the professional employer agreement. The professional employer organization shall also notify each client, in writing, of the client's obligation under § 23-961 to secure workers' compensation for any employees who are not covered by the professional employer agreement, even if such employees are hired after the execution of the professional employer agreement.

E. If a professional employer agreement is terminated, the professional employer organization shall immediately notify its workers' compensation insurance carrier and the commission, in writing, of the name of the client and the date of termination of the agreement.

Credits

Added by Laws 2003, Ch. 180, § 8. Amended by Laws 2009, Ch. 67, § 1.

A. R. S. § 23-901.08, AZ ST § 23-901.08

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-901.09

§ 23-901.09. Presumption; cancers; firefighters and fire investigators; applicability; definitions

Effective: September 29, 2021
Currentness

A. Notwithstanding § 23-901.01, subsection A and § 23-1043.01:

1. Any disease, infirmity or impairment of a firefighter's or fire investigator's health that is caused by brain, bladder, rectal or colon cancer, lymphoma, leukemia or adenocarcinoma or mesothelioma of the respiratory tract and that results in disability or death is presumed to be an occupational disease as defined in § 23-901, paragraph 13, subdivision (c) and is deemed to arise out of employment.

2. Any disease, infirmity or impairment of a firefighter's or fire investigator's health that is caused by buccal cavity, pharynx, esophagus, large intestine, lung, kidney, prostate, skin, stomach, ovarian, breast or testicular cancer or non-Hodgkin's lymphoma, multiple myeloma or malignant melanoma and that results in disability or death is presumed to be an occupational disease as defined in § 23-901, paragraph 13, subdivision (c) and is deemed to arise out of employment.

B. The presumptions provided in subsection A of this section are granted if all of the following apply:

1. The firefighter or fire investigator passed a physical examination before employment and the examination did not indicate evidence of cancer.

2. The firefighter or fire investigator was assigned to hazardous duty for at least five years.

3. For the presumption provided in subsection A, paragraph 2 of this section and for firefighters only, the firefighter received a physical examination that is reasonably aligned with the national fire protection association standard on comprehensive occupational medical program for fire departments (NFPA 1582).

C. Subsection A of this section applies to both of the following:

1. Firefighters or fire investigators currently in service.

2. Former firefighters or fire investigators who are sixty-five years of age or younger and who are diagnosed with a cancer that is listed in subsection A of this section not more than fifteen years after the firefighter's or fire investigator's last date of employment as a firefighter or fire investigator.

D. Subsection A of this section does not apply to cancers of the respiratory tract if there is evidence that the firefighter's or fire investigator's exposure to cigarettes or tobacco products outside of the scope of the firefighter's or fire investigator's official duties is a substantial contributing cause in the development of the cancer.

E. The presumption provided in subsection A of this section may be rebutted by clear and convincing evidence that there is a specific cause of the cancer other than an occupational exposure to a carcinogen as defined by the international agency for research on cancer.

F. For the purposes of this section:

1. “Firefighter” means a full-time firefighter who was regularly assigned to hazardous duty.

2. “Fire investigator” means a person who is employed full time by a municipality or fire district and who is trained in the process of and responsible for determining the origin, cause and development of a fire or explosion.

Credits
Added by Laws 2021, Ch. 229, § 6.

Notes of Decisions (4)

A. R. S. § 23-901.09, AZ ST § 23-901.09
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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KeyCite Red Flag - Severe Negative Treatment
Enacted Legislation Amended by 2024 Ariz. Legis. Serv. Ch. 139 (H.B. 2204) (WEST),

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Article 1. Scope of Workers' Compensation (Refs & Annos)

A.R.S. § 23-902

§ 23-902. Employers subject to chapter; exceptions

Effective: July 1, 2015
Currentness

A. Employers subject to this chapter are the state, each county, city, town, municipal corporation and school district and every person who employs any workers or operatives regularly employed in the same business or establishment under contract of hire, including covered employees pursuant to a professional employer agreement, except domestic servants. Exempted employers of domestic servants may come under this chapter by complying with its provisions and the rules of the commission. For the purposes of this subsection, "regularly employed" includes all employments, whether continuous throughout the year, or for only a portion of the year, in the usual trade, business, profession or occupation of an employer.

B. When an employer procures work to be done for the employer by a contractor over whose work the employer retains supervision or control, and the work is a part or process in the trade or business of the employer, then the contractors and the contractor's employees, and any subcontractor and the subcontractor's employees, are, within the meaning of this section, employees of the original employer. For the purposes of this subsection, "part or process in the trade or business of the employer" means a particular work activity that in the context of an ongoing and integral business process is regular, ordinary or routine in the operation of the business or is routinely done through the business' own employees.

C. A person engaged in work for a business, and who while so engaged is independent of that business in the execution of the work and not subject to the rule or control of the business for which the work is done, but is engaged only in the performance of a definite job or piece of work, and is subordinate to that business only in effecting a result in accordance with that business design, is an independent contractor.

D. A business that uses the services of an independent contractor and the independent contractor may prove the existence of an independent contractor relationship by executing a written agreement that complies with this subsection. The written agreement shall evidence that the business does not have the authority to supervise or control the actual work of the independent contractor or the independent contractor's employees. A written agreement executed in compliance with this subsection creates a rebuttable presumption of an independent contractor relationship between the parties if the written agreement contains a disclosure statement that the independent contractor is not entitled to workers' compensation benefits from the business. Unless the rebuttable presumption is overcome, no premium may be collected by the carrier on payments by the business to the independent contractor if a fully completed written agreement that satisfies the requirements of this subsection is submitted to the carrier. The written agreement shall be dated and contain the signatures of both parties and, unless otherwise provided by law, shall state that the business:

1. Does not require the independent contractor to perform work exclusively for the business. This paragraph shall not be construed as conclusive evidence that an individual who performs services primarily or exclusively for another person is an employee of that person.

2. Does not provide the independent contractor with any business registrations or licenses required to perform the specific services set forth in the contract.

3. Does not pay the independent contractor a salary or hourly rate instead of an amount fixed by contract.

4. Will not terminate the independent contractor before the expiration of the contract period, unless the independent contractor breaches the contract or violates the laws of this state.

5. Does not provide tools to the independent contractor.

6. Does not dictate the time of performance.

7. Pays the independent contractor in the name appearing on the written agreement.

8. Will not combine business operations with the person performing the services rather than maintaining these operations separately.

E. A business that uses the services of a sole proprietor who has waived the sole proprietor's rights to workers' compensation coverage and benefits pursuant to § 23-961, subsection M is not liable for workers' compensation coverage or the payment of premiums for the sole proprietor.

F. The written agreement executed in compliance with subsection D of this section shall be null and void and create no presumption of an independent contractor relationship if the consent of either party is either:

1. Obtained through misrepresentation, false statements, fraud or intimidation.

2. Obtained through coercion or duress.

G. If any agreement is found to be null and void under subsection F of this section the insurance carrier is entitled to collect a premium.

Credits

Amended by Laws 1973, Ch. 136, § 2, eff. Jan. 1, 1974; Laws 1994, Ch. 255, § 2; Laws 1996, Ch. 232, § 1; Laws 2001, Ch. 201, § 1; Laws 2003, Ch. 180, § 9; Laws 2004, Ch. 307, § 1; Laws 2007, Ch. 148, § 1; Laws 2014, Ch. 186, § 13, eff. July 1, 2015.

Notes of Decisions (204)

A. R. S. § 23-902, AZ ST § 23-902
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-903

§ 23-903. Application of chapter to persons engaged in interstate commerce; limitation

Currentness

The provisions of this chapter shall apply to employers and their employees engaged in intrastate and also in interstate and foreign commerce for whom a rule of liability or method of compensation has been or may be established by the United States only to the extent that their mutual connection with intrastate work is clearly separate and distinguishable from interstate or foreign commerce.

Notes of Decisions (7)

A. R. S. § 23-903, AZ ST § 23-903
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. § 23-904

§ 23-904. Arizona worker injuries in other state; injury to foreign worker in this state; evidence of insurance; judicial notice of other state's laws

Effective: August 25, 2020
Currentness

A. If a worker who has been hired or is regularly employed in this state receives a personal injury by accident arising out of and in the course of the worker's employment, the worker is entitled to compensation according to the laws of this state even if the injury was received outside this state.

B. If a worker who is employed in this state and is subject to this chapter temporarily leaves this state incidental to that employment and receives an injury arising out of and in the course of employment, the worker, or beneficiaries of the worker if the injury results in death, is entitled to the benefits of this chapter as though the worker were injured in this state.

C. A worker from another state and the employer of the worker in that other state are exempt from this chapter while that worker is temporarily in this state doing work for an employer if all of the following are true:

1. The employer has furnished workers' compensation insurance coverage under the workers' compensation insurance or similar laws of a state other than Arizona so as to cover that worker's employment while in this state.

2. The extraterritorial provisions of this chapter are recognized in that other state.

3. Employers and workers who are covered in this state are likewise exempt from the application of the workers' compensation insurance act or similar laws of the other state.

4. The benefits under the workers' compensation insurance act or similar laws of the other state, or other remedies under a similar act or laws, are the exclusive remedy against the employer for any injury, whether resulting in death or not, received by the worker while temporarily working for that employer in this state.

D. A certificate from a duly authorized officer of the commission, the department of insurance and financial institutions or a similar department of another state certifying that the employer in the other state is insured in that state is prima facie evidence that the employer carries that workers' compensation insurance.

E. If in any appeal or other litigation the construction of the laws of another state is required, the courts shall take judicial notice of the laws of the other state.

F. For the purposes of this section, a worker is deemed to be temporarily in a state doing work for an employer if, during the three hundred sixty-five days immediately preceding either the worker's date of injury or, in the case of an occupational disease or cumulative trauma claim, the worker's last date of injurious exposure, the worker performs fewer than ninety continuous days of required services in the state under the direction and control of the employer.

G. If a worker has a claim under the workers' compensation laws of another state, territory, province or foreign nation for the same injury or occupational disease as the claim filed in this state, the total amount of compensation paid or awarded under the other state's workers' compensation laws shall be credited against the compensation due under the workers' compensation laws of this state. The worker is entitled to the full amount of compensation due under the laws of this state. If compensation under the laws of this state is more than the compensation under the laws of the other state, or compensation paid the worker under the laws of the other state is recovered from the worker, the insurer shall pay any unpaid compensation to the worker up to the amount required by the claim under the laws of this state.

H. Claims made after September 13, 2013 are subject to this section regardless of the date of injury.

Credits
Added by Laws 2013, Ch. 34, § 2. Amended by Laws 2020, Ch. 37, § 127.

Notes of Decisions (2)

A. R. S. § 23-904, AZ ST § 23-904
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-905

§ 23-905. Minor employees; limitation on payment of lump sum award; additional compensation

Currentness

A. A minor working at an age and at an occupation legally permitted shall be deemed of the age of majority for the purposes of this chapter, and no other person shall have any claim or right to compensation for an injury to such minor employee, but an award of a lump sum of compensation to the minor employee shall be paid only to his legally appointed guardian.

B. An injured minor who is working at an age and at an occupation which is not legally permitted is entitled to additional compensation in an amount equal to fifty per cent of the compensation the injured minor would otherwise receive pursuant to this chapter. If an insurance carrier is required to pay additional compensation pursuant to this subsection, the insurance carrier shall be subrogated and entitled to recover any such amounts paid from the employer.

Credits
Amended by Laws 1985, Ch. 39, § 5.

Notes of Decisions (6)

A. R. S. § 23-905, AZ ST § 23-905
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-906

§ 23-906. Liability under chapter or under common law of employer securing compensation; carriers; service representatives; right of employee to make election; procedure for making election

Currentness

A. Employers who comply with the provisions of § 23-961 or 23-962 as to securing compensation, and the employers' workers' compensation insurance carriers or administrative service representatives, shall not be liable for damages at common law or by statute, except as provided in this section, for injury or death of an employee wherever occurring, but it shall be optional with employees to accept compensation as provided by this chapter or to reject the provisions of this chapter and retain the right to sue the employer as provided by law.

B. The employee's election to reject the provisions of this chapter shall be made by a notice in writing, signed and dated by him and given to his employer, in duplicate in substantially the following form:

To (name of employer):

You are hereby notified that the undersigned elects to reject the terms, conditions and provisions of the law for the payment of compensation, as provided by the compulsory compensation law of the state of Arizona, and acts amendatory thereto.

C. The notice shall be filed with the employer prior to injuries sustained by the employee, and within five days the employer shall file with his insurance carrier the notice so served by the employee. All employees shall be conclusively presumed to have elected to take compensation in accordance with the terms, conditions and provisions of this chapter unless the notice in writing has been served by the employee upon his employer prior to injury.

D. Every employer engaged in the occupations designated in this chapter shall post and keep posted in a conspicuous place upon his premises, in English and Spanish and available for inspection by all workmen, a notice in substantially the following form:

All employees are hereby notified that in the event they do not specifically reject the provisions of the compulsory compensation law they are deemed by the laws of Arizona to have accepted the provisions of such law, and to have elected to accept compensation under the terms of such law, and that under the terms thereof employees have the right to reject the same by written notice thereof prior to any injury sustained, and that blanks and forms for such notice are available to all employees at the office of this company.

E. If an employer fails to post and keep posted the notice as required by this section, or fails to keep available at the place where the employees are hired the blank forms of notice to be signed by the employee, no employee who thereafter engages in employment for such employer, during the time that the notices are not posted or during the time that the blanks are not available, shall be deemed to have accepted the provisions of this chapter, and it shall be optional for such employee, if injured

during the period when blanks were not available or the notice was not posted, to accept compensation under the provisions of this chapter or maintain other action against the employer.

Credits

Amended by Laws 1971, Ch. 173, § 7; Laws 1977, Ch. 109, § 1; Laws 1978, Ch. 92, § 7, eff. Oct. 1, 1978; Laws 1980, Ch. 246, § 21; Laws 1983, Ch. 87, § 1, eff. April 12, 1983; Laws 1984, Ch. 188, § 23; Laws 1987, 3rd S.S., Ch. 2, § 2.

Notes of Decisions (105)

A. R. S. § 23-906, AZ ST § 23-906

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. § 23-907

§ 23-907. Liability of employer failing to secure compensation; defenses; presumption; right of employee to compensation under chapter; information exchange; civil penalties; settlement of disputed claim

Currentness

A. Employers who are subject to and who fail to comply with § 23-961 or 23-962 shall not be entitled to the benefits of this chapter during the period of noncompliance, but shall be liable in an action under any other applicable law of the state. In such action the defendant shall not avail himself of the defenses of assumption of risk or contributory negligence. In all such actions proof of the injury shall constitute prima facie evidence of negligence on the part of the employer and the burden shall be upon the employer to show freedom from negligence resulting in the injury.

B. An employee of such an employer, or the employee's dependents in case death ensued, in lieu of proceeding against the employer by civil action in court, may file an application with the commission for compensation in accordance with this chapter, and the commission shall hear and determine the application for compensation in the manner other claims are heard and determined before the commission. Except for a protest of compensability, an employer who protests or petitions the commission for relief of actions or determinations made by the special fund established by § 23-1065 shall be in compliance with § 23-961 or 23-962. The employer's protest or petition shall include proof that the employer is complying with § 23-961 or 23-962. The proof shall be either a copy of the declaration page of the workers' compensation insurance policy under § 23-961, subsection A, paragraph 1 or a notice to the commission that the employer is in good standing with the commission under § 23-961, subsection A, paragraph 2. The compensation so determined shall be paid from the special fund to the person entitled as provided in this section.

C. The special fund may begin the payment of medical or compensation benefits on a claim which involves an employer who has failed to secure compensation as required by § 23-961 and which is processed under subsection B of this section, pending finality of a notice, a determination, an order or a finding and award on a claim, condition or other matter accepted by the special fund. After payment begins, the payment shall not be interrupted if there is a protest, petition for hearing, request for review or appeal to a higher court by an employer unless, before a notice, determination or order is final, the special fund issues a notice, determination or order that rescinds or amends its prior action or terminates the payment of medical or compensation benefits. Any overpayment of medical or compensation benefits that occurs shall be credited or adjusted against any future liability on the same claim. Any overpayment of medical or compensation benefits to a claimant for a claim, condition or matter that is finally determined to be noncompensable shall be borne by the special fund.

D. The commission may spend monies from the special fund that relate to a claim under this section and shall include as part of an employer's liability under this section those expenditures for the employment or contracting of medical, rehabilitation or labor market consultants, experts or examiners that are necessary for processing and determining benefits and assisting in determining the liability of the special fund on a claim.

E. The employer shall be notified of the employer's liability to the special fund periodically and this notice shall include a ten per cent penalty of the amount expended by the special fund or a penalty of one thousand dollars, whichever is greater, plus interest on the amount expended and the penalty pursuant to § 44-1201. The payments made from the special fund pursuant to the award plus the penalty shall act as a judgment against the employer. The commission shall file the award in the office of the clerk of the superior court in any county in the state and such award shall be entered in the civil order book and judgment docket and when so filed and entered shall be a lien for eight years from the date of the award upon the property of the employer located in the county. Execution may issue thereon within eight years in the same manner and with like effect as if the award were a judgment of the superior court. The commission may recover reasonable attorney fees incurred pursuant to this section. Any civil penalties and interest assessed pursuant to this section shall be deposited, pursuant to §§ 35-146 and 35-147, in the state general fund and any payments and attorney fees shall be deposited in the special fund account.

F. An employer with one or more employees who is required to comply with this chapter but who fails to obtain coverage through an insurance carrier or as a self-insurer shall be subject to an action by the commission to apply to the court for an injunction which shall cause the employer to cease the operation of business until such employer complies with the provisions of law pertaining thereto.

G. The commission and other state and local governmental agencies may exchange information concerning employers who fail to comply with § 23-961 or 23-962 with other federal, state or local governmental agencies. This exchange of information shall be made only for the purpose of the valid administrative needs of the programs administered by the commission or other agencies and shall not be made for the purpose of criminal prosecution of an employer.

H. The commission may assess a civil penalty of one thousand dollars on an uninsured employer if the commission makes an award for a noncompensable claim against the employer and finds that:

1. At the time of the accident for which the claim was made the employer was subject to this chapter.

2. The employer was not insured pursuant to this chapter.

I. The commission may issue an order assessing a civil penalty of not to exceed one thousand dollars on an employer who is subject to this chapter and who is not insured pursuant to this chapter. The order is final against the employer unless the employer requests a hearing before the commission within fifteen working days after a copy of the order is mailed to the employer. The employer's request for hearing shall specify the facts and grounds that are the basis of the employer's objection to the order issued under this subsection. Following the hearing the commission may affirm, reverse or modify its order and shall serve a copy of its decision by first class mail on the employer. An employer aggrieved by this decision may seek judicial review pursuant to title 12, chapter 7, article 6. [1]

J. If the commission has assessed a civil penalty under this section against an employer within the previous five years for failure to secure workers' compensation as required under this chapter, the commission may assess an additional civil penalty against the employer that:

1. Does not exceed five thousand dollars for the second failure to secure the payment of compensation.

2. Does not exceed ten thousand dollars for a third or subsequent failure to secure the payment of compensation. As an aggravating factor only, the commission may consider the economic benefit that the employer received by failing to comply with this chapter.

K. In determining the amount of the final penalty under subsection H, I or J of this section, the commission may consider any relevant factor to waive or reduce the penalty, including:

1. The history of the employer's noncompliance with § 23-961 or 23-962.

2. The history of no insurance claims filed against the employer.

3. Whether the failure to secure workers' compensation coverage was inadvertent. For the purposes of this paragraph, “inadvertent” includes a lapse in coverage of not more than thirty days if there is a change of insurance carrier, a change of ownership or a change in the form of the business.

4. Whether the failure to secure workers' compensation coverage was because the employer was a victim of fraud, misrepresentation or gross negligence by an insurance agent or broker or by a person whom a reasonable person would believe is an insurance agent or broker.

L. Civil penalties assessed pursuant to subsections H, I and J of this section are payable to the state general fund and shall act as a judgment in the same manner as prescribed in subsection E of this section. Recovery of attorney fees and accrual of interest are the same as prescribed in subsection E of this section.

M. The commission may compromise or otherwise settle a disputed claim with an employee of an employer who is subject to and who fails to comply with § 23-961 or 23-962 by filing a notice of compromise and settlement or notice of stipulation with the presiding administrative law judge. The notice shall be served on the employer at the last known mailing address as shown on the records of the commission. The employer shall keep the commission informed of its current mailing address once the employer has been notified by the commission of the filing of a claim against the employer. If the employer does not request a hearing protesting the terms of the agreement or stipulation within ten working days of the service of the notice, the commission and the employee may execute the agreement or stipulation without the consent of the employer, subject to the approval of the presiding administrative law judge. Any payments made to the employee pursuant to this subsection shall be paid from the special fund and are subject to reimbursement and collection from the employer in the same manner as other payments made pursuant to this chapter.

Credits

Amended by Laws 1968, 4th S.S., Ch. 6, § 12, eff. Jan. 2, 1969; Laws 1971, Ch. 173, § 8; Laws 1973, Ch. 133, § 17; Laws 1973, Ch. 136, § 3, eff. Jan. 1, 1974; Laws 1974, Ch. 184, § 5, eff. May 17, 1974; Laws 1977, Ch. 109, § 2; Laws 1983, Ch. 87, § 2, eff. April 12, 1983; Laws 1985, Ch. 39, § 6; Laws 1986, Ch. 136, § 1; Laws 1990, Ch. 33, § 1; Laws 1996, Ch. 102, § 19; Laws 2000, Ch. 193, § 149; Laws 2003, Ch. 180, § 10.

Notes of Decisions (32)

Footnotes

1 Section 12-901 et seq.

A. R. S. § 23-907, AZ ST § 23-907
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-908

§ 23-908. Injury reports by employer and physician; schedule of fees; notification; public meeting; violation; classification

Effective: September 24, 2022
Currentness

A. Every employer that is affected by this chapter, and every physician who attends an injured employee of that employer, shall file with the commission and the employer's insurance carrier from time to time a full and complete report of every known injury to the employee arising out of or in the course of employment and resulting in loss of life or injury requiring medical treatment. The report shall be furnished to the commission and the insurance carrier at times and in the form and detail the commission prescribes, and the report shall make special answers to all questions required by the commission under its rules. For the purposes of this subsection, medical treatment does not include any onetime, short-term treatment by nonmedical staff that requires little technology or training to administer, including treatment of minor scratches, cuts, burns and splinters and other issues that ordinarily do not require medical care.

B. The commission shall fix a schedule of fees to be charged by physicians, physical therapists or occupational therapists attending injured employees and, subject to subsection C of this section, for prescription medicines required to treat an injured employee under this chapter. Notwithstanding subsection C of this section, the schedule of fees may include other reimbursement guidelines for medications dispensed in settings that are not accessible to the general public. The commission shall annually review the schedule of fees. For the purposes of this subsection, settings that are not accessible to the general public do not include mail order pharmacies delivering pharmaceutical services to workers' compensation claimants, if both of the following apply:

1. The pharmacy does not limit or restrict access to claimants with an affiliation to a medical provider or other entity.

2. Any medical provider or other entity referring a claimant to the pharmacy does not receive or accept any rebate, refund, commission, preference or other consideration as compensation for the referral.

C. If a schedule of fees for prescription medicines adopted pursuant to subsection B of this section includes provisions regarding the use of generic equivalent drugs or interchangeable biological products, those provisions shall comply with § 32-1963.01, subsections A, B and D through L. If the commission considers the adoption of fee schedule provisions that involve specific prices, values or reimbursements for prescription drugs, the commission shall base the adoption on studies or practices that are validated and accepted in the industry, including the applicability of formulas that use average wholesale price, plus a dispensing fee, and that have been made publicly available for at least one hundred eighty days before any hearing conducted by the commission. Before the commission takes final action on the schedule of fees pursuant to this subsection and subsection B of this section, except during a public health emergency, the commission shall:

1. Prominently post on its publicly accessible website the proposed schedule of fees at least thirty days before conducting a public hearing on that proposed schedule of fees.

2. Hold at least one meeting that all interested parties may jointly attend and interactively participate in after posting the proposed schedule of fees but before conducting the hearing on the proposed schedule of fees.

3. At least seven business days in advance, prominently post on its publicly accessible website the final proposed schedule of fees to be acted on for adoption.

D. Notwithstanding § 12-2235, information obtained by any physician or surgeon examining or treating an injured person shall not be considered a privileged communication if that information is requested by interested parties for a proper understanding of the case and a determination of the rights involved. Hospital records of an employee concerning an industrial claim shall not be considered privileged if requested by an interested party in order to determine the rights involved. Medical information from any source pertaining to conditions unrelated to the pending industrial claim shall remain privileged.

E. When an accident occurs to an employee, the employee shall forthwith report the accident and the injury resulting from the accident to the employer, and any physician employed by the injured employee shall forthwith report the accident and the injury resulting from the accident to the employer, the insurance carrier and the commission.

F. If an accident occurs to an employee, the employer may designate in writing a physician chosen by the employer, who shall be allowed by the employee, or any person in charge of the employee, to make one examination of the injured employee in order to ascertain the character and extent of the injury occasioned by the accident. The physician so chosen shall forthwith report to the employer, the insurance carrier and the commission the character and extent of the injury as the physician ascertains. If the accident is not reported by the employee or the employee's physician forthwith, as required, or if the injured employee or those in charge of the employee refuse to allow the employer's physician to make the examination, and the injured employee is a party to the refusal, no compensation shall be paid for the injury claimed to have resulted from the accident. The commission may relieve the injured person or that person's dependents from the loss or forfeiture of compensation if it believes after investigation that the circumstances attending the failure on the part of the employee or physician to report the accident and injury are such as to have excused them.

G. Within ten days after receiving notice of an accident, the employer shall inform the insurance carrier and the commission on the forms and in the manner as prescribed by the commission.

H. Immediately on notice to the employer of an accident resulting in an injury to an employee, the employer shall provide the employee with the name and address of the employer's insurance carrier, the policy number and the expiration date.

I. Any person failing or refusing to comply with this section is guilty of a petty offense.

J. Subsection B of this section does not prohibit:

1. A health care provider or pharmacy from entering into a separate contract or network that governs fees, in which case reimbursement shall be made according to the applicable contracted charge or negotiated rate.

2. An employer from directing medical, surgical or hospital care pursuant to § 23-1070.

Credits

Amended by Laws 1968, 4th S.S., Ch. 6, § 13, eff. Jan. 2, 1969; Laws 1973, Ch. 133, § 18; Laws 1978, Ch. 92, § 8, eff. Oct. 1, 1978; Laws 1978, Ch. 201, § 361, eff. Oct. 1, 1978; Laws 1988, Ch. 36, § 1; Laws 1999, Ch. 331, § 1; Laws 2004, Ch. 165, § 2; Laws 2014, Ch. 102, § 1; Laws 2016, Ch. 293, § 1, eff. Jan. 1, 2017; Laws 2018, Ch. 101, § 1; Laws 2021, Ch. 204, § 1, eff. April 9, 2021; Laws 2022, Ch. 56, § 1, eff. March 24, 2022; Laws 2022, Ch. 368, § 3.

Notes of Decisions (39)

A. R. S. § 23-908, AZ ST § 23-908
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-909

§ 23-909. Motion picture exemption

Currentness

A. The provisions of this chapter shall not apply to employers and their employees engaged in any phase of the motion picture business that meet all of the following requirements:

1. The motion picture company engaging in such work is temporarily within the state for a period not to exceed eight months.

2. Such motion picture company is otherwise insured by a recognized insurance company where the premiums and benefits under such other insurance are at least equal to those provided in the workers' compensation laws in the state in which such company is incorporated, or if not incorporated, has its principal offices.

B. All Arizona residents employed by any company fulfilling the exemption requirements of this section shall execute a form rejecting the provisions of the compulsory compensation law of the state of Arizona and accepting the insurance coverage provided in this section. The form shall be in writing, signed and dated by the employee and given to his employer in duplicate in substantially the following form:

"To (name of employer):

You are hereby notified that the undersigned elects to reject the terms, conditions and provisions of the law for the payment of compensation, as provided by the compulsory compensation law of the state of Arizona, and acts amendatory thereto. The undersigned elects to come under the policy of insurance in _____ insurance company secured by you and which carries similar premiums and benefits as provided under the compensation laws of the state of _____."

C. The provisions of § 23-906 shall apply to the insurance provided by the employer in this section, and shall be construed so that any reference to compulsory compensation of Arizona in such section is interpreted to include the insurance provided under this section. An election to come under the provisions of the insurance in this section shall not render the employer liable for damages of common law.

Credits
Added by Laws 1967, Ch. 125, § 1. Amended by Laws 1984, Ch. 188, § 24.

A. R. S. § 23-909, AZ ST § 23-909
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-910

§ 23-910. Exemption for licensees

Currentness

The provisions of this chapter do not apply to a person who performs the services of a licensee as defined in § 32-2101 under the following conditions:

1. Substantially all of the remunerations whether or not paid in cash for services performed by an individual as a real estate licensee are directly related to sales or other output including the performance of services rather than the number of hours worked.

2. The services performed by the licensee are performed pursuant to a written contract between the licensee and the person for whom the services are performed and such contract provides that the licensee will not be treated as an employee with respect to such services for federal tax purposes and for the purposes of this chapter.

Credits
Added by Laws 1983, Ch. 92, § 1. Amended by Laws 1989, Ch. 230, § 1.

A. R. S. § 23-910, AZ ST § 23-910
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. T. 23, Ch. 6, Art. 2, Refs & Annos
Currentness

A. R. S. T. 23, Ch. 6, Art. 2, Refs & Annos, AZ ST T. 23, Ch. 6, Art. 2, Refs & Annos
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A.R.S. § 23-921

§ 23-921. Administration of chapter

Currentness

A. The industrial commission of Arizona is charged with the duties of the administration of this chapter, and with the adjudication of claims for compensation arising out of provisions of this chapter and any of its members or assistants so authorized may:

1. Hold hearings at any place within the state or without the state by agreement of the parties.

2. Administer oaths.

3. Issue and serve by the commission's representatives, or by any sheriff, subpoenas for the attendance of witnesses and claimants and the production of reports, papers, contracts, books, accounts, documents and testimony. The commission may require the attendance and testimony of employers, their officers and representatives before any proceeding of the commission, and the production by employees of books, records, papers and documents.

4. Generally provide for the taking of testimony and for the recording of proceedings held in accordance with this chapter.

B. The commission may make and declare all rules and regulations which are reasonably required in the performance of its duties, including but not limited to rules of practice and procedure in connection with hearing and review proceedings. Such rules and regulations may provide for informal prehearing conferences in order to expedite claim adjudication, amicably dispose of controversies, narrow issues and simplify the method of proof at hearings.

C. The commission may incur such expenses as it determines are reasonably necessary to perform its authorized functions, which expenses shall be a charge against the administrative fund.

D. The commission may charge any person with contempt who refuses to comply with any order of the commission, upon application to the superior court. Any person held in contempt may be punished by a fine of not to exceed one thousand dollars.

Credits
Amended by Laws 1968, 4th S.S., Ch. 6, § 14, eff. Jan. 2, 1969; Laws 1976, Ch. 162, § 42.

Notes of Decisions (36)

A. R. S. § 23-921, AZ ST § 23-921
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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 KeyCite Red Flag - Severe Negative Treatment
KeyCite Red Flag Negative Treatment §§ 23-922 to 23-925. Repealed by Laws 1968, 4th S.S., Ch. 6, § 73, eff. Jan. 2, 1969

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A.R.S. § 23-922

§§ 23-922 to 23-925. Repealed by Laws 1968, 4th S.S., Ch. 6, § 73, eff. Jan. 2, 1969

Currentness

A. R. S. § 23-922, AZ ST § 23-922
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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KeyCite Red Flag - Severe Negative Treatment
KeyCite Red Flag Negative Treatment §§ 23-922 to 23-925. Repealed by Laws 1968, 4th S.S., Ch. 6, § 73, eff. Jan. 2, 1969

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A.R.S. § 23-925

§§ 23-922 to 23-925. Repealed by Laws 1968, 4th S.S., Ch. 6, § 73, eff. Jan. 2, 1969

Currentness

A. R. S. § 23-925, AZ ST § 23-925
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-926

§ 23-926. Inspection of employer records; noncompliance by employer; penalty

Currentness

A. All books, records and payrolls of the employer, including nonconfidential employer records on file with other state or local governmental agencies, showing or reflecting in any way the wage expenditure of the employer shall always be open for inspection by the commission or its assistants to ascertain information necessary for its administration of the law.

B. An employer who refuses to submit his books, records and payrolls for inspection as provided by this section is liable for a penalty of five hundred dollars for each offense which shall be collected by a civil action in the name of the state, and the recovery shall be paid to the state general fund. The commission may recover reasonable attorney fees incurred pursuant to this section.

Credits

Amended by Laws 1971, Ch. 173, § 9; Laws 1985, Ch. 39, § 7; Laws 1996, Ch. 102, § 20.

Notes of Decisions (1)

A. R. S. § 23-926, AZ ST § 23-926
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A.R.S. § 23-927

§ 23-927. Power to enter places of employment

Currentness

A commissioner may enter any place of employment to collect facts and statistics, and may bring to the attention of any employer any law or order of the commission and the failure of such employer to comply therewith. No employer shall refuse to admit a commissioner to his place of employment.

A. R. S. § 23-927, AZ ST § 23-927
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-928

§ 23-928. Investigation by agents

Currentness

A. For the purpose of making an investigation with regard to any employment or place of employment, the commission may appoint, by an order in writing, a member of the commission or any other competent person who is a resident of the state, an agent whose duties shall be prescribed in the order.

B. In the discharge of his duties, the agent shall have the inquisitorial powers granted by this chapter to the commission and the same powers with regard to taking testimony as a referee or master appointed by a superior court. The recommendation made by such agent shall be advisory only and shall not preclude taking further evidence or making further investigations.

Notes of Decisions (5)

A. R. S. § 23-928, AZ ST § 23-928
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A.R.S. § 23-929

§ 23-929. Enforcement of chapter

Currentness

Upon request of the commission the attorney general, or under his direction the county attorney of the proper county, shall institute and prosecute the necessary actions or proceedings for the enforcement of the provisions of this chapter, or for any penalty provided for in this chapter, and shall prosecute or defend all actions or proceedings brought by or against the commission, or the members thereof in their official capacity. The commission may compromise any action.

Credits

Amended by Laws 1968, 4th S.S., Ch. 6, § 15, eff. Jan. 2, 1969; Laws 1976, Ch. 162, § 43.

Notes of Decisions (3)

A. R. S. § 23-929, AZ ST § 23-929
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-930

§ 23-930. Unfair claim processing practices; bad faith; civil penalties

Effective: August 25, 2020
Currentness

A. The commission has exclusive jurisdiction as prescribed in this section over complaints involving alleged unfair claim processing practices or bad faith by an employer, self-insured employer, insurance carrier or claims processing representative relating to any aspect of this chapter. The commission shall investigate allegations of unfair claim processing or bad faith either on receiving a complaint or on its own motion.

B. If the commission finds that unfair claim processing or bad faith has occurred in the handling of a particular claim, it shall award the claimant, in addition to any benefits it finds are due and owing, a benefit penalty of twenty-five percent of the benefit amount ordered to be paid or $500, whichever is more.

C. If the commission finds that an employer, self-insured employer, insurance carrier or claim processing representative has a history or pattern of repeated unfair claim processing practices or bad faith, it may impose a civil penalty of up to $1,000 for each violation found. The civil penalty shall be deposited, pursuant to §§ 35-146 and 35-147, in the state general fund.

D. Any party aggrieved by an order of the commission under this section may request a hearing pursuant to § 23-947. The hearing and decision shall be conducted pursuant to § 23-941.

E. The commission shall adopt by rule a definition of unfair claim processing practices and bad faith. In adopting a rule under this subsection, the commission shall consider, among other factors, recognized and approved claim processing practices within the insurance industry, the commission's own experience in processing workers' compensation claims and the workers' compensation and insurance laws of this state.

F. This section does not limit or interfere with the authority of the department of insurance and financial institutions as provided by law to regulate any insurance carriers, including the jurisdiction of the department of insurance and financial institutions over unfair claim settlement practices as provided in § 20-461.

Credits
Added by Laws 1987, 3rd S.S., Ch. 2, § 3, eff. Jan. 1, 1988. Amended by Laws 1990, Ch. 62, § 1; Laws 1996, Ch. 102, § 21; Laws 2000, Ch. 193, § 150; Laws 2020, Ch. 37, § 128.

Notes of Decisions (14)

A. R. S. § 23-930, AZ ST § 23-930
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KeyCite Red Flag - Severe Negative Treatment
KeyCite Red Flag Negative Treatment § 23-931. Repealed by Laws 1968, 4th S.S., Ch. 6, § 73, eff. Jan. 2, 1969

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A.R.S. § 23-931

§ 23-931. Repealed by Laws 1968, 4th S.S., Ch. 6, § 73, eff. Jan. 2, 1969

Currentness

A. R. S. § 23-931, AZ ST § 23-931
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-932

§ 23-932. Violations; classification

Currentness

A person who violates any provision of this chapter, commits any act therein prohibited, knowingly fails or refuses to perform any duty thereby imposed within the time prescribed by law or by the commission, or knowingly fails or refuses to obey an order of the commission or a judgment of a court made and entered under the provisions of this chapter, for which no penalty or punishment is otherwise specifically provided, is guilty of a class 6 felony.

Credits
Amended by Laws 1978, Ch. 201, § 362, eff. Oct. 1, 1978; Laws 1985, Ch. 39, § 8.

Notes of Decisions (2)

A. R. S. § 23-932, AZ ST § 23-932
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-933

§ 23-933. Priority of judgment against assets of employer

Currentness

Judgments obtained in any action prosecuted by the commission or by the state under the authority of this chapter shall have the same priority against the assets of the employer as claims for taxes.

A. R. S. § 23-933, AZ ST § 23-933
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-934

§ 23-934. Fraud; investigations; rules

Effective: October 30, 2023
Currentness

A. The commission shall establish a fraud unit for the purpose of investigating fraudulent activities, statements or representations made in connection with workers' compensation claims. The fraud unit may investigate allegations of fraud either on receiving a complaint or on the fraud unit's own motion. Any allegation involving unfair claim processing practices or bad faith by an employer, self-insured employer, insurance carrier or claims processing representative shall be addressed pursuant to § 23-930.

B. The commission shall adopt rules to establish a process for receiving fraud complaints and conducting fraud investigations pursuant to this section. The rules shall establish:

1. A process by which the fraud unit verifies claimant annual earnings reported pursuant to § 23-1047 with the department of economic security unemployment insurance information for the purpose of investigating workers' compensation fraud.

2. A process of timeliness for receiving and processing fraud complaints.

3. Criteria for determining which allegations of fraud warrant investigation.

4. Duties and authorities of fraud investigators, including issuing and serving subpoenas for witnesses and documentary evidence, taking depositions, administering oaths and examining witnesses under oath relevant to the fraud investigation.

C. If, on investigation, the fraud unit is satisfied that fraudulent activities, statements or representations were made in connection with a workers' compensation benefits or payments claim for the purpose of obtaining compensation benefits or payments, the fraud unit may report violations of law to the claimant or claimant's representative, to the reporting employer, self-insured employer or insurance carrier, to the appropriate licensing agency as defined in § 20-466.04, and to the appropriate county attorney or the attorney general for prosecution.

D. This section does not limit any of the following:

1. The authority of the commission, the department of insurance and financial institutions or any other entity to pursue any remedy pursuant to § 23-970 or 23-1028.

2. The obligation of an insurer to report a fraud claim pursuant to § 20-466, subsection G.

Credits
Added by Laws 2023, Ch. 191, § 1.

A. R. S. § 23-934, AZ ST § 23-934
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. T. 23, Ch. 6, Art. 3, Refs & Annos
Currentness

A. R. S. T. 23, Ch. 6, Art. 3, Refs & Annos, AZ ST T. 23, Ch. 6, Art. 3, Refs & Annos
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A.R.S. § 23-941

§ 23-941. Hearing rights and procedure

Effective: September 29, 2021
Currentness

A. Subject to § 23-947, any interested party may file a request for a hearing concerning a claim.

B. A request for a hearing shall be made in writing, be signed by or on behalf of the interested party and include the interested party's address, state that a hearing is desired and be filed with the commission.

C. The commission shall refer the request for the hearing to the administrative law judge division for determination as expeditiously as possible. The presiding administrative law judge may dismiss a request for a hearing if it appears to the presiding administrative law judge's satisfaction that the disputed issue or issues have been resolved by the parties. Any interested party who objects to such a dismissal may request a review pursuant to § 23-943.

D. At least twenty days' prior notice of the time and place of the hearing shall be served on all parties in interest. In the case of a hearing concerning suspension of benefits, pursuant to § 23-1026, 23-1027 or 23-1071, only ten days' prior notice is required. Hearings shall be held in the county where the workman resided at the time of the injury or another place selected by the administrative law judge.

E. A record of all proceedings at the hearing shall be made but need not be transcribed unless a party applies to the court of appeals for a writ of certiorari pursuant to § 23-951. The record of the proceedings, if not transcribed, shall be kept for at least two years but may be destroyed after that time if a transcription is not requested.

F. Except as otherwise provided in this section and rules of procedure established by the commission, the administrative law judge is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure and may conduct the hearing in any manner that will achieve substantial justice.

G. Any party shall be entitled to issuance and service of subpoenas under § 23-921. Any party or the party's representative may serve such subpoenas.

H. Any interested party or the interested party's authorized agent shall be entitled to inspect any claims file of the commission, if such authorization is filed in writing with the commission.

I. Any interested party is entitled to one change of administrative law judge as a matter of right. To exercise the right to a change of administrative law judge, the interested party shall file a notice of change of administrative law judge. The notice of change of administrative law judge shall:

1. Be signed by the interested party or the interested party's authorized agent.

2. State the name of the administrative law judge to be changed.

3. Certify that the interested party or the interested party's authorized agent has timely filed the notice of change of administrative law judge. A notice of change of administrative law judge as a matter of right is timely if filed not more than thirty days after the date of the notice of hearing or not more than thirty days after a new administrative law judge is assigned to the claim if another interested party or the interested party's authorized agent has filed a notice of change of administrative law judge as a matter of right.

4. Certify that the interested party or the interested party's authorized agent has not previously been granted a change of administrative law judge as a matter of right for the claim.

J. Any interested party to a hearing before the commission or the interested party's authorized agent may file an affidavit for change of administrative law judge for cause against a presiding administrative law judge that sets forth any of the grounds as provided in subsection K of this section. The chief administrative law judge shall immediately transfer the matter to another administrative law judge. An affidavit for change of administrative law judge for cause shall be filed within the time frames provided in subsection I of this section.

K. Grounds that may be alleged as provided in subsection J of this section for change of administrative law judge for cause are:

1. That the administrative law judge has been engaged as counsel in the hearing before appointment as administrative law judge.

2. That the administrative law judge is otherwise interested in the hearing.

3. That the administrative law judge is of kin or otherwise related to a party to the hearing.

4. That the administrative law judge is a material witness in the hearing.

5. That the party filing the affidavit has cause to believe and does believe that on account of the bias, prejudice or interest of the administrative law judge the party cannot obtain a fair and impartial hearing.

L. For the purposes of subsections I and J of this section, the employer and the employer's insurance carrier are considered a single party unless the employer's and the employer's insurance company's interests are in conflict.

M. After final disposition of the proceedings in which they are used, exhibits marked for identification or introduced as evidence at hearings or proceedings that cannot be readily copied, photocopied, mechanically reproduced or otherwise preserved as a document for inclusion in the record of the proceedings may be disposed of in the following manner:

1. By written notice, the attorneys of record, or if none, the parties, shall be notified that the counsel or the party introducing the exhibit may claim it at the commission within sixty days.

2. Sixty days after notification, any exhibit remaining in the custody of the commission shall be disposed of as state surplus property pursuant to the direction of the department of administration. A written description of the exhibit shall be included in the record to preserve the exhibit's identity.

Credits

Added by Laws 1968, 4th S.S., Ch. 6, § 17, eff. Jan. 2, 1969. Amended by Laws 1971, Ch. 173, § 10; Laws 1973, Ch. 133, § 19; Laws 1974, Ch. 184, § 6, eff. May 17, 1974; Laws 1975, Ch. 145, § 1; Laws 1978, Ch. 92, § 9, eff. Oct. 1, 1978; Laws 1980, Ch. 246, § 22; Laws 2016, Ch. 186, § 1; Laws 2021, Ch. 333, § 2.

Notes of Decisions (652)

A. R. S. § 23-941, AZ ST § 23-941

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-941.01

§ 23-941.01. Settlement of claims; full and final; exception; definitions

Effective: August 3, 2018
Currentness

A. The interested parties to a claim may:

1. Settle and release all or any part of an accepted claim for compensation, benefits, penalties or interest.

2. If the period of temporary disability is terminated by a final notice of claim status, award of the commission or stipulation of the interested parties, negotiate a full and final settlement of an accepted claim.

B. Any full and final settlement shall:

1. Be in writing.

2. Be signed by the carrier, special fund or self-insured employer or an authorized representative of the carrier, special fund or self-insured employer and the employee or the employee's authorized representative.

3. Acknowledge that the employee had the opportunity to seek legal advice and be represented by counsel.

4. Include a description of the employee's medical conditions that have been identified and contemplated at the time of the settlement agreement.

5. Have attached the information provided by the carrier, special fund or self-insured employer pursuant to subsection C, paragraphs 2 and 3 of this section.

C. A full and final settlement shall include the following signed attestations:

1. The employee understands the rights settled and released by the agreement.

2. The employee has been provided information from the carrier, special fund or self-insured employer that outlines any reasonable anticipated future medical, surgical and hospital benefits relating to the claim, the projected cost of those benefits, an explanation of how those projected costs were determined and a disclosure of the amount of the settlement that represents the settlement of future medical, surgical and hospital benefits.

3. The employee has been provided information from the carrier, special fund or self-insured employer that discloses the total amount of future indemnity benefits, the employee's rated age, if applicable, the employee's life expectancy, the source of the employee's life expectancy, the present value of future indemnity benefits, the discount rate used to calculate present value and the amount of the settlement that represents the settlement of future indemnity benefits.

4. The employee understands that monies received for future medical treatment associated with the industrial injury should be set aside to ensure that the costs of the treatment will be paid.

5. The parties have considered and taken reasonable steps to protect any interests of medicare, medicaid, the Indian health service and the United States department of veterans affairs, including establishing a medicare savings account if necessary.

6. The parties have conducted a search for and taken reasonable steps to satisfy any identified medical liens and unpaid medical charges.

7. Coercion, duress, fraud, misrepresentation or undisclosed additional agreements have not been used to achieve the full and final settlement.

D. If an administrative law judge of the commission determines that the requirements of subsection B of this section are satisfied, the attestations of subsection C of this section are present and the employee is represented by counsel, the administrative law judge shall approve the settlement.

E. If the employee is not represented by counsel, the employee shall appear before an administrative law judge of the commission and the administrative law judge shall make specific factual findings regarding whether the requirements of subsections B and C of this section are satisfied. The administrative law judge shall conduct a hearing and perform a detailed inquiry into the attestations provided by the unrepresented employee pursuant to subsection C of this section. The inquiry shall include whether the unrepresented employee understands the specific rights being settled and released, the information, computation and methodology provided by the carrier, special fund or self-insured employer, and the employee's responsibility to protect the interests of other payors and ensure the payment of future treatment costs.

F. The commission may not approve a full and final settlement if the requirements of subsections B and C of this section are not met.

G. A full and final settlement payment shall be made to the employee within fifteen days after the award approving the settlement becomes final.

H. The carrier, special fund or self-insured employer shall notify the attending physician of the approval of a full and final settlement if the full and final settlement terminates the employee's entitlement to medical benefits. Unless medical benefits rendered before the approval date of the full and final settlement are subject to a dispute or payment for the treatment was included in the full and final settlement agreement, the carrier, special fund or self-insured employer remains responsible for payment for the treatment not covered by the full and final settlement agreement as provided by this chapter.

I. Notwithstanding subsection A of this section, a full and final settlement may not be negotiated to settle issues resulting in total and permanent disability pursuant to § 23-1045, subsections C and D.

J. A full and final settlement agreement may not include the settlement of claims unrelated to the claim for compensation, benefits, penalties and interest.

K. This section does not apply to the settlement of claims that have been denied.

L. For the purposes of this section:

1. “Full and final settlement” means a settlement in which the injured employee or, if the injured employee is deceased, the employee's estate, surviving spouse or dependent waives any future entitlement to benefits on the claim and any future right to change the claim pursuant to § 23-1044, subsection F or reopen the claim pursuant to § 23-1061, subsection H.

2. “Special fund” means the special fund established by § 23-1065.

Credits
Added by Laws 2017, Ch. 287, § 3, eff. Nov. 1, 2017. Amended by Laws 2018, Ch. 212, § 1.

A. R. S. § 23-941.01, AZ ST § 23-941.01
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-941.02

§ 23-941.02. Vexatious litigants; designation; definitions

Effective: August 6, 2016
Currentness

A. In a workers' compensation case before the commission, on the motion of a party, the chief administrative law judge or an administrative law judge designated by the chief administrative law judge may designate a pro se litigant a vexatious litigant. The pro se litigant shall respond within thirty days after the motion. The chief administrative law judge, or administrative law judge if designated by the chief administrative law judge, shall issue an order within thirty days after the pro se litigant's response is received or the time for response has elapsed. The vexatious litigant designation applies only to the claim at issue before the administrative law judge.

B. A pro se litigant who is designated a vexatious litigant may not file a new request for hearing, pleading, motion or other document without prior leave of the administrative law judge.

C. A pro se litigant is a vexatious litigant if the commission finds the pro se litigant engaged in vexatious conduct. A designation of vexatious litigant is suspended during the period in which the litigant is represented by legal counsel.

D. For the purposes of this section:

1. “Vexatious conduct” includes any of the following:

(a) Repeated filing of requests for hearing, pleadings, motions or other documents solely or primarily for the purpose of harassment.

(b) Unreasonably expanding or delaying commission proceedings.

(c) Bringing or defending claims without substantial justification.

(d) Engaging in abuse of discovery or conduct in discovery that has resulted in the imposition of sanctions against the pro se litigant.

(e) A pattern of making unreasonable, repetitive and excessive requests for information.

(f) Repeated filing of documents or requests for relief that have been the subject of previous rulings by the commission in the same claim.

2. “Without substantial justification” has the same meaning prescribed in § 12-349.

Credits
Added by Laws 2016, Ch. 26, § 1.

A. R. S. § 23-941.02, AZ ST § 23-941.02
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-941.03

§ 23-941.03. Settlement of claims; supportive medical maintenance benefits; definition

Effective: August 3, 2018
Currentness

A. Any final settlement agreement involving undisputed entitlement to supportive medical maintenance benefits is not valid and enforceable until the final settlement agreement is approved by the commission.

B. The commission may approve a final settlement agreement involving undisputed entitlement to supportive medical maintenance benefits if the requirements of this section are satisfied.

C. Subject to the following requirements, the interested parties to a claim may enter into a final settlement and release of a claim for undisputed entitlement to supportive medical maintenance benefits after the period of temporary disability is terminated by a final notice of claim status or award of the commission. The carrier, special fund or self-insured employer shall submit a summary of all reasonably anticipated future supportive medical maintenance benefits and the projected cost of the benefits for review by the employee. The summary shall also be included with the final settlement agreement filed with the commission. All medical conditions subject to the final settlement agreement must be described in the final settlement agreement. The final settlement provisions defined in this subsection shall apply only to future supportive medical maintenance benefits for the described condition.

D. The carrier, special fund or self-insured employer shall inform the attending physician of the approval of a final settlement agreement. Unless supportive medical maintenance benefits rendered before the date of the final settlement are subject to a dispute or payment for the treatment was included in the final settlement agreement, the carrier, special fund or self-insured employer shall remain responsible for payment for the treatment not covered by the final settlement agreement as provided by this chapter.

E. This section does not prohibit a settlement that does not constitute a final settlement.

F. For the purposes of this section, “final settlement” means a settlement in which the injured worker waives any future entitlement to supportive medical maintenance benefits for known conditions described in the agreement.

Credits
Added by Laws 2018, Ch. 212, § 2.

A. R. S. § 23-941.03, AZ ST § 23-941.03

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-942

§ 23-942. Awards of administrative law judge; contents; disposition and effect

Effective: September 29, 2021
Currentness

A. On the conclusion of any hearing, or prior thereto with concurrence of the parties, the administrative law judge promptly, and not later than thirty days after the matter is submitted for decision, shall determine the matter and make an award in accordance with the administrative law judge's determination.

B. In the event of the demise, resignation, retirement, termination of employment, or other incapacitation of the presiding administrative law judge, the award shall be determined by the chief administrative law judge or the chief administrative law judge's appointee.

C. The award shall become a part of the commission file. A copy of the award shall be served on all parties in interest.

D. The award is final when entered unless within thirty days after the date on which a copy of the award is served to the parties, one of the parties files a request for review under § 23-943. The award shall contain a statement explaining the rights of the parties under § 23-943.

Credits
Added by Laws 1968, 4th S.S., Ch. 6, § 17, eff. Jan. 2, 1969. Amended by Laws 1973, Ch. 133, § 20; Laws 1980, Ch. 246, § 23; Laws 2021, Ch. 333, § 3.

Notes of Decisions (92)

A. R. S. § 23-942, AZ ST § 23-942
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A.R.S. § 23-943

§ 23-943. Decision on review

Effective: September 29, 2021
Currentness

A. The request for review of an administrative law judge award need only state that the party requests a review of the award. The request may be accompanied by a memorandum of points and authorities, in which event any other interested party shall have fifteen days after the date of filing in which to respond. Failure to respond will not be deemed an admission against interest.

B. The request for review shall be filed with the administrative law judge division and copies of the request shall be served on all other parties to the proceeding.

C. If review has been requested, the record of such oral proceedings at the hearings before the administrative law judge for purposes of the review shall be transcribed at the expense of the commission.

D. Notice of the review shall be served on the parties.

E. The review shall be made by the presiding administrative law judge and shall be based on the record and the memoranda submitted under the provisions of subsection A of this section.

F. The presiding administrative law judge may affirm, reverse, rescind, modify or supplement the award and make such disposition of the case as is determined to be appropriate. A decision on review shall be made within sixty days after the review has been requested, with preference being given to those cases not receiving compensation.

G. The decision on review shall become a part of the commission file and a copy thereof shall be served on the parties.

H. The decision on review shall be final unless within thirty days after the date of service of such decision to the parties, one of the parties applies to the court of appeals for a writ of certiorari pursuant to § 23-951. The decision shall contain a statement explaining the rights of the parties under this section and § 23-951.

Credits
Added by Laws 1968, 4th S.S., Ch. 6, § 17, eff. Jan. 2, 1969. Amended by Laws 1971, Ch. 173, § 11; Laws 1973, Ch. 133, § 21; Laws 1980, Ch. 246, § 24; Laws 2021, Ch. 333, § 4.

Notes of Decisions (127)

A. R. S. § 23-943, AZ ST § 23-943
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-944

§ 23-944. Effective date of orders; time for compliance; effect of orders

Currentness

A. General orders of the commission shall take effect within thirty days after publication. Special orders shall take effect as therein directed.

B. The commission shall, upon application of any employer, grant such time as reasonably necessary for compliance with an order. A person may petition the commission for an extension of time to comply with an order, which the commission shall grant if it finds the extension necessary.

C. All orders of the commission in conformity with law shall be valid and in force and prima facie reasonable and lawful until found otherwise in an action brought for that purpose pursuant to the provisions of this chapter or until altered or revoked by the commission.

D. A substantial compliance with the requirements of this chapter shall be sufficient to give effect to the orders of the commission, and they shall not be declared inoperative, illegal or void for an omission of a technical nature.

Notes of Decisions (9)

A. R. S. § 23-944, AZ ST § 23-944
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A.R.S. § 23-945

§ 23-945. Petition for hearing on validity of order; procedure; substitution of order

Currentness

A. Any employer or other person interested in or affected by an order of the commission may petition for a hearing on the reasonableness and lawfulness of such order by a verified petition filed with the commission. The petition shall set forth specifically and in detail the order upon which a hearing is desired, the reasons why the order is unreasonable or unlawful and the issue to be considered by the commission on the hearing. Objections other than those set forth in the petition are deemed finally waived.

B. Upon receipt of the petition, if the issue raised in the petition has theretofore been adequately considered, the commission shall confirm, without hearing, its previous determination. If a hearing is necessary to determine the issue raised, the commission shall order a hearing thereon at such time as it prescribes. Notice of the time and place of hearing shall be given the petitioner and such other persons as the commission finds directly interested in the decision.

C. Upon the hearing, if it is found that the order complained of is unlawful or unreasonable, the commission shall substitute therefor a reasonable and lawful order, and may grant further time reasonably necessary for compliance with its order.

Notes of Decisions (36)

A. R. S. § 23-945, AZ ST § 23-945
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A.R.S. § 23-946

§ 23-946. Action asserting invalidity of order; limitation; venue and procedure

Currentness

A. Any person in interest dissatisfied with an order of the commission may within thirty days commence an action in the superior court of the county where the property, plant or place of employment affected by the order is located against the commission as defendant to set aside, vacate or amend the order, on the ground that the order is unreasonable or unlawful, and the superior court shall have exclusive jurisdiction thereof. The commission shall be served with summons as in civil actions.

B. The answer of the commission shall be filed within twenty days after service of summons upon it. The commission shall file with the answer a certified transcript of its record in the matter, whereupon the action shall be at issue and shall be advanced for trial by the court upon application of either party to the earliest possible date.

C. No action or proceeding to set aside, amend or enjoin enforcement of an order of the commission shall be brought unless the petitioner has applied to the commission for a hearing thereon as provided by § 23-945 and in such petition has raised every issue in the action.

Credits
Amended by Laws 1973, Ch. 133, § 22.

Notes of Decisions (14)

A. R. S. § 23-946, AZ ST § 23-946
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-946.01

§ 23-946.01. Stay of court proceedings pending determination of issues by commission

Currentness

A. If upon the trial provided for in § 23-946, it appears that all issues arising in the action have not theretofore been presented to the commission in the petition for a hearing as to the reasonableness and lawfulness of the order, or that the commission has not had ample opportunity to hear and determine the issues raised in the action, or has not in fact heard and determined the issues raised, the court shall before rendering judgment, unless the parties stipulate to the contrary, transmit to the commission a full statement of such issues not adequately considered, shall stay further proceedings in the action for fifteen days from the date of the transmission and may thereafter grant such further stay as is necessary.

B. Upon receipt of the statement from the court as provided in subsection A, the commission shall consider the issues not theretofore considered, and may alter, modify, amend or rescind its order complained of, and shall, within ten days from the receipt of the statement, report its order thereon to the court. The court shall thereupon order the pleading to be amended to raise the issues resulting from the alteration, modification, amendment or rescission of the commission's order, and thereafter proceed as in other civil actions.

Credits
Added by Laws 1968, 4th S.S., Ch. 6, § 18, eff. Jan. 2, 1969.

Notes of Decisions (1)

A. R. S. § 23-946.01, AZ ST § 23-946.01
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-947

§ 23-947. Time within which hearing must be requested; definition

Currentness

A. A hearing on any question relating to a claim shall not be granted unless the employee has previously filed an application for compensation within the time and in the manner prescribed by § 23-1061 and the request for a hearing is filed within ninety days after the notice sent under § 23-1061, subsection F or within ninety days of notice of a determination by the commission, insurance carrier or self-insuring employer under § 23-1047 or 23-1061, except that an employer who is subject to and fails to comply with § 23-961 or 23-962 must file a request for a hearing within thirty days of notice of a determination by the commission, or within ten days of all other awards issued by the commission.

B. As used in this section, "filed" means that the request for a hearing is in the possession of the commission. Failure to file with the commission within the required time by a party means that the determination by the commission, insurance carrier or self-insuring employer is final and res judicata to all parties. The industrial commission or any court shall not excuse a late filing unless any of the following applies:

1. The person to whom the notice is sent does not request a hearing because of justifiable reliance on a representation by the commission, employer or carrier. In this paragraph, "justifiable reliance" means that the person to whom the notice is sent has made reasonably diligent efforts to verify the representation, regardless of whether the representation is made pursuant to statutory or other legal authority.

2. At the time the notice is sent the person to whom it is sent is suffering from insanity or legal incompetence or incapacity, including minority.

3. The person to whom the notice is sent shows by clear and convincing evidence that the notice was not received.

C. The late filing shall not be excused under subsection B of this section if the person to whom the notice is sent or the person's legal counsel knew or, with the exercise of reasonable care and diligence, should have known of the fact of the notice at any time during the filing period.

Credits

Added by Laws 1968, 4th S.S., Ch. 6, § 20, eff. Jan. 2, 1969. Amended by Laws 1970, Ch. 137, § 14; Laws 1971, Ch. 173, § 12; Laws 1974, Ch. 184, § 7, eff. May 17, 1974; Laws 1980, Ch. 246, § 25; Laws 1987, Ch. 38, § 1; Laws 1987, 3rd S.S., Ch. 2, § 4; Laws 2001, Ch. 201, § 2.

Notes of Decisions (137)

A. R. S. § 23-947, AZ ST § 23-947
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-948

§ 23-948. Jurisdiction of actions concerning orders or petitions for writ of mandamus; right of appeal

Currentness

No court of this state, except the superior court, the court of appeals and the supreme court on appeal shall have jurisdiction to review, vacate, set aside, reverse, revise, correct, amend or annul any order of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the commission in the performance of its duties, but a writ of mandamus may issue from the supreme court to the commission in proper cases, and an appeal may be taken from the superior court to the supreme court in all cases.

Credits

Amended by Laws 1968, 4th S.S., Ch. 6, § 21, eff. Jan. 2, 1969.

Notes of Decisions (11)

A. R. S. § 23-948, AZ ST § 23-948
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-949

§ 23-949. Effect of action concerning order; procedure to stay order

Currentness

The pendency of an action to set aside, vacate or amend an order of the commission shall not stay or suspend the order of the commission. During pendency of the action, the superior court may stay or suspend, in whole or in part, operation of the commission's order only upon three days notice and after hearing, and the order of the court shall not become effective until a bond has been executed and filed in the action, approved by the court or the clerk thereof, payable to the state, in an amount sufficient to insure the prompt payment by the petitioning party of all damages caused by delay in the enforcement of the order of the commission.

A. R. S. § 23-949, AZ ST § 23-949
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-950

§ 23-950. Priority of actions

Effective: August 25, 2020
Currentness

Actions and proceedings under this chapter and actions or proceedings to which the commission, the department of insurance and financial institutions or the state is a party in which any question arises under this chapter or concerning an award of the commission, or an order of the commission or the department of insurance and financial institutions shall be advanced for trial or hearing over civil actions, except election contests and actions affecting the corporation commission.

Credits
Amended by Laws 1968, 4th S.S., Ch. 6, § 22, eff. Jan. 2, 1969; Laws 1976, Ch. 162, § 44; Laws 2020, Ch. 37, § 129.

Notes of Decisions (2)

A. R. S. § 23-950, AZ ST § 23-950
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-951

§ 23-951. Writ of certiorari to review lawfulness of award, order or decision upon review; procedure

Currentness

A. Any party affected by an award by the commission or by a decision upon review under the provisions of § 23-943 or by an order under the provisions of § 23-237 may apply to the court of appeals for a writ of certiorari to review the lawfulness of the award, order or decision upon review.

B. The writ of certiorari provided by subsection A of this section and by § 23-943 shall be made returnable within ten days and shall direct the commission to certify its record, proceedings and evidence to the court of appeals. The court of appeals may quash or dismiss the writ of certiorari upon the grounds of dismissal applicable to civil appeals. The review shall be limited to determining whether or not the commission acted without or in excess of its power and, if findings of fact were made, whether or not such findings of fact support the award, order or decision. If necessary, the court may review the evidence.

C. Each party to the proceedings before the commission may appear in the court of appeals.

D. The court of appeals shall enter judgment either affirming or setting aside the award, order or decision.

E. The rules of civil procedure relating to certiorari shall apply so far as applicable and not in conflict with this chapter.

Credits
Amended by Laws 1964, Ch. 102, § 5; Laws 1968, 4th S.S., Ch. 6, § 23, eff. Jan. 2, 1969; Laws 1972, Ch. 40, § 7, eff. Apr. 6, 1972; Laws 1973, Ch. 133, § 23.

Notes of Decisions (731)

A. R. S. § 23-951, AZ ST § 23-951
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-952

§ 23-952. Continuation of order or award pending hearing or appeal

Currentness

When an order or award is issued by the industrial commission awarding permanent compensation benefits, compensation shall be paid as provided in such order or award and shall not be interrupted when there is a petition for hearing or appeal to a higher court. Any overpayment of permanent compensation resulting therefrom shall be credited against any future liability involving permanent compensation benefits in the same claim.

Credits

Added by Laws 1966, Ch. 87, § 1. Amended by Laws 1975, Ch. 143, § 1.

Notes of Decisions (7)

A. R. S. § 23-952, AZ ST § 23-952
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-953

§ 23-953. Notice of award; effect of petition for hearing or appeal; overpayment

Currentness

When a notice is issued by an insurance carrier or a self-insured employer of an award for permanent compensation benefits pursuant to § 23-1044, subsection B, these benefits shall be paid as provided in the notice of award and shall not be interrupted if there is a petition for a hearing or an appeal to a higher court. Any resulting overpayment of these benefits shall be credited against any future liability for compensation benefits that may arise out of the same claim.

Credits

Added by Laws 1999, Ch. 331, § 2.

A. R. S. § 23-953, AZ ST § 23-953

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-954

§ 23-954. Payment of interest on awards

Effective: August 6, 2016
Currentness

Interest on the payment of benefits shall be paid at a rate of interest at the lesser of ten percent per annum or a rate per annum that is equal to one percent plus the prime rate as published by the board of governors of the federal reserve system in statistical release H.15 or any publication that may supersede it on the date benefits are paid. Interest shall be paid only in the following instances:

1. On an award entered by the commission or by notice of claim status awarding permanent partial disability benefits pursuant to § 23-1044, subsection B or C or permanent total disability benefits pursuant to § 23-1045, subsection B or C, if benefits are not paid within ten days after the date the award or notice becomes final.

2. On a claim for dependent benefits, if the claim is denied and subsequently accepted or found compensable by award of the commission, from the date the claim for benefits was filed.

Credits
Added by Laws 2016, Ch. 186, § 2.

A. R. S. § 23-954, AZ ST § 23-954
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. T. 23, Ch. 6, Art. 4, Refs & Annos
Currentness

A. R. S. T. 23, Ch. 6, Art. 4, Refs & Annos, AZ ST T. 23, Ch. 6, Art. 4, Refs & Annos
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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Article 4. Providing for Compensation (Refs & Annos)

A.R.S. § 23-961

§ 23-961. Methods of securing compensation by employers; deficit premium; civil penalty

Effective: August 25, 2020
Currentness

A. Employers shall secure workers' compensation to their employees in one of the following ways:

1. By insuring and keeping insured the payment of such compensation with an insurance carrier authorized by the director of the department of insurance and financial institutions to write workers' compensation insurance in this state.

2. By furnishing to the commission satisfactory proof of financial ability to pay the compensation directly or through a workers' compensation pool approved by the commission in the amount and manner and when due as provided in this chapter. The requirements of this paragraph may be satisfied by furnishing to the commission satisfactory proof that the employer is a member of a workers' compensation pool approved by the commission pursuant to § 23-961.01. The commission may require a deposit or any other security from the employer for the payment of compensation liabilities in an amount fixed by the commission, but not less than $100,000 dollars for workers' compensation liabilities. If the employer does not fully comply with the provisions of this chapter relating to the payment of compensation, the commission may revoke the authority of the employer to pay compensation directly.

B. An employer may not secure compensation to comply with this chapter by any mechanism other than as provided in this section. No insurance, combination or other program may be marketed, offered or sold as workers' compensation that does not comply with this section. An employer violates this chapter if the employer purchases or secures its obligations under this chapter through a substitute for workers' compensation that does not comply with this section.

C. Insurance carriers that transact the business of workers' compensation insurance in this state are subject to the rules of the director of the department of insurance and financial institutions.

D. On application of an insurance carrier, the director of the department of insurance and financial institutions may order the release to the insurance carrier of all or part of the cash or securities that the insurance carrier deposited before July 1, 2015 with the state treasurer pursuant to this section. In determining whether to order the release of all or part of the deposit, the director of the department of insurance and financial institutions shall consider all of the following:

1. The financial condition of the insurance carrier.

2. The insurance carrier's liabilities for workers' compensation loss and loss expenses in this state.

3. Whether the insurance carrier is subject to a finding of hazardous condition, an order of supervision, a delinquency proceeding or any other regulatory action in this state, the insurance carrier's state of domicile or any other state in which the insurance carrier transacted the business of insurance.

4. Any other factors the director of the department of insurance and financial institutions determines are relevant to the application for release of the deposit.

E. Except in the event of nonpayment of premiums, each insurance carrier shall carry a risk to the conclusion of the policy period unless the policy is cancelled by the employer or unless one or both of the parties to a professional employer agreement terminate the agreement. The policy period shall be agreed on by the insurance carrier and the employer.

F. At least thirty days' notice shall be given by the insurance carrier to the employer and to the commission of any cancellation or nonrenewal of a policy if the cancellation or nonrenewal is at the election of the insurance carrier. The insurance carrier shall promptly notify the commission of any cancellation by the employer or failure of the employer to renew the policy. The failure to give notice of nonrenewal if the nonrenewal is at the election of the insurance carrier shall not extend coverage beyond the policy period. An insurance carrier shall notify the commission on a form prescribed by the commission that it has insured an employer for workers' compensation promptly after undertaking to insure the employer.

G. Every insurance carrier on or before March 1 of each year shall pay to the state treasurer for the credit of the administrative fund, in lieu of all other taxes on workers' compensation insurance, a tax of not more than three percent on all premiums collected or contracted for during the year ending December 31 next preceding, less the deductions from such total direct premiums for applicable cancellations, returned premiums and all policy dividends or refunds paid or credited to policyholders within this state and not reapplied as premiums for new, additional or extended insurance. Every self-insured employer, including workers' compensation pools, on or before March 31 of each year shall pay a tax of not more than three percent of the premiums that would have been paid by the employer if the employer had been fully insured by an insurance carrier authorized to transact workers' compensation insurance in this state during the preceding calendar year. The commission shall adopt rules that shall specify the premium plans and methods to be used for the calculation of rates and premiums and that shall be the basis for the taxes assessed to self-insured employers. The tax shall be not less than $250 per annum and shall be computed and collected by the commission and paid to the state treasurer for the credit of the administrative fund at a rate not exceeding three percent to be fixed annually by the industrial commission of Arizona. The rate shall be no more than is necessary to cover the actual expenses of the industrial commission of Arizona in carrying out its powers and duties under this title. Any quarterly payments of tax pursuant to subsection I of this section shall be deducted from the tax payable pursuant to this subsection.

H. An insurance carrier may reduce the amount of premiums paid by an employer by up to five percent if all of the following apply:

1. The insured employer complies with the drug testing policy requirements prescribed in § 23-493.04.

2. The insured employer conducts drug testing of prospective employees.

3. The insured employer conducts drug testing of an employee after the employee has been injured.

4. The insured employer allows the employer's insurance carrier to have access to the drug testing results under paragraphs 2 and 3 of this subsection.

I. Any insurer that, pursuant to this section, paid or is required to pay a tax of $2,000 or more for the preceding calendar year shall file a quarterly report, in a form prescribed by the commission, accompanied by a payment in an amount equal to the tax due at the rates prescribed in subsection G of this section for premiums determined pursuant to subsection G of this section or an amount equal to twenty-five percent of the tax paid or required to be paid pursuant to subsection G of this section for the preceding calendar year. The quarterly payments shall be due and payable on or before the last day of the month following the close of the quarter and shall be made to the state treasurer.

J. If an overpayment of taxes results from the method prescribed in subsection I of this section the industrial commission of Arizona may refund the overpayment without interest.

K. An insurer who fails to pay the tax prescribed by subsection G or I of this section or the amount prescribed by § 23-1065, subsection A is subject to a civil penalty equal to the greater of $25 or five percent of the tax or amount due plus interest at the rate of one percent per month from the date the tax or amount was due.

L. An insurance carrier authorized to write workers' compensation insurance may not assess an employer premiums for services provided by a contractor alleged to be an employee under § 23-902, subsection B or C, unless the carrier has done both of the following:

1. Prepared written audit or field investigation findings establishing that all applicable factors for determining employment status under § 23-902 have been met.

2. Provided a copy of such findings to the employer in advance of assessing a premium.

M. Notwithstanding § 23-901, paragraph 6, subdivision (i), a sole proprietor may waive the sole proprietor's rights to workers' compensation coverage and benefits if both the sole proprietor and the insurance carrier of the employer subject to this chapter for which the sole proprietor performs services sign and date a waiver that is substantially in the following form:

> I am a sole proprietor, and I am doing business as __(name of sole proprietor)__. I am performing work as an independent contractor for __(name of employer)__. I am not the employee of __(name of employer)__ for workers' compensation purposes, and, therefore, I am not entitled to workers' compensation benefits from __(name of employer)__. I understand that if I have any employees working for me, I must maintain workers' compensation insurance on them.
>
> Sole proprietor Date
>
> Insurance carrier Date

Credits

Amended by Laws 1968, 4th S.S., Ch. 6, § 24, eff. Jan. 2, 1969; Laws 1970, Ch. 137, § 15; Laws 1971, Ch. 173, § 13; Laws 1974, Ch. 184, § 8, eff. May 17, 1974; Laws 1978, Ch. 92, § 10, eff. Oct. 1, 1978; Laws 1983, Ch. 4, § 7, eff. Feb. 11, 1983; Laws 1984, Ch. 188, § 25; Laws 1985, Ch. 39, § 9; Laws 1987, Ch. 38, § 2; Laws 1988, Ch. 51, § 2; Laws 1990, Ch. 249, § 1; Laws 1993, 2nd S.S., Ch. 9, § 1; Laws 1994, Ch. 255, § 3; Laws 1996, Ch. 232, § 2; Laws 1997, Ch. 194, § 1; Laws 2001, Ch. 201, § 3; Laws 2003, Ch. 180, § 11; Laws 2004, Ch. 307, § 2; Laws 2007, Ch. 148, § 2; Laws 2011, Ch. 157, § 5, eff. Jan. 1, 2013; Laws 2014, Ch. 186, § 14, eff. July 1, 2015; Laws 2020, Ch. 37, § 130.

Notes of Decisions (46)

A. R. S. § 23-961, AZ ST § 23-961

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-961.01

§ 23-961.01. Self-insurance pools

Currentness

A. Two or more employers, each of whom are engaged in similar industries, may enter into contracts to establish a workers' compensation pool to provide for the payment and administration of workers' compensation claims pursuant to this chapter. The members of each workers' compensation pool shall elect a board of trustees to manage the workers' compensation pool established pursuant to this section. Each member employer shall have been in business for at least five consecutive years before entering into a contract to establish a workers' compensation pool. The total amount of gross workers' compensation insurance premiums paid by the members of the pool in the year preceding the execution of the contract must equal at least seven hundred fifty thousand dollars. The group of employers that makes up a workers' compensation pool shall have been formed for a specific purpose, other than to engage in self-insurance, before the formation of a workers' compensation pool. Employers may establish workers' compensation pools pursuant to this section by one of the following means:

1. On a cooperative or contract basis.

2. Through the joint formation of a nonprofit corporation.

3. By the execution of a trust agreement to carry out the provisions of this chapter directly by the employers or by contracting with a third party.

B. A workers' compensation pool established pursuant to this section is subject to approval as a self-insurer by the industrial commission pursuant to § 23-961, subsection A, paragraph 2. The commission shall adopt rules as necessary to carry out the purposes of this section.

C. Workers' compensation pools established pursuant to this section are exempt from taxation under title 43. [1]

D. Each agreement or contract shall provide that the members of a workers' compensation pool are jointly and severally liable for the liabilities of the pool. If a member of a pool discontinues its membership in the pool, that party shall be liable only for liabilities accruing prior to the discontinuation of its membership in the pool.

E. As to self-insurance pools established under this section, no pool, employer within a pool, or agent of any pool or employer within a pool may require an employee to be treated by or directed to any specific medical provider subsequent to the employee's initial visit to treat an industrial injury or illness, except as may be required as part of an independent medical examination for an employee making a workers' compensation claim.

F. The industrial commission shall adopt rules necessary for safeguarding the solvency of pools and guaranteeing that injured workers receive benefits as required under this chapter. These rules shall include, at a minimum, matters pertaining to classification and rating, loss reserves, investments, financial security including minimum and combined premiums, combined net worth and other indicia necessary for protection from insolvency, specific and aggregate excess insurance, group homogeneity and assessments necessary for participation in and administration of the workers' compensation system.

Credits

Added by Laws 1997, Ch. 194, § 2. Amended by Laws 1999, Ch. 297, § 29, eff. May 18, 1999.

Footnotes

1 Section 43-101 et seq.

A. R. S. § 23-961.01, AZ ST § 23-961.01

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-962

§ 23-962. Insurance by governmental units; payment of premiums

Effective: January 1, 2013
Currentness

A. Any county, city, town, municipal corporation or school district shall insure in any manner prescribed by the terms of § 23-961. Effective July 1, 1983, this state through the department of administration shall self-insure its liability, if any, under chapter 5 of this title [1] and this chapter without the necessity of complying with § 23-961, subsection A, paragraph 2. On or before June 30, 1983, the state compensation fund and the department of administration shall enter into an interagency contract pursuant to title 11, chapter 7, article 3 [2] for the return to this state of the reserves established and held by the state compensation fund for all claims against this state that were incurred on or before that date. These reserves shall be credited to the state general fund. The department of administration shall direct the continuing payment and processing of all claims against this state for injuries to state employees that were incurred both before and after July 1, 1983. All claims payments shall be made or reimbursed by the department on behalf of this state and for expenses incurred in connection with the payment and processing of such claims. The department of administration may procure excess loss coverage from an insurance carrier for individual or aggregate claims, or both, in such amounts and at such primary retention levels as the department of administration deems in the best interest of the state.

B. The clerk of the board of supervisors of each county, the clerk of each political subdivision and the superintendent of each school district that insures its workers' compensation liability with an insurance carrier shall furnish quarterly to the insurance carrier a true payroll showing the total amount paid to employees subject to the provisions of this chapter during each month of the quarter, segregated in accordance with the requirements of the insurance carrier.

C. Each clerk and school superintendent shall thereupon prepare and submit to his respective governing body for approval a claim for the amount of premiums due the insurance carrier. Such premiums shall be at once paid to the insurance carrier by the proper officer. The department of administration shall draw a warrant for such premiums as are due until June 30, 1983 from the state in favor of the treasurer for the benefit of the insurance carrier and the treasurer shall at once pay the warrant from the general fund and the appropriation made therefor in the general appropriation bill for the insurance carrier.

Credits
Amended by Laws 1968, 4th S.S., Ch. 6, § 25, eff. Jan. 2, 1962; Laws 1970, Ch. 190, § 29; Laws 1974, Ch. 184, § 10, eff. May 17, 1974; Laws 1976, Ch. 163, § 13; Laws 1983, Ch. 87, § 3, eff. April 12, 1983; Laws 1983, Ch. 98, § 23, eff. April 12, 1983; Laws 1984, Ch. 188, § 26; Laws 1987, Ch. 42, § 1; Laws 2011, Ch. 157, § 6, eff. Jan. 1, 2013.

Notes of Decisions (13)

Footnotes

1 Section 23-801 et seq.

2 Section 11-951 et seq.

A. R. S. § 23-962, AZ ST § 23-962
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-963

§ 23-963. Provisions of compensation insurance policy

Effective: January 1, 2013
Currentness

Every policy of insurance covering the liability of the employer for workers' compensation shall cover the entire liability of the employer to his employees covered by the policy or contract, and be deemed to contain the following provisions:

1. That as between the employee and the insurance carrier the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge of the insurance carrier.

2. That jurisdiction of the employer shall be jurisdiction of the insurance carrier.

3. That the insurance carrier shall be bound by and subject to the orders, findings, decisions and awards rendered against the employer for payment of compensation.

4. That the insolvency or bankruptcy of the employer and his discharge therein shall not relieve the insurance carrier or workers' compensation pool from payment of compensation for injuries or death sustained by an employee during the life of the policy or contract.

Credits
Amended by Laws 1968, 4th S.S., Ch. 6, § 26, eff. Jan. 2, 1969; Laws 1974, Ch. 184, § 11, eff. May 17, 1974; Laws 1984, Ch. 188, § 27; Laws 1997, Ch. 194, § 3; Laws 2011, Ch. 157, § 7, eff. Jan. 1, 2013.

Notes of Decisions (20)

A. R. S. § 23-963, AZ ST § 23-963
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. § 23-963.01

§ 23-963.01. Policies with deductible coverage; medical-only loss

Effective: September 24, 2022
Currentness

A. Notwithstanding § 23-963, an insurance carrier authorized to transact workers' compensation insurance in this state may offer deductible coverage to employers. Deductible coverage shall be effected by attaching a benefits deductible endorsement to the policy. The endorsement shall specify whether loss adjustment expenses are to be treated as advancements within the deductible to be reimbursed by the employer. The policyholder exercising the deductible option shall choose only one deductible amount. Premium reductions for deductibles shall be determined before applying any experience modification, premium surcharge or premium discount. If an insurance carrier offers deductible coverage to an employer, the employer shall submit a certified copy of the employer's most recent financial statement to the insurance carrier to justify the deductible amount the employer chooses. The insurance carrier shall retain a copy of the financial statement for three years.

B. Any compensable claim for benefits shall be paid by the carrier. The employer shall reimburse the carrier for any deductible amounts paid by the carrier. The employer is liable for reimbursement up to the limit of the chosen deductible. The payment or nonpayment of deductible amounts by the insured employer to the carrier shall be treated under the policy in the same manner as payment or nonpayment of premiums.

C. The nonpayment of deductible amounts by the insured employer to the carrier under subsection B of this section shall not relieve the insurance carrier from paying compensation for injuries or death sustained by an employee during the period of time the agreement, contract or policy was in effect. No agreements, contracts or policies providing deductible amounts for workers' compensation coverage shall be terminated retroactively for nonpayment of deductible amounts.

D. Losses subject to the deductible shall be reported and recorded as losses for purposes of calculating rates for a policyholder on the same basis as losses under policies providing first dollar coverage.

E. Notwithstanding any other law, for any claim involving medical-only loss, any experience rating adjustment as determined by a national nonprofit insurance rating organization shall be applied to reduce the impact of the loss in the employer's experience modification calculation. For the purposes of this subsection, “medical-only loss” means loss that has no indemnity value reflecting lost wages.

Credits
Added by Laws 1993, Ch. 156, § 1. Amended by Laws 2002, Ch. 43, § 1; Laws 2022, Ch. 368, § 4.

Notes of Decisions (2)

A. R. S. § 23-963.01, AZ ST § 23-963.01
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 4. Providing for Compensation (Refs & Annos)

A.R.S. § 23-964

§ 23-964. Posting notice of compliance with compensation law

Currentness

A. Each employer providing insurance or electing to pay compensation directly as provided in this chapter, shall post in conspicuous places about his place of business typewritten or printed notices stating that he has complied with the provisions of this chapter and all rules and regulations of the commission made in pursuance thereof and, if such is the fact, has been authorized by the commission directly to compensate his employees or their dependents.

B. The notices when posted shall constitute sufficient notice to the employees of the fact that the employer has complied with the law for securing compensation to his employees and their dependents.

Notes of Decisions (3)

A. R. S. § 23-964, AZ ST § 23-964
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document


KeyCite Red Flag - Severe Negative Treatment
KeyCite Red Flag Negative Treatment § 23-965. Repealed by Laws 1968, 4th S.S., Ch. 6, § 73, eff. Jan. 2, 1969

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 4. Providing for Compensation (Refs & Annos)

A.R.S. § 23-965

§ 23-965. Repealed by Laws 1968, 4th S.S., Ch. 6, § 73, eff. Jan. 2, 1969

Currentness

A. R. S. § 23-965, AZ ST § 23-965
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 4. Providing for Compensation (Refs & Annos)

A.R.S. § 23-966

§ 23-966. Failure of employer to pay claim or comply with commission order; reimbursement of funds

Effective: August 27, 2019
Currentness

A. If a self-insured employer or other employer authorized by the commission to process or pay claims directly pursuant to this chapter does not fully comply with the provisions of the workers' compensation law relating to the processing or payment of compensation, medical benefits or the final orders of the commission, the workers' compensation claims shall be assigned by the commission to the special fund established by § 23-1065. The special fund shall ensure that these claims are processed and that compensation, benefits or amounts due are paid. The special fund may use third-party processors or other legal, medical, claims or labor market personnel to assist in the processing and payment of claims assigned under this section.

B. In addition to expenditures authorized under subsection A of this section, the special fund may use monies for any expense or service that is necessary to ensure that claims assigned under subsection A of this section are processed and paid, necessary to assist in the determination of liability of a claim that is assigned under this section or necessary to assist in the collection of monies owed to the special fund under this section, including collection against the cash, securities, bond and other assets of the employer. These expenses may include travel, discovery procedures and employing any third-party processor, expert, consultant or professional, including an attorney, auditor, examiner or actuary. The special fund shall reimburse the administrative fund for all expenses incurred by the administrative fund related to the processing and payment of claims assigned under this section.

C. The special fund is the successor in interest to all excess insurance policies in effect at the time of an assignment under subsection A of this section that insure any part of the self-insured employer's financial obligations under the workers' compensation laws. The special fund's recovery rights under this subsection are subject to applicable coverage terms and policy limits in the excess policy. The excess insurer shall make payment directly to the special fund for all covered amounts spent under this section, including administrative costs, necessary expenses and attorney fees to the extent covered by the excess policy. Unless recovered from an excess insurer, the special fund shall have a claim against the employer for all monies that are spent or anticipated to be spent under this section, including administrative costs, necessary expenses and attorney fees. Any claim by the special fund shall be made on the cash, securities or bond filed under § 23-961 or applicable rules or on any other asset of the employer.

Credits

Amended by Laws 1968, 4th S.S., Ch. 6, § 27, eff. Jan. 2, 1969; Laws 1970, Ch. 185, § 1. Laws 1971, Ch. 173, § 14; Laws 1974, Ch. 184, § 12, eff. May 17, 1974; Laws 1984, Ch. 188, § 28; Laws 2004, Ch. 307, § 3. Amended by Laws 2011, Ch. 157, § 8, eff. Jan. 1, 2013; Laws 2014, Ch. 186, § 15, eff. July 1, 2015; Laws 2019, Ch. 74, § 1.

Notes of Decisions (3)

A. R. S. § 23-966, AZ ST § 23-966
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 4. Providing for Compensation (Refs & Annos)

A.R.S. § 23-967

§ 23-967. Deduction of premium from employee wage or salary; violation; classification

Currentness

Any employer who intentionally deducts any portion of the premium, except for accident benefits, which he is by law required to pay from the wage or salary of an employee is guilty of a class 6 felony.

Credits
Amended by Laws 1978, Ch. 201, § 363, eff. Oct. 1, 1978; Laws 1985, Ch. 39, § 10.

A. R. S. § 23-967, AZ ST § 23-967
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. § 23-968

§ 23-968. Notification to employer by carrier

Currentness

At the request of an employer the insurance carrier shall notify such employer of monies paid relating to a workman of the employer during the preceding month.

Credits
Added by Laws 1968, 4th S.S., Ch. 6, § 28, eff. Jan. 2, 1969.

A. R. S. § 23-968, AZ ST § 23-968
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 4. Providing for Compensation (Refs & Annos)

A.R.S. § 23-969

§ 23-969. Satisfaction of lien; release

Currentness

When any lien established by this article has been satisfied, the commission shall issue a release to the person against whom the lien is claimed. Such release shall be a document in a form as specified in § 11-480.

Credits
Added by Laws 1974, Ch. 68, § 9.

A. R. S. § 23-969, AZ ST § 23-969
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 4. Providing for Compensation (Refs & Annos)

A.R.S. § 23-970

§ 23-970. Misrepresentation of payroll, job description, job function or loss history affecting premium payment; violation; classification; penalty; statute of limitations; civil action

Effective: January 1, 2013
Currentness

A. It is unlawful for an employer to wilfully misrepresent to an insurance carrier the amount of payroll, the job description or job function of an employee, or the employer's loss history, on which the premium for workers' compensation insurance to be paid to the insurance carrier is based.

B. An employer that violates subsection A is guilty of a class 6 felony.

C. In addition to the punishment that may be imposed pursuant to subsection B, an employer that violates subsection A is liable for a penalty of up to three times the amount of the difference in premium paid and the amount the employer should have paid. The penalty shall be collected in a civil action by the insurance carrier, in addition to any other damages that are incurred by the insurance carrier due to the misrepresentation, including costs and attorney fees. The insurance carrier shall initiate the civil action within four years after the date the insurance carrier knew or with the exercise of reasonable diligence should have known of the misrepresentation. The insurance carrier may initiate the civil action regardless of whether a criminal action is brought against the employer.

Credits
Added by Laws 2011, Ch. 157, § 9, eff. Jan. 1, 2013.

A. R. S. § 23-970, AZ ST § 23-970
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 4. Providing for Compensation (Refs & Annos)

A.R.S. § 23-971

§ 23-971. Firefighter and fire investigator cancer claim information; data sharing; definitions

Effective: September 29, 2021
Currentness

A. All insurance carriers, self-insuring employers and workers' compensation pools securing workers' compensation for firefighters and fire investigators pursuant to this chapter shall compile and report to the commission claim and claim reserve information for all cancer-related claims filed by or on behalf of firefighters and fire investigators.

B. The information required by subsection A of this section shall include all of the following:

1. The type of cancer.

2. The total claim costs.

3. The claim reserved by the insurance carrier, self-insuring employer or workers' compensation pool.

4. Any other information requested by the commission.

C. Notwithstanding subsections A and B of this section, the commission may not require or obtain any personally identifiable information for any claimant.

D. The commission shall compile and make available to insurance carriers, rating organizations, employers, public safety workers and workers' compensation pools the claim-related information collected pursuant to this section to assist with the setting of workers' compensation insurance rates and to ensure the adequate reserving for cancer claims for the class codes associated with firefighters and fire investigators.

E. For the purposes of this section, “firefighter” and “fire investigator” have the same meanings prescribed in § 23-901.09.

Credits
Added by Laws 2021, Ch. 229, § 7.

A. R. S. § 23-971, AZ ST § 23-971

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. T. 23, Ch. 6, Art. 5, Refs & Annos
Currentness

Editors' Notes

TERMINATION UNDER SUNSET LAW

<The compensation fund board and board of directors, including the compensation fund investment committee and the compensation fund manager, terminated on July 1, 2012. See §§ 41-3012.19 and 41-2955.>

<Title 23, Chapter 6, Article 5, relating to the compensation fund, was repealed on January 1, 2013, by § 41-3012.19.>

A. R. S. T. 23, Ch. 6, Art. 5, Refs & Annos, AZ ST T. 23, Ch. 6, Art. 5, Refs & Annos
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

 KeyCite Red Flag - Severe Negative Treatment
KeyCite Red Flag Negative Treatment §§ 23-981 to 23-984. Repealed by Laws 2010, Ch. 268, § 2 (§ 41-3012.19), eff. Jan. 1, 2013.

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 5. Compensation Fund [Repealed] (Refs & Annos)

A.R.S. § 23-981

§§ 23-981 to 23-984. Repealed by Laws 2010, Ch. 268, § 2 (§ 41-3012.19), eff. Jan. 1, 2013.

Effective: January 1, 2013
Currentness

A. R. S. § 23-981, AZ ST § 23-981
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

 KeyCite Red Flag - Severe Negative Treatment
KeyCite Red Flag Negative Treatment §§ 23-981 to 23-984. Repealed by Laws 2010, Ch. 268, § 2 (§ 41-3012.19), eff. Jan. 1, 2013.

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 5. Compensation Fund [Repealed] (Refs & Annos)

A.R.S. § 23-981.01

§§ 23-981 to 23-984. Repealed by Laws 2010, Ch. 268, § 2 (§ 41-3012.19), eff. Jan. 1, 2013.

Effective: January 1, 2013
Currentness

A. R. S. § 23-981.01, AZ ST § 23-981.01
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

 KeyCite Red Flag - Severe Negative Treatment
KeyCite Red Flag Negative Treatment §§ 23-981 to 23-984. Repealed by Laws 2010, Ch. 268, § 2 (§ 41-3012.19), eff. Jan. 1, 2013.

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 5. Compensation Fund [Repealed] (Refs & Annos)

A.R.S. § 23-982

§§ 23-981 to 23-984. Repealed by Laws 2010, Ch. 268, § 2 (§ 41-3012.19), eff. Jan. 1, 2013.

Effective: January 1, 2013
Currentness

A. R. S. § 23-982, AZ ST § 23-982
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

 KeyCite Red Flag - Severe Negative Treatment
KeyCite Red Flag Negative Treatment §§ 23-981 to 23-984. Repealed by Laws 2010, Ch. 268, § 2 (§ 41-3012.19), eff. Jan. 1, 2013.

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 5. Compensation Fund [Repealed] (Refs & Annos)

A.R.S. § 23-983

§§ 23-981 to 23-984. Repealed by Laws 2010, Ch. 268, § 2 (§ 41-3012.19), eff. Jan. 1, 2013.

Effective: January 1, 2013
Currentness

A. R. S. § 23-983, AZ ST § 23-983
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

 KeyCite Red Flag - Severe Negative Treatment
KeyCite Red Flag Negative Treatment §§ 23-981 to 23-984. Repealed by Laws 2010, Ch. 268, § 2 (§ 41-3012.19), eff. Jan. 1, 2013.

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 5. Compensation Fund [Repealed] (Refs & Annos)

A.R.S. § 23-984

§§ 23-981 to 23-984. Repealed by Laws 2010, Ch. 268, § 2 (§ 41-3012.19), eff. Jan. 1, 2013.

Effective: January 1, 2013
Currentness

A. R. S. § 23-984, AZ ST § 23-984
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

 KeyCite Red Flag - Severe Negative Treatment
KeyCite Red Flag Negative Treatment § 23-985. Repealed by Laws 1990, Ch. 249, § 5

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 5. Compensation Fund [Repealed] (Refs & Annos)

A.R.S. § 23-985

§ 23-985. Repealed by Laws 1990, Ch. 249, § 5

Currentness

A. R. S. § 23-985, AZ ST § 23-985
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document


KeyCite Red Flag - Severe Negative Treatment
KeyCite Red Flag Negative Treatment § 23-986. Repealed by Laws 2010, Ch. 268, § 2 (§ 41-3012.19), eff. Jan. 1, 2013.

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 5. Compensation Fund [Repealed] (Refs & Annos)

A.R.S. § 23-986

§ 23-986. Repealed by Laws 2010, Ch. 268, § 2 (§ 41-3012.19), eff. Jan. 1, 2013.

Effective: January 1, 2013
Currentness

A. R. S. § 23-986, AZ ST § 23-986
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

 KeyCite Red Flag - Severe Negative Treatment
KeyCite Red Flag Negative Treatment § 23-987. Repealed by Laws 1993, Ch. 115, § 1, eff. July 17, 1993, retroactively effective to April 14, 1992

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 5. Compensation Fund [Repealed] (Refs & Annos)

A.R.S. § 23-987

§ 23-987. Repealed by Laws 1993, Ch. 115, § 1, eff. July 17, 1993, retroactively effective to April 14, 1992

Currentness

A. R. S. § 23-987, AZ ST § 23-987
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 6. Insurance Under Compensation Fund

A.R.S. § 23-1001

§ 23-1001. Delivery of insurance contract or policy to employer

Currentness

Every employer insuring with an insurance carrier shall receive from such insurance carrier a contract or policy of insurance.

Credits
Amended by Laws 1968, 4th S.S., Ch. 6, § 35, eff. Jan. 2, 1969.

A. R. S. § 23-1001, AZ ST § 23-1001
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

 KeyCite Red Flag - Severe Negative Treatment
KeyCite Red Flag Negative Treatment §§ 23-1002 to 23-1004. Repealed by Laws 1968, 4th S.S., Ch. 6, § 73, eff. Jan. 2, 1969

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 6. Insurance Under Compensation Fund

A.R.S. § 23-1002

§§ 23-1002 to 23-1004. Repealed by Laws 1968, 4th S.S., Ch. 6, § 73, eff. Jan. 2, 1969

Currentness

A. R. S. § 23-1002, AZ ST § 23-1002
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

 KeyCite Red Flag - Severe Negative Treatment
KeyCite Red Flag Negative Treatment §§ 23-1002 to 23-1004. Repealed by Laws 1968, 4th S.S., Ch. 6, § 73, eff. Jan. 2, 1969

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 6. Insurance Under Compensation Fund

A.R.S. § 23-1004

§§ 23-1002 to 23-1004. Repealed by Laws 1968, 4th S.S., Ch. 6, § 73, eff. Jan. 2, 1969

Currentness

A. R. S. § 23-1004, AZ ST § 23-1004
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

 KeyCite Red Flag - Severe Negative Treatment
KeyCite Red Flag Negative Treatment §§ 23-1005, 23-1006 . Repealed by Laws 2011, Ch. 157, § 10, eff. January 1, 2013.

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 6. Insurance Under Compensation Fund

A.R.S. § 23-1005

§§ 23-1005, 23-1006 . Repealed by Laws 2011, Ch. 157, § 10, eff. January 1, 2013.

Effective: January 1, 2013
Currentness

A. R. S. § 23-1005, AZ ST § 23-1005
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

 KeyCite Red Flag - Severe Negative Treatment
KeyCite Red Flag Negative Treatment §§ 23-1005, 23-1006 . Repealed by Laws 2011, Ch. 157, § 10, eff. January 1, 2013.

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 6. Insurance Under Compensation Fund

A.R.S. § 23-1006

§§ 23-1005, 23-1006 . Repealed by Laws 2011, Ch. 157, § 10, eff. January 1, 2013.

Effective: January 1, 2013
Currentness

A. R. S. § 23-1006, AZ ST § 23-1006
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. § 23-1007

§§ 23-1007 to 23-1020. Reserved for future legislation

Currentness

A. R. S. § 23-1007, AZ ST § 23-1007
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. § 23-1020

§§ 23-1007 to 23-1020. Reserved for future legislation

Currentness

A. R. S. § 23-1020, AZ ST § 23-1020
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. T. 23, Ch. 6, Art. 7, Refs & Annos
Currentness

A. R. S. T. 23, Ch. 6, Art. 7, Refs & Annos, AZ ST T. 23, Ch. 6, Art. 7, Refs & Annos
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

KeyCite Red Flag - Severe Negative Treatment
Unconstitutional or Preempted Recognized as Unconstitutional by Matthews v. Industrial Commission of Arizona, Ariz., Nov. 23, 2022

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 7. Right to Compensation (Refs & Annos)

A.R.S. § 23-1021

§ 23-1021. Right of employee to compensation

Effective: January 1, 2013
Currentness

Every employee coming within the provisions of this chapter who is injured, and the dependents of every such employee who is killed by accident arising out of and in the course of his employment, wherever the injury occurred, unless the injury was purposely self-inflicted, shall be entitled to receive and shall be paid such compensation for loss sustained on account of the injury or death, such medical, nurse and hospital services and medicines, and such amount of funeral expenses in the event of death, as are provided by this chapter.

Credits

Amended by Laws 1996, Ch. 130, § 1; Laws 1999, Ch. 331, § 3; Laws 2003, Ch. 185, § 1; Laws 2004, Ch. 165, § 3; Laws 2009, Ch. 67, § 2; Laws 2011, Ch. 157, § 11, eff. Jan. 1, 2013.

Notes of Decisions (954)

A. R. S. § 23-1021, AZ ST § 23-1021
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 7. Right to Compensation (Refs & Annos)

A.R.S. § 23-1021.01

§ 23-1021.01. Peace officers; fire fighters; employment status

Currentness

A. A peace officer or fire fighter as defined in § 1-215 who is injured or killed while traveling directly to or from work as a peace officer shall be considered in the course and scope of employment solely for the purposes of eligibility for workers' compensation benefits, provided that the peace officer or fire fighter is not engaged in criminal activity.

B. Nothing in this section shall create any liability on the part of the peace officer's or fire fighter's employer for any civil damages occurring through the peace officer's or fire fighter's negligent or intentional conduct while traveling to or from work as a peace officer.

Credits
Added by Laws 1998, Ch. 60, § 2, eff. May 7, 1998, retroactively effective to January 4, 1997.

A. R. S. § 23-1021.01, AZ ST § 23-1021.01
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. § 23-1022

§ 23-1022. Compensation as exclusive remedy for employees; definition; exceptions; public agency employees

Currentness

A. The right to recover compensation pursuant to this chapter for injuries sustained by an employee or for the death of an employee is the exclusive remedy against the employer or any co-employee acting in the scope of his employment, and against the employer's workers' compensation insurance carrier or administrative service representative, except as provided by § 23-906, and except that if the injury is caused by the employer's wilful misconduct, or in the case of a co-employee by the co-employee's wilful misconduct, and the act causing the injury is the personal act of the employer, or in the case of a co-employee the personal act of the co-employee, or if the employer is a partnership, on the part of a partner, or if a corporation, on the part of an elective officer of the corporation, and the act indicates a wilful disregard of the life, limb or bodily safety of employees, the injured employee may either claim compensation or maintain an action at law for damages against the person or entity alleged to have engaged in the wilful misconduct.

B. "Wilful misconduct" as used in this section means an act done knowingly and purposely with the direct object of injuring another.

C. This section does not apply to an action for medical malpractice against any employee of a hospital maintained by the employer pursuant to § 23-1070. Any suit allowed by this subsection is subject to the lien rights provided by § 23-1023.

D. An employee of a public agency, as defined in § 11-951, who works under the jurisdiction or control of or within the jurisdictional boundaries of another public agency pursuant to a specific intergovernmental agreement or contract entered into between the public agencies as provided in § 11-952 is deemed to be an employee of both public agencies for the purposes of this section. The primary employer shall be solely liable for the payment of workers' compensation benefits for the purposes of this section.

E. Every public agency as defined in § 11-951 for which an intergovernmental agreement or contract is in effect shall post a notice pursuant to the provisions of § 23-906, in substantially the following form:

"All employees are hereby further notified that they may be required to work under the jurisdiction or control of or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of workers' compensation."

Credits

Added by Laws 1980, Ch. 246, § 28, eff. Nov. 24, 1980. Amended by Laws 1983, Ch. 140, § 1; Laws 1984, Ch. 188, § 33.

Notes of Decisions (171)

A. R. S. § 23-1022, AZ ST § 23-1022
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 7. Right to Compensation (Refs & Annos)

A.R.S. § 23-1023

§ 23-1023. Liability of third person to injured employee; election of remedies

Effective: July 24, 2014
Currentness

A. If an employee who is entitled to compensation under this chapter is injured or killed or further aggravates a previously accepted industrial injury by the negligence or wrong of another person not in the same employ, the injured employee, or in event of death the injured employee's dependents, may pursue the injured person's remedy against the other person.

B. If the employee who is entitled to compensation under this chapter or the employee's dependents do not pursue a remedy pursuant to this section against the other person by instituting an action within one year after the cause of action accrues, or if after instituting the action, the employee or the employee's dependents fail to fully prosecute the claim and the action is dismissed, the claim against the other person is deemed assigned to the insurance carrier or self-insured employer and all of the following apply:

1. The insurance carrier or self-insured employer may institute an action against the other person.

2. Any dismissal that is entered for lack of prosecution of an action instituted by the employee or the employee's dependents shall not prejudice the right of the insurance carrier or self-insured employer to recover the amount of benefits paid.

3. If the statute of limitations of the claim is one year after the cause of action accrues, the insurance carrier or self-insured employer may file the action prior to one year after the cause of action accrues.

4. The claim may be prosecuted or compromised by the insurance carrier or the person liable for the self-insured employer or may be reassigned in its entirety to the employee or the employee's dependents. After the reassignment, the employee who is entitled to compensation, or the employee's dependents, shall have the same rights to pursue the claim as if it had been filed within the first year.

C. The employee or the employee's dependents shall provide the insurance carrier or the self-insured employer written notice of the intention to bring an action against a third party and shall provide to the insurance carrier or self-insured employer timely and periodic notice of all pleadings and rulings concerning the status of the pending action. In any action instituted by the employee or the employee's dependents, the insurance carrier or the self-insured employer shall have the right to intervene at any time to protect the insurance carrier's or the self-insured employer's interests.

D. If the employee proceeds against the other person, compensation and medical, surgical and hospital benefits shall be paid as provided in this chapter and the insurance carrier or other person liable to pay the claim shall have a lien on the amount actually collectable from the other person to the extent of such compensation and medical, surgical and hospital benefits paid. This lien shall not be subject to a collection fee. The amount actually collectable shall be the total recovery less the reasonable and necessary expenses, including attorney fees, actually expended in securing the recovery. In any action arising out of an aggravation of a previously accepted industrial injury, the lien shall only apply to amounts expended for compensation and treatment of the aggravation. The insurance carrier or person shall contribute only the deficiency between the amount actually collected and the compensation and medical, surgical and hospital benefits provided or estimated by this chapter for the case. Compromise of any claim by the employee or the employee's dependents at an amount less than the compensation and medical, surgical and hospital benefits provided for shall be made only with written approval of the insurance carrier or self-insured employer liable to pay the claim.

E. For purposes of this section, the commission shall have the same rights as an insurance carrier or self-insured employer.

Credits

Amended by Laws 1965, Ch. 107, § 1; Laws 1968, 4th S.S., Ch. 6, § 38, eff. Jan. 2, 1969; Laws 1971, Ch. 173, § 16; Laws 1974, Ch. 184, § 14, eff. May 17, 1974; Laws 1981, Ch. 226, § 1, eff. April 27, 1981; Laws 2007, Ch. 116, § 1; Laws 2012, Ch. 240, § 1; Laws 2014, Ch. 26, § 1.

Notes of Decisions (293)

A. R. S. § 23-1023, AZ ST § 23-1023

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. § 23-1024

§ 23-1024. Choice of remedy as waiver of alternate remedy

Currentness

A. An employee, or his legal representative in event death results, who accepts compensation waives the right to exercise any option to institute proceedings in court against his employer or any co-employee acting within the scope of his employment, or against the employer's workers' compensation insurance carrier or administrative service representative.

B. An employee, or his legal representative in event death results, who exercises any option to institute a proceeding in court against his employer waives any right to compensation.

Credits
Amended by Laws 1968, 4th S.S., Ch. 6, § 39, eff. Jan. 2, 1969; Laws 1980, Ch. 246, § 29, eff. Nov. 24, 1980; Laws 1984, Ch. 188, § 34.

Notes of Decisions (78)

A. R. S. § 23-1024, AZ ST § 23-1024
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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Title 23. Labor
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Article 7. Right to Compensation (Refs & Annos)

A.R.S. § 23-1025

§ 23-1025. Agreement by employee to waive compensation or to pay premium void; unlawful collection of premium; classification

Currentness

A. An agreement by an employee to waive the employee's rights to compensation, except as provided in this chapter, or an agreement by an employee to pay any portion of the premium paid by the employee's employer is void.

B. It is unlawful for an employer to intentionally collect or receive any premiums from an employee for workers' compensation insurance, except as provided in this chapter. A violation of this subsection is a class 6 felony.

Credits

Amended by Laws 1968, 4th S.S., Ch. 6, § 40, eff. Jan. 2, 1969; Laws 1974, Ch. 184, § 15, eff. May 17, 1974; Laws 1984, Ch. 188, § 35; Laws 1985, Ch. 39, § 11; Laws 1999, Ch. 160, § 3.

Notes of Decisions (12)

A. R. S. § 23-1025, AZ ST § 23-1025
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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Title 23. Labor
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Article 7. Right to Compensation (Refs & Annos)

A.R.S. § 23-1026

§ 23-1026. Periodic medical examination of employee; effect of refusal or obstruction of examination or treatment

Effective: May 5, 2021
Currentness

A. An employee who may be entitled to compensation under this chapter shall submit the employee for medical examination from time to time at a place reasonably convenient for the employee, if and when requested by the commission, the employee's employer or the insurance carrier. A place is reasonably convenient even if it is not where the employee resides if it is the place where the employee was injured and the employer or the insurance carrier pays in advance the employee's reasonable travel expenses, including the cost of transportation, food, lodging and loss of pay, if applicable.

B. The request for the medical examination shall fix a time and place having regard to the convenience of the employee, the employee's physical condition and the employee's ability to attend. A medical examination may be conducted via telehealth as defined in § 36-3601 with the consent of both the employee and the requesting party. The employee may have a physician present at the examination if procured and paid for by the employee.

C. If the employee refuses to submit to the medical examination or obstructs the examination, the employee's right to compensation shall be suspended until the examination has been made, and no compensation shall be payable during or for such period.

D. A physician who makes or is present at the medical examination provided by this section may be required to testify as to the result of the examination. The physician is not subject to a complaint for unprofessional conduct to the physician's licensing board if the complaint is based on a disagreement with the findings and opinions expressed by the physician as a result of the examination.

E. On appropriate application and hearing, the commission may reduce or suspend the compensation of an employee who persists in unsanitary or injurious practices tending to imperil or retard the employee's recovery or who refuses to submit to medical or surgical treatment reasonably necessary to promote the employee's recovery.

F. An employee shall be excused from attending a scheduled medical examination if the employee requests a protective order and the administrative law judge finds that the scheduled examination is unnecessary, would be cumulative or could reasonably be timely scheduled with an appropriate physician where the employee resides. If a protective order is requested, the burden is on the employer or insurance carrier to establish that a medical examination should be scheduled at a place other than where the employee resides. If an employee has left this state and the employer or insurance carrier pays in advance the employee's reasonable travel expenses, including the cost of transportation, food, lodging and loss of pay, if applicable, the employer or insurance carrier is entitled to have the employee return to this state one time a year for examination or one time following the filing of a petition to reopen.

G. If a physician performs an examination under this section and is provided data from the Arizona state board of pharmacy pursuant to title 36, chapter 28,[1] the physician may disclose that data to the employee, employer, insurance carrier and commission.

Credits

Amended by Laws 1968, 4th S.S., Ch. 6, § 41, eff. Jan. 2, 1969; Laws 1974, Ch. 184, § 16, eff. May 17, 1974; Laws 1987, 3rd S.S., Ch. 2, § 5; Laws 2011, Ch. 157, § 12, eff. Jan. 1, 2013; Laws 2012, Ch. 156, § 2, eff. Jan. 1, 2013; Laws 2015, Ch. 252, § 1; Laws 2021, Ch. 320, § 5, eff. May 5, 2021.

Notes of Decisions (70)

Footnotes

1 Section 36-2601 et seq.

A. R. S. § 23-1026, AZ ST § 23-1026
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 7. Right to Compensation (Refs & Annos)

A.R.S. § 23-1027

§ 23-1027. Compensation precluded by neglect or refusal of employee to submit to treatment

Currentness

No compensation shall be payable for the death or disability of an employee if his death is caused by, or insofar as his disability may be aggravated, caused or continued by an unreasonable refusal or neglect to submit to or follow any competent or reasonable surgical treatment or medical aid.

Credits
Amended by Laws 1973, Ch. 133, § 24.

Notes of Decisions (26)

A. R. S. § 23-1027, AZ ST § 23-1027
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. § 23-1028

§ 23-1028. False statements or representations to obtain compensation; forfeiture; violation; classification; sworn statement; definition

Effective: July 3, 2015
Currentness

A. If in order to obtain any compensation, benefit or payment under this chapter, either for himself or for another, any person knowingly makes a false statement or representation, the person is guilty of a class 6 felony, and, if the person is a claimant for compensation, the claimant shall also forfeit all right to any future temporary or permanent disability compensation for the claim on which the false statement or representation was made after conviction of the offense. Forfeiture pursuant to this section does not terminate on any subsequent designation of the offense as a misdemeanor.

B. Notwithstanding § 13-801, a sentence to pay a fine for a violation of this section by a claimant or co-employee shall be a sentence to pay an amount fixed by the court of not more than fifty thousand dollars.

C. Any person who commits a violation under this section is also subject to the penalties prescribed in §§ 20-466.02 and 20-466.04.

D. A claimant for compensation shall personally sign any monthly or annual income status report that requests the claimant to report employment status or earnings to the insurance carrier or self-insured employer, including the annual report of earnings pursuant to § 23-1047. The reporting document shall contain the following statement:

> Any person who knowingly makes a false statement or representation to obtain any compensation, benefit or payment is guilty of a class 6 felony and is subject to up to one and one-half years in prison, a fifty thousand dollar fine and forfeiture of benefits. By my signature below, I am applying for all benefits to which I may be entitled and I swear that the statements made on this application are true, correct and complete to the best of my knowledge.

E. For the purposes of this section, “statement” includes any notice, proof of injury, bill for services, payment for services, hospital or doctor records, x-rays, test reports, medical or legal expenses, or other evidence of loss or injury, or other expense or payment.

Credits

Amended by Laws 1978, Ch. 201, § 364, eff. Oct. 1, 1978; Laws 1994, Ch. 99, § 3; Laws 1997, Ch. 281, § 6, eff. April 29, 1997; Laws 2015, Ch. 115, § 1.

Notes of Decisions (7)

A. R. S. § 23-1028, AZ ST § 23-1028
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 7. Right to Compensation (Refs & Annos)

A.R.S. § 23-1028.01

§ 23-1028.01. Renumbered as § 23-1031

Currentness

A. R. S. § 23-1028.01, AZ ST § 23-1028.01
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

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A.R.S. § 23-1029

§ 23-1029. Repeal of chapter; effect on rights of parties

Effective: January 1, 2013
Currentness

If the provisions of this chapter relative to compensation for injuries to or death of workmen are repealed, and the injury or death has not previously been compensated by lump payment or completed monthly payments, the period intervening between the injury or death and the repeal shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death. The action shall be commenced within one year after the repeal and any amount paid as compensation shall be deducted from the right of recovery.

Credits

Amended by Laws 1968, 4th S.S., Ch. 6, § 42, eff. Jan. 2, 1969; Laws 2011, Ch. 157, § 13, eff. Jan. 1, 2013.

A. R. S. § 23-1029, AZ ST § 23-1029
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

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Title 23. Labor
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A.R.S. § 23-1030

§ 23-1030. Effect on employers' liability law

Currentness

This chapter shall not be construed as having repealed the sections of the statutes commonly known as the employers' liability law. [1]

Notes of Decisions (1)

Footnotes

1 Section 23-801 et seq.

A. R. S. § 23-1030, AZ ST § 23-1030
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

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Title 23. Labor
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A.R.S. § 23-1031

§ 23-1031. Persons incarcerated; suspension of benefits

Currentness

A. Except as provided in subsection B of this section, beginning on December 1, 1997, payment of compensation under this chapter shall be suspended during the period of time that the employee has either:

1. Been convicted of a crime and is incarcerated in any state, federal, county or city jail or correctional facility.

2. Been adjudicated delinquent and is incarcerated in any state, federal, county or city jail or correctional facility.

B. If any portion of an employee's payment of compensation under this chapter has been garnished to satisfy support obligations pursuant to title 25, chapter 5, article 1,[1] the portion of the compensation that has been garnished shall be paid as provided in the court order.

Credits
Added as § 23-1028.01 by Laws 1997, Ch. 212, § 4, eff. April 28, 1997. Renumbered as § 23-1031.

Notes of Decisions (14)

Footnotes

1 Section 25-501 et seq.

A. R. S. § 23-1031, AZ ST § 23-1031
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

A.R.S. § 23-1041

§ 23-1041. Basis for computing compensation; definition

Effective: August 2, 2012
Currentness

A. Every employee of an employer within the provisions of this chapter who is injured by accident arising out of and in the course of employment, or the employee's dependents in the event of the employee's death, shall receive the compensation fixed in this chapter on the basis of the employee's average monthly wage at the time of injury.

B. If the injured or killed employee has not been continuously employed for the period of thirty days immediately preceding the injury or death, the average monthly wage shall be such amount as, having regard to the previous wage of the injured employee or of other employees of the same or most similar class working in the same or most similar employment in the same or neighboring locality, reasonably represents the monthly earning capacity of the injured employee in the employment in which the injured employee is working at the time of the accident.

C. If the employee is working under a contract by which the employee is guaranteed an amount per diem or per month, notwithstanding the contract price for such labor, the employee or the employee's subordinates or employees working under the terms of such contract or the employee's or their dependents in case of death shall be entitled to receive compensation on the basis only of the guaranteed wage as set out in the contract of employment, whether paid on a per diem or monthly basis, but in no event shall the basis be less than the wages paid to employees for similar work not under contract.

D. Notwithstanding any other provision of this chapter, in computing the average monthly wage there shall be excluded from such computation all wages or other compensation for services in excess of:

1. One thousand three hundred twenty-five dollars per month for employees injured before January 1, 1988.

2. One thousand six hundred fifty dollars per month for employees injured from and after December 31, 1987 but before July 1, 1989.

3. One thousand eight hundred dollars per month for employees injured from and after June 30, 1989 but before July 1, 1991.

4. Two thousand one hundred dollars per month for employees injured from and after June 30, 1991 but before August 6, 1999.

5. Two thousand four hundred dollars per month for employees injured on or after August 6, 1999 but before January 1, 2008.

6. Three thousand dollars per month for employees injured from and after December 31, 2007 but before January 1, 2009.

7. Three thousand six hundred dollars per month for employees injured from and after December 31, 2008 but before January 1, 2010.

8. The amount adopted by the commission under subsection E for employees injured on or after January 1, 2010.

E. For purposes of subsection D, paragraph 8, the commission, not later than August 1 of each calendar year, beginning August 1, 2009, shall adopt an amount that adjusts the amount from the prior year to reflect the annual percentage increase in the bureau of labor statistics employment cost index for the prior calendar year. The amount adopted by the commission shall be effective for the following calendar year and shall apply to all injuries occurring during that calendar year. In adopting the amount under this subsection, the commission shall not decrease the amount from the prior year or increase the amount more than five per cent from the prior year.

F. Prior to a determination of the average monthly wage, compensation shall be paid on a basis of a minimum monthly wage of two hundred dollars for employees eighteen years of age or over.

G. For the purposes of this section, "monthly wage" means the average wage paid during and over the month in which the employee is killed or injured.

Credits

Amended by Laws 1963, Ch. 18, § 1; Laws 1968, 4th S.S., Ch. 6, § 43, eff. Jan. 2, 1969; Laws 1972, Ch. 146, § 38; Laws 1977, Ch. 151, § 9; Laws 1980, Ch. 246, § 30; Laws 1987, 3rd S.S., Ch. 2, § 6; Laws 1999, Ch. 331, § 4; Laws 2007, Ch. 271, § 1; Laws 2012, Ch. 240, § 2.

Notes of Decisions (433)

A. R. S. § 23-1041, AZ ST § 23-1041

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

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Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 8. Amount of Compensation

A.R.S. § 23-1042

§ 23-1042. Basis for computing average monthly wage of minor permanently incapacitated

Currentness

If it is established by competent evidence that an injured employee is under eighteen years of age and his incapacity is permanent, his average monthly earning capacity shall be deemed, within the limits fixed by §§ 23-1041 and 23-1046, to be the monthly amount which under ordinary circumstances he would probably be able to earn at the age of eighteen years in the occupation in which he was employed at the time of injury, or in any occupation to which he would reasonably have been promoted if he had not been injured. If the probable earnings at the age of eighteen years cannot be reasonably determined, his average earnings shall be based upon four dollars per day for a six-day week.

Credits

Amended by Laws 1972, Ch. 146, § 39.

Notes of Decisions (13)

A. R. S. § 23-1042, AZ ST § 23-1042
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. § 23-1043

§ 23-1043. Hernias classified for compensation purposes

Currentness

All hernias are considered injuries within the provisions of this chapter causing incapacitating conditions or permanent disability, and until otherwise ordered by the commission, the following rules for rating hernias shall govern:

1. Real traumatic hernia is an injury to the abdominal wall of sufficient severity to puncture or tear asunder the wall, and permit the exposure or protrusion of the abdominal viscera or some part thereof. Such injury will be compensated as a temporary total disability and as a partial permanent disability, depending upon the lessening of the injured individual's earning capacity.

2. All other hernias, whenever occurring or discovered and whatsoever the cause, except as under paragraph 1 of this section, are considered diseases causing incapacitating conditions or permanent partial disability, but the permanent partial disability and the causes thereof are considered to be as shown by medical facts to have either existed from birth, to have been years in formation, or both, and are not compensatory, unless it is proved:

(a) That the immediate cause, which calls attention to the presence of the hernia, was a sudden effort or severe strain or blow received while in the course of employment.

(b) That the descent of the hernia occurred immediately following the cause.

(c) That the cause was accompanied or immediately followed by severe pain in the hernial region.

(d) That the facts in subdivisions (a), (b) and (c) of this paragraph were of such severity that they were noticed by the claimant and communicated immediately to one or more persons.

If the facts in subdivisions (a), (b), (c) and (d) of this paragraph are proven, the hernias are considered to be aggravations of previous ailments or diseases, and will be compensated as such for time lost only to a limited extent, depending upon the nature of the proof submitted and the result of the local medical examination, but for not to exceed two months. Hernias of every kind shall be compensated pursuant to this paragraph unless the claimant proves to the satisfaction of the commission by a preponderance of the evidence that the hernia is a real traumatic hernia as defined in paragraph 1.

Credits
Amended by Laws 1980, Ch. 246, § 31.

Notes of Decisions (67)

A. R. S. § 23-1043, AZ ST § 23-1043
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. § 23-1043.01

§ 23-1043.01. Heart-related and mental cases

Currentness

A. A heart-related or perivascular injury, illness or death shall not be considered a personal injury by accident arising out of and in the course of employment and is not compensable pursuant to this chapter unless some injury, stress or exertion related to the employment was a substantial contributing cause of the heart-related or perivascular injury, illness or death.

B. A mental injury, illness or condition shall not be considered a personal injury by accident arising out of and in the course of employment and is not compensable pursuant to this chapter unless some unexpected, unusual or extraordinary stress related to the employment or some physical injury related to the employment was a substantial contributing cause of the mental injury, illness or condition.

C. If compensation is payable for a heart-related or perivascular injury, illness or death, or for a mental injury, illness or condition, the only employer liable is the employee's last employer in whose employment the requirements of subsection A or B are met.

Credits
Added by Laws 1980, Ch. 246, § 32.

Notes of Decisions (251)

A. R. S. § 23-1043.01, AZ ST § 23-1043.01
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. § 23-1043.02

§ 23-1043.02. Human immunodeficiency virus; establishing exposure; definition

Currentness

A. A claim for a condition, infection, disease or disability involving or related to the human immunodeficiency virus or acquired immune deficiency syndrome shall include the occurrence of a significant exposure as defined in this section and, except as provided in subsection B of this section, shall be processed and determined under the provisions of this chapter and applicable principles of law.

B. Notwithstanding any other law, an employee who satisfies the following conditions presents a prima facie claim for a condition, infection, disease or disability involving or related to the human immunodeficiency virus or acquired immune deficiency syndrome if the medical evidence shows to a reasonable degree of medical probability that the employee sustained a significant exposure within the meaning of this section:

1. The employee's regular course of employment involves handling or exposure to blood or body fluids, other than tears, saliva or perspiration, including health care providers as defined in title 36, chapter 6, article 4, [1] forensic laboratory workers, fire fighters, law enforcement officers, emergency medical technicians, paramedics and correctional officers.

2. Within ten calendar days after a possible significant exposure which arises out of and in the course of his employment, the employee reports in writing to the employer the details of the exposure. The employer shall notify its insurance carrier or claims processor of the report. Failure of the employer to notify the insurance carrier is not a defense to a claim by the employee.

3. The employee has blood drawn within ten days after the possible significant exposure, the blood is tested for the human immunodeficiency virus by antibody testing within thirty days after the exposure and the test results are negative.

4. The employee is tested or diagnosed, according to clinical standards established by the centers for disease control of the United States public health service, as positive for the presence of the human immunodeficiency virus within eighteen months after the date of the possible significant exposure.

C. On presentation or showing of a prima facie claim under this section, the employer may produce specific, relevant and probative evidence to dispute the underlying facts, to contest whether the exposure was significant as defined in this section, or to establish an alternative significant exposure involving the presence of the human immunodeficiency virus.

D. A person alleged to be a source of a significant exposure shall not be compelled by subpoena or other court order to release confidential human immunodeficiency virus related information either by document or by oral testimony. Evidence of the

alleged source's human immunodeficiency virus status may be introduced by either party if the alleged source knowingly and willingly consents to the release of that information.

E. Notwithstanding title 36, chapter 6, article 4, medical information regarding the employee obtained by a physician or surgeon is subject to the provisions of § 23-908, subsection D.

F. The commission by rule shall prescribe requirements and forms regarding employee notification of the requirements of this section and the proper documentation of a significant exposure.

G. For the purposes of this section, “significant exposure” means contact of an employee's ruptured or broken skin or mucous membrane 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. For purposes of filing a claim under this section, significant exposure does not include sexual activity or illegal drug use.

Credits
Added by Laws 1990, Ch. 335, § 4. Amended by Laws 2004, Ch. 165, § 4.

Footnotes

1 Section 36-661 et seq.

A. R. S. § 23-1043.02, AZ ST § 23-1043.02
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. § 23-1043.03

§ 23-1043.03. Hepatitis C; establishing exposure; definition

Currentness

A. A claim for a condition, infection, disease or disability involving or related to hepatitis C shall include the occurrence of a significant exposure as defined in this section and, except as provided in subsection B of this section, shall be processed and determined under this chapter and applicable principles of law.

B. Notwithstanding any other law, an employee who satisfies the following conditions presents a prima facie claim for a condition, infection, disease or disability involving or related to hepatitis C if the medical evidence shows to a reasonable degree of medical probability that the employee sustained a significant exposure within the meaning of this section:

1. The employee's regular course of employment involves handling of or exposure to blood or body fluids, other than tears, saliva or perspiration, including health care providers as defined in § 36-661, forensic laboratory workers, fire fighters, law enforcement officers, emergency medical technicians, paramedics and correctional officers.

2. Within ten calendar days after a possible significant exposure that arises out of and in the course of his employment, the employee reports in writing to the employer the details of the exposure. The employer shall notify its insurance carrier or claims processor of the report. Failure of the employer to notify the insurance carrier is not a defense to a claim by the employee.

3. The employee has blood drawn within ten days after the possible significant exposure, the blood is tested for hepatitis C by antibody testing within thirty days after the exposure and the test results are negative.

4. The employee is tested or diagnosed, according to clinical standards established by the centers for disease control of the United States public health service, as positive for the presence of hepatitis C within seven months after the date of the possible significant exposure.

C. On presentation or showing of a prima facie claim under this section, the employer may produce specific, relevant and probative evidence to dispute the underlying facts, to contest whether the exposure was significant as defined in this section, or to establish an alternative significant exposure involving the presence of hepatitis C.

D. A person alleged to be a source of a significant exposure shall not be compelled by subpoena or other court order to release confidential hepatitis C related information either by document or by oral testimony. Evidence of the alleged source's hepatitis C status may be introduced by either party if the alleged source knowingly and willingly consents to the release of that information.

E. Notwithstanding title 36, chapter 6, article 4,[1] medical information regarding the employee obtained by a physician or surgeon is subject to § 23-908, subsection D.

F. The commission by rule shall prescribe requirements and forms regarding employee notification of the requirements of this section and the proper documentation of a significant exposure.

G. For the purposes of this section, "significant exposure" means contact of an employee's ruptured or broken skin or mucous membrane or other significant unbroken surface area 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 hepatitis C. For purposes of filing a claim under this section, significant exposure does not include sexual activity or illegal drug use.

Credits

Added by Laws 1999, Ch. 331, § 5. Amended by Laws 2004, Ch. 165, § 5.

Footnotes

1 Section 36-661 et seq.

A. R. S. § 23-1043.03, AZ ST § 23-1043.03

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. § 23-1043.04

§ 23-1043.04. Methicillin-resistant staphylococcus aureus; spinal meningitis; tuberculosis; establishing exposure; definitions

Effective: July 20, 2011
Currentness

A. A claim for a condition, infection, disease or disability involving or related to methicillin-resistant staphylococcus aureus, spinal meningitis or tuberculosis shall include the occurrence of a significant exposure as defined in this section and, except as provided in subsection B of this section, shall be processed and determined under this chapter and applicable principles of law.

B. Notwithstanding any other law, an employee who satisfies the following criteria presents a prima facie claim for a condition, infection, disease or disability involving or related to methicillin-resistant staphylococcus aureus, spinal meningitis or tuberculosis if the medical evidence shows to a reasonable degree of medical probability that the employee sustained a significant exposure within the meaning of this section:

1. The employee's regular course of employment involves handling of or exposure to methicillin-resistant staphylococcus aureus, spinal meningitis or tuberculosis.

2. Within thirty calendar days after a possible significant exposure that arises out of and in the course of employment, the employee reports in writing to the employer the details of the exposure. The employer shall notify its insurance carrier or claims processor of the report. Failure of the employer to notify the insurance carrier is not a defense to a claim by the employee.

3. For a claim involving methicillin-resistant staphylococcus aureus, the employee must be diagnosed with methicillin-resistant staphylococcus aureus within fifteen days after the employee reports pursuant to paragraph 2 of this subsection.

4. For a claim involving spinal meningitis, the employee is diagnosed with spinal meningitis within two to eighteen days of the possible significant exposure.

5. For a claim involving tuberculosis, the employee is diagnosed with tuberculosis within twelve weeks of the possible significant exposure.

C. On presentation or showing of a prima facie claim under this section, the employer may produce specific, relevant and probative evidence to dispute the underlying facts, to contest whether the exposure was significant as defined in this section or to establish an alternative significant exposure involving the presence of methicillin-resistant staphylococcus aureus, spinal meningitis or tuberculosis.

D. A person alleged to be a source of a significant exposure shall not be compelled by subpoena or other court order to release confidential information relating to methicillin-resistant staphylococcus aureus, spinal meningitis or tuberculosis either by document or by oral testimony. Evidence of the alleged source's methicillin-resistant staphylococcus aureus, spinal meningitis or tuberculosis status may be introduced by either party if the alleged source knowingly and willingly consents to the release of that information.

E. Notwithstanding title 36, chapter 6, article 4,[1] medical information regarding the employee obtained by a physician or surgeon is subject to § 23-908, subsection D.

F. The commission by rule shall prescribe requirements and forms regarding employee notification of the requirements of this section and the proper documentation of a significant exposure.

G. Notwithstanding any other law, expenses for postexposure evaluation and follow-up, including reasonably required prophylactic treatment, for spinal meningitis or tuberculosis, shall be a medical benefit under § 23-1061 or 23-1062 for any significant exposure that arises out of and in the course of employment if the employee files a claim under this article for the significant exposure or the employee reports in writing to the employer the details of the exposure. Providing postexposure evaluation and follow-up, including prophylactic treatment, does not constitute acceptance of a claim for a condition, infection, disease or disability involving or related to the significant exposure.

H. For the purposes of this section:

1. “Employee” means firefighters, law enforcement officers, corrections officers, probation officers, emergency medical technicians and paramedics who are not employed by a health care institution as defined in § 36-401.

2. “Significant exposure” means exposure in the course of employment to aerosolized bacteria for claims under this section relating to methicillin-resistant staphylococcus aureus, spinal meningitis or tuberculosis. Significant exposure includes exposure in the course of employment to bodily fluids or skin for claims under this section relating to methicillin-resistant staphylococcus aureus.

Credits
Added by Laws 2007, Ch. 230, § 1. Amended by Laws 2011, Ch. 317, § 1.

Footnotes

1 Section 36-661 et seq.

A. R. S. § 23-1043.04, AZ ST § 23-1043.04
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 8. Amount of Compensation

A.R.S. § 23-1043.05

§ 23-1043.05. Renumbered as § 23-1105

Effective: August 9, 2017
Currentness

A. R. S. § 23-1043.05, AZ ST § 23-1043.05
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

A.R.S. § 23-1044

§ 23-1044. Compensation for partial disability; computation

Effective: August 6, 2016
Currentness

A. For temporary partial disability there shall be paid during the period thereof sixty-six and two-thirds percent of the difference between the wages earned before the injury and the wages that the injured person is able to earn thereafter. Unemployment benefits received during the period of temporary partial disability shall be considered wages able to be earned.

B. Disability shall be deemed permanent partial disability if caused by any of the following specified injuries, and compensation of fifty-five percent of the average monthly wage of the injured employee, in addition to the compensation for temporary total disability, shall be paid for the period given in the following schedule:

1. For the loss of a thumb, fifteen months.

2. For the loss of a first finger, commonly called the index finger, nine months.

3. For the loss of a second finger, seven months.

4. For the loss of a third finger, five months.

5. For the loss of the fourth finger, commonly called the little finger, four months.

6. The loss of a distal or second phalange of the thumb or the distal or third phalange of the first, second, third or fourth finger, shall be considered equal to the loss of one-half of the thumb or finger, and compensation shall be one-half of the amount specified for the loss of the entire thumb or finger.

7. The loss of more than one phalange of the thumb or finger shall be considered as the loss of the entire finger or thumb, but in no event shall the amount received for more than one finger exceed the amount provided for the loss of a hand.

8. For the loss of a great toe, seven months.

9. For the loss of a toe other than the great toe, two and one-half months.

10. The loss of the first phalange of any toe shall be considered equal to the loss of one-half of the toe and compensation shall be one-half of the amount for one toe.

11. The loss of more than one phalange shall be considered as the loss of the entire toe.

12. For the loss of a major hand, fifty months, or of a minor hand, forty months.

13. For the loss of a major arm, sixty months, or of a minor arm, fifty months.

14. For the loss of a foot, forty months.

15. For the loss of a leg, fifty months.

16. For the loss of an eye by enucleation, thirty months.

17. For the permanent and complete loss of sight in one eye without enucleation, twenty-five months.

18. For permanent and complete loss of hearing in one ear, twenty months.

19. For permanent and complete loss of hearing in both ears, sixty months.

20. The permanent and complete loss of the use of a finger, toe, arm, hand, foot or leg may be deemed the same as the loss of any such member by separation.

21. For the partial loss of use of a finger, toe, arm, hand, foot or leg, or partial loss of sight or hearing, fifty percent of the average monthly wage during that proportion of the number of months in the foregoing schedule provided for the complete loss of use of such member, or complete loss of sight or hearing, which the partial loss of use thereof bears to the total loss of use of such member or total loss of sight or hearing. For the purposes of this paragraph, “loss of use” means a loss of physical function of the affected member, sight or hearing. The effect on an employee's ability to return to the employee's occupation at the time of the injury shall not be considered in establishing the percentage of loss under this section, except that if the employee is unable to return to the work the employee was performing at the time the employee was injured due to the total or partial loss of use, compensation pursuant to this section shall be calculated based on seventy-five percent of the average monthly wage.

22. For permanent disfigurement about the head or face, including injury to or loss of teeth, the commission, pursuant to § 23-1047, may allow such sum for compensation thereof as it deems just, in accordance with the proof submitted, for a period of not more than eighteen months.

C. In cases not enumerated in subsection B of this section, if the injury causes permanent partial disability for work, the employee shall receive during such disability compensation equal to fifty-five percent of the difference between the employee's average monthly wages before the accident and the amount that represents the employee's reduced monthly earning capacity resulting from the disability, but the payment shall not continue after the disability ends, or the death of the injured employee, and in case the partial disability begins after a period of total disability, the period of total disability shall be deducted from the total period of compensation.

D. In determining the amount that represents the reduced monthly earning capacity for the purposes of subsections A and C of this section, consideration shall be given, among other things, to any previous disability, the occupational history of the injured employee, the nature and extent of the physical disability, the type of work the injured employee is able to perform after the injury, any wages received for work performed after the injury and the age of the employee at the time of injury. If the employee is unable to return to work or continue working in any employment after the injury due to the employee's termination from employment for reasons that are unrelated to the industrial injury, the commission may consider the wages that the employee could have earned from that employment as representative of the employee's earning capacity. A determination of earning capacity that is based on wages that could have been earned from previously terminated employment is subject to change under subsection F of this section and an employee retains the right to later establish that the employee's reduced earning capacity is related in whole or in part to the industrial injury.

E. In case there is a previous disability, as the loss of one eye, one hand, one foot or otherwise, the percentage of disability for a subsequent injury shall be determined by computing the percentage of the entire disability and deducting therefrom the percentage of the previous disability as it existed at the time of the subsequent injury.

F. For the purposes of subsection C of this section, the commission, in accordance with the provisions of § 23-1047 when the physical condition of the injured employee becomes stationary, shall determine the amount that represents the reduced monthly earning capacity and on such determination make an award of compensation that is subject to change in any of the following events:

1. On a showing of a change in the physical condition of the employee after such findings and award arising out of the injury resulting in the reduction or increase of the employee's earning capacity.

2. On a showing of a reduction in the earning capacity of the employee arising out of such injury where there is no change in the employee's physical condition, after the findings and award.

3. On a showing that the employee's earning capacity has increased after such findings and award.

G. The commission may adopt a schedule for rating loss of earning capacity and reasonable and proper rules to carry out this section. In all cases involving this section, except for cases under subsection B of this section, or in cases involving a request pursuant to § 23-1061, subsection J for disability compensation, if any issue is raised regarding whether the injured employee has suffered a loss of earning capacity because of an inability to obtain or retain suitable work, the following apply:

1. The employer or carrier may present evidence showing that the inability to obtain suitable work is due, in whole or in part, to economic or business conditions, or other factors unrelated to the industrial injury. The injured employee may present evidence

showing that the inability to obtain suitable work is due, in whole or in part, to the industrial injury or limitations resulting from the injury. The administrative law judge shall consider all such evidence in determining whether and to what extent the injured employee has sustained any loss of earning capacity.

2. In cases involving loss of employment, the employer or carrier may present evidence showing that the injured employee was terminated from employment or has not obtained suitable work, or both, due, in whole or in part, to economic or business conditions, or other factors unrelated to the injury. The injured employee may present evidence showing that such termination or inability to obtain suitable work is due, in whole or in part, to the industrial injury or limitations resulting from the injury. The administrative law judge shall consider all such evidence in determining whether and to what extent the injured employee has sustained any loss or additional loss of earning capacity.

H. Any single injury or disability that is listed in subsection B of this section and that is not converted into an injury or disability compensated under subsection C of this section by operation of this section shall be treated as scheduled under subsection B of this section regardless of its actual effect on the injured employee's earning capacity.

Credits

Amended by Laws 1968, 4th S.S., Ch. 6, § 44, eff. Jan. 2, 1969; Laws 1973, Ch. 133, § 25; Laws 1980, Ch. 246, § 33; Laws 1987, 3rd S.S., Ch. 2, § 7; Laws 1999, Ch. 331, § 6; Laws 2009, Ch. 184, § 5; Laws 2016, Ch. 186, § 3.

Notes of Decisions (850)

A. R. S. § 23-1044, AZ ST § 23-1044

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. § 23-1045

§ 23-1045. Compensation for total disability; permanent total disability defined

Currentness

A. For temporary total disability the following compensation shall be paid:

1. Compensation of sixty-six and two-thirds per cent of the average monthly wage shall be paid during the period of disability.

2. If there are persons dependent for support upon the employee, compensation shall be paid as provided in this section, with an additional allowance of twenty-five dollars per month for such dependents during the period of disability. The additional allowance shall not be based upon a per capita number of dependents but shall reflect a total monthly benefit increase of exactly twenty-five dollars.

B. For permanent total disability, compensation of sixty-six and two-thirds per cent of the average monthly wage shall be paid during the life of the injured person.

C. In the absence of proof to the contrary, disability shall be deemed total and permanent if caused by:

1. The total and permanent loss of sight of both eyes.

2. The loss by separation of both feet.

3. The loss by separation of both hands.

4. An injury to the spine resulting in permanent and complete paralysis of both legs or both arms, or one leg and one arm.

5. An injury to the skull resulting in incurable imbecility or insanity.

6. The loss by separation of one hand and one foot.

D. The enumeration in this section is not exclusive, and in all other cases permanent total disability shall be determined in accordance with the facts and in accordance with the provisions of § 23-1047.

Credits

Amended by Laws 1968, 4th S.S., Ch. 6, § 45, eff. Jan. 2, 1969; Laws 1973, Ch. 133, § 26; Laws 1990, Ch. 287, § 1, eff. Jan. 1, 1991; Laws 1999, Ch. 331, § 7.

Notes of Decisions (97)

A. R. S. § 23-1045, AZ ST § 23-1045

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. § 23-1046

§ 23-1046. Death benefits

Effective: September 19, 2007
Currentness

A. In case of an injury causing death, the compensation therefor shall be known as a death benefit and shall be payable in the amount, for the period, and to and for the benefit of the following:

1. Burial expenses, not to exceed five thousand dollars, in addition to the compensation.

2. To the surviving spouse, if there are no children, sixty-six and two-thirds per cent of the average monthly wage of the deceased, to be paid until such spouse's death or remarriage, with two years' compensation in one sum upon remarriage. To the surviving spouse if there are surviving children, thirty-five per cent of the average monthly wage of the deceased, to be paid until such spouse's death or remarriage with two years' compensation in one sum upon remarriage, and to the surviving children, an additional thirty-one and two-thirds per cent of the average monthly wage, to be divided equally among them until the age of eighteen years, until the age of twenty-two years if the child is enrolled as a full-time student in any accredited educational institution, or if over eighteen years and incapable of self-support when the child becomes capable of self-support. When all surviving children are no longer eligible for benefits, the surviving spouse's benefits shall be paid as if there were no children. In the event of the subsequent death or remarriage of the surviving spouse, the surviving child's or children's benefits shall be computed pursuant to paragraph 3.

3. To a single surviving child, in the case of the subsequent death or remarriage of a surviving husband or wife, or if there is no surviving husband or wife, sixty-six and two-thirds per cent of the average monthly wage of the deceased, or if there is more than one surviving child, sixty-six and two-thirds per cent to be divided equally among the surviving children. Compensation to any such child shall cease upon death, upon marriage or upon reaching the age of eighteen years, except, if over eighteen years and incapable of self-support, when he becomes capable of self-support, or if over eighteen years of age and enrolled as a full-time student in any accredited educational institution, when the child reaches age twenty-two.

4. To a parent, if there is no surviving husband, wife or child under the age of eighteen years, if wholly dependent for support upon the deceased employee at the time of his death, twenty-five per cent of the average monthly wage of the deceased during dependency, with an added allowance of fifteen per cent if two dependent parents survive, and, if neither parent is wholly dependent, but one or both partly dependent, fifteen per cent divided between them share and share alike.

5. To brothers or sisters under the age of eighteen years, if there is no surviving husband or wife, dependent children under the age of eighteen years or dependent parent, the following shall govern:

(a) If one of the brothers or sisters is wholly dependent upon the deceased employee for support at the time of injury causing death, twenty-five per cent of the average monthly wage until the age of eighteen years.

(b) If more than one brother or sister is wholly dependent, thirty-five per cent of the average monthly wage at the time of injury causing death, divided among such dependents share and share alike.

(c) If none of the brothers or sisters is wholly dependent, but one or more are partly dependent, fifteen per cent divided among such dependents share and share alike.

B. If the deceased employee leaves dependents only partially dependent upon his earnings for support at the time of the injury, the monthly compensation shall be equal to such proportion of the monthly payments for the benefit of persons totally dependent as the amount contributed by the employee to such partial dependents bears to the average wage of the deceased at the time of the injury resulting in his death. The duration of compensation to partial dependents shall be fixed by the commission in accordance with the facts shown, and in accordance with the provisions of § 23-1047, but shall in no case exceed compensation for one hundred months.

C. In the event of death of a dependent before expiration of the time named in the award, the funeral expenses of such person, not to exceed eight hundred dollars, shall be paid.

Credits

Amended by Laws 1968, 4th S.S., Ch. 6, § 46, eff. Jan. 2, 1969; Laws 1971, Ch. 173, § 17; Laws 1973, Ch. 133, § 27; Laws 1974, Ch. 184, § 17, eff. May 17, 1974; Laws 1989, Ch. 39, § 1; Laws 1990, Ch. 99, § 1; Laws 1999, Ch. 331, § 8; Laws 2007, Ch. 271, § 2.

Notes of Decisions (202)

A. R. S. § 23-1046, AZ ST § 23-1046

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. § 23-1047

§ 23-1047. Procedure for determining compensation for partial disability and permanent total disability in cases not enumerated; procedure for determining nonscheduled dependency and duration of compensation to partial dependents in death cases

Effective: September 29, 2021
Currentness

A. In cases of permanent partial disability under § 23-1044, subsection B, paragraph 22 and subsections C and F, when the physical condition of the injured employee becomes stationary, or in the case of permanent total disability not enumerated in § 23-1045, and under § 23-1045, subsection D, or in death cases under § 23-1046, subsection B, the employer or insurance carrier within thirty days shall notify the commission and request that the claim be examined and further compensation, if any, be determined. A copy of all medical reports necessary to make such determination also shall be furnished to the commission. The employer or insurance carrier may commence payment of a permanent disability award without waiting for a determination under subsection B of this section.

B. Within thirty days after the commission receives the medical reports, the claims shall be examined and further compensation, including a permanent disability award, if any, shall be determined under the commission's supervision. If necessary, the commission may require additional medical or other information with respect to the claim and may postpone the determination for not more than sixty additional days. Any determination under this subsection may include necessary adjustments in any compensation paid or payable.

C. The commission shall serve a copy of the determination to all interested parties. Any such party may request a hearing under § 23-941 on the determination made under subsection B of this section within ninety days after copies of the determination are served.

D. Any person receiving permanent compensation benefits shall report annually on the anniversary date of the award to the self-insured employer or insurance carrier all of the person's earnings for the prior twelve-month period. If the person fails to make such report, the self-insured employer or insurance carrier shall notify the person that such report has not been received and that payment of further benefits will be suspended unless such report of earnings is filed within thirty days. After thirty days have elapsed from the date of such notice, the self-insured employer or insurance carrier may issue a notice to the person suspending payment of further benefits and no further payments need be made until such report of earnings is filed.

E. Any person receiving permanent compensation benefits from the special fund established by § 23-1065 shall report annually on the anniversary date of the award to the commission all of the person's earnings for the prior twelve-month period. If the person fails to make such report, the commission shall notify the person that such report has not been received and that payment of further benefits will be suspended unless such report of earnings is filed within thirty days. After thirty days have elapsed

from the date of such notice, the commission may issue a notice to the person suspending payment of further benefits and no further payments need be made until such report of earnings is filed.

Credits

Added by Laws 1968, 4th S.S., Ch. 6, § 47, eff. Jan. 2, 1969. Amended by Laws 1973, Ch. 133, § 28; Laws 1974, Ch. 184, § 18, eff. May 17, 1974; Laws 1977, Ch. 109, § 3; Laws 2001, Ch. 201, § 4; Laws 2021, Ch. 333, § 5.

Notes of Decisions (43)

A. R. S. § 23-1047, AZ ST § 23-1047

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-1048

§ 23-1048. Reasonable accommodations; earning capacity determination; definitions

Effective: July 20, 2011
Currentness

A. If an employer has made reasonable accommodations pursuant to the Americans with disabilities act or other applicable federal or state law, wages payable for the modified job position shall be included in the determination of any temporary partial or permanent partial earning capacity, notwithstanding that the modified job is not available in the open competitive labor market.

B. For the purposes of this section:

1. “Americans with disabilities act” means 42 United States Code §§ 12101 through 12213 and 47 United States Code §§ 225 and 611 and the ADA amendments act of 2008 (P.L. 110-325; 122 Stat. 3553).

2. “Reasonable accommodations” means accommodations made by the date of injury employer to allow an employee to return to work by modifying job duties consistent with the employee's limitations.

Credits
Added by Laws 2011, Ch. 345, § 1.

A. R. S. § 23-1048, AZ ST § 23-1048
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 9. Payment of Compensation

A.R.S. § 23-1061

§ 23-1061. Notice of accident; form of notice; claim for compensation; reopening; payment of compensation; notification of injury

Effective: September 24, 2022
Currentness

A. Notwithstanding § 23-908, subsection E, no claim for compensation shall be valid or enforceable unless the claim is filed with the commission by the employee, or if resulting in death by the parties entitled to compensation, or someone on their behalf, in writing within one year after the injury occurred or the right thereto accrued. The time for filing a compensation claim begins to run when the injury becomes manifest or when the claimant knows or in the exercise of reasonable diligence should know that the claimant has sustained a compensable injury. Except as provided in subsection B or N of this section, neither the commission nor any court shall have jurisdiction to consider a claim that is not timely filed under this subsection, except if the employee or other party entitled to file the claim has delayed in doing so because of justifiable reliance on a material representation by the commission, employer or insurance carrier or if the employee or other party entitled to file the claim is insane or legally incompetent or incapacitated at the time the injury occurs or the right to compensation accrues or during the one-year period thereafter. If the insanity or legal incompetence or incapacity occurs after the one-year period has commenced, the running of the remainder of the one-year period shall be suspended during the period of insanity or legal incompetence or incapacity. If the employee or other party is insane or legally incompetent or incapacitated when the injury occurs or the right to compensation accrues, the one-year period commences to run immediately on the termination of insanity or legal incompetence or incapacity. The commission on receiving a claim shall give notice to the insurance carrier.

B. Failure of an employee or any other party entitled to compensation to file a claim with the commission within one year or to comply with § 23-908 shall not bar a claim if the insurance carrier or employer has commenced payment of compensation benefits under § 23-1044, 23-1045 or 23-1046, except that the payments provided for by § 23-1046, subsection A, paragraph 1 and § 23-1065, subsection A shall not be considered compensation benefits for the purposes of this section.

C. If the commission receives a notification of the injury, the commission shall send a claim form to the employee.

D. The issue of failure to file a claim must be raised at the first hearing on a claim for compensation in respect to the injury or death.

E. Within ten days after receiving notice of an accident, the employer shall inform the employer's insurance carrier and the commission on such forms as may be prescribed by the commission.

F. Each insurance carrier and self-insuring employer shall report to the commission a notice of the first payment of compensation and shall serve on the commission and the employee any denial of a claim, any change in the amount of compensation and the termination of compensation, except that claims for medical, surgical and hospital benefits that are not denied shall be reported to the commission in the form and manner determined by the commission. In all cases where compensation is payable, the insurance carrier or self-insuring employer shall promptly determine the average monthly wage pursuant to § 23-1041. Within thirty days after the payment of the first installment of compensation, the insurance carrier or self-insuring employer shall notify the employee and commission of the average monthly wage of the claimant as calculated, and the basis for such determination. The commission shall then make its own independent determination of the average monthly wage pursuant to § 23-1041. The commission, within thirty days after receipt of such notice, shall notify the employee, employer and insurance carrier of such determination. The amount determined by the commission shall be payable retroactive to the first date of entitlement. The first payment of compensation shall be accompanied by a notice on a form prescribed by the commission stating the manner in which the amount of compensation was determined.

G. Except as otherwise provided by law, the insurance carrier or self-insuring employer shall process and pay compensation and provide medical, surgical and hospital benefits, without the necessity for the making of an award or determination by the commission.

H. On a claim that has been previously accepted, an employee may reopen the claim to secure an increase or rearrangement of compensation or additional benefits by filing with the commission a petition requesting the reopening of the employee's claim on the basis of a new, additional or previously undiscovered temporary or permanent condition, which petition shall be accompanied by a statement from a physician setting forth the physical condition of the employee relating to the claim. A claim shall not be reopened if the initial claim for compensation was previously denied by a notice of claim status or determination by the commission and the notice or determination was allowed to become final and no exception applies under § 23-947 excusing a late filing to request a hearing. A claim shall not be reopened because of increased subjective pain if the pain is not accompanied by a change in objective physical findings. A claim shall not be reopened solely for additional diagnostic or investigative medical tests, but expenses for any reasonable and necessary diagnostic or investigative tests that are causally related to the injury shall be paid by the employer or the employer's insurance carrier. Expenses for reasonable and necessary medical and hospital care and laboratory work shall be paid by the employer or the employer's insurance carrier if the claim is reopened as provided by law and if these expenses are incurred within fifteen days before the date that the petition to reopen is filed. The payment for such reasonable and necessary medical, hospital and laboratory work expense shall be paid for by the employer or the employer's insurance carrier if the claim is reopened as provided by law and if such expenses are incurred within fifteen days before the filing of the petition to reopen. Surgical benefits are not payable for any period before the date of filing a petition to reopen, except that surgical benefits are payable for a period before the date of filing the petition to reopen not to exceed seven days if a bona fide medical emergency precludes the employee from filing a petition to reopen before the surgery. No monetary compensation is payable for any period before the date of filing the petition to reopen.

I. On the filing of a petition to reopen a claim, the commission shall in writing notify the employer's insurance carrier or the self-insuring employer, which shall in writing notify the commission and the employee within twenty-one days after the date of such notice of its acceptance or denial of the petition. The reopened claim shall be processed thereafter in like manner as a new claim.

J. The commission shall investigate and review any claim in which it appears to the commission that the claimant has not been granted the benefits to which such claimant is entitled. If the commission determines that payment or denial of compensation is improper in any way, it shall hold a hearing pursuant to § 23-941 within sixty days after receiving notice of such impropriety. Any claim for temporary partial disability benefits under this subsection must be filed with the commission within two years after the date the claimed entitlement to compensation accrued or within two years after the date on which an award for benefits encompassing the entitlement period becomes final. A claim for temporary partial disability compensation shall be deemed to

accrue when the employee knew or with the exercise of reasonable diligence should have known that the insurance carrier, self-insured employer or special fund denied or improperly paid compensation. A claim for temporary partial disability benefits shall not be deemed to have accrued any earlier than September 26, 2008.

K. When there is a dispute as to which employer or insurance carrier is liable for the payment of a compensable claim, the commission, by order, may designate the employer or insurance carrier that shall pay the claim. Payment shall begin within fourteen days after the employer or insurance carrier has been ordered by the commission to commence payment. When a final determination has been made as to which employer or insurance carrier is actually liable, the commission shall direct any necessary monetary adjustment or reimbursement among the parties or insurance carriers involved.

L. On application to the commission and for good cause shown, the commission may direct that a document filed as a claim for compensation benefits be designated as a petition to reopen, effective as of the original date of filing. In like manner on application and good cause shown, the commission may direct that a document filed as a petition to reopen be designated as a claim for compensation benefits, effective as of the original date of filing.

M. If the insurance carrier or self-insurer does not issue a notice of claim status denying the claim within twenty-one days after the date the insurance carrier is notified by the commission of a claim or of a petition to reopen, the insurance carrier shall pay immediately compensation as if the claim were accepted, from the date the insurance carrier is notified by the commission of a claim or petition to reopen until the date on which the insurance carrier issues a notice of claim status denying such claim. Compensation includes medical, surgical and hospital benefits. This section shall not apply to cases involving seven days or less of time lost from work.

N. If an insurance carrier or self-insured employer receives written notification of an injury from an employee who was injured and intends to file a claim for compensation, the insurance carrier or self-insured employer must forward the written notification of the injury and intended claim for compensation to the commission within seven business days and inform the employee of the employee's requirement to file a claim with the commission. The one-year period as prescribed in subsection A of this section is suspended from the date the insurance carrier or self-insured employer received written notification of the injury and intended claim for compensation until the date that the insurance carrier or self-insured employer forwards the written notification to the commission. When the commission receives such notification, the commission must notify the employee of the employee's responsibility to file a claim with the commission pursuant to this section.

Credits

Added by Laws 1968, 4th S.S., Ch. 6, § 49, eff. Jan. 2, 1969. Amended by Laws 1971, Ch. 173, § 18; Laws 1973, Ch. 133, § 29; Laws 1974, Ch. 184, § 19, eff. May 17, 1974; Laws 1980, Ch. 246, § 34, eff. Jan. 1, 1981; Laws 1990, Ch. 174, § 1; Laws 1999, Ch. 331, § 9; Laws 2001, Ch. 201, § 5; Laws 2004, Ch. 165, § 6; Laws 2008, Ch. 169, § 1; Laws 2021, Ch. 333, § 6; Laws 2022, Ch. 162, § 1.

Notes of Decisions (676)

A. R. S. § 23-1061, AZ ST § 23-1061

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

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A.R.S. § 23-1061.01

§ 23-1061.01. Treatment by prayer or spiritual means

Currentness

Nothing in this chapter shall be construed to prevent a workman, whose injury or disability has been established to the satisfaction of the commission, from relying in good faith on treatment by prayer through spiritual means in accordance with the tenets and practice of a recognized church or religious denomination by a duly accredited practitioner thereof without suffering reduction or suspension of his compensation benefits under this chapter, provided that nothing in this chapter shall be construed to prevent a workman who desires it from being furnished with such treatment by prayer through spiritual means if the commission does not object thereto.

Credits

Added by Laws 1968, 4th S.S., Ch. 6, § 50, eff. Jan. 2, 1969. Amended by Laws 1976, Ch. 162, § 45.

A. R. S. § 23-1061.01, AZ ST § 23-1061.01
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. § 23-1062

§ 23-1062. Medical, surgical, hospital benefits; translation services; travel expenses; commencement of compensation; method of compensation

Effective: August 9, 2017
Currentness

A. Promptly, on notice to the employer, every injured employee shall receive medical, surgical and hospital benefits or other treatment, nursing, medicine, surgical supplies, crutches and other apparatus, including artificial members, reasonably required at the time of the injury, and during the period of disability. Such benefits shall be termed "medical, surgical and hospital benefits".

B. Medical, surgical and hospital benefits include translation services, if needed. A carrier, self-insurance pool or employer that does not direct care pursuant to § 23-1070 may choose the translator if the translator is certified by an outside agency and is not an employee of the carrier, self-insurance pool or employer. If the carrier, self-insurance pool or employer is unable to locate a certified translator for the particular language or dialect needed, the parties may agree on a translator who is not a certified translator.

C. Compensation for medical, surgical and hospital benefits shall include reimbursement for reasonable travel expenses if the employee must travel more than twenty-five miles from the employee's place of residence to obtain medical care for the injury.

D. The first installment of compensation is to be paid no later than the twenty-first day after written notification by the commission to the carrier of the filing of a claim unless the right to compensation is denied. Thereafter, compensation shall be paid at least once each two weeks during the period of temporary total disability and at least monthly thereafter. Compensation shall not be paid for the first seven days after the injury. If the incapacity extends beyond the period of seven days, compensation shall begin on the eighth day after the injury, but if the disability continues for one week beyond such seven days, compensation shall be computed from the date of the injury.

E. Compensation shall be made by negotiable instrument, payable immediately on demand or, at the election of the employee and if offered by the employer or carrier, by another commonly accepted method for transferring money by banking institutions, including electronic fund transfers to the employee's account or a prepaid debit card account that is established for the purpose of making direct electronic payment to the employee.

Credits

Amended by Laws 1968, 4th S.S., Ch. 6, § 51, eff. Jan. 2, 1969; Laws 1971, Ch. 173, § 19; Laws 1973, Ch. 133, § 30; Laws 1974, Ch. 184, § 20, eff. May 17, 1974; Laws 2012, Ch. 12, § 2; Laws 2016, Ch. 186, § 4; Laws 2017, Ch. 287, § 4.

Notes of Decisions (104)

A. R. S. § 23-1062, AZ ST § 23-1062
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. § 23-1062.01

§ 23-1062.01. Timely payment of medical, surgical and hospital benefit billing; content of bills; contracts between providers and carriers; exceptions; definitions

Effective: July 24, 2014
Currentness

A. An insurance carrier, self-insured employer or claims processing representative shall make a determination whether to deny or pay a medical bill on an accepted claim, in whole or in part, including the decision as to the amount to pay, within thirty days from the date the claim is accepted, if the billing is received before the date of acceptance, or within thirty days from the date of receipt of the billing if the billing is received after the date of acceptance. All billing denials shall be based on reasonable justification. The insurance carrier, self-insured employer or claims processing representative shall pay the approved portion of the billing within thirty days after the determination for payment is made. If the billing is not paid within the applicable time period, the insurance carrier, self-insured employer or claims processing representative shall pay interest to the health provider on the billing at a rate that is equal to the legal rate. Interest shall be calculated beginning on the date that the payment to the health care provider is due.

B. Any billing by a health care provider shall include all of the following:

1. The correct demographic patient information and claim number, if known.

2. The correct health care provider information, including name, address, telephone number and federal taxpayer identification number.

3. The appropriate medical coding with dollar amounts and units clearly stated with all descriptions.

4. Clearly printed date or dates of service.

5. Legible medical reports required for each date of service if the billing is for direct treatment of the injured worker.

C. An insurance carrier, self-insured employer or claims processing representative is not responsible for payment of any billings for medical, surgical or hospital benefits provided under this chapter unless the billings are received by the insurance carrier, self-insured employer or claims processing representative and any court action for the payment of the billings is commenced within twenty-four months from the date on which the medical service was rendered or from the date on which the health care provider knew or should have known that service was rendered on an industrial claim, whichever occurs later. A subsequent billing or corrective billing does not restart the limitations period.

D. An injured worker is not responsible for payment of any portion of a medical bill for services rendered on an accepted claim and is not responsible for payment of any disputed amount between a health care provider and the insurance carrier, self-insured employer or claims processing representative.

E. An insurance carrier, self-insured employer or claims processing representative that is subject to this chapter may establish an internal system for resolving payment disputes and other contractual grievances with health care providers.

F. This section does not apply to health care providers that enter into an express written contract with the insurance carrier, the self-insured employer or a claims processing representative that specifies the period in which approved bills shall be paid and that includes contractual remedies for untimely bill payment. If the contract does not include remedies for untimely payment, payment must be made according to the provisions of the contract but the interest penalty prescribed by subsection A of this section shall apply to any late payment. The commission does not have jurisdiction over disputes involving timely payment of billings under contracts between the insurance carrier, self-insured employer or claims processing representative and the health care provider.

G. For the purposes of this section:

1. “Accepted claim” means a claim for benefits under this chapter that has been accepted by a final notice of claim status or final order or award of the commission.

2. “Date of receipt” means the electronic acknowledgement date or, if a bill does not contain an electronic acknowledgment date, the date of receipt is presumed to occur five days after the bill was mailed to the recipient's address.

Credits
Added by Laws 2007, Ch. 217, § 1. Amended by Laws 2014, Ch. 52, § 1.

Notes of Decisions (1)

A. R. S. § 23-1062.01, AZ ST § 23-1062.01
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. § 23-1062.02

§ 23-1062.02. Use of controlled substances; prescription of schedule II controlled substances; reports; treatment plans; monitoring program inquiries; preauthorizations; definitions

Effective: August 3, 2018
Currentness

A. A physician who prescribes a schedule II controlled substance to an employee shall comply with title 32, chapter 32, article 4, [1] including the provisions in that article relating to patients with traumatic injuries.

B. A physician shall include in the report required under commission rule the following information pertaining to the use of a narcotic or opium-based controlled substance that is listed in schedule II or the prescription of any opioid medication:

1. Justification for the use of the controlled substance, including documentation of the following:

(a) That a physical examination of the employee was conducted.

(b) That a substance use risk assessment of the employee was conducted.

(c) That the employee gave informed consent for any opioid treatment.

2. A treatment plan describing the measures that the physician will implement to monitor and prevent the development of abuse, dependence, addiction or diversion by the employee. The physician shall include in the treatment plan all of the following:

(a) A medication agreement.

(b) The frequency of face-to-face follow-up visits to reevaluate the employee's continued use of opioids.

(c) Random drug testing.

(d) Documentation that the medication regime is providing relief that is demonstrated by clinically meaningful improvement in function.

(e) Criteria and procedures for tapering and discontinuing opioid prescription or administration as part of the treatment.

(f) Criteria and procedures for offering or referring the employee for treatment for dependence on or addiction to opioids.

C. If the drug test of the employee reveals inconsistent results, the physician within five business days shall provide a written report to the carrier, self-insured employer or commission setting forth a treatment plan to address the inconsistent drug test results.

D. Before prescribing an opioid analgesic or benzodiazepine controlled substance that is listed in schedule II, III or IV for an employee and at least quarterly while that prescription remains a part of the treatment, the physician shall obtain a patient utilization report regarding the employee from the controlled substances prescription monitoring program's central database tracking system as required by § 36-2606. The physician shall report the results to the carrier, self-insured employer or commission as soon as reasonably practicable but not later than thirty days after the date of the inquiry. Thereafter, the carrier, self-insured employer or commission may request not more than once every two months that the physician obtain a patient utilization report regarding the employee from the controlled substances prescription monitoring program's central database tracking system.

E. If the patient utilization report from the controlled substances prescription monitoring program's central database tracking system reveals that the employee is receiving opioids from another undisclosed health care provider, the physician shall within five business days report the results to the carrier, self-insured employer or commission.

F. If the physician does not comply with this section:

1. The carrier, self-insured employer or commission is not responsible for payment for the physician's services until the physician complies with this section.

2. Except for a self-insured employer that provides medical care pursuant to § 23-1070, the employer, carrier or commission may request a change of physician after making a written request to the physician to comply with this section and the request identifies the area of noncompliance. If a change of physician is ordered and the order becomes final, the employee shall select a physician who agrees to comply with this section. If other medical providers are not available in the employee's area of residence, the employer, carrier or commission shall pay in advance for the employee's reasonable travel expenses, including the cost of transportation, food, lodging and loss of pay, if applicable.

G. If medically necessary, the carrier, self-insured employer or commission shall provide drug rehabilitation and detoxification treatment for an employee who becomes dependent on or addicted to opioids that are prescribed for a work-related injury. In the event of a medical conflict regarding the necessity for drug rehabilitation and detoxification, the carrier, self-insured employer or commission shall continue to provide the opioids until a determination is made after a hearing by an administrative law judge.

H. If the employee resides out of state, the carrier, self-insured employer or commission is not responsible for providing medications that are subject to this section if the out-of-state physician fails to comply with this section. If the other state has a controlled substances monitoring program, the physician shall submit an inquiry to the database as prescribed by subsection D of this section.

I. A carrier, a self-insured employer or the commission may require physician compliance with this section notwithstanding the existence of a prior award addressing medical maintenance benefits for medications. A carrier or self-insured employer is not liable for bad faith or unfair claims processing for any act taken in compliance of and consistent with this section or any act reasonably necessary to monitor or assess the appropriateness and effectiveness of an employee's opioid use.

J. For the purposes of this section:

1. “Clinically meaningful improvement in function” means both of the following:

(a) A significant improvement in the performance of activities of daily living or a reduction in work restrictions.

(b) A reduction in dependency on continued medical treatment.

2. “Inconsistent results” means:

(a) The employee's reported medications, including the parent drugs or metabolites, are not detected.

(b) Controlled substances are detected that are not reported by the employee.

3. “Substance use risk assessment” means an evaluation of an employee's unique likelihood for addiction, misuse, diversion or another adverse consequence resulting from the employee being prescribed or receiving treatment with opioids.

4. “Traumatic injury” as used in title 32, chapter 32, article 4 means physical injury that creates a reasonable risk of death or that causes serious or permanent disfigurement, serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb.

Credits
Added by Laws 2009, Ch. 184, § 6. Amended by Laws 2011, Ch. 338, § 1; Laws 2012, Ch. 156, § 3; Laws 2014, Ch. 52, § 2; Laws 2018, Ch. 101, § 2.

Footnotes

1 Section 32-3248 et seq.

A. R. S. § 23-1062.02, AZ ST § 23-1062.02
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-1062.03

§ 23-1062.03. Evidence-based medical treatment guidelines

Effective: August 2, 2012
Currentness

The commission shall develop and implement a process for the use of evidence-based medical treatment guidelines, where appropriate, to treat injured workers no later than December 31, 2014. The commission shall provide a progress report to the governor, the president of the senate and the speaker of the house of representatives describing the status of the development and implementation of this process no later than the end of each calendar year beginning on December 31, 2012, and ending on December 31, 2014. If the commission requires additional time beyond December 31, 2014, to develop and implement this process, then the commission shall include in its 2014 report a projected timetable to complete the process.

Credits
Added by Laws 2012, Ch. 240, § 3.

A. R. S. § 23-1062.03, AZ ST § 23-1062.03
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-1063

§ 23-1063. Apportionment of compensation

Currentness

Compensation to a dependent widow or widower shall be for the use and benefit of the widow or widower and the dependent children, and the commission may, upon proper application at any time during the duration of such payments, apportion the compensation between them in such way as it deems best for the interest of all beneficiaries.

Credits

Amended by Laws 1968, 4th S.S., Ch. 6, § 52, eff. Jan. 2, 1969.

Notes of Decisions (1)

A. R. S. § 23-1063, AZ ST § 23-1063
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-1064

§ 23-1064. Presumptions of dependency; determination

Currentness

A. The following persons are conclusively presumed to be totally dependent for support upon a deceased employee:

1. A wife upon a husband whom she has not voluntarily abandoned at the time of the injury.

2. A husband upon a wife whom he has not voluntarily abandoned at the time of the injury.

3. A natural, posthumous or adopted child under the age of eighteen years or under the age of twenty-two years if enrolled as a full-time student in any accredited educational institution, or over that age if physically or mentally incapacitated from wage earning, upon the injured parent. Stepparents may be regarded as parents, if dependent, and a stepchild as a natural child if dependent.

B. Questions of dependency and the extent thereof shall be determined as of the date of the injury to the employee and the dependent's right to any death benefit shall become fixed as of such time irrespective of any subsequent change in conditions, and the death benefits shall be directly recoverable by and payable to the dependent entitled thereto.

Credits
Amended by Laws 1961, Ch. 101, § 1; Laws 1973, Ch. 133, § 31; Laws 1990, Ch. 99, § 2.

Notes of Decisions (50)

A. R. S. § 23-1064, AZ ST § 23-1064
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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Enacted Legislation Amended by 2024 Ariz. Legis. Serv. Ch. 139 (H.B. 2204) (WEST),

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A.R.S. § 23-1065

§ 23-1065. Special fund; purposes; investment committee

Effective: July 3, 2015
Currentness

A. The industrial commission may direct the payment into the state treasury of not to exceed one per cent of all premiums received by private insurance carriers during the immediately preceding calendar year. The same percentage shall be assessed against self-insurers based on the total cost to the self-insured employer as provided in § 23-961, subsection G. Such assessments shall be computed on the same premium basis as provided for in § 23-961, subsections G, H, I, J and K and shall be no more than is necessary to keep the special fund actuarially sound. Such payments shall be placed in a special fund within the administrative fund to provide, at the discretion of the commission, such additional awards as may be necessary to enable injured employees to accept the benefits of any law of this state or of the United States, or both jointly, for promotion of vocational rehabilitation of persons with disabilities in industry.

B. In claims involving an employee who has a preexisting industrially-related permanent physical impairment of the type specified in § 23-1044, subsection B and who thereafter suffers an additional permanent physical impairment of the type specified in such subsection, the claim involving the subsequent impairment is eligible for reimbursement, as provided by subsection D of this section, according to the following:

1. The employer in whose employ the subsequent impairment occurred or its insurance carrier is solely responsible for all temporary disability compensation to which the employee is entitled and for an amount equal to the permanent disability compensation provided by § 23-1044, subsection B for the subsequent impairment. If the employee is determined to have sustained no loss of earning capacity after the medically stationary date, the employer or carrier shall pay him as a vocational rehabilitation bonus the amount calculated under this paragraph as a lump sum, which shall be a credit against any permanent compensation benefits awarded in any subsequent proceeding. The amount of the vocational rehabilitation bonus for which the employer or carrier is responsible under this paragraph shall be calculated solely on physical, medically rated permanent impairment and not on occupational or other factors.

2. If the commission determines that the employee is entitled to compensation for loss of earning capacity under § 23-1044, subsection C or permanent total disability under § 23-1045, subsection B, the total amount of permanent benefits for which the employer or carrier is solely responsible under paragraph 1 of this subsection shall be expended first, with monthly payments made according to the loss of earning capacity or permanent total disability award. The employer or carrier and the special fund are equally responsible for the remaining amount of compensation for loss of earning capacity under § 23-1044, subsection C or permanent total disability under § 23-1045, subsection B. This paragraph shall not be construed as requiring payment of any

benefits under § 23-1044, subsection B in any case in which an employee is entitled to benefits for loss of earning capacity under § 23-1044, subsection C or permanent total disability benefits under § 23-1045, subsection B.

C. In claims involving an employee who has a preexisting physical impairment that is not industrially-related and, whether congenital or due to injury or disease, is of such seriousness as to constitute a hindrance or obstacle to employment or to obtaining reemployment if the employee becomes unemployed, and the impairment equals or exceeds a ten per cent permanent impairment evaluated in accordance with the American medical association guides to the evaluation of permanent impairment, and the employee thereafter suffers an additional permanent impairment not of the type specified in § 23-1044, subsection B, the claim involving the subsequent impairment is eligible for reimbursement, as provided by subsection D of this section, under the following conditions:

1. The employer in whose employ the subsequent impairment occurred or its carrier is solely responsible for all temporary disability compensation to which the employee is entitled.

2. The employer had knowledge of the permanent impairment at the time the employee was hired, or that the employee continued in employment after the employer acquired such knowledge.

3. The employee's preexisting impairment is due to one or more of the following:

(a) Epilepsy.

(b) Diabetes.

(c) Cardiac disease.

(d) Arthritis.

(e) Amputated foot, leg, arm or hand.

(f) Loss of sight of one or both eyes or a partial loss of uncorrected vision of more than seventy-five per cent bilaterally.

(g) Residual disability from poliomyelitis.

(h) Cerebral palsy.

(i) Multiple sclerosis.

(j) Parkinson's disease.

(k) Cerebral vascular accident.

(l) Tuberculosis.

(m) Silicosis.

(n) Psychoneurotic disability following treatment in a recognized medical or mental institution.

(o) Hemophilia.

(p) Chronic osteomyelitis.

(q) Hyperinsulinism.

(r) Muscular dystrophies.

(s) Arteriosclerosis.

(t) Thrombophlebitis.

(u) Varicose veins.

(v) Heavy metal poisoning.

(w) Ionizing radiation injury.

(x) Compressed air sequelae.

(y) Ruptured intervertebral disk.

4. The employer or carrier and the special fund are equally responsible for the amount of compensation for loss of earning capacity under § 23-1044, subsection C or permanent total disability under § 23-1045, subsection B.

D. The employer or insurance carrier shall notify the commission of its intent to claim reimbursement for an eligible claim under subsection B or C of this section not later than the time the employer or insurance carrier notifies the commission pursuant to § 23-1047, subsection A. Upon receiving notice the commission may expend funds from the special fund created by this section for travel and discovery procedures and for the employment of such independent legal, medical, rehabilitation, claims

or labor market consultants or experts as may be deemed necessary by the commission to assist in the determination of the liability of the special fund, if any, under subsection B or C of this section. In the event there is any dispute regarding liability to the special fund pursuant to subsection B or C of this section, the commission shall not delay the issuance of a permanent award pursuant to § 23-1047, subsection B.

E. If the special fund created by this section is determined to be liable under either subsection B or C of this section, the employer or insurance carrier that is primarily liable shall pay the entire amount of the award to the injured employee and the commission shall by rule provide for the reimbursement of the employer or insurance carrier on an annual basis. In any case arising out of subsection B or C of this section, the written approval of the special fund is required for the compromise of any claim made pursuant to § 23-1023. In any such case, written approval shall not be unreasonably withheld by the special fund, carrier, self-insured employer or other person responsible for the payment of compensation. Failure to obtain the written approval of the special fund shall not cause the injured worker to lose any benefits but ends the special fund's liability for reimbursement and makes the employer or carrier solely responsible for the payment of the remaining benefits.

F. The employer or insurance carrier shall make its claim for reimbursement to the commission no later than November 1 each year, for payments made pursuant to subsection B or C of this section during the twelve months prior to October 1 each year. Claims shall be paid before December 31 each year. If the total annual reserved liabilities of the special fund obligated under subsections B and C of this section exceed six million dollars, as determined by the annual actuarial study performed pursuant to subsection I of this section, the commission, after notice and a hearing, may levy an additional assessment under subsection A of this section of up to one-half per cent to meet such liabilities. Any insurance carrier or employer who may be adversely affected by the additional assessment may at any time prior to the sixtieth day after such additional assessment is ordered file a complaint challenging the validity of the additional assessment in the superior court in Maricopa county for a judicial review of the additional assessment. On judicial review the determination of the commission shall be upheld if supported by substantial evidence in the record considered as a whole.

G. In the event the injured employee is awarded additional compensation, under subsection A of this section, the commission retains jurisdiction to amend, alter or change the award upon a change in the physical condition of the injured employee resulting from the injury.

H. On receiving notice that the special fund may be liable under this chapter, the commission may spend monies from the special fund established by this section for expenses that are necessary to assist in the processing, payment or determination of liability of the fund. These expenses may include travel, discovery procedures and employing any legal, medical, rehabilitation, claims or labor market consultant, examiner or expert.

I. The commission shall cause an annual actuarial study of the special award fund to be made by a qualified actuary who is a member of the society of actuaries. The actuary shall make specific recommendations for maintaining the fund on a sound actuarial basis. The actuarial study shall be completed on or before September 1.

J. The special fund of the commission consists of all monies from premiums and assessments, except penalties assessed pursuant to this chapter, received and paid into the fund, property and securities acquired by the use of monies in the fund, interest earned on monies in the fund and other monies derived from the sale, use or lease of properties belonging to the fund. The special fund created by this section shall be administered by the director of the industrial commission, subject to the authority of the industrial commission. The director of the commission with approval of the investment committee, in the administration of the special fund, may provide loans, subject to repayment, budgetary review and legislative appropriation, to the administrative fund for the purposes and subject to § 23-1081, acquire real property and acquire or construct a building or other improvements

on the real property as may be necessary to house, contain, furnish, equip and maintain offices and space for departmental and operational facilities of the commission. The commission when using space constructed pursuant to this section shall make equal payments of rent on a semiannual basis, which shall be deposited in the special fund. The investment committee shall determine the amount of the rent, which must be at least equal to or greater than that determined by the joint committee on capital review for buildings of similar design and construction as provided by § 41-792.01.

K. There is established an investment committee consisting of the director and the chairman of the commission and three persons knowledgeable in investments and economics appointed by the governor. Of the members appointed by the governor, one shall be a professional in the investment business, one shall represent workers' compensation insurers and one shall represent self-insurers. The term of members appointed by the governor is three years, which shall begin on July 1 and end on June 30 three years later. The committee shall prescribe by rule investment policies and supervise the investment activities of the special fund.

L. Each member of the investment committee, other than the director of the commission, is eligible to receive from the special fund:

1. Compensation of fifty dollars for each day while in actual attendance at meetings of the investment committee.

2. Reimbursement for expenses pursuant to title 38, chapter 4, article 2. [1]

M. The investment committee shall meet at least once every month.

N. The investment committee shall periodically review and assess the investment strategy.

O. The investment committee, by resolution, may invest and reinvest the surplus or reserves in the funds established under this chapter in any legal investments authorized under § 38-718.

P. In addition to the investments authorized under § 38-718, the investment committee may approve the investment in real property and improvements on real property to house and maintain offices of the commission, including spaces for its departmental and operational facilities. Title to the real estate and improvements on the real estate vests in the special fund of the commission, and the assets become part of the fund as provided by this section.

Q. The investment committee may appoint a custodian for the safekeeping of all or any portion of the investments owned by the special fund of the commission and may register stocks, bonds and other investments in the name of a nominee. Except for investments held by a custodian or in the name of a nominee, all securities purchased pursuant to subsection O of this section shall promptly be deposited with the state treasurer as custodian thereof, who shall collect the dividends, interest and principal thereof, and pay, when collected, into the special fund. The state treasurer shall pay all vouchers drawn for the purchase of securities. The director may sell any of the securities as the director deems appropriate, if authorized by resolution of the investment committee, and the proceeds therefrom shall be payable to the state treasurer for the account of the special fund upon delivery of the securities to the purchaser or the purchaser's agent.

Credits

Amended by Laws 1963, Ch. 5, § 1; Laws 1968, 4th S.S., Ch. 6, § 53, eff. Jan. 2, 1969; Laws 1970, Ch. 137, § 16; Laws 1971, Ch. 173, § 20; Laws 1973, Ch. 133, § 32; Laws 1980, Ch. 246, § 35; Laws 1981, Ch. 299, § 2; Laws 1983, Ch. 142, § 2, eff. April 19, 1983; Laws 1983, Ch. 224, § 11; Laws 1984, Ch. 188, § 36; Laws 1985, Ch. 39, § 12; Laws 1986, Ch. 85, § 2, eff. April 11, 1986; Laws 1986, Ch. 172, § 2, eff. Aug. 13, 1986; Laws 1986, Ch. 415, § 8; Laws 1988, Ch. 51, § 3; Laws 1995, Ch. 32, § 9, eff. March 30, 1995; Laws 1996, Ch. 102, § 22; Laws 1999, Ch. 331, § 10; Laws 2001, Ch. 201, § 6; Laws 2003, Ch. 180, § 12; Laws 2004, Ch. 307, § 4; Laws 2007, Ch. 148, § 3; Laws 2011, Ch. 157, § 14, eff. Jan. 1, 2013; Laws 2014, Ch. 186, § 16, eff. July 1, 2015; Laws 2014, Ch. 215, § 67; Laws 2015, Ch. 43, § 5.

Notes of Decisions (87)

Footnotes

1 Section 38-621 et seq.

A. R. S. § 23-1065, AZ ST § 23-1065
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-1066

§ 23-1066. Minor or incapacitated claimant; appointment of guardian ad litem; procedure

Effective: October 30, 2023
Currentness

A. When it appears to the commission that a claimant for compensation or death benefits is a minor or incapacitated person, the commission, on motion of any party to the proceedings or on its own motion, may appoint a guardian ad litem to represent the best interests of the minor or incapacitated person, in accordance with the terms, conditions and rules of the commission and this chapter. If required by the commission, the guardian ad litem shall give bond in the form and character required by law from a guardian ad litem appointed by the superior court, and in such amount as the commission determines. The bond shall be approved by the commission, and the guardian ad litem shall not be discharged from liability until the guardian ad litem files an account with the commission or with the superior court in the county in which the minor or incapacitated person resides, and until the account, after due notice, is approved.

B. The guardian ad litem shall receive compensation for the guardian ad litem's services as is fixed and allowed by the commission or by the superior court.

Credits
Amended by Laws 1978, Ch. 92, § 11, eff. Oct. 1, 1978; Laws 2023, Ch. 57, § 1.

Notes of Decisions (1)

A. R. S. § 23-1066, AZ ST § 23-1066
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-1067

§ 23-1067. Commutation of compensation to lump sum payment

Effective: September 19, 2007
Currentness

A. The commission may allow commutation of the compensation awarded pursuant to § 23-1044, subsection B to a lump sum payment of not to exceed twenty-five thousand dollars, with or without the consent of the carrier liable for the commutation, under such rules, regulations and system of computation as it devises for obtaining the present value of the compensation.

B. The commission may allow commutation of compensation pursuant to § 23-1044, subsection C, and § 23-1045, subsections B, C and D, to a lump sum of not to exceed twenty-five thousand dollars for commutation requests made before July 1, 1987, fifty thousand dollars for commutation requests made from and after June 30, 1987 but before July 1, 2007 and one hundred fifty thousand dollars for commutation requests made from and after June 30, 2007, with the consent of the carrier liable to pay the claim, under such rules, regulations and system of computation as it devises for obtaining the present value of the compensation.

Credits
Amended by Laws 1970, Ch. 185, § 2; Laws 1973, Ch. 133, § 33; Laws 1987, 3rd S.S., Ch. 2, § 9; Laws 2007, Ch. 12, § 1.

Notes of Decisions (68)

A. R. S. § 23-1067, AZ ST § 23-1067
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

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A.R.S. § 23-1068

§ 23-1068. Assignment of compensation; exemption from attachment or execution; payment to nonresident

Currentness

A. Compensation, whether determined or not, is not, prior to the delivery of the warrant therefor, assignable.

B. Except as provided in subsection D of this section, compensation is exempt from attachment, garnishment and execution and does not pass to another person by operation of law, except that:

1. The amount of compensation payable to a person at the time of death, whether payable in periodic payments or converted to a lump sum, and whether or not the warrant therefor has been issued or delivered after that person's death, shall be paid to that person's personal representative.

2. If medical, wage loss or disability benefits are paid or otherwise provided by an employer to or for the benefit of an employee for an injury or illness for which medical or compensation benefits payable pursuant to this article have been denied or for which a claim for compensation under this article has not been filed, and the injury or illness is subsequently determined to be compensable under this article, the employer or the person authorized by the employer to provide such benefits is entitled to a direct payment out of, or a direct credit against, the medical or compensation benefits payable under this article in the amount of the benefits previously paid or provided.

C. Any dispute as to the amount of the direct payment or credit against the medical or compensation benefits payable shall be resolved pursuant to § 23-1061, subsection J.

D. Compensation is subject to an assignment for the payment of support as defined in § 25-500, spousal maintenance and the fee for handling child support and spousal maintenance payments authorized by § 25-510.

E. Payment to the consular agent, or the consular agent's representative, of the nation of which a dependent is a resident or subject, of compensation due the dependent residing outside the United States, any power of attorney to receive or receipt for such compensation to the contrary notwithstanding, is a full discharge of the benefits or compensation as if made directly to the beneficiary.

Credits

Amended by Laws 1968, 4th S.S., Ch. 6, § 54, eff. Jan. 2, 1969; Laws 1978, Ch. 36, § 1; Laws 2000, Ch. 312, § 4.

Notes of Decisions (28)

A. R. S. § 23-1068, AZ ST § 23-1068
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 9. Payment of Compensation

A.R.S. § 23-1069

§ 23-1069. Attorney's fees; payment; time limitation

Currentness

A. In proceedings before the commission in which an attorney employed by the claimant has rendered services reasonably necessary in processing the claim, the commission shall, upon application filed by the attorney or the claimant prior to a final disposition of the case, set a reasonable attorney's fee and shall provide for the payment thereof from the award, in installments or otherwise, as the commission determines proper in view of the award made, and shall further provide for the payment of the attorney's fee direct to the attorney. The commission shall charge the amount of the payment against the award to the claimant.

B. The attorney's fee provided for in subsection A shall be not more than twenty-five per cent up to ten years from the date of the award. In cases involving solely loss of earning capacity, the maximum shall be twenty-five per cent up to five years from the date of the final award. When the payment of the award to the claimant is made in installments, or in other than a lump sum manner, in no event may an amount in excess of twenty-five per cent of any one such installment payment be withheld for the attorney's fee.

C. The reasonableness of the attorney's fee set pursuant to subsection A shall be reviewable upon the application of the claimant or the attorney in the same manner as other awards of the commission.

Credits

Amended by Laws 1968, 4th S.S., Ch. 6, § 55, eff. Jan. 2, 1969; Laws 1973, Ch. 133, § 34.

Notes of Decisions (17)

A. R. S. § 23-1069, AZ ST § 23-1069
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. § 23-1070

§ 23-1070. Medical, surgical and hospital benefits provided by employer; pilot program

Effective: January 1, 2013
Currentness

A. An employer, other than this state or a political subdivision of this state, who secures compensation to his employees in the manner provided in § 23-961, subsection A, paragraph 1 or 2, alone or jointly with other employers, in lieu of making premium payments for medical, surgical and hospital benefits, may provide such benefits to injured employees and may collect one-half of the cost thereof from his employees, not to exceed one dollar per month from any employee, which may be deducted from the wages of the employee.

B. An employer electing to provide such benefits shall notify his insurance carrier and the commission of the election and render a detailed statement of the arrangements made therefor to the commission.

C. An employer who maintains a hospital for his employees or who contracts with a physician for the hospital care of injured employees, on or before January 30 each year, shall make a verified written report to the commission for the preceding year showing the total amount of hospital fees collected and showing separately the amount contributed by the employees and the amount contributed by the employers. The report shall also contain an itemized account of the expenditures, investments or other disposition of the fees, and a statement showing the balance remaining.

D. An employer who fails to notify his insurance carrier and the commission of his election to provide such benefits, or who maintains a hospital or contracts for hospital service as provided in subsection C of this section, and fails to make the financial report required therein, is liable for such benefits as provided in § 23-1062.

E. If the medical, surgical or hospital aid or treatment being furnished by an employer is such that there is reasonable ground to believe that the health, life or recovery of any employee is endangered or impaired thereby, the commission, upon application of the employee or upon its own motion, may order a change of physicians or other conditions. If the employer fails to comply with the order promptly, the injured employee may elect to have medical, surgical or hospital aid or treatment provided by or through the special fund established by § 23-1065. In that event the claim of the injured employee against the employer shall be assigned to the special fund for the benefit thereof, and the special fund shall furnish to the insured employee medical, surgical or hospital aid or treatment as provided in this chapter.

F. Notwithstanding subsection A of this section, a pilot program is established to allow a city with a population of more than one hundred fifty thousand persons and a self-insured county insurance pool to provide medical, surgical and hospital benefits pursuant to this section. The purpose of the pilot program is to determine whether public sector entities that are self-insured can, through a directed care and medical management program, contain costs and improve health care and return to work results for injured employees. The industrial commission shall select the qualified city. The entities participating in the pilot program shall

consult with the industrial commission on the protocol for assessment and reporting and shall submit all baseline data to the commission before the pilot program can begin. No earlier than January 1, 2012 and not later than January 1, 2013, the pilot program participants may begin providing medical, surgical and hospital benefits pursuant to this section on approval by the industrial commission. This subsection does not exempt pilot program participants from any other requirements for procurement of a medical network to direct care. The pilot program participants shall report in accordance with the protocol for assessment and reporting, with a final report two years after the start of the pilot program. The pilot program ends and pilot program participants may not provide medical, surgical and hospital benefits pursuant to this section from and after December 31, 2014.

Credits

Added by Laws 1968, 4th S.S., Ch. 6, § 56, eff. Jan. 2, 1969. Amended by Laws 1971, Ch. 11, § 1, eff. March 26, 1971; Laws 1971, Ch. 173, § 21; Laws 2011, Ch. 93, § 1; Laws 2011, Ch. 157, § 15, eff. Jan. 1, 2013.

Notes of Decisions (21)

A. R. S. § 23-1070, AZ ST § 23-1070

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 9. Payment of Compensation

A.R.S. § 23-1070.01

§ 23-1070.01. Request for early hearing; stipulation; action of commission

Effective: August 6, 2016
Currentness

A. If a request for hearing filed in connection with a change of physician under § 23-1070 alleges, by affidavit, that immediate and irreparable injury, loss or damage will result if the hearing is not held before the times otherwise prescribed by article 3 of this chapter or if all interested parties, in person or by counsel, stipulate in the request for hearing that the hearing should be held before the times otherwise prescribed by article 3 of this chapter, the commission shall:

1. Immediately issue a notice to all parties setting a hearing date not more than fifteen days later.

2. Require that the administrative law judge, who shall not be subject to the notice or affidavit for change prescribed by § 23-941, subsection I or J, determine the matter and make an award, if any, within five days after completion of the hearing.

B. All other procedures prescribed for subsequent actions with regard to the hearing or award shall be as otherwise prescribed by law.

Credits
Added by Laws 1974, Ch. 184, § 21, eff. May 17, 1974. Amended by Laws 1980, Ch. 246, § 36; Laws 2016, Ch. 186, § 5.

A. R. S. § 23-1070.01, AZ ST § 23-1070.01
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 9. Payment of Compensation

A.R.S. § 23-1071

§ 23-1071. Notice by employees with disabilities of absence from locality or state; failure to give notice; change of doctor

Effective: July 24, 2014
Currentness

A. No employee may leave the state of Arizona for a period exceeding two weeks while the necessity of having medical treatment continues, without the written approval of the commission. Any employee leaving the state of Arizona for a period exceeding two weeks without such approval will forfeit the employee's right to compensation during such time, as well as the employee's right to reimbursement for the employee's medical expenses, and any aggravation of the employee's disability, by reason of the violation of this section, will not be compensated. If an administrative law judge approves an employee's request to leave this state after the request for written approval was initially denied by the commission, the employee is entitled to any forfeited compensation and medical benefits from the date the employee first requested the written approval.

B. No employee may change doctors without the written authorization of the insurance carrier, the commission or the attending physician.

Credits
Added by Laws 1968, 4th S.S., Ch. 6, § 56, eff. Jan. 2, 1969. Amended by Laws 1974, Ch. 184, § 22, eff. May 17, 1974; Laws 1987, 3rd S.S., Ch. 2, § 10; Laws 2014, Ch. 215, § 68.

Notes of Decisions (35)

A. R. S. § 23-1071, AZ ST § 23-1071
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 9. Payment of Compensation

A.R.S. § 23-1072

§ 23-1072. Autopsy in death claims; effect of refusal by claimant

Currentness

A. On filing a claim for compensation for death from an industrial injury or occupational disease where in the opinion of the commission it is necessary to ascertain accurately and scientifically the cause of death, an autopsy may be ordered by the commission upon request of an interested party and notice to the employer to be made by a qualified pathologist designated by the commission. Any interested person may designate a duly licensed physician to attend such autopsy, and the findings of the pathologist performing the autopsy shall be filed with the commission and shall be a public record.

B. All proceedings for compensation shall be suspended upon refusal of a claimant or claimants to permit the autopsy when so ordered.

C. Where an autopsy has been performed pursuant to an order of the commission, no action shall lie against any person, firm or corporation for participating in or requesting such autopsy.

Credits
Added by Laws 1968, 4th S.S., Ch. 6, § 56, eff. Jan. 2, 1969.

A. R. S. § 23-1072, AZ ST § 23-1072
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. § 23-1073

§ 23-1073. Processing of prior claims

Currentness

The commission appointed pursuant to the provisions of chapter 1 of this title shall process all claims for injuries or disabling conditions which occurred prior to January 1, 1969 to the entry of a final award in accordance with the procedure and benefit levels in effect prior to January 1, 1969. Petitions to reopen filed subsequent to January 1, 1969 shall be processed in accordance with the procedural provisions of this chapter.

Credits
Added by Laws 1973, Ch. 53, § 3.

Notes of Decisions (10)

A. R. S. § 23-1073, AZ ST § 23-1073
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. T. 23, Ch. 6, Art. 10, Refs & Annos
Currentness

Editors' Notes

GENERAL NOTES

<Article 10, consisting of § 23-1081, was added by Laws 1968, 4th S.S., Ch. 6, § 58, effective Jan. 2, 1969.>

<Former Article 10, enacted as part of the revision effective Jan. 9, 1956, consisting of §§ 23-1081 to 23-1087, was repealed by Laws 1968, 4th S.S., Ch. 6, § 57, effective Jan. 2, 1969.>

A. R. S. T. 23, Ch. 6, Art. 10, Refs & Annos, AZ ST T. 23, Ch. 6, Art. 10, Refs & Annos
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 10. Administrative Fund (Refs & Annos)

A.R.S. § 23-1081

§ 23-1081. Administrative fund; purposes and administration

Effective: July 1, 2015
Currentness

A. The administrative fund is established to provide for all expenses of the industrial commission in carrying out its powers and duties under this title. Except for monies from cash deposits or surety bonds in the separate account established by § 23-527, the administrative fund and expenditures therefrom shall be subject to budgetary review and legislative appropriation as expenditures from other state funds. Vouchers or claims prepared for any purpose other than for payment of benefits shall be processed as prescribed by § 35-181.01 and the rules of the director of the department of administration. The industrial commission shall annually fix the rate of the tax, not to exceed three per cent, to be paid to the state treasurer for credit to the administrative fund pursuant to § 23-961, subsection G in an amount that is no more than necessary to cover the actual expenses of the industrial commission in carrying out its powers and duties under this title. Monies for expenditure from the administrative fund shall be appropriated by the legislature. All money and securities in the fund shall be held in trust and invested by the treasurer.

B. The administrative fund shall be no less than self-supporting with respect to the expenses of the industrial commission and other expenditures from the administrative fund as provided under this chapter. Unless the special fund established by § 23-1065 is not on an actuarially sound basis as determined pursuant to § 23-1065, subsection I, any surplus or deficit in the revenue provided under § 23-961 above or below the expenses of the industrial commission and other expenditures from the administrative fund as provided under this chapter shall be included in the calculation of the rate to be fixed for the following year pursuant to § 23-961, subsection G. If the special fund is not on an actuarially sound basis as determined pursuant to § 23-1065, subsection I, notwithstanding any other provision of this section, at least once each fiscal year, the industrial commission shall determine if there is a surplus in the revenue provided under § 23-961 that is greater than the expenses of the industrial commission and other expenditures from the administrative fund as provided under this chapter. On notice from the industrial commission to the state treasurer, the surplus shall be transferred to the special fund.

Credits

Added by Laws 1968, 4th S.S., Ch. 6, § 58, eff. Jan. 2, 1969. Amended by Laws 1969, Ch. 107, § 2, eff. April 16, 1969; Laws 1983, Ch. 142 § 3, eff. April 19, 1983; Laws 1984, Ch. 61, § 11, eff. April 6, 1984; Laws 1993, 2nd S.S., Ch. 9, § 2; Laws 1998, Ch. 242, § 10, eff. July 1, 1999; Laws 2001, Ch. 201, § 7; Laws 2004, Ch. 307, § 5; Laws 2005, Ch. 213, § 1; Laws 2014, Ch. 186, § 17, eff. July 1, 2015.

Notes of Decisions (2)

A. R. S. § 23-1081, AZ ST § 23-1081
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

 KeyCite Red Flag - Severe Negative Treatment
KeyCite Red Flag Negative Treatment §§ 23-1082 to 23-1087. Repealed by Laws 1968, 4th S.S., Ch. 6, § 57, eff. Jan. 2, 1969

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 10. Administrative Fund (Refs & Annos)

A.R.S. § 23-1082

§§ 23-1082 to 23-1087. Repealed by Laws 1968, 4th S.S., Ch. 6, § 57, eff. Jan. 2, 1969

Currentness

A. R. S. § 23-1082, AZ ST § 23-1082
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

 KeyCite Red Flag - Severe Negative Treatment
KeyCite Red Flag Negative Treatment §§ 23-1082 to 23-1087. Repealed by Laws 1968, 4th S.S., Ch. 6, § 57, eff. Jan. 2, 1969

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 10. Administrative Fund (Refs & Annos)

A.R.S. § 23-1087

§§ 23-1082 to 23-1087. Repealed by Laws 1968, 4th S.S., Ch. 6, § 57, eff. Jan. 2, 1969

Currentness

A. R. S. § 23-1087, AZ ST § 23-1087
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation
Article 11. Assigned Risk Plan

A.R.S. T. 23, Ch. 6, Art. 11, Refs & Annos
Currentness

Editors' Notes

GENERAL NOTES

<Article 11, consisting of § 23-1091, was added by Laws 1968, 4th S.S., Ch. 6, § 59, effective January 2, 1969.>

A. R. S. T. 23, Ch. 6, Art. 11, Refs & Annos, AZ ST T. 23, Ch. 6, Art. 11, Refs & Annos
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. § 23-1091

§ 23-1091. Assigned risk plan

Effective: August 25, 2020
Currentness

A. An insurer may decline to issue a workers' compensation or occupational disease policy to an employer. An employer who is refused coverage by two or more insurers shall be placed in the assigned risk plan established by this section.

B. There shall be only one workers' compensation assigned risk plan in this state. The director of the department of insurance and financial institutions shall contract with a qualified party to be the assigned risk plan administrator.

C. The administrator may charge all insurers transacting workers' compensation insurance in this state a reasonable fee to administer the assigned risk plan. Each insurer shall pay a share of the fee based on the insurer's share of the preceding calendar year's total net direct workers' compensation and occupational disease compensation insurance premiums written in this state.

D. The assigned risk plan administrator shall develop a plan of operation and, on approval by the director of the department of insurance and financial institutions, shall issue a directive for the equitable apportioning of assigned risks among all the insurers. At any time, the director of the department of insurance and financial institutions may require the assigned risk plan administrator to amend the plan of operation. The plan shall include at least the following:

1. A method for the administrator to select one or more insurers transacting workers' compensation insurance in this state to act as servicing carriers. An administrator that is an insurer may act as its own servicing carrier. The administrator shall monitor the performance of the servicing carriers and shall measure performance against the administrator's established standards. A servicing carrier shall:

(a) Provide coverage for the risks placed in the assigned risk plan.

(b) Pay claims.

(c) Provide safety management services.

(d) Perform other activities that are related to the preliminary and subsequent effectuation of the contract and that arise out of the contract, including paying commissions to any licensed property and casualty agent or broker in this state.

2. A method for apportioning the workers' compensation assigned risks among all insurers.

E. Unless the director decides to use another method, the rates used to determine the premiums of risks in the assigned risk plan are the rates annually filed with the director of the department of insurance and financial institutions by the designated rating organization pursuant to § 20-357, subsection B, unless the director requires the use of rates from another rating organization, plus a uniform percentage increase that applies to all classifications, that is determined by the designated rating organization or, if the director directs, another rating organization and that is subject to approval by the director. The expected loss rates, ballast factors and other factors for use with the uniform experience rating plan as described in title 20, chapter 2, article 4 and filed with the director also apply to experience rated risks in the assigned risk plan.

F. Rating classifications used in the assigned risk plan shall conform to the uniform classification plan. Subclassifications and rating rule deviations shall not be used in the assigned risk plan.

G. All insurers participating in workers' compensation or occupational disease compensation insurance shall participate in the assigned risk plan.

H. Distribution of assignments among insurers shall be made in proportion to each insurer's share of the preceding calendar year's total net direct workers' compensation and occupational disease compensation insurance premium written in this state, as far as practicable.

I. An insurer that refuses to participate in the assigned risk plan shall not be authorized to write workers' compensation coverage in this state. If an insurer refuses to participate in the assigned risk plan after being authorized to write workers' compensation coverage in this state, the insurer's authorization shall be revoked. If an insurer withdraws from or is terminated from writing workers' compensation coverage in this state, the insurer remains responsible for all injuries sustained during the period of coverage stated in the policies of that insurer.

Credits

Added by Laws 1968, 4th S.S., Ch. 6, § 59, eff. Jan. 2, 1969. Amended by Laws 1969, Ch. 107, § 3, eff. April 16, 1969; Laws 1984, Ch. 188, § 37; Laws 2000, Ch. 199, § 17; Laws 2011, Ch. 157, § 16, eff. Jan. 1, 2013; Laws 2020, Ch. 37, § 131.

A. R. S. § 23-1091, AZ ST § 23-1091

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. T. 23, Ch. 6, Art. 12, Refs & Annos
Currentness

Editors' Notes

GENERAL NOTES

<Article 12, Presumptions of Compensability, consisting of §§ 23-1101 to 23-1104, was added by Laws 2011, Ch. 345, § 2, effective July 20, 2011.>

A. R. S. T. 23, Ch. 6, Art. 12, Refs & Annos, AZ ST T. 23, Ch. 6, Art. 12, Refs & Annos
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 12. Presumptions of Compensability (Refs & Annos)

A.R.S. § 23-1101

§ 23-1101. Definition of report

Effective: July 20, 2011
Currentness

In this article, unless the context otherwise requires, “report” means the report prescribed by § 23-1102.

Credits
Added by Laws 2011, Ch. 345, § 2.

A. R. S. § 23-1101, AZ ST § 23-1101
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 12. Presumptions of Compensability (Refs & Annos)

A.R.S. § 23-1102

§ 23-1102. Workers' compensation presumptions of compensability; report

Effective: July 20, 2011
Currentness

A person that advocates a legislative proposal shall submit a report to the joint legislative audit committee as prescribed in this article, if the legislative proposal if enacted would do either of the following:

1. Mandate that an insurer or self-insured employer deem that a disease or condition has arisen out of employment, including establishing a presumption of compensability.

2. Substantially modify a statute that establishes a presumption of compensability for a disease or condition.

Credits
Added by Laws 2011, Ch. 345, § 2.

A. R. S. § 23-1102, AZ ST § 23-1102
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

A.R.S. § 23-1103

§ 23-1103. Impact of presumptions; liability

Effective: July 20, 2011
Currentness

A. The report shall include all of the following:

1. Scientific evidence that shows the extent to which:

(a) Peer reviewed scientific studies exist that document a causal relationship that a specific disease or condition has been demonstrated to have arisen out of employment.

(b) The centers for disease control and prevention have determined that a disease or condition is acquired or transmitted.

(c) Alternative exposure patterns exist for acquiring or transmitting a disease or condition other than occupational.

2. Financial information to indicate the extent to which:

(a) The mandate may cause an employer or insurance carrier to pay a workers' compensation claim for a nonwork related disease or condition.

(b) The mandate may increase costs to self-insured employers or premiums charged by insurance carriers.

3. An explanation of why existing compensability methods are inadequate to accurately determine if a disease or condition is acquired or transmitted in the course of employment.

B. The report shall address the specific language of the legislative proposal.

C. A person that does not submit a report as prescribed in this article is not subject to any civil sanction or criminal penalty.

Credits
Added by Laws 2011, Ch. 345, § 2.

A. R. S. § 23-1103, AZ ST § 23-1103
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 12. Presumptions of Compensability (Refs & Annos)

A.R.S. § 23-1104

§ 23-1104. Report procedures and deadlines

Effective: July 20, 2011
Currentness

A report must be submitted to the joint legislative audit committee on or before September 1 before the start of the legislative session for which the legislation is proposed. The joint legislative audit committee shall assign the written report to the appropriate legislative committee of reference established pursuant to § 41-2954. The legislative committee of reference shall hold at least one hearing and take public testimony after receiving the report. The legislative committee of reference shall study the written report and deliver a report of its recommendations to the joint legislative audit committee, the speaker of the house of representatives, the president of the senate, the governor and the commission on or before December 1 of the year in which the report is submitted.

Credits
Added by Laws 2011, Ch. 345, § 2.

A. R. S. § 23-1104, AZ ST § 23-1104
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Arizona Revised Statutes Annotated
Title 23. Labor
Chapter 6. Workers' Compensation (Refs & Annos)
Article 12. Presumptions of Compensability (Refs & Annos)

A.R.S. § 23-1105

§ 23-1105. Heart-related, perivascular and pulmonary cases; firefighters; presumption; definition

Effective: August 9, 2017
Currentness

A. A heart-related, perivascular or pulmonary injury, illness or death of a firefighter is presumed to be an occupational disease as defined in § 23-901, paragraph 13, subdivision (c), compensable pursuant to § 23-1043.01 and deemed to arise out of employment if all of the following apply:

1. The firefighter passed a physical examination before employment and the examination did not indicate evidence of heart-related, perivascular or pulmonary injury or illness.

2. The firefighter received a physical examination that is reasonably aligned with the national fire protection association standard on comprehensive occupational medical program for fire departments (NFPA 1582).

3. The firefighter was exposed to a known event and the heart-related, perivascular or pulmonary injury, illness or death occurred within twenty-four hours after the exposure and was reasonably related to the exposure.

B. The presumption provided in subsection A of this section may be rebutted by a preponderance of the evidence that there is a specific cause of the heart-related, perivascular or pulmonary injury, illness or death other than the employment.

C. Subsection A of this section does not apply if there is evidence that the firefighter's exposure to cigarettes or tobacco products outside the scope of the firefighter's official duties is a substantial contributing cause in the development of the heart-related, perivascular or pulmonary injury, illness or death.

D. For the purposes of this section, “firefighter” means a firefighter or volunteer firefighter as described in § 23-901, paragraph 6, subdivision (d).

Credits
Added as § 23-1043.05 by Laws 2017, Ch. 325, § 2. Renumbered as § 23-1105.

A. R. S. § 23-1105, AZ ST § 23-1105
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of April 10, 2024.

End of Document

D-5.

INDUSTRIAL COMMISSION OF ARIZONA
Title 20, Chapter 5, Article 5

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: September 4, 2024

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

FROM: Council Staff

DATE: August 15, 2024

SUBJECT: **INDUSTRIAL COMMISSION OF ARIZONA**
Title 20, Chapter 5, Article 5

Summary

This Five-Year Review Report (5YRR) from the Industrial Commission of Arizona (Commission) relates to rules in Title 20, Chapter 5, Article 5 regarding Elevator Safety. The rules in Article 5 address safety standards for elevators and other conveyances, maintenance and posting requirements related to a certificate of inspection, recordkeeping and reporting rules, and inspection guidelines.

In the prior 5YRR for these rules, which was approved by the Council in January 2020, the Commission proposed changes for consistency and clarity and proposed to evaluate the adoption of updated national consensus standards for R20-5-504, R20-5-507 through R20-5-511 and R20-5-513. The Commission indicates the proposed course of action was completed through a rulemaking which became effective January 2023 which updated all of Article 5 for consistency and clarity and incorporated updated national consensus standards.

Proposed Action

Given the extensive rulemaking completed in January 2023, the Commission has no current proposed rule changes to the rules in Article 5.

1. Has the agency analyzed whether the rules are authorized by statute?

The Commission cites both general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Commission indicates the rules have limited economic impact on consumers, while ensuring the public's safety. The 2023 final rulemaking was anticipated to have no adverse economic, small business, or consumer impact. The rulemaking was intended to reduce regulatory burden by eliminating incorrect or confusing language in the prior rules to allow for the affected stakeholders to have a clearer understanding of what is required. Additionally, by adopting the most current standards the amendments would facilitate stakeholders in using more modern technology which could provide a cost benefit. The current rules' impact on consumers and businesses was as anticipated in the 2023 rulemaking.

Stakeholders include the Commission; and owners and operators who install, repair, or alter elevators and other covered conveyances.

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 Commission has determined that the probable benefits of the rules reviewed outweigh the probable costs and that the rules impose the least burden and costs on the persons regulated.

4. Has the agency received any written criticisms of the rules over the last five years?

The Commission indicates it received no written criticisms of the rules in the last five years other than those comments disclosed to the Council in previous rulemakings.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Commission indicates the rules are clear, concise, and understandable.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Commission indicates the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Commission indicates the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

The Commission 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 rules in Article 5 implement state law, specifically, A.R.S. Title 23, Chapter 2, Article 12 (Safety Conditions for Elevators and Similar Conveyances). The rules in Article 5 are more stringent than corresponding OSHA standards applicable to material hoists, personnel hoists, and grain elevators in the construction industry. The corresponding federal regulations are 29 CFR § 1926.552 (Material hoists, personnel hoists, and elevators) and 29 CFR § 1910.272 (Grain handling facilities). The Commission has statutory authority to adopt more stringent standards than the corresponding federal regulations pursuant to A.R.S. §§ 23-491.04 (Commission powers and duties) and 23-491.06 (Development standards and regulations).

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 Commission indicates there have been no rules in Article 5 adopted after July 29, 2010 that require the issuance of a permit, license, or agency authorization.

11. Conclusion

This 5YRR from the Commission relates to rules in Title 20, Chapter 5, Article 5 regarding Elevator Safety. The rules in Article 5 address safety standards for elevators and other conveyances, maintenance and posting requirements related to a certificate of inspection, recordkeeping and reporting rules, and inspection guidelines. The Commission indicates the rules are clear, concise, understandable, consistent, effective, and enforced as written. Specifically, given the extensive rulemaking completed in January 2023, the Commission has no current proposed rule changes to the rules in Article 5.

Council staff recommends approval of this report.

THE INDUSTRIAL COMMISSION OF ARIZONA

LEGAL DIVISION

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May 30, 2024

Sent via e-mail to grrc@azdoa.gov
Jessica Klein, Chair
Governor's Regulatory Review Council
Arizona Department of Administration
l00North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE**:** A.A.C. Title 20, Chapter 5, Article 5, Five-year Review Report

Dear Ms. Klein:

The Industrial Commission of Arizona ("Commission"), through its Executive Deputy Director, submits for approval by the Governor's Regulatory Review Council ("Council") the attached Five-year Review Report on 20 A.A.C. 5, Article 5. The Commission has timely filed this report on or before Friday, May 31, 2024.

An electronic copy of this cover letter, the report, general and specific statutes, rules reviewed, and most recent economic impact statement are concurrently submitted by email to Patricia Grant. The Commission believes that the report complies with the requirements of A.R.S. § 41-1056.

The Commission has reviewed all rules in Article 5 and has complied with A.R.S. § 41-1091, which requires the Commission to annually publish a directory summarizing the subject matter of all currently applicable rules and substantive policy statements, by posting directories of its current rules and substantive policy statements on the Commission's website, as required by A.R.S. § 41-1091.01(1) & (2). Should you have any questions concerning the report, please contact Chief Counsel Afshan Peimani at (602) 542-5905 or Assistant Chief Counsel Sophia Cox at (602) 542-3556.

Sincerely,

Gaetano Testini
Executive Deputy Director

FIVE-YEAR-REVIEW REPORT
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA
ARTICLE 5. ELEVATOR SAFETY

FIVE-YEAR-REVIEW REPORT
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA
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FIVE-YEAR REVIEW SUMMARY

The Industrial Commission of Arizona (the "Commission") was created in 1925 as a result of legislation (the Arizona Workman's Compensation Act) implementing the constitutional provisions establishing a workers' compensation system. From 1925 to 1969, the workers' compensation system consisted of the State Compensation Fund, which was then a part of the Commission, and self-insured employers which generally comprised the mining and the railroad companies. In 1969, the workers' compensation system reorganized and expanded to include private insurance companies. The State Compensation Fund was split off from the Commission and established as a separate agency responsible for providing workers' compensation insurance coverage. The Commission retained both its responsibility as the file of record and its authority over the processing of workers' compensation claims. Since that time, the role of the Commission has grown to include other labor-related issues such as occupational safety and health, youth employment, resolution of wage-related disputes, minimum wage, vocational rehabilitation, workers' compensation coverage for claimants of uninsured employers, and self-insured employers.

Certification Regarding Compliance with A.R.S. § 41-1091

In the cover letter for this report, the Commission's Director certifies that the Commission is in compliance with A.R.S. § 41-1091 with respect to the substantive policy statements relating to the rules in Article 5, as well as other substantive policy statements and all rules, which are available on the Commission's website.

About Article 5 Generally:

The rules in Article 5 address safety standards for elevators and other conveyances, maintenance and posting requirements related to a certificate of inspection, recordkeeping and reporting rules, and inspection guidelines.

Recent Article 5 Rulemaking:

The Commission conducted the following rulemaking in 2019, 2020, and 2023 to amend Article 5.

2019:

- R20-5-507 (effective August 6, 2019) – Amended to incorporate by reference national consensus standards contained in ASME A17.7-2007 (Performance-Based Safety Code for Elevators and Escalators).

2020:

- R20-5-507 (effective February 6, 2020) – Amended to adopt the national consensus clearance standard contained in requirement 5.3.1.7.2 of ASME A17.1-2016, replacing the existing clearance standard contained in Section 5.3 of ASME A17.1-2007. The amendment reduced the permissible clearance between the hoistway face of the hoistway doors and the hoistway edge of the landing sill to 19 mm for swinging doors and 57 mm for sliding doors in residential elevators.

2023:

- R20-5-502 (effective January 9, 2023) Amended to incorporate the definitions provided in A.R.S. § 23-491 and include new definitions to provide further clarity to stakeholders.
- R20-5-504 (effective January 9, 2023) Amended to incorporate by reference ASME A18.1-2020 (Safety Standard for Platform Lifts and Stairway Chairlifts) with amendments as of November 29, 2020. A18.1-2020 presents certain guides for the design, construction, installation, operation, inspection, testing, maintenance, and repair of inclined stairway chairlifts, and inclined and vertical platform lifts. It covers devices intended for transportation of a mobility-impaired person only—typically within household applications. The goal of this Standard is to help protect public safety, while reflecting best-practices of industry. The new standard includes updated engineering tests, a new definition for platform lifts, new signage requirements, updated electrical standards, updated maintenance standards, updated emergency signals and alarms, and updated speed safeguards.
- R20-5-505 (effective January 9, 2023) Amended to clarify confusing rules. This change was proposed in the previous five year review report.

- R20-5-506 (effective January 9, 2023) Amended to clarify confusing rules. This change was proposed in the previous five year review report.
- R20-5-507 (effective January 9, 2023) Amended to incorporate by reference ASME A17.1-2019 (Safety Code for Elevators and Escalators) as an option for every owner or operator of an elevator, escalator, dumbwaiter, moving walk, material lift, or dumbwaiter with automatic transfer device, installed, repaired or altered on or after January 1, 2023. ASME A17.1-2019 is the accepted guide throughout North America for the design, construction, installation, operation, inspection, testing, maintenance, alteration, and repair of elevators, escalators, and related conveyances. The new standard updates door requirements in private residence elevators, clarifies the seismic requirements for elevators and escalators, updates emergency communication requirements to ensure communication with trapped passengers and hearing-impaired passengers, and increases the door protections on passenger elevators.
- R20-5-508 (effective January 9, 2023) Amended to incorporate ASME A90.1-2015 (Safety Standard for Belt Manlifts), changed the title of the rule, and corrected an error which misidentified the incorporated material.
- R20-5-509 (effective January 9, 2023) Amended to incorporate ANSI A10.4-2016 (Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Sites). This standard applies to the design, construction, installation, operation, inspection, testing, maintenance, alterations and repair of hoists and elevators that 1) are not an integral part of buildings, 2) are installed inside or outside buildings or structures during construction, alteration, demolition or operations and 3) are used to raise and lower workers and other personnel connected with or related to the structure. These personnel hoists and employee elevators may also be used for transporting materials under specific circumstances defined in this standard.
- R20-5-510 (effective January 9, 2023) Amended to incorporate ANSI A10.5-2020 (Safety Requirements for Material Hoists). The new rule incorporated by reference ASME A17.6-2017 (Standard Requirements for Elevator Suspension, Compensation, and Governor Systems). The proposed new rule would incorporate by reference ANSI E1.42-2018 (Entertainment Technology - Design, Installation, and Use of Orchestra Pit Lifts). This standard covers the design, construction, operation, inspection, testing, maintenance,

alteration and repair of permanently installed orchestra pit lifts and their associated parts, rooms, spaces, enclosures and hoistways, where located in a theatre or a similar place of public entertainment. This standard covers the design, construction, operation, inspection, testing, maintenance, alteration and repair of orchestra pit lift equipment and its associated parts, rooms, spaces, and hoistways (1) operating at a speed of 15 feet (4.6 meters) per minute or less (2) not designed for passenger use (3) not for moving during performances (4) providing an orchestra pit performance location on the audience side of a proscenium arch, (5) providing an extension of the stage as a forestage and (6) providing an extension of the auditorium floor over the pit.

- R20-5-511(repealed)
- R20-5-513 (effective January 9, 2023) Amended to clarify confusing rules. This change was proposed in previous five year review report.
- R20-5-514 (effective January 9, 2023) created rule incorporating ASME A17.6-2017 standards for elevator suspension, compensation, and governor systems. Previously Article 5 did not incorporate by reference national consensus standards for elevator suspension, compensation, and governor systems.
- R20-5-515 (effective January 9, 2023) created rule incorporating ANSI E1.42-2018 requirements for stage and orchestra lifts. Article 5 previously did not incorporate by reference national consensus standards for the design, installation, and use of orchestra lifts.

FIVE-YEAR-REVIEW REPORT
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA
ARTICLE 5. ELEVATOR SAFETY

1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.

The rules in Article 5 have general and specific authorization under: (1) A.R.S. § 23-491.04(A)(2), which states, "The commission shall . . . [p]romulgate standards and regulations pursuant to section 23-491.06 as required and promulgate such other rules and regulations and exercise such other powers as are necessary to carry out [A.R.S. Title 23, Chapter 2, Article 12]."; (2) A.R.S. § 23-491.04(B), which provides specific authority for the Commission to "set fees not to exceed the actual cost for inspections performed pursuant to [A.R.S. Title 23, Chapter 2, Article 12]"; and (3) A.R.S. § 23-491.06(A), which sets forth the procedure for adopting safety standards and regulations.

2. Objective of the rules, including the purposes for the existence of the rules.

The Commission's overarching objectives regarding Article 5, in no particular order with respect to priority, are (1) to protect all persons who use elevators and other conveyances from hazards to life, health, or property; (2) minimize burden upon the regulated community; and (3) set forth the procedural guidance necessary to implement Arizona Revised Statutes, Title 23, Chapter 2, Article 12 (Safety Conditions for Elevators and Similar Conveyances).

R20-5-502. Definitions

The rule defines terms utilized in A.A.C., Title 20, Chapter 5, Article 5.

R20-5-504. Safety Standard for Platform Lifts and Stairway Chairlifts

The rule adopts national consensus safety standards for platform lifts and stairway chairlifts based on when they were installed, repaired, or altered.

R20-5-505. Certificate of Inspection

The rule sets forth requirements for public posting of certificates of inspection and State Serial Numbers.

R20-5-506. Recordkeeping

The rule addresses the assignment of State Serial Numbers to all conveyances; the procedure for notifying the Elevator Safety Section of the Arizona Division of Occupational Safety and Health ("ADOSH") 90 days before installation, relocation, or major alteration of a conveyance; and the procedure for notifying the Elevator Safety Section of ADOSH within 24 hours of every accident resulting in personal injury or disabling damage to a conveyance.

R20-5-507. Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Material Lifts, Special Purpose Personnel Elevators, and Dumbwaiters with Automatic Transfer Devices

The rule adopts national consensus safety standards for elevators, escalators, dumbwaiters, moving walks, material lifts, and special purpose personnel elevators depending on when they were installed, repaired, or altered and establishes distance requirements for the hoistway face of the hoistway doors and the hoistway edge of the landing sill.

R20-5-508. Safety Standard for Manlifts

The rule adopts national consensus safety standards for manlifts depending on when they were altered, repaired, or installed.

R20-5-509. Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demotion Operations

The rule adopts national consensus safety standards for personnel hoists and employee elevators for construction and demolition operations based on when they were altered, repaired, or installed.

R20-5-510. Safety Requirements for Material Hoists

The rule adopts national consensus safety standards for material hoists depending on when they were altered, repaired, or installed.

R20-5-513. Firefighters' Emergency Operation

The rule sets forth the requirement that conveyances equipped with firefighters' emergency operation must utilize the AZFS Key.

R20-5-514. Standard for Elevator Suspension, Compensation, and Governor Systems

The rule adopts national consensus safety standards for elevators with elevator suspension, compensation, or governor systems installed, repaired, or altered after January 9, 2023, by incorporating ASME A17.6-2017.

R20-5-515. Safety Requirements for Stage and Orchestra Lifts

The rule adopts national consensus safety standards for stage lifts installed, repaired, or altered after January 9, 2023, by incorporating ANSI E1.42-2018.

3. Effectiveness of the rules in achieving their objectives, including a summary of any available data supporting the conclusion reached

The rules in Article 5 are generally effective in achieving their objectives. Currently, ADOSH's Elevator Safety Section has seven inspectors who perform work across the State. During State Fiscal Year 2023 the Section completed 3,721 inspections. In Fiscal Year 2024 the Section has completed 3,569 inspections. In addition, the Commission issued 1,310 certificates and 3,156 correction orders in State Fiscal Year 2023 and has issued 1,636 certificates of inspection and 2,769 correction orders to date in State Fiscal Year 2024.

4. Consistency of the rules 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

The rules in Article 5 are consistent with applicable Arizona Revised Statutes in Title 23, Chapter 2, Article 12 (A.R.S. §§ 23-491 through 23-491.16).

5. Agency enforcement policy, including whether the rules are currently being enforced and, if so, whether there are any problems with enforcement

The rules reviewed are enforced as written to the extent they are consistent with statute.

6. Clarity, conciseness, and understandability of the rules

The rules in Article 5 are clear, concise, and understandable.

7. Written criticisms of the rules received by the agency within the five years immediately preceding the five-year review report

The Commission has not received any written criticisms of the rules within the five years immediately preceding this report aside from comments disclosed in the previous rulemakings.

8. A comparison of the estimated economic, small business, and consumer impact of the rules with the economic, small business, and consumer impact statement prepared on the last making of the rules or, if no economic, small business, and consumer impact statement was prepared on the last making of the rules, an assessment of the actual economic, small business, and consumer impact of the rules

The rules have a limited economic impact on consumers, while ensuring the public's safety. The 2023 final rulemaking was anticipated to have no adverse economic, small business, or consumer impact. The rulemaking was intended to reduce regulatory burden by eliminating incorrect or confusing language in the prior rules to allow for the affected stakeholders to have a clearer understanding of what is required. Additionally, by adopting the most current standards the amendments would facilitate stakeholders in using more modern technology which could provide a cost benefit. The current rules impact on consumers and businesses was as anticipated by the 2023 rulemaking.

9. Any analysis submitted to the agency by another person regarding the rules' impact on this state's business competitiveness as compared to the competitiveness of businesses in other states

No business competitiveness analysis has been submitted to the Commission regarding Article 5.

10. If applicable, whether the agency completed the course of action indicated in the agency's previous five-year-review report

The previous Five-Year Review Report proposed course of action outlined changes for consistency and clarity and proposed to evaluate the adoption of updated national consensus standards for R20-5-504, R20-5-507 through R20-5-511 and R20-5-513. The proposed course of action was completed through the 2023 rulemaking which updated all of Article 5 for consistency and clarity and incorporated updated national consensus standards.

11. A determination after analysis that probable benefits outweigh probable costs and that the rules impose the least burden and costs on persons regulated

The Commission has determined that the probable benefits of the rules reviewed outweigh the probable costs and that the rules impose the least burden and costs on the persons regulated.

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

The rules in Article 5 implement state law, specifically A.R.S. Title 23, Chapter 2, Article 12. A.R.S. §§ 23-491.04 and 23-491.06 authorize the Commission to promulgate rules and propose the adoption of national consensus standards or federal standards. The Commission has adopted national consensus standards which at times may be more stringent than federal standards.

13. For rules adopted 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

There have been no rules adopted after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization.

14. Proposed course of action

The Commission has no current proposed rule changes to Article 5 given the extensive rulemaking that was completed in 2023.

ECONOMIC IMPACT STATEMENT

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 5. ELEVATOR SAFETY

1. Identification of the proposed rulemaking:

The Commission is proposing to amend A.A.C. R20-5-502 (Definitions), A.A.C. R20-5-504 (Safety Standards for Platform Lifts and Stairway Chairlifts), A.A.C. R20-5-505 (Certificate of Inspection), A.A.C. R20-5-506 (Recordkeeping) A.A.C. R20-5-507 (Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Material Lifts, and Dumbwaiters with Automatic Transfer Devices), A.A.C. R20-5-508 (Safety Standards for Belt Manlifts), A.A.C. R20-5-509 (Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Operations), A.A.C. R20-5-510 (Safety Requirements for Material Hoists), and A.A.C. R20-5-513 (Firefighters' Emergency Operation). Additionally, the Commission is proposing to create A.A.C. R20-5-514 (Standard for Elevator Suspension, Compensation, and Governor Systems), and A.A.C. R20-5-515 (Safety Requirements for Stage and Orchestra Lifts). Lastly, the Commission is proposing to repeal A.A.C. R20-5-511 (Guide for Inspection of Elevators, Escalators, and Moving Walks).

2. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking:

Owners and operators, who install, repair, or alter elevators and other covered conveyances will be directly affected by the proposed rulemaking.

3. A cost benefit analysis of the following:

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 Commission does not anticipate an increase in costs from the new rulemaking. The Commission will not need to hire additional staff to enforce the new rules.

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

Political subdivisions who own or operate, and install, repair, or alter elevators and other covered conveyances would enjoy the same benefits as outlined below to businesses affected by the proposed amendments.

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

The Industrial Commission anticipates that the proposed rulemaking will have no adverse economic, small business, or consumer impact. The proposed rulemaking is intended to reduce regulatory burden by eliminating incorrect or confusing language in the current rules to allow for the affected stakeholders to have a clearer understanding of what is required. Additionally, by adopting the most current standards the amendments would facilitate stakeholders in using more modern technology which may provide a cost benefit.

4. Impact on private and public employment in businesses, agencies, and political subdivisions:

It is not anticipated that the new rules would have an impact on private and public employment in businesses, agencies, and political subdivisions.

5. Impact on small businesses:

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

Arizona small businesses who who own or operate, and install, repair, or alter elevators and other covered conveyances will be directly affected by the proposed rulemaking.

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

The proposed rules do not place new obligations, costs, or time constraints on employers, adoption of the final rules is not expected to impose administrative or other costs required for compliance in Arizona.

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

The Commission did not consider methods of reducing the impact on small businesses.

d. Cost and benefit to private persons and consumers who are directly affected by proposed rulemaking:

Private persons and consumers are not directly affected by this rulemaking.

6. Probable effect on state revenues:

The Commission anticipates state revenues remaining neutral.

7. Less intrusive or less costly alternative methods considered:

The Commission did not consider alternative methods.

8. Data on which the rule is based:

The Commission did not perform any studies as a basis for the rulemaking.

RULES REVIEWED

2022), with an immediate effective date of December 7, 2022 (Supp. 22-4).

R20-5-432. Historical Boilers

Historical boilers shall require an initial Certificate Inspection by an Authorized Inspector in accordance with The National Board Inspection Code, followed by a Certificate Inspection every three years thereafter if stored inside a shelter, or annually if stored outdoors. The initial Certificate Inspection shall include ultrasonic thickness testing of all pressure boundaries. Thinning of the pressure retaining boundary shall be monitored and recorded on the inspection report.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 1496, effective August 18, 2009 (Supp. 09-3). Amended by final rulemaking at 28 A.A.R. 3952 (December 30, 2022), with an immediate effective date of December 7, 2022 (Supp. 22-4).

ARTICLE 5. ELEVATOR AND CONVEYANCE SAFETY

R20-5-501. Repealed

Historical Note

Former Rule E-1. Amended effective November 9, 1979 (Supp. 79-6). R20-5-501 recodified from R4-13-501 (Supp. 95-1). Section repealed by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1).

R20-5-502. Definitions

In addition to the definitions provided in A.R.S. § 23-491, the following definitions apply to this Article:

"Alteration" or "altered" means work performed to any conveyance that is not routine maintenance or repair.

"ASME" means American Society of Mechanical Engineers.

"ANSI" means American National Standard Institute.

"AZFS key" means Arizona Firefighters Service Key, a universal key used by a firefighter to operate a conveyance during an emergency.

"Chief" means the head inspector of the Elevator Safety Section of the Division of Occupational Safety and Health.

"Conveyance" defined in A.R.S. § 23-491, also includes employee elevators for construction and demolition operations, material lifts, platform lifts, orchestra lifts and stairway chairlifts.

"Elevator Safety Section" means the Elevator Safety Section of the Division of Occupational Safety and Health of the Commission.

"Employee elevator for construction and demolition operations" means an elevator that is not an integral part of a building, is installed inside or outside buildings or structures during construction, alteration, or demolition operations, and is used to raise and lower workers and other personnel.

"Inspection" means the official determination by an inspector of the condition of all parts of the equipment on which the safe operation of a conveyance depends.

"Orchestra lift" means a lift operating at a speed of 15 (4.6 meters) per minute or less, not designed for passenger use, not for moving during performances, providing an extension of the stage, and providing an extension of the auditorium floor.

"Platform lift" means a powered hoisting and lowering mechanism designed to transport mobility-impaired persons on a guided platform that travels on an incline or vertically.

"Stairway chairlift" means a powered hoisting and lowering mechanism that is guided and equipped with a seat to transport seated passengers along stairways.

"State Serial Number" is a unique number assigned by the Chief Elevator Inspector to a conveyance.

Historical Note

Former Rule E-2. R20-5-502 recodified from R4-13-502 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2). Amended by final rulemaking at 29 A.A.R. 512 (February 3, 2023), within an immediate effective date of January 9, 2023 (Supp. 23-1).

R20-5-503. Repealed

Historical Note

Former Rule E-3. R20-5-503 recodified from R4-13-503 (Supp. 95-1). Section repealed by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1).

R20-5-504. Safety Standard for Platform Lifts and Stairway Chairlifts

A. Every owner or operator of a platform lift or stairway chairlift installed, repaired, or altered on or after January 1, 2023, shall comply with ASME A18.1-2020 (Safety Standard for Platform Lifts and Stairway Chairlifts), with amendments as of November 29, 2020, which is incorporated by reference. For purposes of a repair or alteration, compliance with the specified standard shall apply, to the extent possible, to the scope of the repair or alteration. This incorporation by reference does not include any later amendments or editions of the incorporated matter.

B. Every owner or operator of a platform lift or stairway chairlift installed, repaired, or altered prior to January 1, 2023, shall comply with either: (1) ASME A18.1-2005 (Safety Standard for Platform Lifts and Stairway Chairlifts), with amendments as of November 29, 2005; or (2) ASME A18.1-2020 (Safety Standard for Platform Lifts and Stairway Chairlift), with amendments as of November 29, 2020, which are incorporated by reference. For purposes of a repair or alteration, compliance with the specified standard shall apply, to the extent possible, to the scope of the repair or alteration. These incorporations by reference do not include any later amendments or editions of the incorporated matter.

C. A copy of the referenced material is available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and ASME at Three Park Avenue, New York, New York 10016-5990 or at http://www.asme.org.

Historical Note

Former Rule E-4. R20-5-504 recodified from R4-13-504 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2). Amended by final rulemaking at 29 A.A.R. 512 (February 3, 2023), within an immediate effective date of Janu-

ary 9, 2023 (Supp. 23-1).

R20-5-505. Certificate of Inspection

The owner or operator of a conveyance shall maintain the Commission's certificate at the same location as the conveyance or related equipment and make the certificate available for inspection and copying upon request. The State Serial Number or certificate shall be posted or displayed in or within close proximity to the conveyance in a location that is easily accessible.

Historical Note

Former Rule E-5. R20-5-505 recodified from R4-13-505 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2). Amended by final rulemaking at 29 A.A.R. 512 (February 3, 2023), within an immediate effective date of January 9, 2023 (Supp. 23-1).

R20-5-506. Recordkeeping

A. The Elevator Safety Section shall assign a State Serial Number to every conveyance for recordkeeping purposes. The State Serial Number shall be on a tag that is affixed to the controller or mainline disconnect of the conveyance.

B. The owner or operator of a conveyance shall notify the Elevator Safety Section at least 90 days before installation, relocation, or alteration of a conveyance.

C. The owner or operator of a conveyance shall notify the Elevator Safety Section within 24 hours of every accident resulting in injury to a person or disabling damage to a conveyance. For purposes of this subsection, disabling damage means any damage to a conveyance that impairs normal operations.

Historical Note

Former Rule E-6. Amended effective November 9, 1979 (Supp. 79-6). R20-5-506 recodified from R4-13-506 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2). Amended by final rulemaking at 29 A.A.R. 512 (February 3, 2023), within an immediate effective date of January 9, 2023 (Supp. 23-1).

R20-5-507. Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Material Lifts, Special Purpose Personnel Elevators, and Dumbwaiters with Automatic Transfer Devices

A. Every owner or operator of an elevator, escalator, dumbwaiter, moving walk, material lift, special purpose personnel elevator, or dumbwaiter with automatic transfer device installed, repaired, or altered on or after January 1, 2023, shall comply with the ASME A17.1-2019 (Safety Code for Elevators and Escalators) or ASME A17.7-2007 (Performance-Based Safety Code for Elevators and Escalators) as referenced in ASME A17.1-2019, which are incorporated by reference. For purposes of a repair or alteration, compliance with the specified standard shall apply, to the extent possible, to the scope of the repair or alteration. These incorporations by reference do not include any later amendments or editions of the incorporated matter.

B. Every owner or operator of an elevator, escalator, dumbwaiter, moving walk, material lift, special purpose personnel elevator, or dumbwaiter with automatic transfer device installed, repaired, or altered between May 5, 2009, and December 31, 2022, shall comply with either: (1) ASME A17.1-2019 (Safety Code for Elevators and Escalators); (2) ASME A17.1-2007 (Safety Code for Elevators and Escalators); or (3) ASME A17.7-2007 (Performance-Based Safety Code for Elevators and Escalators), as referenced in ASME A17.1-2019 and ASME A17.1-2007, which are incorporated by reference. For purposes of a repair or alteration, compliance with the specified standard shall apply, to the extent possible, to the scope of the repair or alteration. These incorporations by reference do not include any later amendments or editions of the incorporated matter.

C. Every owner or operator of an elevator, escalator, dumbwaiter, moving walk, material lift, special purpose personnel elevator, or dumbwaiter with automatic transfer device installed, repaired, or altered before May 5, 2009, shall comply with either: (1) ASME A17.1-2019 (Safety Code for Elevators and Escalators); (2) ASME A17.1-2007 (Safety Code for Elevators and Escalators); (3) ASME A17.7-2007 (Performance-Based Safety Code for Elevators and Escalators), as referenced in ASME A17.1-2019 and A17.1-2007; or (4) the version of ASME A17.1 (Safety Code for Elevators and Escalators) in effect at the time of installation, which are incorporated by reference. For purposes of a repair or alteration, compliance with the specified standard shall apply, to the extent possible, to the scope of the repair or alteration. These incorporations by reference do not include any later amendments or editions of the incorporated matter.

D. For installations of a residential elevator, escalator, dumbwaiter, moving walk, material lift, or dumbwaiter with an automatic transfer device, installed after February 6, 2020, the distance between the hoistway face of the hoistway doors and the hoistway edge of the landing sill shall not exceed 19 mm (0.75 in.) for swinging doors and 57 mm (2.25 in.) for sliding doors.

E. A copy of the referenced material is available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and may be obtained from ASME at Three Park Avenue, New York, New York 10016-5990 or at http://www.asme.org.

Historical Note

Former Rule R4-13-507 repealed, new Section R4-13-507 adopted effective November 9, 1979 (Supp. 79-6). Amended effective March 30, 1981 (Supp. 81-2). Amended effective June 23, 1983 (Supp. 83-3). Amended effective July 24, 1985 (Supp. 85-4). Amended effective September 5, 1989 (Supp. 89-3). Amended effective March 20, 1992 (Supp. 91-2). R20-5-507 recodified from R4-13-507 (Supp. 95-1). Amended effective October 8, 1996 (Supp. 96-4). Amended by final rulemaking at 5 A.A.R. 2935, effective August 4, 1999 (Supp. 99-3). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2). Amended by final rulemaking at 25 A.A.R. 2182, with an immediate effective date of August 6, 2019 (Supp. 19-3). Amended by final rulemaking at 26 A.A.R. 311, with an immediate effective date of February 6, 2020 (Supp. 20-1). Amended by final rulemaking at 29 A.A.R. 512 (February 3, 2023), within an immediate effective date of January 9, 2023 (Supp. 23-1).

R20-5-508. Safety Standard for Manlifts

A. Every owner or operator of a manlift installed, repaired, or altered on or after January 1, 2023, shall comply with ASME A90.1-2015 (Safety Standard for Belt Manlifts), which is incorporated by reference. For purposes of a repair or alteration, compliance with the specified standard shall apply, to the extent possible, to the scope of the repair or alteration. This

incorporation by reference does not include any later amendments or editions of the incorporated matter.

B. Every owner or operator of a manlift installed, repaired, or altered prior to January 1, 2023, shall comply with either: (1) ASME A90.1-2015 (Safety Standard for Belt Manlifts); or (2) ASME A90.1-2003 (Safety Standard for Belt Manlifts), which are incorporated by reference. For purposes of a repair or alteration, compliance with the specified standard shall apply, to the extent possible, to the scope of the repair or alteration. These incorporations by reference do not include any later amendments or editions of the incorporated matter.

C. A copy of the referenced material is available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and ASME at Three Park Avenue, New York, New York 10016-5990 or at http://www.asme.org.

Historical Note

Adopted effective November 9, 1979 (Supp. 79-6). R20-5-508 recodified from R4-13-508 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2). Amended by final rulemaking at 29 A.A.R. 512 (February 3, 2023), within an immediate effective date of January 9, 2023 (Supp. 23-1).

R20-5-509. Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Operations

A. Every owner or operator of a personnel hoist or employee elevator for construction and demolition operation installed, repaired, or altered on or after January 1, 2023, shall comply with ANSI A10.4-2016 (Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Sites), which is incorporated by reference. For purposes of a repair or alteration, compliance with the specified standard shall apply, to the extent possible, to the scope of the repair or alteration. This incorporation by reference does not include any later amendments or editions of the incorporated matter.

B. Every owner or operator of a personnel hoist or employee elevator for construction and demolition operation installed prior to January 1, 2023, shall comply with either: (1) ANSI A10.4-2016 (Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Sites); or (2) ANSI A10.4-2007 (Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Sites), which are incorporated by reference. For purposes of a repair or alteration, compliance with the specified standard shall apply, to the extent possible, to the scope of the repair or alteration. These incorporations by reference do not include any later amendments or editions of the incorporated matter.

C. A copy of the referenced material is available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and ANSI at 25 West 43rd Street, 4th Floor, New York, New York, 10036 or at http://www.ansi.org.

Historical Note

Adopted effective November 9, 1979 (Supp. 79-6). Amended effective June 23, 1983 (Supp. 83-3). R20-5-509 recodified from R4-13-509 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2). Amended by final rulemaking at 29 A.A.R. 512 (February 3, 2023), within an immediate effective date of January 9, 2023 (Supp. 23-1).

R20-5-510. Safety Requirements for Material Hoists

A. Every owner or operator of a material hoist installed, repaired, or altered on or after January 1, 2023, shall comply with ANSI A10.5-2020 (Safety Requirements for Material Hoists), which is incorporated by reference. For purposes of a repair or alteration, compliance with the specified standard shall apply, to the extent possible, to the scope of the repair or alteration. This incorporation by reference does not include any later amendments or editions of the incorporated matter.

B. Every owner or operator of a material hoist installed, repaired, or altered prior to January 1, 2023, shall comply with either: (1) ANSI A10.5-2020 (Safety Requirements for Material Hoists); or (2) ANSI A10.5-2006 (Safety Requirements for Material Hoists), which are incorporated by reference. For purposes of a repair or alteration, compliance with the specified standard shall apply, to the extent possible, to the scope of the repair or alteration. These incorporations by reference do not include any later amendments or editions of the incorporated matter.

C. A copy of the referenced material is available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and ANSI at 25 West 43rd Street, 4th Floor, New York, New York, 10036 or at http://www.ansi.org.

Historical Note

Adopted effective November 9, 1979 (Supp. 79-6). Amended effective June 23, 1983 (Supp. 83-3). R20-5-510 recodified from R4-13-510 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2). Amended by final rulemaking at 29 A.A.R. 512 (February 3, 2023), within an immediate effective date of January 9, 2023 (Supp. 23-1).

R20-5-511. Repealed

Historical Note

Adopted effective March 30, 1981 (Supp. 81-2). R20-5-511 recodified from R4-13-511 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 381, effective March 15, 2003 (Supp. 03-1). Amended by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2). Repealed by final rulemaking at 29 A.A.R. 512 (February 3, 2023), within an immediate effective date of January 9, 2023 (Supp. 23-1).

R20-5-512. Expired

Historical Note

Adopted effective March 30, 1981 (Supp. 81-2). R20-5-512 recodified from R4-13-512 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 2320, effective May 19, 2005 (Supp. 05-2).

R20-5-513. Firefighters' Emergency Operation

All conveyances equipped with firefighters' emergency operation shall utilize the AZFS key.

Historical Note

New Section made by final rulemaking at 15 A.A.R. 872, effective May 5, 2009 (Supp. 09-2). Amended by final rulemaking at 29 A.A.R. 512 (February 3, 2023), within an immediate effective date of January 9, 2023 (Supp. 23-

1).

R20-5-514. Standard for Elevator Suspension, Compensation, and Governor Systems

A. Every owner or operator of an elevator with elevator suspension, compensation, or governor systems installed, repaired, or altered on or after the effective date of this subsection shall comply with ASME A17.6-2017 (Standard for Elevator Suspension, Compensation, and Governor Systems), which is incorporated by reference. For purposes of a repair or alteration, compliance with the specified standard shall apply, to the extent possible, to the scope of the repair or alteration. This incorporation by reference does not include any later amendments or editions of the incorporated matter.

B. A copy of the referenced material is available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and ASME at Three Park Avenue, New York, New York 10016-5990 or at http://www.asme.org.

Historical Note

New Section made by final rulemaking at 29 A.A.R. 512 (February 3, 2023), within an immediate effective date of January 9, 2023 (Supp. 23-1).

R20-5-515. Safety Requirements for Stage and Orchestra Lifts

A. Every owner or operator of a stage lift installed, repaired, or altered on or after the effective date of this section shall comply with ANSI E1.42-2018 (Entertainment Technology - Design, Installation, and Use of Orchestra Pit Lifts), which is incorporated by reference. For purposes of a repair or alteration, compliance with the specified standard shall apply, to the extent possible, to the scope of the repair or alteration. This incorporation by reference does not include any later amendments or editions of the incorporated matter.

B. A copy of the reference material is available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix, Arizona 85007, and ANSI at 25 West 43rd Street, 4th Floor, New York, New York, 10036 or at http://www.ansi.org.

Historical Note

New Section made by final rulemaking at 29 A.A.R. 512 (February 3, 2023), within an immediate effective date of January 9, 2023 (Supp. 23-1).

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926

Each employer shall comply with the standards in the Federal Occupational Safety and Health Standards for Construction, as published in 29 CFR 1926, with amendments as of February 24, 2021, incorporated by reference. Copies of these referenced materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to construction activity by all employers, both public and private, in the state of Arizona. This incorporation by reference does not include amendments or editions to 29 CFR 1926 published after February 24, 2021.

Historical Note

Editorial correction (Supp. 75-1). Amended as an emergency effective November 16, 1977 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 77-6). Amended as an emergency effective October 29, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former Section R4-13-601 repealed, former emergency adoption effective October 29, 1980, adopted effective March 2, 1981 (Supp. 81-2). Amended effective June 17, 1981 (Supp. 81-3). Amended effective November 14, 1984 (Supp. 84-6). Amended effective March 3, 1987 (Supp. 87-1). Amended effective April 22, 1988; amended effective May 26, 1988 (Supp. 88-2). Amended effective October 14, 1988 (Supp. 88-4). Amended effective September 14, 1989 (Supp. 89-3). Amended effective April 2, 1990 (Supp. 90-2). Amended effective August 6, 1990 (Supp. 90-3). Amended effective February 8, 1991 (Supp. 91-1). Amended effective November 21, 1991 (Supp. 91-4). Amended effective February 28, 1992 (Supp. 91-2). Amended effective October 22, 1992; amended effective December 23, 1992 (Supp. 92-4). Amended effective September 13, 1993 (Supp. 93-3). Amended effective October 21, 1993; amended effective December 17, 1993 (Supp. 93-4). Amended effective May 11, 1994 (Supp. 94-2). Amended effective November 18, 1994 (Supp. 94-4). Amended effective January 12, 1995; R20-5-601 recodified from R4-13-601 (Supp. 95-1). Amended effective August 28, 1996 (Supp. 96-3). Amended effective April 1, 1997 (Supp. 97-2). Amended effective December 12, 1997 (Supp. 97-4). Amended effective August 27, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 592, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 851, effective February 5, 2002 (Supp. 02-1). Amended by final rulemaking at 9 A.A.R. 2108, effective June 2, 2003 (Supp. 03-2). Amended by final rulemaking at 12 A.A.R. 4102, effective December 4, 2006 (Supp. 06-4). Amended by final rulemaking at 13 A.A.R. 1417, effective March 30, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 2711, effective June 17, 2008 (Supp. 08-2). Amended by final rulemaking at 16 A.A.R. 1469, effective September 11, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 1264, effective June 13, 2011 (Supp. 11-2). Amended by final rulemaking at 18 A.A.R. 1492, effective August 5, 2012 by Notice of Public Information at 18 A.A.R. 1653 (Supp. 12-2). Amended by final rulemaking at 18 A.A.R. 3007, effective October 24, 2012 (Supp. 12-4). Amended by final rulemaking at 22 A.A.R. 773, effective March 16, 2016 (Supp. 16-1). Amended by final rulemaking at 22 A.A.R. 1391, effective May 10, 2016 (Supp. 16-2). Amended by final rulemaking at 24 A.A.R. 2316, effective July 23, 2018 (Supp. 18-3). Amended by final rulemaking at 26 A.A.R. 373, with an immediate effective date of February 11, 2020 (Supp. 20-1). Amended by final rulemaking at 28 A.A.R. 1761 (July 22, 2022), with an immediate effective date of July 8, 2022 (Supp. 22-3).

R20-5-601.01. Expired

Historical Note

New Section made by exempt rulemaking at 18 A.A.R. 1144, effective May 25, 2012 (Supp. 12-2). Section expired under A.R.S. § 41-1056(J) at 26 A.A.R. 290, effective January 15, 2020 (Supp. 20-1).

R20-5-602. The Federal Occupational Safety and Health

GENERAL AND SPECIFIC STATUTES

A.R.S. § 23-491.04. Commission powers and duties

A. The commission shall:

1. Administer this article through the division of occupational safety and health.

2. Promulgate standards and regulations pursuant to section 23-491.06 as required and promulgate such other rules and regulations and exercise such other powers as are necessary to carry out this article.

B. The commission, by rule and regulation, may set fees not to exceed the actual cost for inspections performed pursuant to this article.

A.R.S. § 23-491.06. Development of standards and regulations

A. Safety standards and regulations shall be formulated in the following manner:

1. The division shall either propose adoption of national consensus standards or federal standards or draft such regulations as it considers necessary after conducting sufficient investigations through the division's employees and through consultation with other persons knowledgeable in the business for which the standards or regulations are being formulated.

2. Proposed standards or regulations, or both, shall be submitted to the commission for approval.

B. Any person who may be adversely affected by a standard or regulation issued under this article may, at any time within sixty days after such standard or regulation is promulgated by the commission, file a complaint challenging the validity of such standard or regulation with the superior court in the county in which the person resides or has the person's principal place of business, for a judicial review of such standard or regulation. The filing of a complaint shall not, unless otherwise ordered by the court, operate as a stay of the standard or regulation. The determinations of the commission shall be conclusive if supported by substantial evidence in the record considered as a whole.

C. In case of conflict between standards and regulations, the regulations shall take precedence.

A.R.S. § 23-491. Definitions

1. "Authorized representative" means the elevator chief and elevator inspector employed by the division.

2. "Certificate" means a certificate of inspection issued by the division.

3. "Commission" means the industrial commission of Arizona.

4. "Conveyance" means an elevator, dumbwaiter, escalator, moving walk, manlift, personnel hoist, material hoist, stage lift and special purpose personnel elevator, excluding conveyances located at mines and subject to regulation and inspection by the state mine inspector pursuant to title 27, chapter 3.

5. "Director" means the director of the division of occupational safety and health.

6. "Division" means the division of occupational safety and health of the industrial commission.

7. "Dumbwaiter" means a hoisting and lowering mechanism with a car of limited capacity and size that moves in guides in a substantially vertical direction and that is used exclusively for carrying material.

8. "Elevator" means a hoisting and lowering mechanism equipped with a car or platform that moves in guides in substantially vertical direction and that serves two or more floors of a building or structure.

9. "Elevator company" means a person that is engaged in the business of erecting, constructing, installing, altering, servicing, repairing or maintaining conveyances.

10. "Escalator" means a power driven, inclined, continuous stairway used for raising or lowering passengers.

11. "Interested party" means the commission and its agents and the owner or operator who has been issued a correction order.

12. "Manlift" means a device consisting of a power driven endless belt moving in one direction only and provided with steps or platforms and attached handholds for the transportation of personnel from floor to floor.

13. "Material hoist" means a hoist for raising and lowering materials only and prohibiting the hoisting of persons.

14. "Moving walk" means a type of passenger carrying device on which passengers stand or walk and in which the passenger carrying surface remains parallel to its direction of motion and is uninterrupted.

15. "Owner" or "operator" means an individual or organization including this state and all political subdivisions of this state who has title to, controls or has the duty to control the operation of one or more conveyances, but shall not include an individual or organization engaged in mining or metallurgical operations whose operation is subject to regulation and inspection by the state mine inspector pursuant to title 27, chapter 3.

16. "Personnel hoist" means a mechanism for use in connection with the construction, alteration, maintenance or demolition of a building, structure or other work, used for hoisting and lowering workers and materials and equipped with a car that moves on guide members during its vertical movement. The term includes a hoistway of a personnel hoist.

17. "Private elevator inspector" means an individual who is authorized by the commission under section 23-491.16 to conduct inspections under this article.

18. "Special purpose personnel elevator" means a passenger, hand powered, counterweighted device or an electric powered device that travels vertically in guides and that serves two or more landings.

19. "Stage lift" means a hoisting and lowering mechanism equipped with a platform that moves in guides in a substantially vertical direction and that serves one or more landings.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 1, Articles 1-3

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: September 4, 2024

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

FROM: Council Staff

DATE: **August 15, 2024**

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 1, Articles 1-3

Summary

This Five Year Review Report (5YRR) from the Department of Health Services covers nine (9) rules in Title 9, Chapter 1, Articles 1-3 related to Administration of the Department. Specifically, Article 1 relates to Rules of Practice and Procedure; Article 2 relates to Public Participation in Rulemaking; and Article 3 relates to Disclosures of Medical Records, Payment Records, and Public Health Records. The Office of Administrative Counsel and Rules (OACR) is the program/unit within the Department responsible for the monitoring and enforcement of the rules identified in this report.

The Department completed its course of action proposed in its 5YRR approved by Council in September of 2019.

Proposed Action

The Department anticipates submitting a Notice of Final Rulemaking to the Council to address the issues identified in this report by April 2025.

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:**

Respectively, the rules in Articles 1-3 pertain to hearings, hearing procedures, and administrative decisions; rulemaking process, rulemaking record, and the process for petitioning rulemaking from the Department; and the processing of public record requests. The Department states that there have been no significant changes from the economic, small business, and consumer impact of these rules between the previous five-year-review report and the current one. The Department does not charge a fee to the person requesting an appeal or hearing, however, the person requesting an appeal or hearing may incur a cost if the person requesting an appeal or hearing retains private counsel. Additionally, the Department does not charge a fee pertaining to rulemaking. The Department believes that the fees charged for the request of public records is generally consistent with the actual costs.

Stakeholders are identified as the Department of Health Services and individuals engaged in the processed outlined above.

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.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Department has not received written criticism of the rules in the past five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Department indicates that the rules are generally not clear, concise, and understandable and the rules would be improved with the following:

- R9-1-201: certain definitions should be removed and terms should be defined where used
- R9-1-202: if information regarding the process for requesting a review of rulemaking records was added
- R9-1-301: terms should be defined where used; definition of emancipated minor could be made clearer; outbreak has an incorrect cross reference; the term Patient should be removed
- R9-1-303: acknowledgement is misspelled and subsections need to be clarified

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Department states the rules are generally consistent with other rules and statutes with the following exceptions:

- R9-1-102: Subsection (B) is inconsistent with A.R.S. § 41-1092.08

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department states 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 generally not enforced as written and the rules would be improved with the following:

- R9-1-302: subsection (D)(4) should be updated as current practice does not require the requestor's address unless it is being requested that the records be mailed; subsection (E) should be updated to show that the Department may respond to records requests by either mail or email; subsection (E)(3) should be updated to reflect that record requests may take longer than the 30 days
- R9-1-303: Subsection (B)(7) should be updated as the requirement for "signature" is not current practice; subsection (B)(8) should be deleted; subsection (C) should be updated as agreements between the requestor and the Department about time-frames is not current practice.

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 states that there is no corresponding federal law related to these 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?

The Department indicates this section does not apply as the rules do not require the issuance of a regulatory permit, license, or agency authorization.

11. Conclusion

This Five Year Review Report from the Department of Health Services covers nine rules in Title 9, Chapter 1, Articles 1-3 related to Administration of the Department. As indicated above, the rules are effective in achieving its objectives and generally consistent with other rules and statutes. The Department completed its course of action proposed in its 5YRR approved by Council in September of 2019 and anticipates submitting a Notice of Final Rulemaking to the Council to address the issues identified in this report by April 2025.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

ARIZONA DEPARTMENT OF HEALTH SERVICES

June 21, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, Esq., 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. 1, Articles 1, 2, and 3, Five-Year-Review Report

Dear Ms. Klein:

Please find enclosed the Five-Year-Review Report from the Arizona Department of Health Services (Department) for 9 A.A.C. 1, Articles 1, 2, and 3, which is due on or before June 28, 2024.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this Report, please contact Angie Trevino at angelica.trevino@azdhs.gov or (480) 589-0298.

Sincerely,

Stacie Gravito
Digitally signed by Stacie Gravito
Date: 2024.06.21 14:44:29 -07'00'

Stacie Gravito
Director's Designee

SG:at

Enclosures

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 1. Department of Health Services – Administration

Article 1. Rules of Practice and Procedure

Article 2. Public Participation in Rulemaking

Article 3. Disclosure of Medical Records, Payment Records, And Public Health Records

Due: June 28, 2024

Submitted: June 21, 2024

1. Authorization of the rule by existing statutes

Authorizing statutes: A.R.S. §§ 36-104(3), 36-136(A)(2), and 36-136(G)

Implementing statutes:

Article 1: A.R.S. §§ 41-1002(C), 41-1003, 41-1092.08, and 41-1092.09

Article 2: A.R.S. §§ 41-1029, and 41-1033

Article 3: A.R.S. §§ 36-104(9), 36-105, 36-107, 36-136(I)(11), and 36-351

2. The objective of each rule:

Article 1

Rule	Objective
R9-1-101. Definitions	The objective of this rule is to define terms and phrases used in the Chapter and Article, allowing for consistent interpretation.
R9-1-102. Response to a Recommended Decision	The objective of this rule is to provide a process for a party of an administrative decision to object to a recommended decision.
R9-1-103. Rehearing or Review of a Final Administrative Decision	The objective of this rule is to provide a process for a party to an administrative decision to express an objection to, or obtain a possible rehearing or review of, the administrative decision.

Article 2

Rule	Objective
R9-1-201. Definitions	The objective of this rule is to define terms and phrases used in the Article, allowing for consistent interpretation.
R9-1-202. Rulemaking Record	The objective of this rule is to inform a party requesting to review a rulemaking record at the of the days and times available for their review with the Office of Administrative Counsel and Rules.

R9-1-203. Petition for Department Rulemaking and Petition for a Review of a Department Practice or Substantive Policy Statement	The objective of this rule is to establish requirements to petition the Department for a rulemaking or a review of a practice or substantive policy statement that allegedly constitutes a rule, and establishes requirements and a time-frame for the Department to respond.

Article 3

Rule	Objective
R9-1-301. Definitions	The objective of this rule is to define terms and phrases used in the Article, allowing for consistent interpretation.
R9-1-302. Medical Records or Payment Records Disclosure	The objective of this rule is to establish requirements for when the Department may disclose information in medical records or payment records.
R9-1-303. Public Health Records Disclosure	The objective of this rule is to govern the Department's disclosure of public health records.

3. Are the rules effective in achieving their objectives? **Yes _X_** **No __**

4. Are the rules consistent with other rules and statutes? **Yes __** **No _X_**

Rule	Explanation
R9-1-102	Subsection (B) is inconsistent with A.R.S. § 41-1092.08, as amended by Laws 2022, Chapter 265. The new changes provide a process for an appellant to accept an administrative law judge's recommended action. The rule should be updated to reflect the new process and follow what is outlined in A.R.S. § 41-1092.08.

5. Are the rules enforced as written? **Yes ___** **No _X_**

Rule	Explanation
R9-1-302	Subsection (D)(4) indicates that the person making a records request must include their address with their request. Current practice does not require the requestor's address unless it is being requested that the records be mailed. This subsection should be updated to reflect current practice. Subsection (E) should be updated to reflect current practice. The Department may respond to records requests by either mail or email. The Department will request the requestor's address only when the requestor asks for the records to be mailed to them either in paper form or by compact disc. Subsection (E)(3): Timeframe for gathering and completing the records request may take longer than the 30 days specified in the rule; therefore, the Department proposes to

	remove this timeframe from the rules. The Department proposes to amend the rules to clarify that the Department will respond to the requestor immediately advising the requestor that their records request was received.
R9-1-303	Subsection (B)(7): The requirement for "signature" is not current practice and should be removed. Subsection (B)(8): The requirement in this subsection is not current practice and should be removed. Subsection (C): This subsection needs to be amended to clarify current practice. Agreements between the requestor and the Department about time-frames is not current practice.

6. Are the rules clear, concise, and understandable? **Yes __ No _X_**

Rule	Explanation
R9-1-201	The terms defined in this Section are only used once in the Article. It may be clearer to remove the definitions and define the terms where used.
R9-1-202	This Section could be clearer if information regarding the process, including making an appointment, for requesting a review of rulemaking records was added to this Section.
R9-1-301	(1) Behavioral health services: this term is only used once in Article 3. It may be best to remove the definition from this Section and define the term where used. (2) Business day: this term is only used once in Article 3. It may be best to remove the definition from this Section and define the term where used. (11) Emancipated minor: the definition of this term lists who is considered an emancipated minor; however (d) combines 2 criteria. This definition may be clearer if "U.S. armed forces enlisted member" currently under (d) is listed separately. (27) Outbreak: the definition of this term is cross-referenced to A.R.S. § 36-671 which is incorrect. Cross-reference to this statute should be removed. (29) Patient: this term is not used in this Article. This definition should be removed.
R9-1-303	R9-1-303(C)(1)(a) there is a misspelling: "acknowledgement" should be corrected to "acknowledgment". Subsection (C)(1)(b) and (c) and (C)(2) needs to clarify that this is completed depending on the request. "If applicable" should be included for clarification.

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:

There have been no significant changes from the economic, small business, and consumer impact of these rules between the 2019 five-year-review report and now. The Department of Health Services (Department) did not complete an economic, small business, and consumer impact statement with the 2020 expedited rulemaking. At the time of the five-year-review in 2019, the Department designated costs or benefits as the following: minimal when less than $1,000; moderate when between $1,000 and $10,000; substantial when greater than $10,000; and significant when meaningful or important but not readily subject to quantification. The Office of Administrative Counsel and Rules (OACR) is the program/unit within the Department responsible for the monitoring and enforcement of the rules in 9 A.A.C. 1, Articles 1, 2, and 3.

Below is data, per Article, from calendar year 2023.

Article 1

The rules under this Article pertain to hearings, hearing procedures, and administrative decisions. For calendar year 2023 OACR completed the following:

- 347 Director's decisions/final orders
- 364 Notices of hearing
- 249 Informal settlement conferences

Article 2

The rules under this Article pertain to the rulemaking process, rulemaking record, and process for petitioning rulemaking from the Department. For calendar year 2023, OACR completed the following:

- Twelve final rulemakings that were filed with the Secretary of State
- 21 five-year-review reports that were submitted to the Governor's Regulatory Review Council
- One substantive policy statement

Article 3

The rules under this Article pertain to the processing of public record requests. For calendar year 2023, OACR received 606 public records requests. Total charges collected in 2023 equaled $4,395.50. The average cost of public record requests in calendar year 2023 was $15.

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 Health Services (Department) completed the course of action indicated in the Department's previous five-year-review report.

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 of Health Services (Department) believes the current rules pose the minimum cost and burden on businesses, the regulated public and on the general public. The Department 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. The Department does not charge a fee pertaining to rulemaking. The Department believes that the fees charged for the request of public records is generally consistent with the actual costs.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No _X_

Federal laws are not applicable to the rules in 9 A.A.C. 1, Articles 1 through 3.

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 of Health Services has determined that A.R.S. § 41-1037 does not apply to these rules. The rules in 9 A.A.C. 1, Articles 1 through 3 do not require the issuance of a regulatory permit, license, or agency authorization.

14. Proposed course of action:

The Department of Health Services has reviewed the current rules and proposes to amend the rules to address the issues identified in this report. The Department proposes to submit final rulemaking to the Council by April 2025.

ARTICLE 1. RULES OF PRACTICE AND PROCEDURE

R9-1-101. Definitions

In addition to the definitions in A.R.S. §§ 41-1001 and 41-1092, the following definitions apply in this Chapter, unless otherwise specified:

1. "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
2. "Department" means the Arizona Department of Health Services.
3. "Director" means the Director of the Arizona Department of Health Services.
4. "Recommended decision" means the written ruling made by an administrative law judge regarding a contested case or appealable agency action within 20 days after a hearing under A.R.S. § 41-1092.08.

Historical Note

Adopted effective April 13, 1990 (Supp. 90-2). Amended by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3). Amended by final expedited rulemaking at 26 A.A.R. 1224, with an immediate effective date of June 3, 2020 (Supp. 20-2).

R9-1-102. Response to a Recommended Decision

A. The Director may mail a copy of a recommended decision to each party.

B. A party has ten calendar days from the date the Director mails the recommended decision to submit a response that states each reason why the Director should accept, reject, or modify the recommended decision with information supporting the reason.

C. The Director may consider a response in subsection (B) in determining whether to accept, reject, or modify the recommended decision.

Historical Note

Adopted effective April 13, 1990 (Supp. 90-2). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3). Amended by final expedited rulemaking at 26 A.A.R. 1224, with an immediate effective date of June 3, 2020 (Supp. 20-2).

R9-1-103. Rehearing or Review of a Final Administrative Decision

A. A party who is aggrieved by a final administrative decision may file with the Director, not later than 30 calendar days after service of the final administrative decision, a written motion for rehearing or review of the final administrative decision specifying the grounds for rehearing or review.

B. A party filing a motion for rehearing or review under this Section may amend the motion at any time before it is ruled upon by the Director.

C. Any other party may file a response to the motion for rehearing or review in subsection (A) within 15 calendar days after the date the motion for rehearing or review is filed with the Director.

D. The Director may require that the parties file supplemental memoranda explaining the issues raised in a motion or response in subsection (A) or (C) and may permit oral argument.

E. The Director may grant a rehearing or review of the final administrative decision for any of the following reasons materially affecting the requesting party's rights:

1. Irregularity in the proceedings of the hearings or an abuse of discretion that deprived the party of a fair hearing,
2. Misconduct by the administrative law judge or the prevailing party,
3. Accident or surprise that could not have been prevented by ordinary prudence,
4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing,
5. Excessive or insufficient penalties,
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing, or
7. That the decision is not supported by the evidence or is contrary to law.

F. The Director shall rule on the motion for rehearing or review within 15 calendar days after a response to the motion is filed. If no response to the motion for rehearing or review is filed, the Director shall rule on the motion for rehearing or review within five calendar days after the expiration of the response period in subsection (C).

G. An order issued by the Director granting a rehearing or review shall specify the grounds for the rehearing or review.

Historical Note

Adopted effective April 13, 1990 (Supp. 90-2). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3). Amended by final expedited rulemaking at 26 A.A.R. 1224, with an immediate effective date of June 3, 2020 (Supp. 20-2).

R9-1-104. Repealed

Historical Note

Adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

R9-1-105. Repealed

Historical Note

Adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

R9-1-106. Repealed

Historical Note

Adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

R9-1-107. Repealed

Historical Note

Adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

R9-1-108. Repealed

Historical Note

Adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

R9-1-109. Repealed

Historical Note
Adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

R9-1-110. Repealed

Historical Note
Adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

R9-1-111. Repealed

Historical Note
Section repealed, new Section adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

R9-1-112. Repealed

Historical Note
Section repealed, new Section adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

R9-1-113. Repealed

Historical Note
Amended Regulation 10-71. Section repealed, new Section adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

R9-1-114. Repealed

Historical Note
Amended Regulation 1-74. Section repealed, new Section adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

R9-1-115. Repealed

Historical Note
Amended Regulation 10-71. Section repealed, new Section adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

R9-1-116. Repealed

Historical Note
Amended Regulation 10-71. Section repealed, new Section adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

R9-1-117. Repealed

Historical Note
Amended Regulation 10-71. Section repealed, new Section adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

R9-1-118. Repealed

Historical Note
Amended Regulation 10-71. Section repealed, new Section adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

R9-1-119. Repealed

Historical Note
Amended Regulation 10-71 and 1-74. Section repealed, new Section adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

R9-1-120. Repealed

Historical Note
Amended Regulation 10-71. Section repealed, new Section adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

R9-1-121. Repealed

Historical Note
Section repealed, new Section adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

R9-1-122. Repealed

Historical Note
Amended Regulation 10-71 and 1-74. Repealed effective April 13, 1990 (Supp. 90-2).

R9-1-123. Repealed

Historical Note
Amended Regulation 10-71. Repealed effective April 13, 1990 (Supp. 90-2).

R9-1-124. Repealed

Historical Note
Repealed effective April 13, 1990 (Supp. 90-2).

R9-1-125. Repealed

Historical Note
Former Section R9-1-125 renumbered as Section R9-1-126, new Section R9-1-125 adopted effective May 12, 1977 (Supp. 77-3). Repealed effective April 13, 1990 (Supp. 90-2).

R9-1-126. Repealed

Historical Note
Former Section R9-1-125 renumbered as Section R9-1-126 effective May 12, 1977 (Supp. 77-3). Repealed effective April 13, 1990 (Supp. 90-2).

ARTICLE 2. PUBLIC PARTICIPATION IN RULEMAKING

R9-1-201. Definitions

In addition to the definitions in R9-1-101, the following definitions apply in this Article, unless otherwise specified:

1. "Amendment" means a change to a rule, including added or deleted text.
2. "Arizona Administrative Code" means the publication described in A.R.S. § 41-1012.
3. "Citation" means the number that identifies a rule.
4. "Rulemaking record" means a file maintained by the Department as specified in A.R.S. § 41-1029.
5. "Text" means a letter, number, symbol, table, or punctuation in a rule.

Historical Note
Adopted effective April 13, 1990 (Supp. 90-2). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

Amended by final rulemaking at 12 A.A.R. 3699, effective November 11, 2006 (Supp. 06-3). Amended by final expedited rulemaking at 26 A.A.R. 1224, with an immediate effective date of June 3, 2020 (Supp. 20-2).

R9-1-202. Rulemaking Record

Except on a state holiday, an individual may review a rulemaking record at the Office of Administrative Counsel and Rules, Monday through Friday, from 8:00 a.m. until 5:00 p.m.

Historical Note

Adopted effective April 13, 1990 (Supp. 90-2). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3). Amended by final expedited rulemaking at 26 A.A.R. 1224, with an immediate effective date of June 3, 2020 (Supp. 20-2).

R9-1-203. Petition for Department Rulemaking and Petition for Review of a Department Practice or Substantive Policy Statement

A. A petition to the Department for rulemaking under A.R.S. § 41-1033 shall include:
1. The name and address of the individual who submits the petition;
2. An identification of the rulemaking, including:
   a. A statement of the rulemaking sought,
   b. The Arizona Administrative Code citation of each existing rule included in the petition, and
   c. A description of each new rule included in the petition;
3. The specific text of each new rule or amendment;
4. The reasons for requesting the rulemaking, supported by:
   a. Statistical data;
   b. If the statistical data refers to exhibits, the exhibits;
   c. An identification of the persons who would be affected by the rulemaking and the type of effect; and
   d. Other information supporting the rulemaking;
5. The signature of the individual who submits the petition;
6. The date the petition is signed; and
7. A copy of each existing rule included in the petition.

B. A petition to the Department under A.R.S. § 41-1033 for review of a Department practice or substantive policy statement that allegedly constitutes a rule shall include:
1. The name and address of the individual who submits the petition,
2. An identification of a Department practice or substantive policy statement that allegedly constitutes a rule,
3. The signature of the individual who submits the petition,
4. The date the petition is signed, and
5. A copy of the Department's substantive policy statement or a description of the Department's practice.

C. The Department shall notify an individual who submits a petition according to A.R.S. § 41-1033 of the Department's decision in writing within 60 calendar days after receipt of the petition.

D. If the Department denies a petition submitted according to A.R.S. § 41-1033, the individual who submitted the petition may proceed according to A.R.S. §§ 41-1033 or 41-1034.

Historical Note

Adopted effective April 13, 1990 (Supp. 90-2). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 12 A.A.R. 3699, effective November 11, 2006 (Supp. 06-3). Amended by final expedited rulemaking at 26 A.A.R. 1224, with an immediate effective date of June 3, 2020 (Supp. 20-2).

R9-1-204. Repealed

Historical Note

Adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

R9-1-205. Repealed

Historical Note

Adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

R9-1-206. Repealed

Historical Note

Adopted effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

ARTICLE 3. DISCLOSURE OF MEDICAL RECORDS, PAYMENT RECORDS, AND PUBLIC HEALTH RECORDS

R9-1-301. Definitions

In addition to the definitions in R9-1-101, the following definitions apply in this Article, unless otherwise specified:
1. "Behavioral health services" means the same as in A.R.S. § 36-401.
2. "Business day" means the same as in A.R.S. § 10-140.
3. "Commercial purpose" means the same as in A.R.S. § 39-121.03.
4. "Consent" means permission by an individual or by the individual's parent, legal guardian, or other health care decision maker to have medical services provided to the individual.
5. "Court of competent jurisdiction" means a court with the authority to enter an order.
6. "De-identified" means a public health record from which the information listed in 45 CFR 164.514(b)(2)(i) for an individual and the individual's relatives, employers, or household members has been removed.
7. "Disclose" means to release, transfer, provide access to, or divulge information in any other manner.
8. "Disclosure" means the release, transfer, provision of access to, or divulging of information in any other manner by the person holding the information.
9. "Disease" means the same as in R9-6-101.
10. "Documentation" means written supportive evidence.
11. "Emancipated minor" means an individual less than age 18 who:
    a. Is determined to be independent of parents or legal guardians under A.R.S. Title 12, Chapter 15, Article 1;
    b. Meets the requirements for recognition as an emancipated minor in A.R.S. § 12-2455;
    c. Has the ability to make a contract under A.R.S. § 44-131 or to consent to medical services under A.R.S. § 44-132; or
    d. Is married or is a U.S. armed forces enlisted member.
12. "Employee" means an individual who works for the Department for compensation.
13. "Enlisted member" means the same as in 32 U.S.C. 101.

14. "Epidemic" means that a disease affects a disproportionately large number of individuals in a population, community, or region at the same time.
15. "Estate" means the same as in A.R.S. § 14-1201.
16. "Halfway house" means a residential setting that temporarily provides shelter, food, and other services to an individual after the individual completes a confinement in a correctional facility, as defined in A.R.S. § 13-2501, or a stay in a health care institution, as defined in A.R.S. § 36-401.
17. "Health care decision maker" means the same as in A.R.S. § 12-2291.
18. "Human Subjects Review Board" means individuals designated by the Director to:
    a. Review human subjects research that is conducted, funded, or sponsored by the Department for consistency with 45 CFR Part 46, Subpart A, dealing with the protection of the human subjects;
    b. Review requests for Department information from external entities conducting or planning to conduct human subjects research; and
    c. Establish guidelines for the submission and review of human subjects research.
19. "Incapacitated person" means the same as in A.R.S. § 14-5101.
20. "Incidence" means the rate of cases of a disease or an injury in a population, community, or region during a specified period.
21. "Individually identifiable health information" means the information described in 42 U.S.C. 1320d.
22. "Injury" means trauma or damage to a part of the human body.
23. "Legal guardian" means an individual:
    a. Appointed by a court of competent jurisdiction under A.R.S. Title 8, Chapter 4, Article 12 or A.R.S. Title 14, Chapter 5;
    b. Appointed by a court of competent jurisdiction under another state's laws for the protection of minors and incapacitated persons; or
    c. Appointed for a minor or an incapacitated person in a probated will.
24. "Medical records" means the same as in A.R.S. § 12-2291.
25. "Medical services" means the same as in A.R.S. § 36-401.
26. "Minor" means the same as in A.R.S. § 36-798.
27. "Outbreak" means an unexpected increase in the incidence of a disease as determined by the Department or a health agency, as defined in A.R.S. § 36-671.
28. "Parent" means a biological or adoptive mother or father of an individual.
29. "Patient" means an individual receiving behavioral health services, medical services, nursing services, or health-related services, as defined in A.R.S. § 36-401.
30. "Payment records" means the same as in A.R.S. § 12-2291.
31. "Personal representative" means the same as in A.R.S. § 14-1201.
32. "Probated will" means a will that has been proved as valid in a court of competent jurisdiction.
33. "Public health records" means information created, obtained, or maintained by the Department for:
    a. Public health surveillance to monitor the incidence and spread of a disease or an injury;
    b. Public health investigation to identify and examine outbreaks or epidemics of disease or the incidence of injury;
    c. Public health intervention to respond and contain outbreaks or epidemics of disease or the incidence of injury;
    d. A system of public health statistics, as defined in A.R.S. § 36-301;
    e. A system of vital records, as defined in A.R.S. § 36-301; or
    f. Health oversight activities, which include the following:
        i. Supervision of the health care system,
        ii. Determining eligibility for health-related government benefit programs,
        iii. Determining compliance with health-related government regulatory programs, or
        iv. Determining compliance with civil rights laws for which health-related information is relevant; or
    g. Other public health activities required or authorized by state or federal law.
34. "Research" means the same as in 45 CFR 164.501.
35. "State" means the same as in A.R.S. § 36-841.
36. "Surviving spouse" means the individual:
    a. To whom a deceased individual was married at the time of death, and
    b. Who is currently alive.
37. "Third person" means a person other than:
    a. The individual identified by medical records; or
    b. The individual's parent, legal guardian, or other health care decision maker.
38. "Treatment" means a procedure or method to cure, improve, or palliate a disease or an injury.
39. "Valid authorization" means written permission to disclose individually identifiable health information that contains all the elements described in 45 CFR 164.508(c)(1).
40. "Volunteer" means an individual who works for the Department without compensation.
41. "Will" means the same as in A.R.S. § 14-1201.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 3699, effective November 11, 2006 (Supp. 06-3). Amended by final expedited rulemaking at 26 A.A.R. 1224, with an immediate effective date of June 3, 2020 (Supp. 20-2).

R9-1-302. Medical Records or Payment Records Disclosure

A. Except as provided in subsection (B), an employee or volunteer shall not disclose to a third person medical records or payment records containing individually identifiable health information obtained or accessed as a result of the employment or volunteering.

B. Unless otherwise prohibited by law, an employee or volunteer may disclose to a third person medical records or payment records containing individually identifiable health information:
1. With the valid authorization of the individual identified by the information in the medical records or payment records, if the individual:
    a. Is at least age 18 or an emancipated minor, and
    b. Is not an incapacitated person;
2. With the valid authorization of the parent, legal guardian, or other health care decision maker of the individual iden-

tified by the information in the medical records or payment records, if the individual is:
a. Less than age 18, other than an emancipated minor; or
b. An incapacitated person;
3. With the valid authorization of the individual identified by the information in the medical records or payment records, regardless of age, if:
a. The information to be disclosed resulted from the consent given by the individual under A.R.S. § 36-663 or A.R.S. § 44-132.01 and,
b. The individual is not an incapacitated person;
4. With the valid authorization of the individual identified by information in the medical records or payment records if:
a. The information to be disclosed resulted from the individual's treatment under A.R.S. § 44-133.01;
b. The individual was at least age 12 at the time of the treatment under A.R.S. § 44-133.01 as established by documentation, such as a copy of the individual's:
i. Driver license issued by a state, or
ii. Birth certificate; and
c. The individual is not an incapacitated person;
5. If the individual identified by the information in the medical records or payment records is deceased, upon the written request to the Department according to subsection (D) for disclosure of the deceased individual's medical records or payment records to:
a. The deceased individual's health care decision maker at the time of death;
b. The personal representative of the deceased individual's estate; or
c. If the deceased individual's estate has no personal representative, a person listed in A.R.S. § 12-2294(D);
6. At the direction of the Human Subjects Review Board, if the medical records or payment records are sought for research and the disclosure meets the requirements of 45 CFR 164.512(i)(2); or
7. As required by an order issued by a court of competent jurisdiction.

C. For purposes of subsection (B)(1), an individual less than age 18 who claims emancipated minor status shall submit to the Department a valid authorization signed by the individual less than age 18 and:
1. A copy of an order emancipating the individual issued by the Superior Court of Arizona;
2. If the individual was an emancipated minor in a state other than Arizona:
a. Documentation establishing that the individual is at least age 16, such as a copy of the individual's:
i. Driver license issued by a state, or
ii. Birth certificate; and
b. Documentation of the individual's emancipation, such as a copy of:
i. An order emancipating the individual issued by a court of competent jurisdiction of a state other than Arizona,
ii. A real property purchase agreement signed by the individual as the buyer or the seller in a state other than Arizona,
iii. An order for the individual to pay child support issued by a court of competent jurisdiction of a state other than Arizona, or
iv. A loan agreement with a financial institution, such as a bank, savings and loan association, a credit union, or a consumer lender, signed by the individual as the borrower in a state other than Arizona;
3. A copy of the individual's marriage certificate issued by a state;
4. If the individual is a homeless minor, as described in A.R.S. § 44-132, documentation such as:
a. A statement on the letterhead of a homeless shelter, as defined in A.R.S. § 16-121, or halfway house that:
i. Is dated within 10 calendar days before the date the Department receives the document,
ii. States the homeless shelter or halfway house is the individual's primary residence,
iii. Is signed by an authorized signer for the homeless shelter or halfway house, and
iv. States the authorized singer's title or position at the homeless shelter or halfway house; or
b. A statement signed by the individual that:
i. The individual does not live with the individual's parents, and
ii. The individual lacks a fixed nighttime residence;
5. If the individual is a U.S. armed forces enlisted member, a copy of the individual's U.S. armed forces:
a. Enlistment document, or
b. Identification card; or
6. If the individual is a U.S. armed forces veteran, as defined in 38 U.S.C. 101, a copy of the individual's discharge certificate.

D. A request to the Department under subsection (B)(5) to disclose medical records or payment records shall include:
1. The name of the individual identified by the information in the medical records or payment records;
2. A statement that the individual identified by the information in the medical records or payment records is deceased;
3. The description and dates of the medical records or payment records requested;
4. The name, address, and telephone number of the person requesting the medical records or payment records disclosure;
5. Whether the person requesting the medical records or payment records disclosure:
a. Was the deceased individual's health care decision maker at the time of death,
b. Is the personal representative of the deceased individual's estate, or
c. Is a person listed in A.R.S. § 12-2294(D);
6. The signature of the individual requesting the medical records or payment records disclosure;
7. Documentation that the individual identified by the information in the medical records or payment records is deceased, such as a copy of:
a. The individual's death certificate,
b. A published obituary notice for the individual, or
c. Written notification of the individual's death; and
8. Documentation establishing the relationship to the deceased individual indicated under subsection (D)(5), which includes the following:
a. Appointment as the deceased individual's legal guardian by a court of competent jurisdiction,

b. Appointment as the personal representative of the deceased individual's estate by a court of competent jurisdiction,
c. The deceased individual's birth certificate naming the person requesting the medical records or payment records as a parent,
d. The birth certificate of the person requesting the medical records or payment records naming the deceased individual as a parent, or
e. If the person requesting the medical records or payment records disclosure is the deceased individual's surviving spouse:
i. A copy of the person's marriage certificate naming the deceased individual as spouse, and
ii. A copy of the deceased individual's probated will naming the person as the deceased individual's surviving spouse.

E. The Department shall send a response to a request for medical records or payment records disclosure under subsection (B)(5) that meets the requirements of subsection (D):
1. By regular mail,
2. To the address provided under subsection (D)(4), and
3. Within 30 days after the date the Department receives the request.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 3699, effective November 11, 2006 (Supp. 06-3). Amended by final expedited rulemaking at 26 A.A.R. 1224, with an immediate effective date of June 3, 2020 (Supp. 20-2).

R9-1-303. Public Health Records Disclosure

A. A.R.S. Title 39, Chapter 1, Article 2, governs the Department's disclosure of public health records, except for:
1. Disclosure of public health records under A.R.S. §§ 36-104(9) and 36-105;
2. Disclosure of vital records, as defined in A.R.S. 36-301, under A.R.S. §§ 36-324, 36-342, and 36-351;
3. At the direction of the Human Subjects Review Board, disclosure of public health records that are not de-identified when:
a. The public health records are sought for research, and
b. The disclosure meets the requirements of 45 CFR 164.512(i)(2);
4. Disclosure of medical marijuana records under A.R.S. § 36-2810; or
5. Other disclosures prohibited by state or federal law.

B. For disclosure of public health records under A.R.S. Title 39, Chapter 1, Article 2, an individual shall submit to the Department a public records request that contains:
1. The request date;
2. The requester's name, and if applicable, the requester's mailing address, e-mail address, and telephone number;
3. If applicable, the name, address, and telephone number of the requester's organization;
4. A specific identification of the public health records to be disclosed, including the description and dates of the records;
5. Whether the public health records identified in subsection (B)(4) will be used for commercial purposes;
6. If the requester indicates under subsection (B)(5) that the public health records will be used for commercial purposes, an explanation of each commercial purpose;
7. The requester's signature; and
8. If the requester indicates under subsection (B)(5) that the public health records will be used for a commercial purpose:
a. A jurat, as defined in A.R.S. § 41-311, completed by an Arizona notary; or
b. A notarization from another state indicating that the notary:
i. Verified the signer's identity,
ii. Observed the signing of the document, and
iii. Heard the signer swear or affirm the truthfulness of the document.

C. Within 15 business days after the Department receives a public records request that meets the requirements in subsection (B) or at a later time agreed upon by the Department and the individual requesting the records, the Department shall respond to the request by:
1. Sending by regular mail or electronic mail to the address provided in subsection (B)(2):
a. An acknowledgement that the Department received the public records request;
b. A list of categories of public health records that are not subject to disclosure; and
c. For the public health records requested that are subject to disclosure, a statement that the Department will notify the individual when disclosure will be provided; or
2. Providing:
a. A list of categories of public health records that are not subject to disclosure; and
b. For the public health records requested that are subject to disclosure, disclosure of the records.

D. The Department shall ensure that public health records disclosed pursuant to a public records request are de-identified.

E. For copies of public health records disclosed pursuant to a public records request:
1. If the copies are for a commercial purpose, the Department shall charge:
a. The amount determined according to A.R.S. § 39-121.03, and
b. Based on the requester's explanation under subsection (B)(6);
2. If the copies are not for a commercial purpose, the Department shall charge twenty-five cents per page; or
3. If the copies are for a purpose stated in A.R.S. § 39-122(A), the Department shall not impose a charge.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 3699, effective November 11, 2006 (Supp. 06-3). Amended by final expedited rulemaking at 26 A.A.R. 1224, with an immediate effective date of June 3, 2020 (Supp. 20-2).

R9-1-304. Reserved

R9-1-305. Reserved

R9-1-306. Reserved

R9-1-307. Reserved

R9-1-308. Reserved

R9-1-309. Reserved

R9-1-310. Reserved

R9-1-311. Repealed

Historical Note
Amended by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3). Section repealed by final rulemaking at 12 A.A.R. 3699, effective November 11, 2006 (Supp. 06-3).

R9-1-312. Repealed

Historical Note
Amended by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3). Section repealed by final rulemaking at 12 A.A.R. 3699, effective November 11, 2006 (Supp. 06-3).

R9-1-313. Repealed

Historical Note
Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

R9-1-314. Repealed

Historical Note
Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

R9-1-315. Repealed

Historical Note
Section repealed by final rulemaking at 8 A.A.R. 3296, effective July 15, 2002 (Supp. 02-3).

ARTICLE 4. EXPIRED AND REPEALED

R9-1-401. Reserved

R9-1-402. Reserved

R9-1-403. Reserved

R9-1-404. Reserved

R9-1-405. Reserved

R9-1-406. Reserved

R9-1-407. Reserved

R9-1-408. Reserved

R9-1-409. Reserved

R9-1-410. Reserved

R9-1-411. Expired

Historical Note
Section R9-1-411 expired under A.R.S. § 41-1056(J) at 27 A.A.R. 797, effective April 8, 2021 (Supp. 21-2).

R9-1-412. Expired

Historical Note
Amended effective December 12, 1975 (Supp. 75-2). Amended effective February 12, 1981 (Supp. 81-1). Amended effective January 5, 1987 (Supp. 87-1). Amended effective April 4, 1994 (Supp. 94-2). Amended effective April 3, 1996 (Supp. 96-2). Amended by final rulemaking at 6 A.A.R. 4724, effective November 28, 2000 (Supp. 00-4). Amended by final rulemaking at 8 A.A.R. 4459, effective October 2, 2002 (Supp. 02-4). Amended by final rulemaking at 13 A.A.R. 4505, effective February 2, 2008 (Supp. 07-4). Amended by exempt rulemaking at 19 A.A.R. 1800, effective October 1, 2013 (Supp. 13-2). Section R9-1-412 expired under A.R.S. § 41-1056(J) at 27 A.A.R. 797, effective April 8, 2021 (Supp. 21-2).

R9-1-413. Repealed

Historical Note
Amended effective February 12, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 5077, effective November 22, 2002 (Supp. 02-4).

R9-1-414. Repealed

Historical Note
Adopted effective May 26, 1978 (Supp. 78-3). Section repealed by final rulemaking at 8 A.A.R. 5077, effective November 22, 2002 (Supp. 02-4).

R9-1-415. Repealed

Historical Note
Amended effective February 12, 1981 (Supp. 81-1). Correction, subsection (A) DHEW Publication number from (FDA) 48-2091 to (FDA) 78-2091 (Supp. 83-3). Section repealed by final rulemaking at 8 A.A.R. 5077, effective November 22, 2002 (Supp. 02-4).

R9-1-416. Repealed

Historical Note
Amended effective February 12, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 5077, effective November 22, 2002 (Supp. 02-4).

R9-1-417. Repealed

Historical Note
Amended effective February 12, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 5077, effective November 22, 2002 (Supp. 02-4).

R9-1-418. Repealed

Historical Note
Repealed effective February 12, 1981 (Supp. 81-1).

ARTICLE 5. SLIDING FEE SCHEDULES

R9-1-501. Definitions
In this Article, unless otherwise specified:

1. "Administrative fee" means a fee payable by an uninsured individual that is established and charged according to R9-1-506(E).
2. "AHCCCS" means the Arizona Health Care Cost Containment System.
3. "Business day" means the same as in A.R.S. § 10-140.
4. "Calendar year" means January 1 through December 31.
5. "Child" means an individual under age 19.
6. "Consideration" means valuable compensation for something received or to be received.
7. "Correctional facility" means the same as in A.R.S. § 13-2501.
8. "Costs of producing rental income" means payments made by a rental-income recipient that are attributable to the premises or the portion of the premises generating the income, including payments for:
   a. Property taxes,
   b. Insurance premiums,
   c. Mortgage principal and interest,
   d. Utilities, and
   e. Maintenance and repair.

36-104. Powers and duties

This section is not to be construed as a statement of the department's organization. This section is intended to be a statement of powers and duties in addition to the powers and duties granted by section 36-103. The director shall:

1. Administer the following services:

(a) Administrative services, which shall include at a minimum the functions of accounting, personnel, standards certification, electronic data processing, vital statistics and the development, operation and maintenance of buildings and grounds used by the department.

(b) Public health support services, which shall include at a minimum:

(i) Consumer health protection programs, consistent with paragraph 25 of this section, that include at least the functions of community water supplies, general sanitation, vector control and food and drugs.

(ii) Epidemiology and disease control programs that include at least the functions of chronic disease, accident and injury control, communicable diseases, tuberculosis, venereal disease and others.

(iii) Laboratory services programs.

(iv) Health education and training programs.

(v) Disposition of human bodies programs.

(c) Community health services, which shall include at a minimum:

(i) Medical services programs that include at least the functions of maternal and child health, preschool health screening, family planning, public health nursing, premature and newborn program, immunizations, nutrition, dental care prevention and migrant health.

(ii) Dependency health care services programs that include at least the functions of need determination, availability of health resources to medically dependent individuals, quality control, utilization control and industry monitoring.

(iii) Children with physical disabilities services programs.

(iv) Programs for the prevention and early detection of an intellectual disability.

(d) Program planning, which shall include at least the following:

(i) An organizational unit for comprehensive health planning programs.

(ii) Program coordination, evaluation and development.

(iii) Need determination programs.

(iv) Health information programs.

2. Include and administer, within the office of the director, staff services, which shall include at a minimum budget preparation, public information, appeals, hearings, legislative and federal government liaison, grant development and management and departmental and interagency coordination.

3. Make rules for the organization and proper and efficient operation of the department.

4. Determine when a health care emergency or medical emergency situation exists or occurs within this state that cannot be satisfactorily controlled, corrected or treated by the health care delivery systems and facilities available. When such a situation is determined to exist, the director shall immediately report that situation to the legislature and the governor. The report shall include information on the scope of the emergency, recommendations for solution of the emergency and estimates of costs involved.

5. Provide a system of unified and coordinated health services and programs between this state and county governmental health units at all levels of government.

6. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

7. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of monies.

8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.

9. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of the department's duties subject to the departmental rules and regulations on the confidentiality of information.

10. Establish and maintain separate financial accounts as required by federal law or regulations.

11. Advise with and make recommendations to the governor and the legislature on all matters concerning the department's objectives.

12. Take appropriate steps to reduce or contain costs in the field of health services.

13. Encourage and assist in the adoption of practical methods of improving systems of comprehensive planning, of program planning, of priority setting and of allocating resources.

14. Encourage an effective use of available federal resources in this state.

15. Research, recommend, advise and assist in the establishment of community or area health facilities, both public and private, and encourage the integration of planning, services and programs for the development of the state's health delivery capability.

16. Promote the effective use of health manpower and health facilities that provide health care for the citizens of this state.

17. Take appropriate steps to provide health care services to the medically dependent citizens of this state.

18. Certify training on the nature of sudden infant death syndrome, which shall include information on the investigation and handling of cases involving sudden and unexplained infant death for use by law enforcement officers as part of their basic training requirement.

19. Adopt protocols on the manner in which an autopsy shall be conducted under section 11-597, subsection D in cases of sudden and unexplained infant death.

20. 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.

21. Administer the federal family violence prevention and services act grants, and the department is designated as this state's recipient of federal family violence prevention and services act grants.

22. Accept and spend private grants of monies, gifts and devises for the purposes of methamphetamine education. The department shall disburse these monies to local prosecutorial or law enforcement agencies with existing programs, faith-based organizations and nonprofit entities that are qualified under section 501(c)(3) of the United States internal revenue code, including nonprofit entities providing services to women with a history of dual diagnosis disorders, and that provide educational programs on the repercussions of methamphetamine use. State general fund monies shall not be spent for the purposes of this paragraph. If the director does not receive sufficient monies from private sources to carry out the purposes of this paragraph, the director shall not provide the educational programs prescribed in this paragraph. Grant monies received pursuant to this paragraph are not lapsing and do not revert to the state general fund at the close of the fiscal year.

23. Identify successful methamphetamine prevention programs in other states that may be implemented in this state.

24. Pursuant to chapter 13, article 8 of this title, coordinate all public health and risk assessment issues associated with a chemical or other toxic fire event if a request for the event is received from the incident commander, the emergency response commission or the department of public safety and if funding is available. Coordination of public health issues shall include general environmental health consultation and risk assessment services consistent with chapter 13, article 8 of this title and, in consultation with the Arizona poison control system, informing the public as to potential public health risks from the environmental exposure. Pursuant to chapter 13, article 8 of this title, the department of health services shall also prepare a report, in consultation with appropriate state, federal and local governmental agencies, that evaluates the public health risks from the environmental exposure. The department of health services' report shall include any department of environmental quality report and map of smoke dispersion from the fire, the results of any environmental samples taken by the department of environmental quality and the toxicological implications and public health risks of the environmental exposure. The department of health services shall consult with the Arizona poison control system regarding toxicology issues and shall prepare and produce its report for the public as soon as practicable after the event. The department of health services shall not use any monies pursuant to section 49-282, subsection E to implement this paragraph.

25. Consult, cooperate, collaborate and, if necessary, enter into interagency agreements and memoranda of understanding with the Arizona department of agriculture concerning its administration, pursuant to title 3, chapter 3, article 4.1, of this state's authority under the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252).

26. Adopt rules pursuant to title 32, chapter 32, article 5 prescribing the designated database information to be collected by health profession regulatory boards for the health professionals workforce database.

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.

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

A. This article and articles 2 through 5 of this chapter apply to all agencies and all proceedings not expressly exempted.

B. This chapter creates only procedural rights and imposes only procedural duties. They are in addition to those created and imposed by other statutes. To the extent that any other statute would diminish a right created or duty imposed by this chapter, the other statute is superseded by this chapter, unless the other statute expressly provides otherwise.

C. An agency may grant procedural rights to persons in addition to those conferred by this chapter so long as rights conferred on other persons by any provision of law are not substantially prejudiced.

D. Unless specifically authorized by statute, an agency shall avoid duplication of other laws that do not enhance regulatory clarity and shall avoid dual permitting to the extent practicable.

E. Unless specifically authorized by statute, an agency may not require preapplication authorization or require preapplication conferences as a requirement to filing an application that is otherwise allowed by statute. If preapplication procedures are required by statute, an agency shall consider the preapplication requirements or procedures as the beginning of the licensing time frame for the purposes of article 7.1 of this chapter. An agency may offer voluntary preapplication procedures without specific statutory authority if the agency communicates to an applicant that the preapplication procedures are not mandatory. If preapplication procedures are offered by an agency, the agency shall consider the costs and delays that may be imposed on an applicant and shall seek to minimize those impacts.

F. Unless authorized by federal or state law, an agency may not take any action that materially increases the regulatory burdens on a business unless there is a threat to the health, safety and welfare of the public that has not been addressed by legislation or industry regulation within the proposed regulated field.

G. Unless authorized by federal or state law, an agency may not apply a regulation to a qualified marketplace platform if the purpose of that regulation is to regulate a business that provides goods or services directly to the customer.

H. For the purposes of this section:

1. "Qualified marketplace contractor" means any person or organization, including an individual, corporation, limited liability company, partnership, sole proprietor or other entity, that enters into an agreement with a qualified marketplace platform to use the qualified marketplace platform's digital platform to provide goods or services to third-party individuals or entities seeking those services.

2. "Qualified marketplace platform" means an organization, including a corporation, limited liability company, partnership, sole proprietor or any other entity, that operates a digital platform that facilitates the provision of goods or services by qualified marketplace contractors to third-party individuals or entities seeking those goods or services.

41-1003. Required rule making

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

41-1092.08. Final administrative decisions; review; exception

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

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

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

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

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

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

1. The agency head, executive director, board or commission does not review the administrative law judge's decision pursuant to subsection B of this section or does not reject or modify the administrative law judge's decision as provided in subsection D of this section, in which case the administrative law judge's decision is the final administrative decision.

2. The decision of the agency head is subject to review pursuant to subsection C of this section.

3. The licensee accepts the administrative law judge's decision concerning the appeal of a licensing decision as final pursuant to subsection I of this section.

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

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

I. Except for a licensing decision concerning the administrative completeness of an application submitted by a licensee or a licensing decision where the agency, executive director, board or commission has determined that the licensee poses a threat of grave harm or danger to the public or has acted with complete disregard for the well-being of the public in engaging or in being allowed to engage in the licensee's regulated business activity, for any appealable agency action or contested case involving a licensing decision, the licensee may accept the decision not more than ten days after receiving the administrative law judge's written decision. If the licensee accepts the administrative law judge's written decision, the decision shall be certified as the final decision by the office. If the licensee does not accept

the administrative law judge's written decision as the final decision in the matter, the head of the agency, executive director, board or commission may review the decision and accept, reject or modify the decision. If the head of the agency, executive director, board or commission intends to reject or modify the decision, the parties shall meet and confer, within thirty days after receiving the administrative law judge's decision pursuant to subsection A of this section, concerning the agency's proposed modifications to the findings of fact and conclusions of law. Within twenty days after conferring, the head of the agency, executive director, board or commission shall file its final decision in accordance with subsection B of this section. This subsection does not apply to any appealable agency actions of the department of water resources pursuant to title 45.

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

41-1092.09. Rehearing or review

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

1. A party may file a motion for rehearing or review within thirty days after service of the final administrative decision.

2. The opposing party may file a response to the motion for rehearing within fifteen days after the date the motion for rehearing is filed.

3. After a hearing has been held and a final administrative decision has been entered pursuant to section 41-1092.08, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.

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

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

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

41-1029. Agency rule making record

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

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

1. A copy of the notice initially filed in the office of the secretary of state.

2. Copies of all publications in the register with respect to the rule or the proceeding on which the rule is based.

3. Copies of any portions of the agency's rule making docket containing entries relating to the rule or the proceeding on which the rule is based.

4. All written petitions, requests, submissions and comments received by the agency and all other written materials considered or prepared by the agency in connection with the rule or the proceeding on which the rule is based.

5. Any official transcript of oral presentations made in the proceeding on which the rule is based, or if not transcribed, any tape recording or stenographic record of those presentations, and any memorandum prepared by a presiding official summarizing the contents of those presentations.

6. A copy of all materials submitted to the council, including the economic, small business and consumer impact statement and the minutes of the council meeting at which the rule was reviewed.

7. A copy of the final rule and preamble.

8. Information requested regarding the experience, technical competence, specialized knowledge and judgment of an agency if the agency relies on section 41-1024, subsection D in the making of a rule and a request is made.

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

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

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

1. Make, amend or repeal a final rule.

2. Review an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule.

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

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

1. Reject the petition and state its reasons in writing for rejection to the petitioner.

2. Initiate rulemaking proceedings in accordance with this chapter.

3. If otherwise lawful, make a rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36-105. Information; state-federal cooperation

Subject to the laws and departmental rules and regulations on the confidentiality of information promulgated pursuant thereto, and upon request, the department shall furnish information to any agency of the United States which is charged with the administration of health services.

36-107. Power to promulgate rules concerning confidential nature of records

The director shall promulgate such rules and regulations as are required by state law or federal law or regulation to protect confidential information. No names or other information of any applicant, claimant, recipient or employer shall be made available for any political, commercial or other unofficial purpose.

36-351. Duties of the director; Arizona state library, archives and public records

A. The director shall provide safe, secure and permanent preservation of vital records. The director shall comply with preservation requirements, including the resolution necessary for authentic reproduction, established by the Arizona state library, archives and public records pursuant to section 39-101.

B. The director shall submit to the Arizona state library, archives and public records for permanent preservation, a copy of a person's:

1. Registered birth certificate seventy-five years after the person's birth.

2. Registered death certificate fifty years after the person's death.

C. Pursuant to section 41-151.09, subsection D, the Arizona state library, archives and public records shall provide access to registered birth certificates and registered death certificates submitted pursuant to subsection B of this section.

D. Each calendar year, the director shall reproduce on permanent media established by the Arizona state library, archives and public records pursuant to section 39-101, vital records registered for the calendar year including an index. The director shall submit the vital records and index to the Arizona state library, archives and public records, which shall provide for the confidential safekeeping of the vital records and index.

E. The director of the Arizona state library, archives and public records is entitled to receive records, including sealed records, within one hundred and twenty days on receipt or creation by the department. These electronic records shall be used only for archival or preservation purposes and may not be released or copied for other purposes.

D-7.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 16, Article 2

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: September 4, 2024

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

FROM: Council Staff

DATE: **August 14, 2024**

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 16, Article 2

Summary

This Five Year Review Report (5YRR) from the Department of Health Services (Department) covers sixteen (16) rules and one (1) Table in Title 9, Chapter 16, Article 2 related to Licensing Audiologist and Speech Language Pathologists. A.R.S. Title 36, Chapter 17, Articles 1, 2, and 3, govern licensing and regulation of audiologists and speech-language pathologists and the rules in Article 2 implement the statutory requirements for the licensing of audiologists and speech-language pathologists.

The Department completed its course of action proposed in its 5YRR approved by Council in July of 2019.

Proposed Action

The Department anticipates submitting a Notice of Final Expedited Rulemaking to the Council to address the issues identified in this report by December of 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:**

According to the Department, all the rules in 9 A.C.C. 16, Article 2 were last revised by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020. The Department indicates that stakeholders include applicants, licensees, businesses and schools that employ audiologists and speech-language pathologists, consumers, and the Department. As of April 2024, the Department has licensed 516 audiologists, 77 audiologists who also dispense hearing aids, and 6,002 speech-language pathologists, of which 150 are limited speech-language pathologists and 251 are temporary speech-language pathologists.

The Department estimates that the changes to the rules did not increase costs for audiologists and speech-language pathologists but may have provided a significant benefit to all affected persons by having rules that are clearer, more effective and more understandable. The Department's overall assessment of the economic, small business, and consumer impact is that the benefits of having the new rules outweigh any associated costs.

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 that 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.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Department received two written criticisms of the rules in the past five years. The first was from Kristin Samuelson who is an audiologist licensed in the state of Arizona and the chair of the American Board of Audiology. She commented as to why the Department does not accept licensure from the American Board of Audiology as proof that the applicant has met the requirements for licensure in this state. The second was from Kendall Ovalle, a supervisor of inpatient therapy at a Level 1 trauma hospital in Phoenix, AZ with concerns as to whether ASHA education and training would be accepted.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Department indicates that the rules are generally clear, concise, and understandable with the following exceptions:

- R9-16-201: the acronym ASHA should be spelled out
- R9-16-202: a grammatical error in (A)(2) should be corrected
- R9-16-203: cross references should be updated; the rule should specify that the required examination is the International Licensing Examination for Hearing Healthcare Professionals
- R9-16-205: the rule should be clarified in asserting that the applicant's clinical fellowship agreement should be in a Department-provided format.

- R9-16-206: a grammatical error should be corrected
- R9-16-209: the rule should specify what is to be included in the clinical fellowship report and that the 2023 updated version of the American National Standard - Specifications for Audiometers are used.
- R9-16-216: the rule should specify that the duplicate license fee is also the same as a change application fee.
- R9-16-215: the rule should clarify that a change application and a duplicate application are two different electronic applications

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Department states the rules are not consistent with other rules and statutes and would be if the following amendments were made:

- R9-16-208: the rule should be amended to add the Arizona Medical Association and to update the list of associations that develop, endorse, or sponsor continuing education courses
- R9-16-213: the rule should be updated to amend the title; a new subsection should be created to clarify that the Department may deny an application or suspend or revoke a license if a licensee does not correct the deficiencies identified during an investigation
- R9-16-214: the term regular license should be amended to initial license

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Department states the rules are generally effective in achieving their objectives with the following exceptions:

- R9-16-201: The rules could be could improved by simplifying the titles that approved accreditation; could be improved by removing obsolete definitions

8. **Has the agency analyzed the current enforcement status of the rules?**

The Department 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 Department states that there is no corresponding federal law related to these 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?**

The Department has determined that a general permit is not applicable under ARS § 41-1037 and that the rules qualify for an exception under (A)(2) as the issuance of an alternative type of permit, license or authorization is specifically authorized by A.R.S. § 36-1902(A).

11. Conclusion

This Five Year Review Report from the Department of Health Services covers sixteen rules and one Table in Title 9, Chapter 16, Article 2. As indicated above, the rules are enforced as written and generally effective in achieving their objectives. The Department completed its prior proposed course of action and anticipates submitting a Notice of Final Rulemaking to the Council by December 2024.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

April 29, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, Esq., 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. 16, Article 2, Five-Year-Review Report for Occupational Licensing – Licensing Audiologists and Speech-Language Pathologists

Dear Ms. Klein:

Please find enclosed the Five-Year Review Report (Report) from the Arizona Department of Health Services (Department) for 9 A.A.C. 16, Article 2, Licensing Audiologists and Speech-Language Pathologists, which is due on May 31, 2024.

The Department reviewed the rules in 9 A.A.C. 16, Article 2, with the intention that the rules do not expire pursuant to A.R.S. § 41-1056(J).

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact me at (602) 542-1020.

Sincerely,

Stacie Gravito
Director's Designee

SG:lf

Enclosures

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 16. Department of Health Services – Occupational Licensing

Article 2. Licensing Audiologists and Speech-Language Pathologists

April 2024

1. Authorization of the rule by existing statutes

Authorizing statutes: A.R.S. §§ 36-104(3), 36-132(A)(18), and 36-136(G)

Implementing statutes: A.R.S. §§ 36-1901 through 36-1909, 36-1934, and 36-1936 through 36-1940.03

2. The objective of each rule:

Rule	Objective
R9-16-201	The objective of the rule is to define the terms used in Article 2 so that requirements are clear and terms are interpreted consistently.
R9-16-202	The objective of the rule is to specify the requirements for submitting an application for licensure as an audiologist or a speech-language pathologist.
R9-16-203	The objective of the rule is to specify the requirements for submitting an initial application for licensure as an audiologist.
R9-16-204	The objective of the rule is to specify the requirements for submitting an initial application for licensure as a speech-language pathologist.
R9-16-205	The objective of the rule is to specify the requirements for submitting an initial application for licensure as a temporary speech-language pathologist.
R9-16-206	The objective of the rule is to specify the requirements for a temporary speech-language pathologist - limited.
R9-16-207	The objective of the rule is to specify the requirements for submitting a renewal application for licensure.
R9-16-208	The objective of the rule is to specify continuing education requirements.
R9-16-209	The objective of the rule is to specify the requirements for clinical fellowship supervisors.
R9-16-210	The objective of the rule is to specify the requirements for licensed speech-language pathologists who supervise speech-language pathologist assistants.
R9-16-211	The objective of the rule is to provide requirements for maintaining hearing screening equipment and client records.
R9-16-212	The objective of the rule is to require an audiologist who dispenses hearing aids to provide a hearing aid bill of sale when requested by a client.
R9-16-213	The objective of the rule is to specify the types of enforcement or disciplinary actions and the criteria to consider when determining a disciplinary action, the Department may take.

R9-16-214	The objective of the rule is to establish clear timelines and procedures for the application, review, and issuance of a license.
Table 2.1	The objective of the table is to specify time-frame durations for the Department's approval of an application.
R9-16-215	The objective of the rule is to provide a licensee with a method for notifying the Department of a change that affects a license and for requesting a duplicate license.
R9-16-216	The objective of the rule is to specify the nonrefundable fees that applicants must submit when applying for initial licensure or temporary licensure as audiologists or speech-language pathologists.

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
R9-16-201	The rule is effective in achieving its objective but could be improved by simplifying the titles that approved accreditation in subsection (1).
R9-16-201	The rule is effective in achieving its objective but could be improved by removing obsolete definitions of terms not used in the Article or that are only used once, including ASHA, clinical fellowship agreement, clinical fellowship report, hearing aid dispenser examination, student, and supervisory activities. Definitions of terms that are used once can be described in the place it is used within the rule.

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
R9-16-208	The list of associations that develop, endorse, or sponsor continuing education courses is not consistent with 9 A.A.C. 16, Article 5 for speech language pathologist assistants and should be amended to add the Arizona Medical Association.
R9-16-213	The rule is consistent but could be improved by making this Section more consistent with the other rules in Chapter 16 by amending the title from "Enforcement" to "Denial, Suspension, Revocation, Enforcement." Also, the "shall" in subsection (B) should be amended to a "may" for better clarification. In addition, the rule would be more consistent with Chapter 16 and clearer if a new subsection was created to clarify that the Department may deny an application or suspend or revoke a license if a licensee does not correct the deficiencies identified during an investigation according to the plan of correction or an applicant or a licensee provides false or misleading information to the Department. Furthermore, the Department would like to amend the rules to clarify information regarding the requirement to respond to a plan of correction.
R9-16-214	Subsection (D) mentions a "regular license" and is inconsistent with the language used to reference a license. A "regular license" is not mentioned or defined elsewhere in the Chapter or Article. The rule could be improved by amending this subject to specify that it is an initial license.

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
R9-16-201	The rule is clear, concise, and understandable, but could be improved by spelling out the American Speech-Language-Hearing Association, rather than using the acronym ASHA.
R9-16-202	The rule is clear, concise, and understandable, but could be improved by correcting a grammatical error in subsection (A)(2).
R9-16-203	The rule is clear, concise, and understandable, but could be improved by moving the placement of a cross-reference in (A)(2) and updating the cross-reference in (A)(3). In addition, the rule could be improved in subsection (B)(3) by clarifying and specifying that the required examination is the International Licensing Examination for Hearing Healthcare Professionals, according to A.R.S. § 36-1924. The rule would also be clearer by creating a new (B)(4) to reference the hearing aid dispenser practical examination as required in A.R.S. § 36-1940(C)(4).
R9-16-205	The rule is clear, concise, and understandable, but could be improved by clarifying that the applicant's clinical fellowship agreement is in a Department-provided format.
R9-16-206	The rule is clear, concise, and understandable, but could be improved by correcting a grammatical error.
R9-16-209	The rule is clear, concise, and understandable, but could be improved by specifying what is to be included in the clinical fellowship report rather than including this in the definition.
R9-16-209	The rule is clear, concise, and understandable, but could be improved by specifying the 2023 updated version of the American National Standard - Specifications for Audiometers.
R9-16-216	The rule is clear, concise, and understandable, but could be improved by specifying that the duplicate license fee is also the same as a change application fee.
R9-16-215	The rule could be improved by amending it to clarify that a change application and a duplicate application are two different electronic applications submitted in a Department-provided format and removing language related to paper applications.

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:

Comment	Agency's Response
Good afternoon, I am an audiologist who has been licensed in the state of Arizona since 1993. I am now the chair of the American Board of Audiology. I am working on a task force that is looking into audiology licensure requirements from state to state. There are several states, including Arizona, who will accept certification from the American Speech-Language-Hearing Association (CCC-A) as proof that an applicant has met the qualifications for licensure, but NOT certification from the American Board of Audiology (ABA-C). I personally maintain both certifications, but many audiologists have moved away from ASHA CCC-A and are instead pursuing the ABA-C certification which is administered by the American Academy of Audiology. We are reaching out to the states who do not recognize ABA-C to ask why it is not considered proof of requirements met for licensure in this state. Is there someone who could discuss this with me? The American Board of Audiology is considering making changes to our requirements for certification so that more states will accept this credential. Respectfully, Kristin Samuelson Kristin Samuelson, Au.D., CCC-A, ABA-C Doctor of Audiology Educational Audiologist Washington Elementary School 8033 N 27th Ave. | Phoenix, AZ 85051 Phone: 602.347.3424	The Department thanked Kristin Samuelson for her feedback and let her know that this would be noted in the five-year review report. Based on the comment, the Department plans to research the possibility of amending R9-16-203 and R9-16-204 to included documentation of a current ABA-C. There is a concern regarding the ABA-C does not require the national exam.
I am also a supervisor of inpatient therapy at a Level 1 trauma hospital in Phoenix, AZ. Supervision of students and clinical fellows in speech-language pathology is a professional responsibility and can be a significant	The Department thanked Kendall Ovalle for her feedback. In response, the Department has reviewed the course and if the course is approved by ASHA, then the Department would accept the course as continuing education. Therefore, according to R9-16-208(C)(11), the Department

undertaking depending on the education and clinical experience of the student/clinical fellow. ASHA requires a minimum of two hours of professional development post-certification (one-time requirement) in supervision. However, education and student preparedness vary drastically among students and academic institutions, which is why we are wanting our staff (PT, OT, and SLP) to have more thorough training in clinical supervision to provide them with the tools and resources to supervise students more effectively. Kendall Ovalle, M.S., CCC-SLP Supervisor of Inpatient Therapy Services HonorHealth John C. Lincoln Medical Center P: 602-786-2512	would approve the course and not need to amend the rules to specifically reference the course.

8. Economic, small business, and consumer impact comparison:

Arizona Revised Statutes (A.R.S.) Title 36, Chapter 17, Articles 1, 2, and 3, govern licensing and regulation of audiologists and speech-language pathologists. The Arizona Department of Health Services (Department) implemented statutory requirements for the licensing of audiologists and speech-language pathologists in the Arizona Administrative Code (A.A.C.) in Title 9, Chapter 16, Article 2. The Department believes that affected persons include applicants, licensees, businesses and schools that employ audiologists and speech-language pathologists, consumers, and the Department. In assessing the economic, small business, and consumer impact of the new rules, the Department provides a summary of the changes considered.

As of April 2024, the Department has licensed 516 audiologists, 77 audiologists who also dispense hearing aids, and 6,002 speech-language pathologists, of which 150 are limited speech-language pathologists and 251 are temporary speech-language pathologists. During fiscal year 2023, the Department issued 55 initial licenses and 143 license renewals to audiologists and audiologists who dispense hearing aids. Additionally, the Department issued 514 initial licenses and 1,065 license renewals to speech-language pathologists. The Department conducted 14 complaint investigations which included 2 audiologists and 12 speech-language pathologists. Furthermore, three speech-language pathologist applications were either withdrawn or denied.

All of the rules in 9 A.A.C. 16, Article 2 were last revised by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020. In this rulemaking, all of the rules in Article 2 were

amended and/or repealed to implement the course of action, as stated in the 2019 five-year review report (5YRR). The 5YRR stated that the rules could be improved to increase understandability by simplifying and clarifying some requirements, updating antiquated language and outdated citations and references, and making technical and grammatical changes. In addition, the Department in this rulemaking consolidated and clarified all fees and reciprocity requirements.

The Department, in R9-16-201, updated antiquated definitions and outdated references. For example, in definition (1), some regional accrediting organizations' titles in (1)(a), (c), (e), and (f) have changed; and obsolete terms such as "applicant," "application packet," "current CCC," "Department-designated written hearing aid dispenser examination," "graduate level," and "pupil" were removed from the definitions. R9-16-202 through R9-16-215 were repealed and a new Section was created in their place. The rulemaking also created a new Table 2.1 and R9-16-216. R9-16-202, R9-16-203, and R9-16-204 were repealed and new sections were rewritten to use clearer and more consistent language. For example, changing the terms "format provided by the Department" to "a Department-provided format." Other changes in these sections included updating cross-references, simplifying language requiring documentation of citizenship or alien status that complies with the statutes. Sections were also reorganized and rearranged for the Article to flow better.

In this rulemaking, the Department streamlined documentation requirements since a certificate of clinical competence issued by the American Speech-Language-Hearing Association attests that an individual completed or passed required education, national examination, and clinical fellowship, making it redundant for the Department to require related documentation. A requirement for an employee agreement or employment contract was simplified and made less burdensome. The Department believes these changes have reduced burdens for applicants and increased opportunities for reciprocity. Several new sections were created to be written clearer and simpler, including simplifying the continuing education requirements in R9-16-208, by using an attestation as a statement of completion. The attestation includes an applicant's agreement to allow the Department to make supplemental requests for additional information to ensure the Department may approve licensure.

As the Department reorganized and restructured sections in the Article, "Disciplinary Actions" in R9-16-214 was moved to R9-16-213 and renamed "Enforcement" to be more consistent with other rules in Title 9. To ensure clarity and consistency of the requirements in this Article, the Department created a new Section, R9-16-216, for licensing fees. The Department estimates that the changes to the rules in this rulemaking did not increase costs for audiologists and speech-language pathologists but may have provided a significant benefit to all affected persons by having new rules that are clearer, more effective, and more understandable. The Department's overall assessment of the economic, small business, and consumer impact is that the benefits of having the new rules outweigh any associated costs.

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 2019 five-year-review-report, the Department stated a plan to revise the rules to address identified issues. Through expedited rulemaking found in 26 A.A.R 816, the Department completed the course of action.

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 that 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.

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)?

Federal laws are not applicable to the rules in 9 A.A.C. 16, Article 2.

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:

A general permit is not applicable. The Department, pursuant to A.R.S. § 36-1902(A), is authorized to license persons who apply for a license and possess all other qualifications required for licensure as an audiologist or a speech-language pathologist.

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 plans to amend the rules in 9 A.A.C. 16, Article 2 to address issues identified in this five-year-review report in an expedited rulemakings. The Department plans to submit a Notice of Final Rulemaking to the Governor's Regulatory Review Council by December 2024.

Stakeholder Comments

Email received, Kristin Samuelson:

On Tue, Dec 19, 2023 at 2:32 PM Samuelson, Kristin <Kristin.Samuelson@wesdschools.org> wrote:

> Good afternoon,
> I am an audiologist who has been licensed in the state of Arizona since 1993. I am now the chair of the American Board of Audiology. I am working on a task force that is looking into audiology licensure requirements from state to state. There are several states, including Arizona, who will accept certification from the American Speech-Language-Hearing Association (CCC-A) as proof that an applicant has met the qualifications for licensure, but NOT certification from the American Board of Audiology (ABA-C). I personally maintain both certifications, but many audiologists have moved away from ASHA CCC-A and are instead pursuing the ABA-C certification which is administered by the American Academy of Audiology. We are reaching out to the states who do not recognize ABA-C to ask why it is not considered proof of requirements met for licensure in this state. Is there someone who could discuss this with me? The American Board of Audiology is considering making changes to our requirements for certification so that more states will accept this credential.
> Respectfully,
> Kristin Samuelson
>
> **Kristin Samuelson, Au.D., CCC-A, ABA-C**
> **Doctor of Audiology**
> Educational Audiologist
> Washington Elementary School
> 8033 N 27th Ave. | Phoenix, AZ 85051
> Phone: 602.347.3424

Reply from ADHS to Kristin Samuelson:

From: **Special Licensing - ADHS** <special.licensing@azdhs.gov>
Date: Fri, Dec 29, 2023 at 2:02 PM
Subject: Re: SPHR Applications Help
To: Samuelson, Kristin <Kristin.Samuelson@wesdschools.org>

Hi Kristin,

Thank you for your email. When the rules were written for Speech and Hearing professionals, the program that met the requirements for a Certificate of Clinical Competence (CCC) was ASHA. This is noted within definition and within the application pathways for licensure. See below for specifics:

Pursuant R9-16-201(3)(5) Definitions:

3. "ASHA" means the American Speech-Language-Hearing Association, a national professional, scientific, and credentialing association for audiologists; speech-language pathologists; speech, language, and hearing scientists; audiology and speech-language pathology support

5. "CCC" means Certificate of Clinical Competence, an award issued by ASHA to an individual who:

a. Completes a degree in audiology or speech-language pathology from an accredited college or university that includes a clinical practicum,

b. Passes the ETSNEA or ETSNESLP, and

c. Completes a clinical fellowship.

Pursuant R9-16-203(A) Initial Application for an Audiologist:

A. In addition to complying with R9-16-202, an applicant for initial licensure as an audiologist shall submit to the Department the following:

1. A transcript or equivalent documentation issued to the applicant from an accredited college or university after the applicant's completion of a doctoral degree consistent with the standards of this state’s universities, as required in A.R.S. § 36-1940(A)(2) **OR** documentation of the applicant’s current CCC.

2. Documentation of a passing grade on a ETSNEA or current CCC dated within three years before the date of application required in A.R.S. §§ 36-1902(E) and 36-1940(A)(3) or current license from other state.

3. Documentation of completing supervised clinical rotation consistent with the standards of this state’s universities required in A.R.S. § 36-1940(B)(2) **OR** current CCC.

4. Whether the applicant is applying to fit and dispense hearing aids.

5. If applicable, a list of all states and countries in which the applicant is or has been licensed as an audiologist or an audiologist to fit and dispense hearing aids.

As noted above (R9-16-203), an individual can apply for an audiologist license without a current CCC from ASHA.

The rules for Speech and Hearing Professionals (SPHR) are open for review every five years. We have added your feedback to our SPHR rule review documentation.

Thank you again for your time and feedback.

Take care,

Special Licensing
Arizona Department of Health Services
150 North 18th Avenue, Suite 410, Phoenix, AZ 85007
Telephone: 602-364-2079
Fax: 602-364-4769
Email: Special.Licensing@azdhs.gov
Health and Wellness for all Arizonans

Reply from Kristin Samuelson to ADHS:
Samuelson, Kristin
Jan 8, 2024, 8:37 AM
to me

Thank you for your response. The only difference I see is passing the national exam, which we are considering adding as a requirement. If the American Board of Audiology board certification (ABAC) were to add the national exam requirement, is there a possibility that AZDHS would revisit the requirements and allow an audiologist to hold ASHA CCC-A OR the American Academy of Audiology ABAC? Our continuing ed requirements are more rigorous, and therefore hold audiologists to a higher standard going forward.

Respectfully,
Kristin

Kristin Samuelson, Au.D., CCC-A, ABA-C

Doctor of Audiology

Educational Audiologist

Washington Elementary School

8033 N 27th Ave. | Phoenix, AZ 85051

Phone: 602.347.3424

Reply from ADHS to Kristin Samuelson:

Feedback received 2/1:
Kendall Ovalle, M.S., CCC-SLP
Supervisor of Inpatient Therapy Services
HonorHealth John C. Lincoln Medical Center
P: 602-786-2512

Provided interesting feedback regarding the Credentialed Clinical Instructor Program, Level 1 offered through the American Physical Therapy Association (APTA) for health care professionals. She shared how this program is important to effectively prepare SLPs for clinical supervision. We may want to notify her when the rules are open for public comment so she could share the impact of this course. Below are her comments on adding this course to the rules (C)(11) :

I am also a supervisor of inpatient therapy at a Level 1 trauma hospital in Phoenix, AZ. Supervision of students and clinical fellows in speech-language pathology is a professional responsibility and can be a significant undertaking depending on the education and clinical experience of the student/clinical fellow. ASHA requires a minimum of two hours of professional development post-certification (one-time requirement) in supervision. However, education and student preparedness vary drastically among students and academic institutions, which is why we are wanting our staff (PT, OT, and SLP) to have more thorough training in clinical supervision to provide them with the tools and resources to supervise students more effectively.

C. A continuing education course developed, endorsed, or sponsored by one of the following meets the requirements in subsection (B):

1. Hearing Healthcare Providers of Arizona,
2. Arizona Speech-Language-Hearing Association,
3. American Speech-Language-Hearing Association,
4. International Hearing Society,
5. International Institute for Hearing Instruments Studies,
6. American Auditory Society,
7. American Academy of Audiology,
8. Academy of Doctors of Audiology,
9. Arizona Society of Otolaryngology, Head and Neck Surgery,
10. American Academy of Otolaryngology-Head and Neck Surgery, or
11. An organization determined by the Department to be consistent with an organization in subsection (C)(1) through (10).

Here's the link:

[Credentialed Clinical Instructor Program Level 1 | APTA]
[apta-ccip-policiesprocedures-060320.pdf]

9 A.A.C. 16

TITLE 9. HEALTH SERVICES

CHAPTER 16. DEPARTMENT OF HEALTH SERVICES - OCCUPATIONAL LICENSING

ARTICLE 2. LICENSING AUDIOLOGISTS AND SPEECH-LANGUAGE PATHOLOGISTS

R9-16-201. Definitions

1. "Accredited" means approved by the:
   a. New England Commission of Higher Education,
   b. Middle States Commission on Higher Education,
   c. Higher Learning Commission,
   d. Northwest Commission on Colleges and Universities,
   e. Southern Association of Colleges and Schools Commission on Colleges, or
   f. WASC Senior College and University Commission.
2. "Applicant" means an individual who submits an application and required documentation for approval to practice as an audiologist or a speech-language pathologist.
3. "ASHA" means the American Speech-Language-Hearing Association, a national professional, scientific, and credentialing association for audiologists; speech-language pathologists; speech, language, and hearing scientists; audiology and speech-language pathology support personnel; and students.
4. "Calendar day" means each day, not including the day of the act, event, or default, from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
5. "CCC" means Certificate of Clinical Competence, an award issued by ASHA to an individual who:
   a. Completes a degree in audiology or speech-language pathology from an accredited college or university that includes a clinical practicum,
   b. Passes the ETSNEA or ETSNESLP, and
   c. Completes a clinical fellowship.
6. "Clinical fellow" means an individual engaged in a clinical fellowship.
7. "Clinical fellowship" means an individual's postgraduate professional experience assessing, diagnosing, screening, treating, writing reports, and counseling individuals exhibiting speech, language, hearing, or communication disorders, obtained:
   a. After completion of graduate level academic course work and a clinical practicum;
   b. Under the supervision of a clinical fellowship supervisor; and
   c. While employed on a full-time or part-time equivalent basis.
8. "Clinical fellowship agreement" means the document submitted to the Department by a clinical fellow to register the initiation of a clinical fellowship.
9. "Clinical fellowship report" means a document completed by a clinical fellowship supervisor containing:
   a. A summary of the diagnostic and therapeutic procedures performed by the clinical fellow,
   b. A verification by the clinical fellowship supervisor of the clinical fellow's performance of diagnostic and therapeutic procedures, and
   c. An evaluation of the clinical fellow's ability to perform the diagnostic and therapeutic procedures.
10. "Clinical fellowship supervisor" means a licensed speech-language pathologist who:
    a. Is or has been a sponsor of a temporary licensee,
    b. Had a CCC while supervising a clinical fellow before October 28, 1999, or
    c. Has a CCC while supervising a clinical fellow in another state.
11. "Clinical practicum" means the experience acquired by an individual who is completing course work in audiology or speech-language pathology, while supervised by a licensed audiologist, a licensed speech-language pathologist, or an individual holding a CCC, by assessing, diagnosing, evaluating, screening, treating, and counseling individuals exhibiting speech, language, cognitive, hearing, or communication disorders.
12. "Continuing education" means a course that provides instruction and training that is designed to develop or improve a licensee's professional competence in disciplines directly related to the licensee's scope of practice.
13. "Course" means a workshop, seminar, lecture, conference, or class.
14. "Diagnostic and therapeutic procedures" means the principles and methods used by an audiologist in the practice of audiology or a speech-language pathologist in the practice of speech-language pathology.
15. "Disciplinary action" means a proceeding that is brought against a licensee by the Department under A.R.S. § 36-1934 or a state licensing entity.

16. "ETSNEA" means Educational Testing Service National Examination in Audiology, the specialty area test of the Praxis Series given by the Education Testing Service, Princeton, N.J.
17. "ETSNESLP" means Educational Testing Service National Examination in Speech-Language Pathology, the specialty area test of the Praxis Series given by the Education Testing Service, Princeton, N.J.
18. "Full-time" means 30 clock hours or more per week.
19. "Hearing aid dispenser examination" means the International Licensing Examination for Hearing Healthcare Professionals approved by the Department as complying with A.R.S. § 36-1924.
20. "Local education agency" means a governing board established by A.R.S. § 15-101 or A.R.S. Title 15, Chapter 3, Article 3.
21. "Monitoring" means being responsible for and providing direction to a clinical fellow without directly observing diagnostic and therapeutic procedures.
22. "On-site observations" means the presence of a clinical fellowship supervisor who is watching a clinical fellow perform diagnostic and therapeutic procedures.
23. "Part-time equivalent" means:
    a. 25-29 clock hours per week for 48 weeks,
    b. 20-24 clock hours per week for 60 weeks, or
    c. 15-19 clock hours per week for 72 weeks.
24. "Semester credit hour" means one earned academic unit of study based on completing, at an accredited college or university, a 50 to 60 minute class session per calendar week for 15 to 18 weeks.
25. "Semester credit hour equivalent" means one quarter credit, which is equal in value to 2/3 of a semester credit hour.
26. "State-supported institution" means a school, a charter school, a private school, or an accommodation school as defined in A.R.S. § 15-101.
27. "Student" means a child attending a school, a charter school, a private school, or an accommodation school as defined in A.R.S. § 15-101.
28. "Supervision" means being responsible for and providing direction to:
    a. A clinical fellow during on-site observations or monitoring of the clinical fellow's performance of diagnostic and therapeutic procedures; or
    b. An individual completing a clinical practicum.
29. "Supervisory activities" means evaluating and assessing a clinical fellow's performance of diagnostic and therapeutic procedures in assessing, diagnosing, evaluating, screening, treating, and counseling individuals exhibiting speech, language, cognitive, hearing, or communication disorders.

Historical Note

Former Section R9-16-201 repealed, new Section R9-16-201 adopted effective January 23, 1978 (Supp. 78-1). Repealed effective March 14, 1994 (Supp. 94-1). Adopted by final rulemaking at 5 A.A.R. 4359, effective October 28, 1999 (Supp. 99-4). Amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Amended by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-202. Application

A. An applicant for licensure shall submit to the Department:
1. An application in a Department-provided format that contains:
    a. The applicant's name, home address, telephone number, and e-mail address;
    b. The applicant's Social Security number, as required under A.R.S. §§ 25-320 and 25-502;
    c. If applicable, the applicant's business addresses and telephone number;
    d. The applicant's current employment, if applicable, including:
        i. The employer's name,
        ii. The licensee's position,
        iii. Dates of employment,
        iv. The address of the employer,
        v. The supervisor's name,
        vi. The supervisor's email address, and
        vii. The supervisor's telephone number;
    e. If applicable, whether the applicant is requesting an audiology license to fit and dispense;
    f. Whether the applicant has ever been convicted of a felony or a misdemeanor in this or another state;
    g. If the applicant has been convicted of a felony or a misdemeanor:
        i. The date of the conviction,
        ii. The state or jurisdiction of the conviction,
        iii. An explanation of the crime of which the applicant was convicted, and
        iv. The disposition of the case;

h. Whether the applicant is or has been licensed as an audiologist, an audiologist to fit and dispense hearing aids, or a speech-language pathologist in another state or country;
i. Whether the applicant has had a license revoked or suspended by any state;
j. Whether the applicant is currently ineligible for licensing in any state because of a license revocation or suspension;
k. Whether any disciplinary action has been imposed by any state, territory or district in this country for an act related to the applicant's practice of audiology or a speech-language pathologist license;
l. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-214(C);
m. An attestation that the information submitted as part of the application is true and accurate; and
n. The applicant's signature and date of signature;

2. If a license for the applicant has been revoked or suspended by any state documentation that includes:
   a. The date of the revocation or suspension,
   b. The state or jurisdiction of the revocation or suspension, and
   c. An explanation of the revocation or suspension;
3. If the applicant is currently ineligible for licensing in any state because of a license revocation or suspension, documentation that includes:
   a. The date of the ineligibility for licensing,
   b. The state or jurisdiction of the ineligibility for licensing, and
   c. An explanation of the ineligibility for licensing;
4. If the applicant has been disciplined by any state, territory, or district of this country for an act related to the applicant's license to practice audiology or a speech-language pathologist license that is consistent with A.R.S. Title 36, Chapter 17, documentation that includes:
   a. The date of the disciplinary action,
   b. The state or jurisdiction of the disciplinary action,
   c. An explanation of the disciplinary action, and
   d. Any other applicable documents, including a legal order or settlement agreement;
5. Documentation of the applicant's citizenship or alien status that complies with A.R.S. § 41-1080; and
6. A fee specified in R9-16-216.

B. In addition to complying with subsection (A), an applicant that may be eligible for licensure under A.R.S. § 36-1922 shall submit documentation to the Department that includes:
1. The name of each state that issued the applicant a current license, including:
   a. The license number of each current license, and
   b. The date each current license was issued;
2. Documentation of the professional license or certification issued to the applicant by each state in which the applicant holds a professional license or certification;
3. For each state named in subsection (B)(1), a statement, signed and dated by the applicant, attesting that the applicant:
   a. Has been licensed or certified in another state for at least one year, with a scope of practice consistent with the scope of practice for which licensure is being requested;
   b. Has met minimum education requirements according to A.R.S. §§ 36-1940 or 36-1940.01;
   c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and
   d. Does not have a complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct.

C. The Department shall review the application and required documentation for a license according to R9-16-214 and Table 2.1.

Historical Note

Former Section R9-16-202 repealed, new Section R9-16-202 adopted effective January 23, 1978 (Supp. 78-1). Repealed effective March 14, 1994 (Supp. 94-1). Adopted by final rulemaking at 5 A.A.R. 4359, effective October 28, 1999 (Supp. 99-4). Section R9-16-202 repealed; new Section R9-16-202 renumbered from R9-16-203 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section R9-16-202 repealed; new Section made by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-203. Initial Application for an Audiologist

A. In addition to complying with R9-16-202, an applicant for initial licensure as an audiologist shall submit to the Department the following:
1. A transcript or equivalent documentation issued to the applicant from an accredited college or university after the applicant's completion of a doctoral degree consistent with the standards of this state's universities, as required in A.R.S. § 36-1940(A)(2) or documentation of the applicant's current CCC.
2. Documentation of a passing grade on a ETSNEA or current CCC dated within three years before the date of application required in A.R.S. §§ 36-1902(E) and 36-1940(A)(3) or current license from other state.

3. Documentation of completing supervised clinical rotation consistent with the standards of this state's universities required in A.R.S. § 36-1940(B)(2) or current CCC.
4. Whether the applicant is applying to fit and dispense hearing aids.
5. If applicable, a list of all states and countries in which the applicant is or has been licensed as an audiologist or an audiologist to fit and dispense hearing aids.

B. In addition to complying with R9-16-202, an applicant for initial licensure as an audiologist licensed to fit and dispense hearing aids who was awarded a master's degree before December 31, 2007 shall submit to the Department the following:
1. A transcript or equivalent documentation issued to the applicant from an accredited college or university demonstrating the applicant's completion of a master's degree in audiology before December 31, 2007 or documentation of the applicant's current CCC;
2. Documentation of a passing grade on an ETSNEA or current CCC dated within three years before the date of application; and
3. Documentation of a passing grade obtained by the applicant on a written hearing aid dispenser examination as required in A.R.S. § 36-1940(C)(4).

Historical Note

Former Section R9-16-203 repealed, new Section R9-16-203 adopted effective January 23, 1978 (Supp. 78-1). Repealed effective March 14, 1994 (Supp. 94-1). Adopted by final rulemaking at 5 A.A.R. 4359, effective October 28, 1999 (Supp. 99-4). Amended by final rulemaking at 10 A.A.R. 2063, effective July 3, 2004 (Supp. 04-2). Section R9-16-203 renumbered to R9-16-202; new Section R9-16-203 made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section R9-16-203 repealed; new Section made by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-204. Initial Application for a Speech-language Pathologist

In addition to complying with R9-16-202(A), an applicant for initial licensure as a speech-language pathologist shall submit to the Department the following:
1. A transcript or equivalent documentation issued to the applicant by an accredited college or university after the applicant's completion of a master's degree consistent with the standards of this state's universities, as required in A.R.S. § 36-1940.01(A)(2)(a) or documentation of current CCC;
2. Completion of a clinical practicum, as required in A.R.S. § 36-1940.01(A)(2)(b) or documentation of current CCC;
3. Documentation of the applicant's completion of the ETSNESLP as required in A.R.S. § 36-1940.01(A)(3) or documentation of current CCC; and
4. Documentation of the completion of clinical fellowship or documentation of current CCC.

Historical Note

Former Section R9-16-204 repealed, new Section R9-16-204 adopted effective January 23, 1978 (Supp. 78-1). Repealed effective March 14, 1994 (Supp. 94-1). Adopted by final rulemaking at 5 A.A.R. 4359, effective October 28, 1999 (Supp. 99-4). Amended by final rulemaking at 10 A.A.R. 2063, effective July 3, 2004 (Supp. 04-2). Section R9-16-204 renumbered to R9-16-209; new Section R9-16-204 made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section R9-16-204 repealed; new Section made by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-205. Initial Application for a Temporary Speech-language Pathologist

A. In addition to complying with R9-16-202(A), an applicant for initial licensure as a temporary speech-language pathologist shall submit to the Department the following:
1. A transcript or equivalent documentation issued to the applicant by an accredited college or university after the applicant's completion of a master's degree consistent with the standards of this state's universities, as required in A.R.S. § 36-1940.01(A)(2)(a) .
2. Completion of a clinical practicum, as required in A.R.S. § 36-1940.01(A)(2)(b).
3. Documentation of the applicant's completion of the ETSNESLP as required in A.R.S. § 36-1940.01(A)(3).
4. Documentation of the applicant's clinical fellowship agreement that includes:
   a. The applicant's name, home address, and telephone number;
   b. The clinical fellowship supervisor's name, business address, telephone number, and speech-language pathology license number;
   c. The name and address where the clinical fellowship will take place;
   d. A statement by the clinical fellowship supervisor agreeing to comply with R9-16-209; and
   e. The signatures of the applicant and the clinical fellowship supervisor.

B. A temporary license issued is effective for 12 months from the date of issuance.

C. A temporary license may be renewed only once.

D. An applicant issued a temporary speech-language pathologist license shall:
1. Practice under the supervision of a licensed speech-language pathologist, and

2. Not practice under the supervision of an individual who has a temporary speech-language pathologist license.

Historical Note

Former Section R9-16-205 repealed, new Section R9-16-205 adopted effective January 23, 1978 (Supp. 78-1). Repealed effective March 14, 1994 (Supp. 94-1). Adopted by final rulemaking at 5 A.A.R. 4359, effective October 28, 1999 (Supp. 99-4). Section R9-16-205 renumbered to R9-16-210; new Section R9-16-205 renumbered from R9-16-206 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section R9-16-205 repealed; new Section made by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-206. Requirements for a Speech-language Pathologist - Limited

In addition to complying with R9-16-202(A), an applicant for initial licensure as a speech-language pathologist - limited as specified in A.R.S. § 36-1940.01(B) shall submit to the Department the following:

1. A certificate in speech and language therapy awarded by the Department of Education.
2. A document representing an employee or contractor relationship with a local education agency or a state supported institution.

Historical Note

Former Section R9-16-206 repealed, new Section R9-16-206 adopted effective January 23, 1978 (Supp. 78-1). Repealed effective March 14, 1994 (Supp. 94-1). Adopted by final rulemaking at 5 A.A.R. 4359, effective October 28, 1999 (Supp. 99-4). Amended by final rulemaking at 10 A.A.R. 2063, effective July 3, 2004 (Supp. 04-2). Section R9-16-206 renumbered to R9-16-205; new Section R9-16-206 made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section R9-16-206 repealed; new Section made by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-207. License Renewal

A. Before the expiration date of a license, a licensee shall submit to the Department:

1. A renewal application in a Department-provided format that contains:
   a. The licensee's name, home address, telephone number, and e-mail address;
   b. If applicable, the licensee's business address and telephone number;
   c. The licensee's current employment, if applicable, including:
      i. The employer's name,
      ii. The licensee's position,
      iii. Dates of employment,
      iv. The address of the employer,
      v. The supervisor's name,
      vi. The supervisor's email address, and
      vii. The supervisor's telephone number;
   d. The licensee's license number and date of expiration;
   e. Since the previous license application, whether the licensee has been convicted of a felony or a misdemeanor in this or another state;
   f. If the licensee was convicted of a felony or a misdemeanor:
      i. The date of the conviction,
      ii. The state or jurisdiction of the conviction,
      iii. An explanation of the crime of which the licensee was convicted, and
      iv. The disposition of the case;
   g. Whether the licensee has had, within two years before the renewal application date, an audiology or speech-language pathology license suspended or revoked by any state;
   h. If the applicant has been disciplined by any state, territory, or district of this country for an act related to the applicant's license to practice audiology or a speech-language pathologist license that is consistent with A.R.S. Title 36, Chapter 17, documentation that includes:
      i. The date of the disciplinary action,
      ii. The state or jurisdiction of the disciplinary action,
      iii. An explanation of the disciplinary action, and
      iv. Any other applicable documents, including a legal order or settlement agreement;
   i. An attestation that the licensee completed continuing education required under A.R.S. § 36-1904 and documentation of completion is available upon request;
   j. The licensee agrees to allow the Department to submit supplemental requests for information under R9-16-214(C);
   k. An attestation that the information submitted as part of the application is true and accurate; and
   l. The licensee's signature and date of signature; and
2. A renewal fee specified in R9-16-216.

B. A licensee licensed as a speech-language pathologist, whose practice is limited to providing services to students under the authority of a local education agency or state-supported institution, shall provide documentation required in A.R.S. § 36-1940.01(B);
C. If a licensee is renewing a temporary speech-language pathology license:
1. A statement signed and dated by the licensee's clinical fellowship supervisor agreeing to comply with R9-16-209; and
2. The name, business address, telephone number, and license number of the speech language pathologist providing supervision to the licensee.

D. In addition to subsection (A), a licensee who submits a renewal application within 30 calendar days after the license expiration date shall submit a late fee specified in R9-16-216.
E. A licensee who does not submit the documentation and the fee in subsection (A) and, if applicable, (B) within 30 calendar days after the license expiration date shall apply for a new license in R9-16-202.
F. If a licensee applies for a license according to R9-16-202 more than 30 calendar days but less than one year after the expiration date of the applicant's previous license, the applicant:
1. Is not required to submit ETSNEA or ETSNESLP documentation, and
2. Shall submit an attestation of continuing education according to R9-16-208, completed within the twenty-four months before the date of application.

G. The Department shall review the application for a renewal license according R9-16-214 and Table 2.1.

Historical Note

Former Section R9-16-207 repealed, new Section R9-16-207 adopted effective January 23, 1978 (Supp. 78-1). Repealed effective March 14, 1994 (Supp. 94-1). Adopted by final rulemaking at 5 A.A.R. 4359, effective October 28, 1999 (Supp. 99-4). Section R9-16-207 renumbered to R9-16-208; new Section R9-16-207 made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section R9-16-207 repealed; new Section made by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-208. Continuing Education

A. Twenty-four months prior to submitting a renewal application, a licensee shall complete continuing education.
1. Except as provided in (A)(2), a licensed audiologist shall complete at least 20 continuing education hours related to audiology;
2. A licensed audiologist who fits and dispenses hearing aids shall complete:
   a. At least 20 continuing education hours related to audiology and hearing aid dispensing, and
   b. No more than eight continuing education hours required in subsection (A)(2)(a) provided by a single manufacturer of hearing aids; and
3. A licensed speech-language pathologist shall complete at least 20 continuing education hours in speech-language pathology related courses.

B. Continuing education shall:
1. Directly relate to the practice of audiology, speech-language pathology, or fitting and dispensing hearing aids;
2. Have educational objectives that exceed an introductory level of knowledge of audiology, speech-language pathology, or fitting and dispensing hearing aids; and
3. Consist of courses that include advances within the last five years in:
   a. Practice of audiology,
   b. Practice of speech-language pathology,
   c. Procedures in the selection and fitting of hearing aids,
   d. Pre- and post-fitting management of clients,
   e. Instrument circuitry and acoustic performance data,
   f. Ear mold design and modification contributing to improved client performance,
   g. Audiometric equipment or testing techniques that demonstrate an improved ability to identify and evaluate hearing loss,
   h. Auditory rehabilitation,
   i. Ethics,
   j. Federal and state statutes or rules, or
   k. Assistive listening devices.

C. A continuing education course developed, endorsed, or sponsored by one of the following meets the requirements in subsection (B):
1. Hearing Healthcare Providers of Arizona,
2. Arizona Speech-Language-Hearing Association,
3. American Speech-Language-Hearing Association,
4. International Hearing Society,
5. International Institute for Hearing Instruments Studies,
6. American Auditory Society,
7. American Academy of Audiology,
8. Academy of Doctors of Audiology,
9. Arizona Society of Otolaryngology, Head and Neck Surgery,

10. American Academy of Otolaryngology-Head and Neck Surgery, or
11. An organization determined by the Department to be consistent with an organization in subsection (C)(1) through (10).

Historical Note

Adopted by final rulemaking at 5 A.A.R. 4359, effective October 28, 1999 (Supp. 99-4). Section R9-16-208 renumbered to R9-16-214; new Section R9-16-208 renumbered from R9-16-207 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Amended by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-209. Clinical Fellowship Supervisors

In addition to complying with the requirements in A.R.S. § 36-1905, a clinical fellowship supervisor shall complete a minimum of 36 supervisory activities throughout an individual's clinical fellowship that include:

1. A minimum of 18 on-site observations,
2. No more than six on-site observations in a 24-hour period, and
3. A minimum of 18 monitoring activities.

Historical Note

Adopted by final rulemaking at 5 A.A.R. 4359, effective October 28, 1999 (Supp. 99-4). Section R9-16-209 renumbered to R9-16-212; new Section R9-16-209 renumbered from R9-16-204 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

Section R9-16-209 repealed; new Section made by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-210. Requirements for Supervising a Speech-language Pathologist Assistant

A licensed speech-language pathologist who provides direct supervision or indirect supervision to a speech-language pathologist assistant shall comply with A.R.S. § 36-1940.04(F) and (G):

1. Establish a record for each speech-language pathologist assistant who receives direct supervision and indirect supervision from the speech-language pathologist that includes:
   a. The speech-language pathologist assistant's license number, name, home address, telephone number, and e-mail;
   b. A plan indicating the types of skills and the number of hours allocated to the development of each skill that the speech-language pathologist assistant is expected to complete;
   c. A document listing each occurrence of direct supervision or indirect supervision provided to the speech-language pathologist assistant that includes:
      i. Business name and address where supervision occurred,
      ii. The date and times when the supervision started and ended,
      iii. The types of clinical interactions provided, and
      iv. Notation of speech-language pathologist assistant's progress;
   d. Documentation of evaluations provided to the speech-language pathologist assistant during the time supervision was provided; and
   e. Documentation of when supervision was terminated; and
2. Maintain a speech-language pathologist assistant record:
   a. Throughout the period that the speech-language pathologist assistant receives direct supervision and indirect supervision clinical interactions from the supervisor; and
   b. For at least two years after the last date the speech-language pathologist assistant received clinical interactions from the supervisor.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2063, effective July 3, 2004 (Supp. 04-2). Section R9-16-210 renumbered to R9-16-215; new Section R9-16-210 renumbered from R9-16-205 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

Section R9-16-210 repealed; new Section made by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-211. Equipment; Records

A. A licensee shall maintain equipment used by the licensee in the practice of audiology or the practice of speech-language pathology according to the manufacturer's specifications.

B. If a licensee uses equipment that requires calibration, the licensee shall ensure that:

1. The equipment is calibrated a minimum of every 12 months and according to the American National Standard - Specifications for Audiometers S3.6-2018, incorporated by reference and on file with the Department, with no future additions or amendments and available from the Standards Secretariat, c/o Acoustical Society of America, 1305 Walt Whitman Road, Suite 300, Melville, New York, 11747-4300, September 20, 2018; and
2. A written record of the calibration is maintained in the same location as the calibrated equipment for at least 36 months after the date of the calibration.

C. A licensee shall maintain the following records according to A.R.S. § 32-3211 for each client for at least 36 months after the date the licensee provided a service or dispensed a product while engaged in the practice of audiology, practice of speech-language pathology, or practice of fitting and dispensing hearing aids:

1. The client's name, address, and telephone number;
2. The name or description and the results of each test and procedure used in evaluating speech, language, and hearing disorders or determining the need for dispensing a product or service; and
3. If a product such as a hearing aid, augmentative communication device, or laryngeal device is dispensed, a record of the following:
   a. The name of the product dispensed;
   b. The product's serial number, if any;
   c. The product's warranty or guarantee, if any;
   d. The refund policy for the product, if any;
   e. A statement of whether the product is new or used;
   f. The total amount charged for the product;
   g. The name of the licensee; and
   h. The name of the intended user of the product.

Historical Note

Adopted as an emergency effective July 12, 1982, pursuant to A.R.S. § 41-1003, valid for 90 days (Supp. 82-4). Emergency expired. Permanent rule R9-16-211 adopted effective January 14, 1983 (Supp. 83-1). Repealed effective March 14, 1994 (Supp. 94-1). New Section R9-16-211 made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

Section R9-16-211 repealed; new Section made by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-212. Bill of Sale Requirements

An audiologist who dispenses hearing aids shall provide a bill of sale to a client at the time the audiologist provides a hearing aid to the client or at a time requested by the client that complies with the requirements in R9-16-311(A)(7).

Historical Note

Adopted as an emergency effective July 12, 1982, pursuant to A.R.S. § 41-1003, valid for 90 days (Supp. 82-4). Emergency expired. Permanent rule R9-16-212 adopted effective January 14, 1983 (Supp. 83-1). Repealed effective March 14, 1994 (Supp. 94-1). New Section R9-16-212 renumbered from R9-16-209 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

Section R9-16-212 repealed; new Section made by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-213. Enforcement

A. The Department may, as applicable:

1. Deny, revoke, or suspend an audiology or speech-language pathology's license under A.R.S. § 36-1934;
2. Request an injunction under A.R.S. § 36-1937; or
3. Assess a civil money penalty under A.R.S. § 36-1939.

B. In determining which disciplinary action specified in subsection (A) is appropriate, the Department shall consider:

1. The type of violation,
2. The severity of the violation,
3. The danger to the public health and safety,
4. The number of violations,
5. The number of clients affected by the violations,
6. The degree of harm to the consumer,
7. A pattern of noncompliance, and
8. Any mitigating or aggravating circumstances.

C. A licensee may appeal a disciplinary action taken by the Department according to A.R.S. Title 41, Chapter 6, Article 10.

TITLE 9. HEALTH SERVICES

CHAPTER 16. DEPARTMENT OF HEALTH SERVICES - OCCUPATIONAL LICENSING

Historical Note

Adopted as an emergency effective July 12, 1982, pursuant to A.R.S. § 41-1003, valid for 90 days (Supp. 82-4). Emergency expired. Permanent rule R9-16-213 adopted effective January 14, 1983 (Supp. 83-1). Repealed effective March 14, 1994 (Supp. 94-1). New Section R9-16-213 made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

Section R9-16-213 repealed; new Section made by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-214. Time-frames

A. For each type of license issued by the Department under this Article, Table 2.1 specifies the overall time-frame described in A.R.S. § 41-1072(2).
1. An applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame.
2. The extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.

B. For each type of license issued by the Department under this Article, Table 2.1 specifies the administrative completeness review time-frame described in A.R.S. § 41-1072(1).
1. The administrative completeness review time-frame begins the date the Department receives an application required in this Article.
2. Except as provided in subsection (B)(3), the Department shall provide a written notice of administrative completeness or a notice of deficiencies to an applicant within the administrative completeness review time-frame.
   a. If a license application is not complete, the notice of deficiencies listing each deficiency and the information or documentation needed to complete the application.
   b. A notice of deficiencies suspends the administrative completeness review time-frame and the overall time-frame from the date of the notice until the date the Department receives the missing information or documentation.
   c. If the applicant does not submit to the Department all the information or documentation listed in the notice of deficiencies within 30 calendar days after the date of the notice of deficiencies, the Department shall consider the application withdrawn.
3. If the Department issues a license during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.

C. For each type of license issued by the Department under this Article, Table 2.1 specifies the substantive review time-frame described in A.R.S. § 41-1072(3), which begins on the date the Department sends a written notice of administrative completeness.
1. Within the substantive review time-frame, the Department shall provide a written notice to the applicant that the Department approved or denied.
2. During the substantive review time-frame:
   a. The Department may make one comprehensive written request for additional information or documentation; and
   b. If the Department and the applicant agree in writing, the Department may make supplemental requests for additional information or documentation.
3. A comprehensive written request or a supplemental request for additional information or documentation suspends the substantive review time-frame and the overall time-frame from the date of the request until the date the Department receives all the information or documentation requested.
4. If the applicant does not submit to the Department all the information or documentation listed in a comprehensive written request or supplemental request for additional information or documentation within 30 calendar days after the date of the request, the Department shall deny the license or approval.

D. The Department shall issue a regular license or a temporary license:
1. Within five calendar days after receiving the license fee, and
2. From the date of issue, the license is valid for:
   a. Two years, if a regular license, and
   b. Twelve months, if a temporary license.

E. An applicant who is denied a license may appeal the denial according to A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Adopted as an emergency effective July 12, 1982, pursuant to A.R.S. § 41-1003, valid for 90 days (Supp. 82-4). Emergency expired. Permanent rule R9-16-214 adopted effective January 14, 1983 (Supp. 83-1). Repealed effective March 14, 1994 (Supp. 94-1). New Section R9-16-214 renumbered from R9-16-208 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

Section R9-16-214 repealed; new Section made by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

Table 2.1 Time-frames (in calendar days)

Type of Approval	Statutory Authority	Overall Time-Frame	Administrative Completeness Review Time-Frame	Time to Respond to Notice of Deficiency	Substantive Review Time-Frame	Time to Respond to Comprehensive Written Request
Application for an Initial or Temporary License (R9-16-202)	A.R.S. §§ 36-1904 and 36-1940	60	30	30	30	30
License Renewal (R9-16-207)	A.R.S. § 36-1904	60	30	30	30	30

Historical Note

Table 2.1 made by exempt rulemaking under R9-16-209 at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

Table 2.1 repealed; new Table 2.1 made and recodified under new Section R9-16-214, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-215. Changes Affecting a License or a Licensee; Request for a Duplicate License

A. A licensee shall submit to the Department a notice in a Department-provided format within 30 calendar days after the effective date of a change in:
1. The licensee's home address or e-mail address, including the new home address or e-mail address;
2. The licensee's name, including a copy of one of the following with the licensee's new name:
   a. Marriage certificate,
   b. Divorce decree, or
   c. Other legal document establishing the licensee's new name; and
3. The place or places, including address or addresses, where the licensee engages in the practice of audiology or speech-language pathology.

B. A licensee may obtain a duplicate license by submitting to the Department a written request for a duplicate license in a format provided by the Department that includes:
1. The licensee's name and address,
2. The licensee's license number and expiration date,
3. The licensee's signature and date of signature, and
4. A duplicate license fee specified in R9-16-216.

Historical Note

New Section R9-16-215 renumbered from R9-16-210 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

Amended by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-216. Fees

A. An applicant shall submit to the Department the following nonrefundable fee for:
1. An initial application as an audiologist, $100;
2. An initial application as a speech-language pathologist, $100; and
3. An initial application as a temporary speech-language pathologist, $100.

B. An applicant shall submit to the Department the following fee for:
1. An initial license as an audiologist, $200;
2. An initial license as a speech-language pathologist, $200; and
3. A temporary license as a speech-language pathologist, $100.

C. A licensee shall submit to the Department the following fee for:
1. A renewal license as an audiologist, $200;
2. A renewal license as a speech-language pathologist, $200; and
3. A temporary renewal license as a speech-language pathologist, $100.

D. If a licensed audiologist or speech-language pathologist submits a renewal license application specified in subsection (C) within 30 calendar days after the license expiration date, the licensee shall submit with the renewal license application a $25 late fee.

E. The fee for a duplicate license is $25.

F. An applicant for initial licensure is not required to submit the applicable fee in subsection (A) and (B) if the applicant, as part of the applicable application in R9-16-202, submits an attestation that the applicant meets the criteria for waiver of licensing fees in A.R.S. § 41-1080.01.

Historical Note

New Section made by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

36-104. Powers and duties

This section is not to be construed as a statement of the department's organization. This section is intended to be a statement of powers and duties in addition to the powers and duties granted by section 36-103. The director shall:

1. Administer the following services:

(a) Administrative services, which shall include at a minimum the functions of accounting, personnel, standards certification, electronic data processing, vital statistics and the development, operation and maintenance of buildings and grounds used by the department.

(b) Public health support services, which shall include at a minimum:

(i) Consumer health protection programs, consistent with paragraph 25 of this section, that include at least the functions of community water supplies, general sanitation, vector control and food and drugs.

(ii) Epidemiology and disease control programs that include at least the functions of chronic disease, accident and injury control, communicable diseases, tuberculosis, venereal disease and others.

(iii) Laboratory services programs.

(iv) Health education and training programs.

(v) Disposition of human bodies programs.

(c) Community health services, which shall include at a minimum:

(i) Medical services programs that include at least the functions of maternal and child health, preschool health screening, family planning, public health nursing, premature and newborn program, immunizations, nutrition, dental care prevention and migrant health.

(ii) Dependency health care services programs that include at least the functions of need determination, availability of health resources to medically dependent individuals, quality control, utilization control and industry monitoring.

(iii) Children with physical disabilities services programs.

(iv) Programs for the prevention and early detection of an intellectual disability.

(d) Program planning, which shall include at least the following:

(i) An organizational unit for comprehensive health planning programs.

(ii) Program coordination, evaluation and development.

(iii) Need determination programs.

(iv) Health information programs.

2. Include and administer, within the office of the director, staff services, which shall include at a minimum budget preparation, public information, appeals, hearings, legislative and federal government liaison, grant development and management and departmental and interagency coordination.

3. Make rules for the organization and proper and efficient operation of the department.

4. Determine when a health care emergency or medical emergency situation exists or occurs within this state that cannot be satisfactorily controlled, corrected or treated by the health care delivery systems and facilities available. When such a situation is determined to exist, the director shall immediately report that situation to the legislature and the governor. The report shall include information on the scope of the emergency, recommendations for solution of the emergency and estimates of costs involved.

5. Provide a system of unified and coordinated health services and programs between this state and county governmental health units at all levels of government.

6. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

7. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of monies.

8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.

9. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of the department's duties subject to the departmental rules and regulations on the confidentiality of information.

10. Establish and maintain separate financial accounts as required by federal law or regulations.

11. Advise with and make recommendations to the governor and the legislature on all matters concerning the department's objectives.

12. Take appropriate steps to reduce or contain costs in the field of health services.

13. Encourage and assist in the adoption of practical methods of improving systems of comprehensive planning, of program planning, of priority setting and of allocating resources.

14. Encourage an effective use of available federal resources in this state.

15. Research, recommend, advise and assist in the establishment of community or area health facilities, both public and private, and encourage the integration of planning, services and programs for the development of the state's health delivery capability.

16. Promote the effective use of health manpower and health facilities that provide health care for the citizens of this state.

17. Take appropriate steps to provide health care services to the medically dependent citizens of this state.

18. Certify training on the nature of sudden infant death syndrome, which shall include information on the investigation and handling of cases involving sudden and unexplained infant death for use by law enforcement officers as part of their basic training requirement.

19. Adopt protocols on the manner in which an autopsy shall be conducted under section 11-597, subsection D in cases of sudden and unexplained infant death.

20. 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.

21. Administer the federal family violence prevention and services act grants, and the department is designated as this state's recipient of federal family violence prevention and services act grants.

22. Accept and spend private grants of monies, gifts and devises for the purposes of methamphetamine education. The department shall disburse these monies to local prosecutorial or law enforcement agencies with existing programs, faith-based organizations and nonprofit entities that are qualified under section 501(c)(3) of the United States internal revenue code, including nonprofit entities providing services to women with a history of dual diagnosis disorders, and that provide educational programs on the repercussions of methamphetamine use. State general fund monies shall not be spent for the purposes of this paragraph. If the director does not receive sufficient monies from private sources to carry out the purposes of this paragraph, the director shall not provide the educational programs prescribed in this paragraph. Grant monies received pursuant to this paragraph are not lapsing and do not revert to the state general fund at the close of the fiscal year.

23. Identify successful methamphetamine prevention programs in other states that may be implemented in this state.

24. Pursuant to chapter 13, article 8 of this title, coordinate all public health and risk assessment issues associated with a chemical or other toxic fire event if a request for the event is received from the incident commander, the emergency response commission or the department of public safety and if funding is available. Coordination of public health issues shall include general environmental health consultation and risk assessment services consistent with chapter 13, article 8 of this title and, in consultation with the Arizona poison control system, informing the public as to potential public health risks from the environmental exposure. Pursuant to chapter 13, article 8 of this title, the department of health services shall also prepare a report, in consultation with appropriate state, federal and local governmental agencies, that evaluates the public health risks from the environmental exposure. The department of health services' report shall include any department of environmental quality report and map of smoke dispersion from the fire, the results of any environmental samples taken by the department of environmental quality and the toxicological implications and public health risks of the environmental exposure. The department of health services shall consult with the Arizona poison control system regarding toxicology issues and shall

prepare and produce its report for the public as soon as practicable after the event. The department of health services shall not use any monies pursuant to section 49-282, subsection E to implement this paragraph.

25. Consult, cooperate, collaborate and, if necessary, enter into interagency agreements and memoranda of understanding with the Arizona department of agriculture concerning its administration, pursuant to title 3, chapter 3, article 4.1, of this state's authority under the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252).

26. Adopt rules pursuant to title 32, chapter 32, article 5 prescribing the designated database information to be collected by health profession regulatory boards for the health professionals workforce database.

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 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 to promote 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 educating 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 coordinating 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 enforcing 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 and behavioral-supported 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 a licensing period shall not 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.

36-1901. Definitions

In this chapter, unless the context otherwise requires:

1. "Accredited program" means a program leading to the award of a degree in audiology that is accredited by an organization recognized for that purpose by the United States department of education.

2. "Approved training program" means a postsecondary speech-language pathology assistant training program that is approved by the director.

3. "Assistive listening device or system" means an amplification system that is specifically designed to improve the signal-to-noise ratio for the listener who is deaf or hard of hearing, to reduce interference from noise in the background and to enhance hearing levels at a distance by picking up sound from as close to the source as possible and sending it directly to the ear of the listener, excluding hearing aids.

4. "Audiologist" means a person who engages in the practice of audiology and who meets the requirements prescribed in this chapter.

5. "Audiology" means the nonmedical and nonsurgical application of principles, methods and procedures of measurement, testing, evaluation and prediction that are related to hearing, its disorders and related communication impairments for the purpose of nonmedical diagnosis, prevention, amelioration or modification of these disorders and conditions.

6. "Clinical interaction" means a fieldwork practicum in speech-language pathology that is supervised by a licensed speech-language pathologist.

7. "Department" means the department of health services.

8. "Direct supervision":

(a) Means a licensed speech-language pathologist observes and guides a speech-language pathology assistant while the speech-language pathology assistant performs an assigned clinical activity.

(b) Includes the supervising licensed speech-language pathologist viewing and communicating with the speech-language pathology assistant via telecommunication technology as the speech-language pathology assistant provides clinical activities if the supervising licensed speech-language pathologist can provide ongoing immediate feedback throughout the clinical activity being provided.

(c) Does not include the supervising licensed speech-language pathologist reviewing a taped session at a later time.

9. "Director" means the director of the department.

10. "Disorders of communication" means an organic or nonorganic condition that impedes the normal process of human communication and includes disorders of speech, articulation, fluency, voice, verbal and written language, auditory comprehension, cognition and communications and oral, pharyngeal and laryngeal sensorimotor competencies.

11. "Disorders of hearing" means an organic or nonorganic condition, whether peripheral or central, that impedes the normal process of human communication and includes disorders of auditory sensitivity, acuity, function or processing.

12. "Hearing aid" means any wearable instrument or device designed for or represented as aiding or improving human hearing or as aiding, improving or compensating for defective human hearing, and any parts, attachments or accessories of the instrument or device, including ear molds, but excluding batteries and cords.

13. "Hearing aid dispenser" means any person who engages in the practice of fitting and dispensing hearing aids.

14. "Indirect supervision" means supervisory activities, other than direct supervision, that are performed by a licensed speech-language pathologist and that may include consulting, reviewing records and reviewing and evaluating audiotaped or videotaped sessions.

15. "Letter of concern" means an advisory letter to notify a licensee that, while there is insufficient evidence to support disciplinary action, the director believes the licensee should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the director may result in action against the licensee.

16. "License" means a license issued by the director under this chapter and includes a temporary license.

17. "Nonmedical diagnosing" means the art or act of identifying a communication disorder from its signs and symptoms. Nonmedical diagnosing does not include diagnosing a medical disease.

18. "Practice of audiology" means:

(a) Rendering or offering to render to a person or persons who have or who are suspected of having disorders of hearing any service in audiology, including prevention, identification, evaluation, consultation, habilitation, rehabilitation, instruction and research.

(b) Participating in hearing conservation, hearing aid and assistive listening device evaluation and hearing aid prescription preparation, fitting, dispensing and orientation.

(c) Screening, identifying, assessing, nonmedical diagnosing, preventing and rehabilitating peripheral and central auditory system dysfunctions.

(d) Providing and interpreting behavioral and physiological measurements of auditory and vestibular functions.

(e) Selecting, fitting and dispensing assistive listening and alerting devices and other systems and providing training in their use.

(f) Providing aural rehabilitation and related counseling services to persons who are deaf or hard of hearing and their families.

(g) Screening speech-language and other factors that affect communication function in order to conduct an audiologic evaluation and an initial identification of persons with other communications disorders and making the appropriate referral.

(h) Planning, directing, conducting or supervising services.

19. "Practice of fitting and dispensing hearing aids":

(a) Means measuring human hearing by means of an audiometer or by any other means, solely for the purpose of making selections or adaptations of hearing aids, and fitting, selling and servicing hearing aids, including assistive listening devices, and making impressions for ear molds.

(b) Includes identification, instruction, consultation, rehabilitation and hearing conservation as these relate only to hearing aids and related devices and, at the request of a physician or another licensed health care professional, making audiograms for the professional's use in consultation with persons who are deaf or hard of hearing.

(c) Does not include formal auditory training programs, lip reading and speech conservation.

20. "Practice of speech-language pathology" means:

(a) Rendering or offering to render to an individual or groups of individuals who have or are suspected of having disorders of communication service in speech-language pathology, including prevention, identification, evaluation, consultation, habilitation, rehabilitation, instruction and research.

(b) Screening, identifying, assessing, interpreting, nonmedical diagnosing and rehabilitating disorders of speech and language.

(c) Screening, identifying, assessing, interpreting, nonmedical diagnosing and rehabilitating disorders of oral-pharyngeal functions and related disorders.

(d) Screening, identifying, assessing, interpreting, nonmedical diagnosing and rehabilitating cognitive and communication disorders.

(e) Assessing, selecting and developing augmentative and alternative communication systems and providing training in using these systems and assistive listening devices.

(f) Providing aural rehabilitation and related counseling services to persons who are deaf or hard of hearing and their families.

(g) Enhancing speech-language proficiency and communication effectiveness.

(h) Screening hearing and other factors for speech-language evaluation and initially identifying persons with other communication disorders and making the appropriate referral.

21. "Regular license" means each type of license issued by the director, except a temporary license.

22. "Sell" or "sale" means a transfer of title or of the right to use by lease, bailment or any other contract, but does not include transfers at wholesale to distributors or dealers.

23. "Speech-language pathology" means the nonmedical and nonsurgical application of principles, methods and procedures of assessment, testing, evaluation and prediction related to speech and language and its disorders and related communication impairments for the nonmedical diagnosis, prevention, amelioration or modification of these disorders and conditions.

24. "Speech-language pathology assistant" means a person who provides services prescribed in section 36-1940.04 under the direction and supervision of a speech-language pathologist licensed pursuant to this chapter.

25. "Sponsor" means a person who is licensed pursuant to this chapter and who agrees to train or directly supervise a temporary licensee in the same field of practice.

26. "Temporary licensee" means a person who is licensed under this chapter for a specified period of time under the sponsorship of a person licensed pursuant to this chapter.

27. "Unprofessional conduct" means:

(a) Obtaining any fee or making any sale by fraud or misrepresentation.

(b) Employing directly or indirectly any suspended or unlicensed person to perform any work covered by this chapter.

(c) Using, or causing or promoting the use of, any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia or other representation, however disseminated or published, that is misleading, deceiving, improbable or untruthful.

(d) Advertising for sale a particular model, type or kind of product when purchasers or prospective purchasers responding to the advertisement cannot purchase or are dissuaded from purchasing the advertised model, type or kind if the purpose of the advertisement is to obtain prospects for the sale of a different model, type or kind than that advertised.

(e) Representing that the professional services or advice of a physician will be used or made available in selling, fitting, adjusting, maintaining or repairing hearing aids if this is not true, or using the words "doctor", "clinic", "clinical" or like words, abbreviations or symbols while failing to affix the word, term or initials "audiology", "audiologic", "audiologist", "doctor of audiology", "Au.D.", "Ph.D." or "Sc.D.".

(f) Defaming competitors by falsely imputing to them dishonorable conduct, inability to perform contracts or questionable credit standing or by other false representations, or falsely disparaging the products of competitors in any respect, or their business methods, selling prices, values, credit terms, policies or services.

(g) Displaying competitive products in the licensee's show window, shop or advertising in such manner as to falsely disparage such products.

(h) Representing falsely that competitors are unreliable.

(i) Quoting prices of competitive products without disclosing that they are not the current prices, or showing, demonstrating or representing competitive models as being current models when they are not current models.

(j) Imitating or simulating the trademarks, trade names, brands or labels of competitors with the capacity, tendency or effect of misleading or deceiving purchasers or prospective purchasers.

(k) Using in the licensee's advertising the name, model name or trademark of a particular manufacturer of hearing aids in such a manner as to imply a relationship with the manufacturer that does not exist, or otherwise to mislead or deceive purchasers or prospective purchasers.

(l) Using any trade name, corporate name, trademark or other trade designation that has the capacity, tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the name, nature or origin of any product of the industry, or of any material used in the product, or that is false, deceptive or misleading in any other material respect.

(m) Obtaining information concerning the business of a competitor by bribery of an employee or agent of that competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unfair means.

(n) Giving directly or indirectly, offering to give, or allowing or causing to be given money or anything of value, except miscellaneous advertising items of nominal value, to any person who advises another in a professional capacity as an inducement to influence that person or have that person influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser, or to influence persons to refrain from dealing in the products of competitors.

(o) Sharing any profits or sharing any percentage of a licensee's income with any person who advises another in a professional capacity as an inducement to influence that person or have that person influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser or to dissuade persons from dealing in products of competitors.

(p) Failing to comply with existing federal regulations regarding fitting and dispensing a hearing aid.

(q) Being convicted of a felony or a misdemeanor that involves moral turpitude.

(r) Fraudulently obtaining or attempting to obtain a license or a temporary license for the applicant, the licensee or another person.

(s) Aiding or abetting unlicensed practice.

(t) Wilfully making or filing a false audiology, speech-language pathology or hearing aid dispenser evaluation.

(u) Using narcotics, alcohol or drugs to the extent that performing professional duties is impaired.

(v) Betraying a professional confidence.

(w) Engaging in any conduct, practice or condition that impairs the ability of the licensee to safely and competently engage in the practice of audiology, speech-language pathology or hearing aid dispensing.

(x) Providing services or promoting the sale of devices, appliances or products to a person who cannot reasonably be expected to benefit from these services, devices, appliances or products.

(y) Being disciplined by a licensing or disciplinary authority of any state, territory or district of this country for an act that is grounds for disciplinary action under this chapter.

(z) Violating any provision of this chapter or failing to comply with rules adopted pursuant to this chapter.

(aa) Failing to refer an individual for medical evaluation if a condition exists that is amenable to surgical or medical intervention prescribed by the advisory committee and consistent with federal regulations.

(bb) Practicing in a field or area within that licensee's defined scope of practice in which the licensee has not either been tested, taken a course leading to a degree, received supervised training, taken a continuing education course or had adequate prior experience.

(cc) Failing to affix the word, term or initials "audiology", "audiologic", "audiologist", "doctor of audiology", "Au.D.", "Ph.D." or "Sc.D." in any sign, written communication or advertising media in which the term "doctor" or the abbreviation "Dr." is used in relation to the audiologist holding a doctoral degree.

36-1902. Powers and duties of the director; advisory committee; members

A. The director shall:

1. Supervise and administer qualifying examinations to test the knowledge and proficiency of applicants for a hearing aid dispenser's license.

2. Designate the time and place for holding examinations for a hearing aid dispenser's license.

3. License persons who apply for and pass the examination for a license and who possess all other qualifications required for the practice of fitting and dispensing hearing aids, the practice of audiology and the practice of speech-language pathology.

4. License persons who apply for a license and who possess all other qualifications required for licensure as a speech-language pathology assistant.

5. Authorize all disbursements necessary to carry out this chapter.

6. Ensure the public's health and safety by adopting and enforcing qualification standards for licensees and applicants for licensure under this chapter.

7. Appoint an advisory committee to assist in examining applicants for a hearing aid dispenser's license and to collaborate with and assist the director in disciplinary matters, if requested, or any other duties prescribed in this chapter.

B. The director may:

1. Purchase and maintain, or rent, equipment and facilities necessary to carry out the examination of applicants for a license.

2. Issue and renew a license.

3. Deny, suspend, revoke or refuse renewal of a license or file a letter of concern, issue a decree of censure, prescribe probation, impose a civil penalty or restrict or limit the practice of a licensee pursuant to this chapter.

4. Make and publish rules that are not inconsistent with the laws of this state and that are necessary to carry out this chapter.

5. Require the periodic inspection of testing equipment and facilities of persons who are engaged in the practice of fitting and dispensing hearing aids, the practice of audiology and the practice of speech-language pathology.

6. Require a licensee to produce customer records of patients involved in complaints on file with the department.

C. The advisory committee appointed pursuant to subsection A, paragraph 7 of this section consists of the following members:

1. The director or the director's designee.

2. Two physicians who are licensed under title 32, chapter 13 or 17, one of whom is a specialist in otolaryngology.

3. Two licensed audiologists, one of whom dispenses hearing aids.

4. Two licensed speech-language pathologists, one of whom provides services in a school setting.

5. Two public members, one of whom is deaf or hard of hearing.

6. One member of the commission for the deaf and the hard of hearing who is not licensed pursuant to this chapter.

7. Two licensed hearing aid dispensers who are not licensed to practice audiology.

8. Two licensed speech-language pathology assistants.

D. Committee members who are licensed under this chapter shall have at least five years' experience immediately preceding the appointment in their field of practice in this state. Committee members shall serve a two-year term.

E. The director shall verify that each audiology licensee has passed a nationally recognized examination approved by the director.

F. The director shall verify that each speech-language pathology licensee has passed a nationally recognized examination approved by the director.

G. The director may recognize a nationally recognized speech-language hearing association or audiology association examination, or both, as an approved examination.

36-1903. Deposit of monies

The director shall deposit pursuant to sections 35-146 and 35-147, ten per cent of all monies collected pursuant to this chapter in the state general fund and shall deposit the remaining ninety per cent in the health services licensing fund established by section 36-414, except that monies collected from civil penalties imposed pursuant to this chapter shall be deposited in the state general fund.

36-1904. Issuance of license; renewal of license; continuing education; military members

A. The director shall issue a regular license to each applicant who meets the requirements of this chapter. A regular license is valid for two years.

B. A licensee shall renew a regular license every two years on payment of the renewal fee prescribed in section 36-1908. There is a thirty-day grace period after the expiration of a regular license. During this period the licensee may renew a regular license on payment of a late fee in addition to the renewal fee.

C. When renewing a regular license as a hearing aid dispenser, the licensee shall provide proof of having completed at least twenty-four hours of continuing education within the prior twenty-four months. Courses sponsored by a single manufacturer of hearing aids may not satisfy more than eight hours of continuing education within the prior twenty-four months. At least eight hours of continuing education must be from courses taught in person that offer a hands-on opportunity for instruction in dispensing-related techniques. Courses on topics that provide a hearing aid dispenser an opportunity to stay current on business or client service practices or trends in the profession or that contribute to the professional or business competence of a hearing aid dispenser may qualify for up to one-third of the continuing education requirement. The in-person course requirement may be waived by the director:

1. For all licensees, in the event of a public health emergency declaration.

2. For an individual licensee, in the event of a bona fide emergency that prevents the licensee from attending in-person courses for an indefinite period of time.

D. When renewing a regular license in audiology or in speech-language pathology, the licensee shall provide proof of having completed at least twenty hours of continuing education within the prior twenty-four months. Courses sponsored by a single manufacturer of hearing aids may not satisfy more than eight hours of continuing education within the prior twenty-four months for persons with a license in audiology.

E. The director by rule shall provide standards for continuing education courses required by this section. Educational courses that are developed by professional organizations of hearing aid dispensers, audiologists or speech language pathologists and that are used by those associations to comply with continuing education requirements are deemed to comply with department standards.

F. The director may refuse to renew a regular license for any cause provided in section 36-1934.

G. A person who does not renew a regular license as prescribed by this section shall apply for a new license pursuant to the requirements of this chapter. If an application is received by the director within one year after the expiration date of the license, the applicant is not required to take an examination.

H. A person who reapplies for a regular license issued pursuant to this chapter must provide proof of completion of the continuing education hours prescribed by subsection C or D of this section within the previous twenty-four months before the date of reapplication.

I. A license issued pursuant to this chapter to any member of the Arizona national guard or the United States armed forces reserves does not expire while the member is serving on federal active duty and is extended one hundred eighty days after the member returns from federal active duty if the member, or the legal representative of the member, notifies the director of the federal active duty status of the member. A license issued pursuant to this chapter to any member serving in the regular component of the United States armed forces is extended one hundred eighty days after the date of expiration if the member, or the legal representative of the member, notifies the director of the federal active duty status of the member. If the license is renewed during the applicable extended time period after the member returns from federal active duty, the member is responsible only for normal fees and activities relating to renewal of the license and shall not be charged any additional costs such as late fees or delinquency fees. The member, or the legal representative of the member, shall present to the director a copy of the member's official military orders, a redacted military identification card or a written verification from the member's commanding officer before the end of the applicable extended time period in order to qualify for the extension.

J. A license issued pursuant to this chapter to any member of the Arizona national guard, the United States armed forces reserves or the regular component of the United States armed forces does not expire and is extended one hundred eighty days after the date the military member is able to perform activities necessary under the license if the member both:

1. Is released from active duty service.

2. Suffers an injury as a result of active duty service that temporarily prevents the member from being able to perform activities necessary under the license.

36-1905. Sponsors; duties

A. A sponsor shall directly train and supervise a temporary licensee. The director shall prescribe by rule a reasonable number of hours of training and supervision required. A sponsor may not sponsor more than two temporary licensees at one time.

B. A sponsor and the temporary licensee are equally liable for violations of this chapter and rules adopted pursuant to this chapter that are committed by the temporary licensee.

C. A sponsor who violates this section is subject to disciplinary action as prescribed pursuant to section 36-1934.

36-1906. Registering place of business with director

A. A person who holds a license shall notify the director in writing of the address of the place or places where the person engages in the practice of fitting and dispensing hearing aids, the practice of audiology or the practice of speech-language pathology and of any subsequent change of address.

B. The director shall keep a record of the places of practice of persons who hold licenses.

36-1907. Practicing without a license; prohibition

A. A person shall not engage in the practice of fitting and dispensing hearing aids, audiology or speech-language pathology or display a sign or in any other way advertise or claim to be a hearing aid dispenser, an audiologist or a speech-language pathologist unless the person holds an active license in good standing issued by the director as provided in this chapter.

B. A person shall not engage in performing the duties of a speech-language pathology assistant or claim to be a speech-language pathology assistant unless the person holds an active license in good standing issued by the director as provided by this chapter.

C. A licensee shall conspicuously post a license issued pursuant to this chapter in the licensee’s office or place of business.

36-1908. Fees

The director shall prescribe and collect fees from persons who are regulated under this chapter for the following:

1. An original application for a regular or temporary license.

2. An original issuance of a regular or temporary license.

3. An original application for a regular or temporary license if an examination pursuant to section 36-1924 is required.

4. A renewal of a regular or temporary license.

5. An issuance of a duplicate regular or temporary license.

6. A late fee.

36-1909. Bill of sale; requirements

A. A hearing aid dispenser or dispensing audiologist shall deliver a bill of sale to each person supplied with a hearing aid by the hearing aid dispenser or the dispensing audiologist or at that person's order or direction.

B. A bill of sale shall contain the hearing aid dispenser's or the dispensing audiologist's signature and shall show the address of that person's regular place of practice and the number of that person's license, a description of the make and model of the hearing aid and the amount charged. The bill of

sale shall also state the serial number and the condition of the hearing aid as to whether it is new, used or rebuilt.

C. A bill of sale shall contain language that verifies that the client has been informed about audio switch technology, including benefits such as increased access to telephones and assistive listening devices. If the hearing device purchased by the client has audio switch technology, the client shall be informed of the proper use of the technology. The client shall be informed that an audio switch is also referred to as a telecoil, t-coil or t-switch.

D. A bill of sale shall contain language that informs the client about the Arizona telecommunications equipment distribution program established by section 36-1947 that provides assistive telecommunications devices to residents of this state who have hearing loss.

36-1934. Denial, revocation or suspension of license; hearings; alternative sanctions

A. The director may deny, revoke or suspend a license issued under this chapter for any of the following reasons:

1. Being convicted of a felony or misdemeanor involving moral turpitude. The record of the conviction or a certified copy from the clerk of the court where the conviction occurred or from the judge of that court is sufficient evidence of conviction.

2. Securing a license under this chapter through fraud or deceit.

3. Committing unprofessional conduct or incompetence in the conduct of the licensee's practice.

4. Using a false name or alias in the licensee's professional practice.

5. Violating any of the provisions of this chapter.

6. Failing to comply with existing federal regulations regarding fitting and dispensing a hearing aid.

B. If the director determines pursuant to a hearing that grounds exist to revoke or suspend a license, the director may do so permanently or for a fixed period of time and may impose conditions as prescribed by rule.

C. The department may deny a license without holding a hearing. After receiving notification of the denial, the applicant may request a hearing to review the denial.

D. The department shall conduct any hearing to revoke or suspend a license or impose a civil penalty under section 36-1939 pursuant to title 41, chapter 6, article 10.

E. Instead of denying, revoking or suspending a license, the director may file a letter of concern, issue a decree of censure, prescribe a period of probation or restrict or limit the practice of a licensee.

36-1936. Unlawful acts

A person may not:

1. Sell, barter, or offer to sell or barter, a license.

2. Purchase or procure by barter a license with intent to use it as evidence of the holder's qualification to engage in the practice of fitting and dispensing hearing aids.

3. Alter materially a license with fraudulent intent.

4. Use or attempt to use as a valid license one which has been purchased, fraudulently obtained, counterfeited or materially altered.

5. Wilfully make a false, material statement in an application or related document for a license or for renewal of a license.

36-1940.03. Temporary licenses

A. The department shall issue a temporary license to a person who does not meet the professional experience requirement of section 36-1940.01 if the applicant meets the other requirements of that section and:

1. Includes with the application a plan for meeting the postgraduate professional experience.

2. Submits a fee prescribed by section 36-1908.

B. A person may renew a temporary license only once.

C. A person issued a temporary license shall practice only under the supervision of a person who is fully licensed by this state.

D-8.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 16, Article 3

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: September 4, 2024

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

FROM: Council Staff

DATE: **August 14, 2024**

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 16, Article 3

Summary

This Five Year Review Report (5YRR) from the Department of Health Services (Department) covers sixteen (16) rules and two (2) Tables in Title 9, Chapter 16, Article 3 related to Licensing Hearing Aid Dispensers. A.R.S. Title 36, Chapter 17, Article 2, governs licensing and regulation of hearing aid dispensers and the rules in Article 3 implement the statutory requirements for the licensing of hearing aid dispensers.

The Department completed its course of action proposed in its 5YRR approved by Council in July of 2019.

Proposed Action

The Department anticipates submitting a Notice of Final Rulemaking to the Council to address the issues identified in this report by February 2025.

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:**

According to the Department, the rules in this Article were reorganized with the intent for the rules to be more effective, clear, concise, and understandable. The Department states that the 2020 rulemaking did not increase the cost of regulatory compliance, increase a fee, or reduce the procedural rights of persons regulated. Stakeholders include applicants, licensees, businesses that employ hearing aid dispensers, consumers and the Department. As of 2024, the Department states it has licensed 580 hearing aid dispensers. The Department's overall assessment of the economic, small business and, and consumer impact remains that the benefits of the rules outweigh any associated costs.

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 that 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.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Department has not received written criticism of the rules in the past five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Department states the rules are not clear, concise, and understandable and would benefit with the following amendments:

- R9-16-301: cross references should be updated
- R9-16-302: rule should be updated to reflect the current information found in the notifications sent by the Department
- R9-16-303: terms should be updated
- R9-16-304: the words "by examination or licensure of reciprocity" should be removed
- R9-16-307: rule should be removed
- R9-16-308: requirements in the renewal and initial application should match
- R9-16-312: terms should be updated
- R9-16-314: cross references should be updated
- Table 3.1: Table should be updated to reflect all application types
- R9-16-315: terms and language should be updated
- R9-16-316: fee informations should be updated

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Department states the rules are not consistent with other rules and statutes would benefit with the following amendments:

- R9-16-301: definitions should be updated
- R9-16-307: cross references and license types should be updated
- R9-16-308: cross references should be updated
- R9-16-313: titles should be updated and an additional subsection is needed
- Table 3.1: references to repealed statutes should be removed
- R9-16-315: references to repealed statutes should be removed
- R9-16-316: references to "business organization" should be removed

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Department states the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

The Department states the rules are not enforced as written as A.R.S. § 36-1910 was repealed, therefore any references to this statutory citation are not enforced.

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 states that there is no corresponding federal law related to these 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?**

The Department indicates that a general permit is not applicable as the rules qualify for an exception under ARS § 41-1037(A)(2).

11. **Conclusion**

This Five Year Review Report from the Department of Health Services covers sixteen rules and two Tables in Title 9, Chapter 16, Article 3 related to Licensing Hearing Aid Dispensers. As indicated above, A.R.S. § 36-1910 was repealed and should be updated throughout the Article. The Department completed its prior proposed course of action and anticipates submitting a Notice of Final Rulemaking by February 2025.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

May 20, 2024

VIA EMAIL: grrc@azdoa.gov
Jessica Klein, Esq., 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. 16, Article 3, Five-Year-Review Report

Dear Ms. Klein:

Please find enclosed the Five-Year-Review Report from the Arizona Department of Health Services (Department) for 9 A.A.C. 16, Article 3, which is due on or before May 31, 2024.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this Report, please contact Angie Trevino at angelica.trevino@azdhs.gov or (480) 589-0298.

Sincerely,

Stacie Gravito
Director's Designee

SG:at

Enclosures

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 16. Department of Health Services – Occupational Licensing

Article 3. Licensing Hearing Aid Dispensers

May 2024

1. Authorization of the rule by existing statutes

Authorizing statutes: A.R.S. §§ 36-104(3), 36-132(A)(18), and 36-136(G)

Implementing statutes: A.R.S. §§ 36-1901 through 36-1909; 36-1921 through 36-1926; and 36-1934 through 36-1940.02

2. The objective of each rule:

Rule	Objective
R9-16-301	The objective of the rules is to define the terms used in this Article.
R9-16-302	The objective of the rules is to specify the written and practical examination requirements an applicant or temporary hearing aid dispenser must complete and pass in order to apply for an initial hearing aid dispenser license. The objective also includes the Department's responsibility to notify the applicant of the results of those examinations.
R9-16-303	The objective of the rules is to specify the information the applicant is required to submit when applying for licensure.
R9-16-304	The objective of the rules is to specify the requirements for an initial hearing aid dispenser license and specify the length of time the hearing aid dispenser license is valid. Additionally, it clarifies that the Department will return a fee to the applicant when the Department does not issue a license.
R9-16-305	The objective of the rules is to detail the licensing requirements for an initial temporary hearing aid dispenser license.
R9-16-306	The objective of the rules is to list the criteria that needs to be met when applying for the required examination.
R9-16-307	The objective of the rules is to specify the requirements for submitting an initial application for a business organization to obtain a business hearing aid dispenser license.
R9-16-308	The objective of the rules is to specify the requirements when a hearing aid dispenser is applying for the renewal of a license.

R9-16-309	The objective of the rules is to specify continuing education requirements.
R9-16-310	The objective of the rules is to specify the requirements for an individual, known as a sponsor who is licensed pursuant to A.R.S. Title 36, Chapter 17, and agrees to train, supervise, and be responsible for a temporary licensed hearing aid dispenser's practice.
R9-16-311	The objective of the rules is to specify the responsibilities and requirements a licensed hearing aid dispenser shall adhere to.
R9-16-312	The objective of the rules is to provide requirements for maintaining hearing screening equipment and client records.
R9-16-313	The objective of the rules is to list the actions the Department may take and specify the criteria the Department will consider when determining disciplinary actions.
R9-16-314	The objective of the rules is to detail the time-frame requirements per A.R.S. § 41-1072.
Table 3.1	The objective of the table is to summarize the time-frame durations used by the Department when reviewing applications, such as initial and renewal applications.
R9-16-315	The objective of the rules is to list the changes that affect the license or licensee and must be reported to the Department; and the requirements for requesting a duplicate license.
R9-16-316	The objective of the rules is to state the fee requirements for each license type.

3. Are the rules effective in achieving their objectives? **Yes _X_ No __**

Rule	Explanation

4. Are the rules consistent with other rules and statutes? **Yes __ No _X__**

Rule	Explanation
R9-16-301	R9-16-301(2) provides a definition of "Business organization" as identified in A.R.S. § 36-1910; this statute was repealed in 2021. This definition needs to be removed from this Article. Additionally, references to "business," "businesses," and "business organization" as used in accordance with the definition of "business organization" need to be removed from other definitions, such as in R9-16-301(1), R9-16-301(5), and R9-16-301(10).

R9-16-307	Section R9-16-307 is not consistent with statute. A.R.S. § 36-1910 was repealed in 2021; therefore, Section R9-16-307 needs to be removed from this Article. The Department no longer issues Business Hearing Aid Dispenser licenses.
R9-16-308	In R9-16-308(A)(4) and (D)(2) references to "business organization" need to be removed as A.R.S. § 36-1910 was repealed in 2021.
R9-16-313	The rule is consistent but could be improved by making this Section more consistent with other rules in 9 A.A.C. 16 by amending the title from "Enforcement" to "Denial, Suspension, Revocation, Enforcement." In addition, the rule would be more consistent with 9 A.A.C. 16 and clearer if a new subsection was created to clarify and inform applicants or licensees that the Department may deny an application or suspend or revoke a license if a licensee does not correct the deficiencies identified during an investigation according to the plan of correction or an applicant or a licensee provides false or misleading information to the Department.
R9-16-314 Table 3.1	Reference to "Business Organization" in Table 3.1 needs to be removed due to the repeal of A.R.S. § 36-1910.
R9-16-315	R9-16-315(C) needs to be removed from this Section due to the repeal of A.R.S. § 36-1910.
R9-16-316	R9-16-316(A)(2) and (A)(4) need to be removed as business organizations are no longer licensed. And R9-16-316(D) needs to remove reference to "business organization".

5. Are the rules enforced as written? **Yes ___ No _X_**

Rule	Explanation
R9-16-307	As mentioned in #4 of this report, A.R.S. § 36-1910 was repealed in 2021; therefore, Section R9-16-307 is not enforced. The Department of Health Services proposes to remove this Section from the Article.
R9-16-308, Table 3.1, R9-16-315, R9-16-316	As explained in #4 of this report, references to "business organization" are not enforced as a result of A.R.S. § 36-1910 being repealed in 2021. The Department of Health Services proposes to remove references to "business organization."

6. Are the rules clear, concise, and understandable? **Yes ___ No _X_**

Rule	Explanation
R9-16-301	R9-16-301(6): Definition for "disciplinary action" could be clearer by including a cross-reference to Section R9-16-313.
R9-16-302	R9-16-302(G): Wording in this subsection could be improved by removing the repetition of words and updating the rules to provide the information currently in the notifications sent by the Department.
R9-16-303	R9-16-303(A)(1)(c)(ii): for clarity and consistency purposes in this subsection, the term "licensee" should be changed to say "applicant."
R9-16-303	R9-16-303(B) can be made clearer by removing "for approval" from this rule. The Department of Health Services reviews applications to ensure that applications include all the documentation required to obtain licensure. This review can result in an approval as well as a withdrawal or denial.
R9-16-304	R9-16-304(C) can be made clearer by removing "by examination or licensure of reciprocity" as the licenses described in this Section are valid for two years.
R9-16-307	This Section needs to be removed as explained in #4 of this report.
R9-16-308	The requirements in the renewal application subsection R9-16-308(A)(2) should match the requirements in the initial application subsection R9-16-303(A)(5).
R9-16-308	This Section needs to be amended as described in #4 and #5 of this report.
R9-16-308	R9-16-308(H): This subsection can be made clearer by adding that the Department of Health Services also reviews the documentation submitted with the renewal application.
R9-16-312	R9-16-312(C)(1): For clarity and consistency purposes the term "individual" should be changed to say "client."
R9-16-314	The cross-reference to "Table 6.1" in R9-16-314(A), (B), and (C) needs to be corrected to read "Table 3.1."
R9-16-314 Table 3.1	Table 3.1 in this Section can be clearer by including all types of applications.
R9-16-315	R9-16-315(A): Understandability of this subsection could be improved by replacing "written notice" with "change application" and add that the "change application" should be submitted in a Department-provided format.

R9-16-315	R9-16-315(B) can be made clearer by updating language to reflect current practice and include that this Section also applies to requests for a revised license.
R9-16-316	R9-16-316(C) needs to be clarified that a fee is also charged when requesting a license due to a change.

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 Department of Health Services (Department) implemented statutory requirements for the licensing of hearing aid dispensers in Arizona Administrative Code (A.A.C.) in Title 9, Chapter 16, Article 3. The rules in Article 3 were amended in 2020, in which 16 of the 17 Sections were repealed and created 15 new Sections. The Section R9-16-301, Definitions, was amended. The rules in this Article were reorganized with the intent for the rules to be more effective, clear, concise, and understandable. The 2020 rulemaking did not increase the cost of regulatory compliance, increase a fee, or reduce the procedural rights of persons regulated.

As of 2024, the Department has licensed 580 hearing aid dispensers. During fiscal year 2023, the Department issued 56 initial licenses and 95 license renewals to hearing aid dispensers. The Department does not issue Business Hearing Aid Dispenser licenses due to the repeal of A.R.S. § 36-1910 in SB1458 (Laws 2021, Ch. 250). During fiscal year 2023, the Department conducted three (3) complaint investigations for hearing aid dispensers. Furthermore, the Department did not deny any hearing aid dispenser or temporary hearing aid dispenser applications, nor were there any applications withdrawn. This is in comparison to the 2019 Five-Year-Review Report which stated the following: *"As of March 2019, the Department has licensed 285 hearing aid dispensers and 123 business organization licensed as a hearing aid dispenser. During fiscal year 2018, the Department issued 61 initial licenses and 224 license renewals to hearing aid dispensers. The Department also issued 32 initial licenses and 91 license renewals to business organizations licensed as a hearing aid dispenser. The Department conducted two complaint investigations for hearing aid dispensers and one complaint investigation for a business organization licensed as a hearing aid dispenser. Additionally, no hearing aid dispenser application was withdrawn or denied."*

The Department believes affected persons include applicants, licensees, businesses that employ hearing aid dispensers, consumers, and the Department. The Department believes the rules as amended in 2020 have benefited affected persons. The Department's overall assessment of the economic, small business, and consumer impact remains that the benefits of these rules outweigh any associated costs.

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 2019 Five-Year-Review Report was approved by the Governor's Regulatory Council on July 2, 2019. The rules identified in the report that were of concern were amended, repealed, and created new Sections by final expedited rulemaking that became effective April 8, 2020. The concerns identified in the 2019 Five-Year-Review Report were addressed with this rulemaking.

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 that 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.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No _X_

Federal laws are not applicable to the rules in 9 A.A.C. 16, Article 3.

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:

A general permit is not applicable. The Department, pursuant to A.R.S. § 36-1902(A), is authorized to license persons who apply for a license and possess all other qualifications required for licensure as a hearing aid dispenser.

14. Proposed course of action:

The Department of Health Services has reviewed the current rules and proposes to amend the rules to address the issues listed in this report. The Department proposes to submit final rulemaking to the Council by February 2025.

b. Twelve months, if a temporary license.

E. An applicant who is denied a license may appeal the denial according to A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Adopted as an emergency effective July 12, 1982, pursuant to A.R.S. § 41-1003, valid for 90 days (Supp. 82-4). Emergency expired. Permanent rule R9-16-214 adopted effective January 14, 1983 (Supp. 83-1). Repealed effective March 14, 1994 (Supp. 94-1). New Section R9-16-214 renumbered from R9-16-208 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section R9-16-214 repealed; new Section made by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

Table 2.1 Time-frames (in calendar days)

Type of Approval	Statutory Authority	Overall Time-Frame	Administrative Completeness Review Time-Frame	Time to Respond to Notice of Deficiency	Substantive Review Time-Frame	Time to Respond to Comprehensive Written Request
Application for an Initial or Temporary License (R9-16-202)	A.R.S. §§ 36-1904 and 36-1940	60	30	30	30	30
License Renewal (R9-16-207)	A.R.S. § 36-1904	60	30	30	30	30

Historical Note

Table 2.1 made by exempt rulemaking under R9-16-209 at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Table 2.1 repealed; new Table 2.1 made and recodified under new Section R9-16-214, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-215. Changes Affecting a License or a Licensee; Request for a Duplicate License

A. A licensee shall submit to the Department a notice in a Department-provided format within 30 calendar days after the effective date of a change in:
1. The licensee's home address or e-mail address, including the new home address or e-mail address;
2. The licensee's name, including a copy of one of the following with the licensee's new name:
   a. Marriage certificate,
   b. Divorce decree, or
   c. Other legal document establishing the licensee's new name; and
3. The place or places, including address or addresses, where the licensee engages in the practice of audiology or speech-language pathology.

B. A licensee may obtain a duplicate license by submitting to the Department a written request for a duplicate license in a format provided by the Department that includes:
1. The licensee's name and address,
2. The licensee's license number and expiration date,
3. The licensee's signature and date of signature, and
4. A duplicate license fee specified in R9-16-216.

Historical Note

New Section R9-16-215 renumbered from R9-16-210 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Amended by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-216. Fees

A. An applicant shall submit to the Department the following nonrefundable fee for:
1. An initial application as an audiologist, $100;
2. An initial application as a speech-language pathologist, $100; and
3. An initial application as a temporary speech-language pathologist, $100.
2. "Business organization" means an entity identified in A.R.S. § 36-1910.

B. An applicant shall submit to the Department the following fee for:
1. An initial license as an audiologist, $200;
2. An initial license as a speech-language pathologist, $200; and
3. A temporary license as a speech-language pathologist, $100.

C. A licensee shall submit to the Department the following fee for:
1. A renewal license as an audiologist, $200;
2. A renewal license as a speech-language pathologist, $200; and
3. A temporary renewal license as a speech-language pathologist, $100.

D. If a licensed audiologist or speech-language pathologist submits a renewal license application specified in subsection (C) within 30 calendar days after the license expiration date, the licensee shall submit with the renewal license application a $25 late fee.

E. The fee for a duplicate license is $25.

F. An applicant for initial licensure is not required to submit the applicable fee in subsection (A) and (B) if the applicant, as part of the applicable application in R9-16-202, submits an attestation that the applicant meets the criteria for waiver of licensing fees in A.R.S. § 41-1080.01.

Historical Note

New Section made by final expedited rulemaking at 26 A.A.R. 816, with an immediate effective date of April 8, 2020 (Supp. 20-2).

ARTICLE 3. LICENSING HEARING AID DISPENSERS

R9-16-301. Definitions

In addition to the definitions in A.R.S. § 36-1901, the following definitions apply in this Article unless otherwise specified:
1. "Applicant" means an individual or a business organization that submits an application and required documentation for approval to practice as a hearing aid dispenser.

A.R.S. § 36-1910.

3. "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
4. "Continuing education" means a course that provides instruction and training that directly relates to the practice of fitting and dispensing hearing aids specified in A.R.S. § 36-1904.
5. "Designated agent" means an individual who:
   a. Is authorized by an applicant or hearing aid dispenser [a person] to receive communications from the Department, including legal service of process;
   b. May file or sign documents on behalf of the applicant or hearing aid dispenser;
   c. Is a U.S. citizen or legal resident;
   d. Has an Arizona address; and
   e. Is a controlling person of the business organization, if applicable.
6. "Disciplinary action" means a proceeding that is brought against a licensee by the Department under A.R.S. § 36-1934 or a state specified in R9-16-308(A)(2).
7. "GED" means a general education development test.
8. "Hearing aid dispenser examination" means one of the following that has been identified by the Department as complying with the requirements in A.R. S. § 36-1924:
   a. The International Licensing Examination for Hearing Health Professionals, administered by the International Hearing Society; or
   b. A test provided by the Department or other organization.
9. "Practical examination" means a test:
   a. Designated by the Department that demonstrates an applicant's proficiency in the practice of fitting and dispensing of hearing aids, and
   b. Compliant with A.R.S. § 36-1924(A)(4).
10. "State licensing entity" means a state agency or board that approves licensure and takes disciplinary action of individuals or businesses that practice as a hearing aid dispenser.
11. "Temporary hearing aid dispenser" means a person who is licensed under A.R.S. Title 36, Chapter 17 and this Article for a specified period of time under the sponsorship of a hearing aid dispenser also licensed under A.R.S. Title 36, Chapter 17 and this Article.

Historical Note

Section repealed, new Section adopted effective June 25, 1993 (Supp. 93-2). Section amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Amended by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-302. Examination Requirements

A. Within two years after the date an applicant receives the approval notification in R9-16-306(B), or a temporary hearing aid dispenser receives the approval in R9-16-305(B), the applicant or temporary hearing aid dispenser shall take and obtain a passing score on the Department-designated:
1. Written hearing aid dispenser examination required in subsection (B), and
2. Practical examination required in subsection (B).

B. An applicant approved to take the Department-designated practical examination or a temporary hearing aid dispenser approved to take the Department-designated practical examination shall:
1. Arrive on the scheduled date and time of the examination,
2. Provide proof of identity by a government-issued photographic identification card that is provided by the applicant or temporary hearing aid dispenser upon the request of the individual administering the examination, and
3. Exhibit ethical conduct during the examination process.

C. After the Department receives an applicant's Department-designated written hearing aid dispenser examination results, the Department shall notify the applicant of:
1. A passing score and approval to take the practical examination; or
2. A failing score that includes, as applicable, approval to retake the written hearing aid dispenser examination.

D. An applicant or temporary hearing aid dispenser who does not comply with subsection (B)(1) or (B)(2) is ineligible to take the examination on the scheduled date and time.

E. An applicant or temporary hearing aid dispenser taking the examination will receive a passing score on the examination if the applicant or temporary hearing aid dispenser demonstrates the proficiencies in A.R.S. § 36-1924, as determined by the Department.

F. After the Department receives an applicant's practical examination results, the Department shall notify the applicant whether the applicant received:
1. A passing score; or
2. A failing score and, as applicable, approval to retake the Department-designated practical examination for the examination sections that the applicant failed.

G. The Department shall notify an applicant or temporary hearing aid dispenser that the applicant or temporary hearing aid dispenser may apply for an initial hearing aid dispenser license when the applicant or temporary hearing aid dispenser has received a passing score on both of the examinations in subsection (A).

Historical Note

Amended effective March 22, 1976 (Supp. 76-2). Section repealed, new Section adopted effective June 25, 1993 (Supp. 93-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section repealed; new Section made by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-303. Application

A. An applicant for licensure shall submit to the Department:
1. An application in a Department-provided format that contains:
   a. The applicant's name, home address, telephone number, and e-mail address;
   b. The applicant's Social Security number, as required under A.R.S. §§ 25-320 and 25-502;
   c. The applicant's current employment, if applicable, including:
      i. The employer's name,
      ii. The licensee's position,
      iii. Dates of employment,
      iv. The address of the employer,
      v. The supervisor's name,
      vi. The supervisor's email address, and
      vii. The supervisor's telephone number;

d. Whether the applicant has ever been convicted of a felony or a misdemeanor in this or another state or jurisdiction;
e. If the applicant was convicted of a felony or misdemeanor:
i. The date of the conviction,
ii. The state or jurisdiction of the conviction,
iii. An explanation of the crime of which the applicant was convicted, and
iv. The disposition of the case;
f. Whether a hearing aid dispenser license issued to the applicant has been suspended or revoked;
g. Whether the applicant is currently ineligible to apply for a hearing aid dispenser license due to a prior revocation or suspension of the applicant's hearing aid dispenser license;
h. Whether the applicant has been disciplined by any state, territory or district in this country for an act upon the applicant's hearing aid dispenser license;
i. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-16-314;
j. An attestation that the information submitted as part of the application is true and accurate; and
k. The applicant's signature and date of signature;

2. Documentation of the applicant's citizenship or alien status that complies with A.R.S. § 41-1080;
3. Documentation that the applicant received a high school diploma, a high school equivalency diploma, an associate degree, or a higher degree;
4. Whether a professional license or certificate has been revoked or suspended by another state or jurisdiction;
5. If a license for an applicant has been revoked or suspended by any state, documentation that includes:
a. The date of the revocation or suspension,
b. The state or jurisdiction of the revocation or suspension, and
c. An explanation of the revocation or suspension;
6. If an applicant is currently ineligible for licensing in any state because of a license revocation or suspension, documentation that includes:
a. The date of the ineligibility for licensing,
b. The state or jurisdiction of the ineligibility for licensing, and
c. An explanation of the ineligibility for licensing;
7. If an applicant has been disciplined by any state, territory or district, in this country for an act upon the applicant's hearing aid dispenser license, documentation that includes;
a. The date of the disciplinary action,
b. The state or jurisdiction of the disciplinary action,
c. An explanation of the disciplinary action, and
d. Any other applicable documents, including a legal order or settlement agreement; and
8. A nonrefundable application fee specified in R9-16-316.

B. The Department shall review an application and documentation for approval according to R9-16-314 and Table 3.1.

Historical Note

The Department of Health Services advises that this rule is preempted by Section 521(a) of the federal Food, Drug and Cosmetic Act (21 U.S.C. 360K). See 21 CFR 808.53, effective November 10, 1980 (Supp. 80-6). Section repealed, new Section adopted effective June 25, 1993 (Supp. 93-2). Amended by final rulemaking at 10 A.A.R. 2063, effective July 3, 2004 (Supp. 04-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section repealed; new Section made by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-304. Requirements for an Initial Hearing Aid Dispenser License

A. An applicant for initial licensure shall submit an application to the Department that includes:
1. The information and documents required in R9-16-303;
2. Documentation of passing the:
a. Written hearing aid dispenser examination, and
b. Practical examination; and
3. The fees specified in R9-16-316.

B. In addition to complying with subsections (A)(1) and (A)(3), an applicant that may be eligible for licensure under A.R.S. § 36-1922 shall submit documentation to the Department that includes:
1. The name of each state that issued the applicant a current hearing aid dispenser license, including:
a. The license number of each current hearing aid dispenser license, and
b. The date each current hearing aid dispenser license was issued;
2. Documentation of the professional license or certification issued to the applicant by each state in which the applicant holds a professional license or certification;
3. For each state named in subsection (B)(1), a statement, signed and dated by the applicant, attesting that the applicant:
a. Has been licensed or certified in another state for at least one year, with a scope of practice consistent with the scope of practice for which licensure is being requested;
b. Has met minimum education requirements according to A.R.S. § 36-1923(A);
c. Has not voluntarily surrendered a license or certification in any other state or country while under investigation for unprofessional conduct; and
d. Does not have a complaint, allegation, or investigation pending before another regulatory entity in another state or country related to unprofessional conduct.

C. An initial hearing aid dispenser license is valid for two years from the date of issue for licensure by examination or licensure by reciprocity.

D. If the Department does not issue an initial hearing aid dispenser license to an applicant, the Department shall return the license fee to the applicant.

Historical Note

Amended effective March 22, 1976 (Supp. 76-2). The Department of Health Services advises that this rule is preempted by Section 521(a) of the federal Food, Drug and Cosmetic Act (21 U.S.C. 360K). See 21 CFR 808.53, effective November 10, 1980 (Supp. 80-6). Section repealed, new Section adopted effective June 25, 1993 (Supp. 93-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section repealed; new Section made by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-305. Requirements for an Initial Temporary Hear-

ing Aid Dispenser License

A. In addition to complying with R9-16-303, an applicant for a temporary hearing aid dispenser license shall submit to the Department:
1. The sponsor's:
   a. Name,
   b. Business address,
   c. Business telephone number, and
   d. Arizona hearing aid dispenser license number.
2. A statement signed by the sponsor that the sponsor is a licensed hearing aid dispenser who agrees to train, supervise, and be responsible for the applicant's hearing aid dispenser practice according to A.R.S. § 36-1905.

B. If the Department issues a temporary license to the applicant, the Department shall notify the applicant of approval to take the hearing aid dispenser examination as specified in R9-16-302.

C. A temporary hearing aid dispenser may renew a temporary license according to A.R.S. § 36-1926.

D. A temporary license is no longer valid on the date the Department receives notice from the sponsor that the sponsor is terminating sponsorship.

E. A hearing aid dispenser whose temporary license is terminated according to subsection (D):
1. Shall not practice until issued a new license,
2. May apply for an initial or temporary license as a hearing aid dispenser according to this Article; and
3. May choose to:
   a. Complete the two-year test period issued to the applicant with a previous temporary license, or
   b. Restart the two-year test period on the date the Department approves the hearing aid dispenser's temporary license in subsection (E)(2); and
4. If the applicant chooses to restart the two-year test period in subsection (3)(b), the previous test result obtained will not apply.

F. An initial hearing aid dispenser license is valid for 12 months from the date of issue for a temporary license or in compliance with A.R.S. § 36-1926(D).

Historical Note

Section repealed, new Section adopted effective June 25, 1993 (Supp. 93-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section repealed; new Section made by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-306. Application for Examination

A. In addition to complying with R9-16-303, an applicant for initial licensure by examination shall submit an application to the Department that includes:
1. Information and documentation required in R9-16-303, and
2. The fee in R9-16-316.

B. If the Department approves the application, the Department shall notify the applicant of approval to take the written hearing aid dispenser examination as specified in R9-16-302.

C. If the Department approves an application, the applicant shall not practice fitting and dispensing hearing aids without a license issued by the Department.

Historical Note

Adopted effective June 25, 1993 (Supp. 93-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section repealed; new Section made by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-307. Initial Application for a Business Hearing Aid Dispenser License

A. An applicant for a business hearing aid dispenser license shall submit to the Department:
1. An application in a Department-provided format that contains:
   a. The name of the business organization;
   b. The business organization's Arizona business name, address, e-mail address, and telephone number;
   c. If the business organization has more than one location, provide the name, address, e-mail address, and telephone number for each location;
   d. The name, address, telephone number, and e-mail address of the individual authorized by the business organization to be the designated agent;
   e. The name, business telephone number, and Arizona hearing aid dispenser license number of each hearing aid dispenser employed by the business organization in Arizona;
   f. Whether the business organization or a hearing aid dispenser working for the business organization has had a hearing aid dispenser license suspended or revoked by any state;
   g. Whether the business organization or a hearing aid dispenser working for the business organization is currently ineligible for licensing in any state due to a suspension or revocation;
   h. An attestation that the:
      i. Business organization allows the Department to make supplemental requests for additional information; and
      ii. Information required as part of the application has been submitted and is true and accurate; and
   i. The signature and date of signature from the designated agent; and
2. An application and license fee specified in R9-16-316.

B. A business organization with more than one location shall submit a duplicate license fee for each additional location according to R9-16-315 and R9-16-316.

C. The Department shall review an application for an initial business hearing aid dispenser license according to R9-16-314 and Table 3.1.

D. A business organization licensed according to this Article shall comply with A.R.S. § 36-1910.

E. An initial license issued to a business organization according to this Section is valid for two years from the date of issue.

Historical Note

Adopted effective June 25, 1993 (Supp. 93-2). Amended by final rulemaking at 10 A.A.R. 2063, effective July 3, 2004 (Supp. 04-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section repealed; new Section made by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-308. License Renewal

A. A licensee, except for a temporary hearing aid dispenser, shall submit a renewal application in a Department-provided format that contains:
1. For an individual licensed as a hearing aid dispenser:
   a. The licensee's name, home address, telephone number, and e-mail address;
   b. The licensee's current employment, if applicable, including:
      i. The employer's name,
      ii. The licensee's position,
      iii. Dates of employment,
      iv. The address of the employer,
      v. The supervisor's name,
      vi. The supervisor's email address, and
      vii. The supervisor's telephone number;
   c. The licensee's license number and expiration date;
   d. Since the hearing aid dispenser's previous license application, whether the licensee has been convicted of a felony or a misdemeanor in this or another state or jurisdiction;
   e. If the licensee was convicted of a felony or misdemeanor:
      i. The date of the conviction,
      ii. The state or jurisdiction of the conviction,
      iii. An explanation of the crime of which the licensee was convicted, and
      iv. The disposition of the case;
   f. Whether the licensee has had a license revoked or suspended by any state within the previous two years;
   g. Whether the licensee is currently ineligible for licensure in any state because of a prior license revocation or suspension;
   h. Whether the licensee agrees to allow the Department to submit supplemental requests for information under R9-16-314;
   i. An attestation that the licensee completed continuing education required under A.R.S. § 36-1904 and that documentation of completion is available upon request;
   j. An attestation that the information required as part of the application has been submitted and is true and accurate; and
   k. The licensee's signature and date of signature;
2. Whether the licensee has, within the two years before the date of the application, had:
   a. A license issued under this Article suspended or revoked; or
   b. A professional license or certificate revoked by another state or jurisdiction; and
3. A license renewal fee specified in R9-16-316; or
4. For a business organization licensed as a hearing aid dispenser:
   a. The information in subsection R9-16-307(A)(1), and
   b. A license renewal fee specified in R9-16-316.

B. A licensee, except for a temporary hearing aid dispenser, who renews a license within 30 calendar days after the expiration date of the license, shall submit to the Department:
1. The information and renewal fee required in subsection (A), and
2. A late fee specified in R9-16-316.

C. A renewal license issued to a licensee, except for temporary hearing aid dispenser, is valid for two years after the expiration date of the previous license issued by the Department.

D. If a licensee does not comply with subsections (A) or (B), the license is nonrenewable and:
1. The hearing aid dispenser may apply for a new license according to subsection (E), or
2. The business organization may apply for a new license according to R9-16-307.

E. A licensee whose license is nonrenewable, according to subsection (D)(1), and is within one year after the expiration date of the hearing aid dispenser's license, the licensee shall submit:
1. The information in R9-16-303(A);
2. An attestation of continuing education, according to R9-16-309, completed with twenty-four months before the date of the date of application; and
3. A nonrefundable application fee and a license fee specified in R9-16-316.

F. If allowed in R9-16-303, a temporary hearing aid dispenser shall submit at least 30 calendar days before the expiration date on the license, a renewal application to the Department in a Department-provided format that contains:
1. The information in R9-16-303(A);
2. The applicant's sponsor's:
   a. Name,
   b. Business address,
   c. Business telephone number, and
   d. Arizona hearing aid dispenser license number;
3. A statement signed by the sponsor that the sponsor is a licensed hearing aid dispenser who agrees to train, supervise, and be responsible for the applicant's hearing aid dispenser practice according to A.R.S. § 36-1905; and
4. A license renewal fee specified in R9-16-316.

G. A renewal license issued to a licensee according to subsection (F) is valid for one year after the expiration date of the previous license issued by the Department.

H. The Department shall review a renewal application according to R9-16-314 and Table 3.1.

Historical Note

Adopted effective June 25, 1993 (Supp. 93-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section repealed; new Section made by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-309. Continuing Education

A. Twenty-four months prior to submitting a renewal application, a licensee shall complete 24 continuing education hours that includes no more than eight continuing education hours provided by a single manufacturer of hearing aids.

B. Continuing education shall:
1. Directly relate to the practice of fitting and dispensing hearing aids;
2. Have educational objectives that exceed an introductory level of knowledge of fitting and dispensing hearing aids; and
3. Consist of courses that include advances within the last five years in:
   a. Procedures in the selection and fitting of hearing aids,
   b. Pre- and post-fitting management of clients,
   c. Instrument circuitry and acoustic performance data,
   d. Ear mold design and modification contributing to improved client performance,

e. Audiometric equipment or testing techniques that demonstrate an improved ability to identify and evaluate hearing loss,
f. Auditory rehabilitation,
g. Ethics,
h. Federal and state statutes or rules, or
i. Assistive listening devices.

C. A continuing education course developed, endorsed, or sponsored by one of the following meets the requirements in subsection (B):
1. Hearing Healthcare Providers of Arizona,
2. Arizona Speech-Language-Hearing Association,
3. American Speech-Language-Hearing Association,
4. International Hearing Society,
5. International Institute for Hearing Instruments Studies,
6. American Auditory Society,
7. American Academy of Audiology,
8. Academy of Doctors of Audiology,
9. Arizona Society of Otolaryngology, Head and Neck Surgery,
10. American Academy of Otolaryngology-Head and Neck Surgery, or
11. An organization determined by the Department to be consistent with an organization in subsection (B)(1) through (10).

Historical Note
Adopted effective June 25, 1993 (Supp. 93-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section repealed; new Section made by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-310. Sponsors

A. A sponsor shall:
1. Provide to a temporary hearing aid dispenser for on-site training and supervision that:
   a. Consists of coordinating, directing, watching, inspecting, and evaluating the fitting and dispensing activities of the temporary hearing aid dispenser; and
   b. Directly relates to the type of training and education needed to pass the licensing examination required in A.R.S. § 36-1924;
2. Maintain a training record that:
   a. Is signed by the temporary hearing aid dispenser;
   b. Has the date, time, and content of the training and supervision provided to the temporary hearing aid dispenser, as required in subsection (A)(1); and
   c. Is available for inspection by the Department for at least 12 months after the end of the sponsorship agreement; and
3. Not provide sponsorship to more than two temporary hearing aid dispenser licensees at one time.

B. When a sponsor terminates a sponsorship agreement with a temporary hearing aid dispenser, the sponsor shall:
1. Provide to the temporary hearing aid dispenser a:
   a. Written notice indicating termination of the sponsorship agreement, and
   b. Copy of the hearing aid dispenser's records in subsection (A)(2); and
2. Provide to the Department documentation of the notice required in subsection (B)(1)(a).

Historical Note
Adopted effective June 25, 1993 (Supp. 93-2). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 5029, effective September 30, 2001 (Supp. 01-4). New Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Amended by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-311. Responsibilities of a Hearing Aid Dispenser

A. A hearing aid dispenser licensed shall:
1. Upon licensure, notify the Department in writing of the address where the hearing aid dispenser practices the fitting and dispensing of hearing aids;
2. Conspicuously post the license received in the hearing aid dispenser's office or place of business;
3. Except as specified in subsections (A)(4) or (A)(5), conduct audiometric tests before selecting a hearing aid for a client that provides detailed information about the client's hearing loss, including:
   a. Type, degree, and configuration of hearing loss;
   b. Ability, as measured by the percentage of words the client is able to repeat correctly, to discriminate speech; and
   c. The client's most comfortable and uncomfortable loudness levels in decibels;
4. Have the option to conduct audiometric testing required in subsection (A)(3) before selling a client a hearing aid if the client provides to the dispenser the information required in subsection (A)(3) from a licensed professional and the information was:
   a. Obtained within the previous 12 months for an adult, or
   b. Within the previous six months for an individual under the age of 18;
5. Have the option to conduct audiometric testing required in subsection (A)(3) if the tests cannot be performed on the client due to:
   a. The client's young age, or
   b. A physical or mental disability;
6. Evaluate the performance characteristics of the hearing aid as it functions on the client's ear for the purpose of assessing the degree of audibility provided by the device and benefit to the client;
7. Provide a bill of sale to a client according to A.R.S. § 36-1909(A) that contains:
   a. Information required in A.R.S. § 36-1909;
   b. A complete description of:
      i. Warranty information, and
      ii. The conditions of any offer of a trial period with a money back guarantee or partial refund; and
   c. The client's signature and date of signature; and
8. Not:
   a. Practice without a license according to A.R.S. § 36-1907,
   b. Commit unlawful acts according to A.R.S. § 36-1936, or
   c. Commit actions described in A.R.S. § 36-1934(A).

B. The trial period described in subsection (A)(7)(b)(ii) shall not include any time that the hearing aid is in the possession of the hearing aid dispenser or the manufacturer of the hearing aid.

Historical Note
Adopted effective June 25, 1993 (Supp. 93-2). Section

repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section repealed; new Section made by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-312. Equipment and Records

A. A licensee shall maintain an audiometer and other hearing devices according to the manufacturer's specifications.

B. If a licensee uses equipment that requires calibration, the licensee shall ensure that:
1. The equipment is calibrated at least every 12 months and according to the American National Standard Institution/ Acoustical Society incorporated by reference and on file with the Department, with no future additions or amendments, and available from the American National Standards Institution at http://webstore.ansi.org; and
2. A written record of the calibration is maintained in the same location as the calibrated equipment for at least 36 months after the date of the calibration.

C. A licensee shall maintain a record according to A.R.S. § 32-3211 for each client with the following documents for at least 36 months after the date the licensee provided a service or dispensed a product while engaged in the practice of fitting and dispensing hearing aids:
1. The name, address, and telephone number of the individual to whom services are provided;
2. A written statement from a licensed physician that the client has medical clearance to use hearing aids or a medical waiver signed by the client who is 18 years of age or older;
3. For each audiometric test conducted for the client, the:
   a. Audiometric test results by date and procedure used in evaluating hearing disorders or determining the need for dispensing a product or service,
   b. Name of the individual who performed the audiometric tests, and
   c. Signature of the individual who performed the audiometric tests;
4. A copy of the bill of sale required in R9-16-311(A)(7);
5. Documented verification of the effectiveness of the hearing aid required in R9-16-311(A)(6); and
6. The contracts, agreements, warranties, trial periods, or other documents involving the client.

Historical Note

Adopted effective June 25, 1993 (Supp. 93-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section repealed; new Section made by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-313. Enforcement

A. The Department may, as applicable:
1. Deny, revoke, or suspend a license under A.R.S. § 36-1934,
2. Request an injunction under A.R.S. § 36-1937, or
3. Assess a civil money penalty under A.R.S. § 36-1939.

B. In determining which disciplinary action specified in subsection (A), the Department shall consider:
1. The type of violation,
2. The severity of the violation,
3. The danger to the public health and safety,
4. The number of violations,
5. The number of clients affected by the violations,
6. The degree of harm to the consumer,
7. A pattern of noncompliance, and
8. Any mitigating or aggravating circumstances.

C. A licensee may appeal a disciplinary action taken by the Department according to A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Adopted effective June 25, 1993 (Supp. 93-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section repealed; new Section made by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-314. Time-frames

A. For each type of license issued by the Department under this Article, Table 6.1 specifies the overall time-frame described in A.R.S. § 41-1072(2).
1. An applicant or licensee and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame.
2. The extension of the substantive review time-frame and overall time-frame may not exceed 25% of the overall time-frame.

B. For each type of license issued by the Department under this Article, Table 6.1 specifies the administrative completeness review time-frame described in A.R.S. § 41-1072(1).
1. The administrative completeness review time-frame begins on the date the Department receives an application required in this Article.
2. Except as provided in subsection (B)(3), the Department shall provide written notice of administrative completeness or a notice of deficiencies to an applicant within the administrative completeness review time-frame.
   a. If an application and required documentation is not complete, the notice of deficiencies shall list each deficiency and the information or documentation needed to complete the application.
   b. A notice of deficiencies suspends the administrative completeness review time-frame and the overall time-frame from the date of the notice until the date the Department receives the missing information or documentation.
   c. If the applicant does not submit to the Department all the information or documentation listed in the notice of deficiencies within 30 calendar days after the date of the notice of deficiencies, the Department shall consider the application withdrawn.
3. If the Department issues a license during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.

C. For each type of license issued by the Department under this Article, Table 6.1 specifies the substantive review time-frame described in A.R.S. § 41-1072(3), which begins on the date the Department sends a written notice of administrative completeness.
1. Within the substantive review time-frame, the Department shall provide written notice to the applicant that the Department approved or denied the application.
2. During the substantive review time-frame:
   a. The Department may make one comprehensive written request for additional information or documentation; and

b. If the Department and the applicant agree in writing, the Department may make supplemental requests for additional information of documentation.

3. A comprehensive written request or a supplemental request for additional information or documentation suspends the substantive review time-frame and the overall time-frame from the date of the request until the date the Department receives all the information or documentation requested.

4. If the applicant does not submit to the Department all the information or documentation listed in a comprehensive written request or supplemental request for additional information or documentation within 30 calendar days after the date of the request, the Department shall deny the license.

D. An applicant who is denied a license may appeal the denial according to A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Adopted effective June 25, 1993 (Supp. 93-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section repealed; new Section made by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

Table 3.1. Time-frames (in calendar days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Review Time-frame	Time to Respond to Notice of Deficiency	Substantive Review Time-frame	Time to Respond to Comprehensive Written Request
Initial Application for a Hearing Aid Dispenser	A.R.S. §§ 36-1904, 36-1923	60	30	30	30	30
Initial Application for a Business Organization	A.R.S. § 36-1910	60	30	30	30	30
License Renewal	A.R.S. § 36-1904	60	30	30	30	30

Historical Note

Table 3.1 renumbered from Table 1 and amended by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Table 3.1 repealed; new Table 3.1 made and recodified under R9-16-314 by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-315. Change Affecting a License or a Licensee; Request for Duplicate License

A. A hearing aid dispenser licensee or temporary hearing aid dispenser licensee shall submit a written notice to the Department in writing within 30 calendar days after the effective date of a change in:

1. The licensee's home address or e-mail address, including the new home address or e-mail address;
2. The licensee's name, including a copy of one of the following with the licensee's new name:
   a. Marriage certificate,
   b. Divorce decree, or
   c. Other legal document establishing the licensee's new name; or
3. The place or places where the licensee engages in the practice of hearing aid dispensing, including the address or addresses of the place or places where the licensee engages in the practice of hearing aid dispensing.

B. A licensee may obtain a duplicate license by submitting to the Department a request for a duplicate license in a Department-provided format that includes:

1. The licensee's name and address,
2. The licensee's license number and expiration date,
3. The licensee's signature and date of signature, and
4. A duplicate license fee specified in R9-16-316.

C. A business hearing aid dispenser licensee shall submit a written notice to the Department within 30 calendar days after the licensee:

1. Has a change in the information provided in R9-16-307(A)(1)(b).
2. Closes a location specified in R9-16-307(A)(1)(b) and (c), including the location address.
3. Begins operating at new location, not specified in R9-16-307(A)(1)(c), including the new location address.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 2688, effective June 7, 2002 (Supp. 02-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section repealed; new Section made by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

Table 1. Renumbered

Historical Note

Table 1 made by final rulemaking at 8 A.A.R. 2688, effective June 7, 2002 (Supp. 02-2). Table 1 renumbered to Table 3.1 by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2).

R9-16-316. Fees

A. An applicant shall submit to the Department the following fee for:

1. A nonrefundable initial application, $100;
2. An initial license for a regular or business hearing aid dispenser, $200;
3. A renewal application for temporary hearing aid dispenser license, $100.
4. A regular or business hearing aid dispenser licensee for a renewal license, $200.

B. If a renewal application is submitted within 30 calendar days after the license expiration date, a licensee shall submit with the renewal application a $25 late fee.

C. The fee for a duplicate license is $25.

D. An applicant, who is not a business organization, for initial licensure is not required to submit the applicable fee in subsection (A) if the applicant, as part of the applicable application in R9-16-303 or R9-16-306, submits an attestation that the applicant meets the criteria for waiver of licensing fees in A.R.S. § 41-1080.01.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 2063, effective July 3, 2004 (Supp. 04-2). Historical note corrected to reflect the rulemaking action on file and effective with the 04-2 supplement (Supp. 05-2). Section repealed; new Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section repealed; new Section made by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

R9-16-317. Repealed

Historical Note

New Section made by exempt rulemaking at 20 A.A.R. 1998, effective July 1, 2014 (Supp. 14-2). Section repealed by final expedited rulemaking at 26 A.A.R. 835, with an immediate effective date of April 8, 2020 (Supp. 20-2).

ARTICLE 4. REGISTRATION OF ENVIRONMENTAL HEALTH SANITARIANS

R9-16-401. Definitions

The following definitions apply in this Article, unless otherwise specified:

1. "Accredited" means that an educational institution is recognized by the U.S. Department of Education as providing standards necessary to meet acceptable levels of quality for its graduates to gain admission to other reputable institutions of higher learning or to achieve credentials for professional practice.
2. "Administrative completeness review time-frame" has the same meaning as in A.R.S. § 41-1072.
3. "Applicant" means an individual who submits an application packet or renewal application packet for registration as an environmental health sanitarian.
4. "Application packet" means the information, documents, and fees required by the Department to:
   a. Determine eligibility to take a sanitarian examination, and
   b. Be registered as an environmental health sanitarian.
5. "Calendar day" means each day, not including the day of the act, event, or default from which a designated period of time begins to run and including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
6. "Continuing education" means a course that provides instruction and training that is designed to develop or improve a registered environmental health sanitarian's professional competence in disciplines directly related to the practice of a registered environmental health sanitarian.
7. "Continuing education hour" means 50 to 60 minutes of continuous course work.
8. "Course" means a workshop, seminar, lecture, conference, or other learning program activities as approved by the Department.
9. "Department" means the Arizona Department of Health Services established in A.R.S. § 36-104 and the Sanitarians Council established in A.R.S. § 36-136.01.
10. "Environmental health" means the science and practice of preventing human injury and illness and promoting well-being by identifying sources that produce potential hazardous physical, chemical, and biological agents in air, water, soil, food, and other conditions; and eliminating or minimizing exposure to the sources that adversely affect or may adversely affect human health.
11. "Environmental health sanitarian aide" means an individual who performs and assists with environmental health services as described and under the supervision of an individual in R9-16-403.
12. "Hazardous environmental agent" means a material, whether liquid, solid, gas, or sludge, that contains properties that make the material potentially harmful to public health or the environment.
13. "Immediate family member" means an individual related by birth, marriage, or adoption.
14. "License or licensed" means a permit, certificate, or similar form of approval issued by a state agency according to state law that an individual may practice in the profession indicated by the approval.
15. "Natural science" means a branch of science that deals with the physical world, including life, physical, and health sciences.
16. "Overall time-frame" has the same meaning as in A.R.S. § 41-1072.
17. "Practice of a registered environmental health sanitarian" means acting under the authority of R9-16-402.
18. "Registered environmental health sanitarian" means the same as a "registered sanitarian" in A.R.S. § 36-136.01.
19. "Renewal application packet" means the information, documents, and fees required by the Department to apply for a renewal registration as an environmental health sanitarian.
20. "Sanitarian examination" means a test that consists of questions related to environmental health including natural sciences, facility and system inspections, investigations, compliance, responding to emergencies, and promoting environmental public health awareness.
21. "Semester credit" means one earned academic unit of study or equivalent, with a grade of "C" or better, at an accredited college or university by:
   a. Attending a 50 to 60 minute class session each calendar week for at least 16 weeks, or
   b. Completing practical work for a class as determined by the accredited college or university.
22. "Substantive review time-frame" has the same meaning as in A.R.S. § 41-1072.
23. "Supervision" means being responsible for and providing direction to an individual who:
   a. Performs and assists a registered environmental health sanitarian with environmental health services as described in R9-16-403, and
   b. Is employed as an environmental health sanitarian aide in a position directly related to environmental health.

sanitarian examination.

36-104. Powers and duties

This section is not to be construed as a statement of the department's organization. This section is intended to be a statement of powers and duties in addition to the powers and duties granted by section 36-103. The director shall:

1. Administer the following services:

(a) Administrative services, which shall include at a minimum the functions of accounting, personnel, standards certification, electronic data processing, vital statistics and the development, operation and maintenance of buildings and grounds used by the department.

(b) Public health support services, which shall include at a minimum:

(i) Consumer health protection programs, consistent with paragraph 25 of this section, that include at least the functions of community water supplies, general sanitation, vector control and food and drugs.

(ii) Epidemiology and disease control programs that include at least the functions of chronic disease, accident and injury control, communicable diseases, tuberculosis, venereal disease and others.

(iii) Laboratory services programs.

(iv) Health education and training programs.

(v) Disposition of human bodies programs.

(c) Community health services, which shall include at a minimum:

(i) Medical services programs that include at least the functions of maternal and child health, preschool health screening, family planning, public health nursing, premature and newborn program, immunizations, nutrition, dental care prevention and migrant health.

(ii) Dependency health care services programs that include at least the functions of need determination, availability of health resources to medically dependent individuals, quality control, utilization control and industry monitoring.

(iii) Children with physical disabilities services programs.

(iv) Programs for the prevention and early detection of an intellectual disability.

(d) Program planning, which shall include at least the following:

(i) An organizational unit for comprehensive health planning programs.

(ii) Program coordination, evaluation and development.

(iii) Need determination programs.

(iv) Health information programs.

2. Include and administer, within the office of the director, staff services, which shall include at a minimum budget preparation, public information, appeals, hearings, legislative and federal government liaison, grant development and management and departmental and interagency coordination.

3. Make rules for the organization and proper and efficient operation of the department.

4. Determine when a health care emergency or medical emergency situation exists or occurs within this state that cannot be satisfactorily controlled, corrected or treated by the health care delivery systems and facilities available. When such a situation is determined to exist, the director shall immediately report that situation to the legislature and the governor. The report shall include information on the scope of the emergency, recommendations for solution of the emergency and estimates of costs involved.

5. Provide a system of unified and coordinated health services and programs between this state and county governmental health units at all levels of government.

6. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

7. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of monies.

8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.

9. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of the department's duties subject to the departmental rules and regulations on the confidentiality of information.

10. Establish and maintain separate financial accounts as required by federal law or regulations.

11. Advise with and make recommendations to the governor and the legislature on all matters concerning the department's objectives.

12. Take appropriate steps to reduce or contain costs in the field of health services.

13. Encourage and assist in the adoption of practical methods of improving systems of comprehensive planning, of program planning, of priority setting and of allocating resources.

14. Encourage an effective use of available federal resources in this state.

15. Research, recommend, advise and assist in the establishment of community or area health facilities, both public and private, and encourage the integration of planning, services and programs for the development of the state's health delivery capability.

16. Promote the effective use of health manpower and health facilities that provide health care for the citizens of this state.

17. Take appropriate steps to provide health care services to the medically dependent citizens of this state.

18. Certify training on the nature of sudden infant death syndrome, which shall include information on the investigation and handling of cases involving sudden and unexplained infant death for use by law enforcement officers as part of their basic training requirement.

19. Adopt protocols on the manner in which an autopsy shall be conducted under section 11-597, subsection D in cases of sudden and unexplained infant death.

20. 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.

21. Administer the federal family violence prevention and services act grants, and the department is designated as this state's recipient of federal family violence prevention and services act grants.

22. Accept and spend private grants of monies, gifts and devises for the purposes of methamphetamine education. The department shall disburse these monies to local prosecutorial or law enforcement agencies with existing programs, faith-based organizations and nonprofit entities that are qualified under section 501(c)(3) of the United States internal revenue code, including nonprofit entities providing services to women with a history of dual diagnosis disorders, and that provide educational programs on the repercussions of methamphetamine use. State general fund monies shall not be spent for the purposes of this paragraph. If the director does not receive sufficient monies from private sources to carry out the purposes of this paragraph, the director shall not provide the educational programs prescribed in this paragraph. Grant monies received pursuant to this paragraph are not lapsing and do not revert to the state general fund at the close of the fiscal year.

23. Identify successful methamphetamine prevention programs in other states that may be implemented in this state.

24. Pursuant to chapter 13, article 8 of this title, coordinate all public health and risk assessment issues associated with a chemical or other toxic fire event if a request for the event is received from the incident commander, the emergency response commission or the department of public safety and if funding is available. Coordination of public health issues shall include general environmental health consultation and risk assessment services consistent with chapter 13, article 8 of this title and, in consultation with the Arizona poison control system, informing the public as to potential public health risks from the environmental exposure. Pursuant to chapter 13, article 8 of this title, the department of health services shall also prepare a report, in consultation with appropriate state, federal and local governmental agencies, that evaluates the public health risks from the environmental exposure. The department of health services' report shall include any department of environmental quality report and map of smoke dispersion from the fire, the results of any environmental samples taken by the department of environmental quality and the toxicological implications and public health risks of the environmental exposure. The department of health services shall consult with the Arizona poison control system regarding toxicology issues and shall prepare and produce its report for the public as soon as practicable after the event. The department of health services shall not use any monies pursuant to section 49-282, subsection E to implement this paragraph.

25. Consult, cooperate, collaborate and, if necessary, enter into interagency agreements and memoranda of understanding with the Arizona department of agriculture concerning its administration, pursuant to title 3, chapter 3, article 4.1, of this state's authority under the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) and any other federal produce safety regulation, order or

guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252).

26. Adopt rules pursuant to title 32, chapter 32, article 5 prescribing the designated database information to be collected by health profession regulatory boards for the health professionals workforce database.

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 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 to promote 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 educating 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 coordinating 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 enforcing 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 and behavioral-supported 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 a licensing period shall not 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.

36-1901. Definitions

In this chapter, unless the context otherwise requires:

1. "Accredited program" means a program leading to the award of a degree in audiology that is accredited by an organization recognized for that purpose by the United States department of education.

2. "Approved training program" means a postsecondary speech-language pathology assistant training program that is approved by the director.

3. "Assistive listening device or system" means an amplification system that is specifically designed to improve the signal-to-noise ratio for the listener who is deaf or hard of hearing, to reduce interference from noise in the background and to enhance hearing levels at a distance by picking up sound from as close to the source as possible and sending it directly to the ear of the listener, excluding hearing aids.

4. "Audiologist" means a person who engages in the practice of audiology and who meets the requirements prescribed in this chapter.

5. "Audiology" means the nonmedical and nonsurgical application of principles, methods and procedures of measurement, testing, evaluation and prediction that are related to hearing, its disorders and related communication impairments for the purpose of nonmedical diagnosis, prevention, amelioration or modification of these disorders and conditions.

6. "Clinical interaction" means a fieldwork practicum in speech-language pathology that is supervised by a licensed speech-language pathologist.

7. "Department" means the department of health services.

8. "Direct supervision":

(a) Means a licensed speech-language pathologist observes and guides a speech-language pathology assistant while the speech-language pathology assistant performs an assigned clinical activity.

(b) Includes the supervising licensed speech-language pathologist viewing and communicating with the speech-language pathology assistant via telecommunication technology as the speech-language pathology assistant provides clinical activities if the supervising licensed speech-language pathologist can provide ongoing immediate feedback throughout the clinical activity being provided.

(c) Does not include the supervising licensed speech-language pathologist reviewing a taped session at a later time.

9. "Director" means the director of the department.

10. "Disorders of communication" means an organic or nonorganic condition that impedes the normal process of human communication and includes disorders of speech, articulation, fluency, voice, verbal and written language, auditory comprehension, cognition and communications and oral, pharyngeal and laryngeal sensorimotor competencies.

11. "Disorders of hearing" means an organic or nonorganic condition, whether peripheral or central, that impedes the normal process of human communication and includes disorders of auditory sensitivity, acuity, function or processing.

12. "Hearing aid" means any wearable instrument or device designed for or represented as aiding or improving human hearing or as aiding, improving or compensating for defective human hearing, and any parts, attachments or accessories of the instrument or device, including ear molds, but excluding batteries and cords.

13. "Hearing aid dispenser" means any person who engages in the practice of fitting and dispensing hearing aids.

14. "Indirect supervision" means supervisory activities, other than direct supervision, that are performed by a licensed speech-language pathologist and that may include consulting, reviewing records and reviewing and evaluating audiotaped or videotaped sessions.

15. "Letter of concern" means an advisory letter to notify a licensee that, while there is insufficient evidence to support disciplinary action, the director believes the licensee should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the director may result in action against the licensee.

16. "License" means a license issued by the director under this chapter and includes a temporary license.

17. "Nonmedical diagnosing" means the art or act of identifying a communication disorder from its signs and symptoms. Nonmedical diagnosing does not include diagnosing a medical disease.

18. "Practice of audiology" means:

(a) Rendering or offering to render to a person or persons who have or who are suspected of having disorders of hearing any service in audiology, including prevention, identification, evaluation, consultation, habilitation, rehabilitation, instruction and research.

(b) Participating in hearing conservation, hearing aid and assistive listening device evaluation and hearing aid prescription preparation, fitting, dispensing and orientation.

(c) Screening, identifying, assessing, nonmedical diagnosing, preventing and rehabilitating peripheral and central auditory system dysfunctions.

(d) Providing and interpreting behavioral and physiological measurements of auditory and vestibular functions.

(e) Selecting, fitting and dispensing assistive listening and alerting devices and other systems and providing training in their use.

(f) Providing aural rehabilitation and related counseling services to persons who are deaf or hard of hearing and their families.

(g) Screening speech-language and other factors that affect communication function in order to conduct an audiologic evaluation and an initial identification of persons with other communications disorders and making the appropriate referral.

(h) Planning, directing, conducting or supervising services.

19. "Practice of fitting and dispensing hearing aids":

(a) Means measuring human hearing by means of an audiometer or by any other means, solely for the purpose of making selections or adaptations of hearing aids, and fitting, selling and servicing hearing aids, including assistive listening devices, and making impressions for ear molds.

(b) Includes identification, instruction, consultation, rehabilitation and hearing conservation as these relate only to hearing aids and related devices and, at the request of a physician or another licensed health care professional, making audiograms for the professional's use in consultation with persons who are deaf or hard of hearing.

(c) Does not include formal auditory training programs, lip reading and speech conservation.

20. "Practice of speech-language pathology" means:

(a) Rendering or offering to render to an individual or groups of individuals who have or are suspected of having disorders of communication service in speech-language pathology, including prevention, identification, evaluation, consultation, habilitation, rehabilitation, instruction and research.

(b) Screening, identifying, assessing, interpreting, nonmedical diagnosing and rehabilitating disorders of speech and language.

(c) Screening, identifying, assessing, interpreting, nonmedical diagnosing and rehabilitating disorders of oral-pharyngeal functions and related disorders.

(d) Screening, identifying, assessing, interpreting, nonmedical diagnosing and rehabilitating cognitive and communication disorders.

(e) Assessing, selecting and developing augmentative and alternative communication systems and providing training in using these systems and assistive listening devices.

(f) Providing aural rehabilitation and related counseling services to persons who are deaf or hard of hearing and their families.

(g) Enhancing speech-language proficiency and communication effectiveness.

(h) Screening hearing and other factors for speech-language evaluation and initially identifying persons with other communication disorders and making the appropriate referral.

21. "Regular license" means each type of license issued by the director, except a temporary license.

22. "Sell" or "sale" means a transfer of title or of the right to use by lease, bailment or any other contract, but does not include transfers at wholesale to distributors or dealers.

23. "Speech-language pathology" means the nonmedical and nonsurgical application of principles, methods and procedures of assessment, testing, evaluation and prediction related to speech and language and its disorders and related communication impairments for the nonmedical diagnosis, prevention, amelioration or modification of these disorders and conditions.

24. "Speech-language pathology assistant" means a person who provides services prescribed in section 36-1940.04 under the direction and supervision of a speech-language pathologist licensed pursuant to this chapter.

25. "Sponsor" means a person who is licensed pursuant to this chapter and who agrees to train or directly supervise a temporary licensee in the same field of practice.

26. "Temporary licensee" means a person who is licensed under this chapter for a specified period of time under the sponsorship of a person licensed pursuant to this chapter.

27. "Unprofessional conduct" means:

(a) Obtaining any fee or making any sale by fraud or misrepresentation.

(b) Employing directly or indirectly any suspended or unlicensed person to perform any work covered by this chapter.

(c) Using, or causing or promoting the use of, any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia or other representation, however disseminated or published, that is misleading, deceiving, improbable or untruthful.

(d) Advertising for sale a particular model, type or kind of product when purchasers or prospective purchasers responding to the advertisement cannot purchase or are dissuaded from purchasing the advertised model, type or kind if the purpose of the advertisement is to obtain prospects for the sale of a different model, type or kind than that advertised.

(e) Representing that the professional services or advice of a physician will be used or made available in selling, fitting, adjusting, maintaining or repairing hearing aids if this is not true, or using the words "doctor", "clinic", "clinical" or like words, abbreviations or symbols while failing to affix the word, term or initials "audiology", "audiologic", "audiologist", "doctor of audiology", "Au.D.", "Ph.D." or "Sc.D.".

(f) Defaming competitors by falsely imputing to them dishonorable conduct, inability to perform contracts or questionable credit standing or by other false representations, or falsely disparaging the products of competitors in any respect, or their business methods, selling prices, values, credit terms, policies or services.

(g) Displaying competitive products in the licensee's show window, shop or advertising in such manner as to falsely disparage such products.

(h) Representing falsely that competitors are unreliable.

(i) Quoting prices of competitive products without disclosing that they are not the current prices, or showing, demonstrating or representing competitive models as being current models when they are not current models.

(j) Imitating or simulating the trademarks, trade names, brands or labels of competitors with the capacity, tendency or effect of misleading or deceiving purchasers or prospective purchasers.

(k) Using in the licensee's advertising the name, model name or trademark of a particular manufacturer of hearing aids in such a manner as to imply a relationship with the manufacturer that does not exist, or otherwise to mislead or deceive purchasers or prospective purchasers.

(l) Using any trade name, corporate name, trademark or other trade designation that has the capacity, tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the name, nature or origin of any product of the industry, or of any material used in the product, or that is false, deceptive or misleading in any other material respect.

(m) Obtaining information concerning the business of a competitor by bribery of an employee or agent of that competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unfair means.

(n) Giving directly or indirectly, offering to give, or allowing or causing to be given money or anything of value, except miscellaneous advertising items of nominal value, to any person who advises another in a professional capacity as an inducement to influence that person or have that person influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser, or to influence persons to refrain from dealing in the products of competitors.

(o) Sharing any profits or sharing any percentage of a licensee's income with any person who advises another in a professional capacity as an inducement to influence that person or have that person influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser or to dissuade persons from dealing in products of competitors.

(p) Failing to comply with existing federal regulations regarding fitting and dispensing a hearing aid.

(q) Being convicted of a felony or a misdemeanor that involves moral turpitude.

(r) Fraudulently obtaining or attempting to obtain a license or a temporary license for the applicant, the licensee or another person.

(s) Aiding or abetting unlicensed practice.

(t) Wilfully making or filing a false audiology, speech-language pathology or hearing aid dispenser evaluation.

(u) Using narcotics, alcohol or drugs to the extent that performing professional duties is impaired.

(v) Betraying a professional confidence.

(w) Engaging in any conduct, practice or condition that impairs the ability of the licensee to safely and competently engage in the practice of audiology, speech-language pathology or hearing aid dispensing.

(x) Providing services or promoting the sale of devices, appliances or products to a person who cannot reasonably be expected to benefit from these services, devices, appliances or products.

(y) Being disciplined by a licensing or disciplinary authority of any state, territory or district of this country for an act that is grounds for disciplinary action under this chapter.

(z) Violating any provision of this chapter or failing to comply with rules adopted pursuant to this chapter.

(aa) Failing to refer an individual for medical evaluation if a condition exists that is amenable to surgical or medical intervention prescribed by the advisory committee and consistent with federal regulations.

(bb) Practicing in a field or area within that licensee's defined scope of practice in which the licensee has not either been tested, taken a course leading to a degree, received supervised training, taken a continuing education course or had adequate prior experience.

(cc) Failing to affix the word, term or initials "audiology", "audiologic", "audiologist", "doctor of audiology", "Au.D.", "Ph.D." or "Sc.D." in any sign, written communication or advertising media in which the term "doctor" or the abbreviation "Dr." is used in relation to the audiologist holding a doctoral degree.

36-1902. Powers and duties of the director; advisory committee; members

A. The director shall:

1. Supervise and administer qualifying examinations to test the knowledge and proficiency of applicants for a hearing aid dispenser's license.

2. Designate the time and place for holding examinations for a hearing aid dispenser's license.

3. License persons who apply for and pass the examination for a license and who possess all other qualifications required for the practice of fitting and dispensing hearing aids, the practice of audiology and the practice of speech-language pathology.

4. License persons who apply for a license and who possess all other qualifications required for licensure as a speech-language pathology assistant.

5. Authorize all disbursements necessary to carry out this chapter.

6. Ensure the public's health and safety by adopting and enforcing qualification standards for licensees and applicants for licensure under this chapter.

7. Appoint an advisory committee to assist in examining applicants for a hearing aid dispenser's license and to collaborate with and assist the director in disciplinary matters, if requested, or any other duties prescribed in this chapter.

B. The director may:

1. Purchase and maintain, or rent, equipment and facilities necessary to carry out the examination of applicants for a license.

2. Issue and renew a license.

3. Deny, suspend, revoke or refuse renewal of a license or file a letter of concern, issue a decree of censure, prescribe probation, impose a civil penalty or restrict or limit the practice of a licensee pursuant to this chapter.

4. Make and publish rules that are not inconsistent with the laws of this state and that are necessary to carry out this chapter.

5. Require the periodic inspection of testing equipment and facilities of persons who are engaged in the practice of fitting and dispensing hearing aids, the practice of audiology and the practice of speech-language pathology.

6. Require a licensee to produce customer records of patients involved in complaints on file with the department.

C. The advisory committee appointed pursuant to subsection A, paragraph 7 of this section consists of the following members:

1. The director or the director's designee.

2. Two physicians who are licensed under title 32, chapter 13 or 17, one of whom is a specialist in otolaryngology.

3. Two licensed audiologists, one of whom dispenses hearing aids.

4. Two licensed speech-language pathologists, one of whom provides services in a school setting.

5. Two public members, one of whom is deaf or hard of hearing.

6. One member of the commission for the deaf and the hard of hearing who is not licensed pursuant to this chapter.

7. Two licensed hearing aid dispensers who are not licensed to practice audiology.

8. Two licensed speech-language pathology assistants.

D. Committee members who are licensed under this chapter shall have at least five years' experience immediately preceding the appointment in their field of practice in this state. Committee members shall serve a two-year term.

E. The director shall verify that each audiology licensee has passed a nationally recognized examination approved by the director.

F. The director shall verify that each speech-language pathology licensee has passed a nationally recognized examination approved by the director.

G. The director may recognize a nationally recognized speech-language hearing association or audiology association examination, or both, as an approved examination.

36-1903. Deposit of monies

The director shall deposit pursuant to sections 35-146 and 35-147, ten per cent of all monies collected pursuant to this chapter in the state general fund and shall deposit the remaining ninety per cent in the health services licensing fund established by section 36-414, except that monies collected from civil penalties imposed pursuant to this chapter shall be deposited in the state general fund.

36-1904. Issuance of license; renewal of license; continuing education; military members

A. The director shall issue a regular license to each applicant who meets the requirements of this chapter. A regular license is valid for two years.

B. A licensee shall renew a regular license every two years on payment of the renewal fee prescribed in section 36-1908. There is a thirty-day grace period after the expiration of a regular license. During this period the licensee may renew a regular license on payment of a late fee in addition to the renewal fee.

C. When renewing a regular license as a hearing aid dispenser, the licensee shall provide proof of having completed at least twenty-four hours of continuing education within the prior twenty-four months. Courses sponsored by a single manufacturer of hearing aids may not satisfy more than eight hours of continuing education within the prior twenty-four months. At least eight hours of continuing education must be from courses taught in person that offer a hands-on opportunity for instruction in dispensing-related techniques. Courses on topics that provide a hearing aid dispenser an opportunity to stay current on business or client service practices or trends in the profession or that contribute to the professional or business competence of a hearing aid dispenser may qualify for up to one-third of the continuing education requirement. The in-person course requirement may be waived by the director:

1. For all licensees, in the event of a public health emergency declaration.

2. For an individual licensee, in the event of a bona fide emergency that prevents the licensee from attending in-person courses for an indefinite period of time.

D. When renewing a regular license in audiology or in speech-language pathology, the licensee shall provide proof of having completed at least twenty hours of continuing education within the prior twenty-four months. Courses sponsored by a single manufacturer of hearing aids may not satisfy more than eight hours of continuing education within the prior twenty-four months for persons with a license in audiology.

E. The director by rule shall provide standards for continuing education courses required by this section. Educational courses that are developed by professional organizations of hearing aid dispensers, audiologists or speech language pathologists and that are used by those associations to comply with continuing education requirements are deemed to comply with department standards.

F. The director may refuse to renew a regular license for any cause provided in section 36-1934.

G. A person who does not renew a regular license as prescribed by this section shall apply for a new license pursuant to the requirements of this chapter. If an application is received by the director within one year after the expiration date of the license, the applicant is not required to take an examination.

H. A person who reapplies for a regular license issued pursuant to this chapter must provide proof of completion of the continuing education hours prescribed by subsection C or D of this section within the previous twenty-four months before the date of reapplication.

I. A license issued pursuant to this chapter to any member of the Arizona national guard or the United States armed forces reserves does not expire while the member is serving on federal active duty and is extended one hundred eighty days after the member returns from federal active duty if the member, or the legal representative of the member, notifies the director of the federal active duty status of the member. A license issued pursuant to this chapter to any member serving in the regular component of the United States armed forces is extended one hundred eighty days after the date of expiration if the member, or the legal representative of the member, notifies the director of the federal active duty status of the member. If the license is renewed during the applicable extended time period after the member returns from federal active duty, the member is responsible only for normal fees and activities relating to renewal of the license and shall not be charged any additional costs such as late fees or delinquency fees. The member, or the legal representative of the member, shall present to the director a copy of the member's official military orders, a redacted military identification card or a written verification from the member's commanding officer before the end of the applicable extended time period in order to qualify for the extension.

J. A license issued pursuant to this chapter to any member of the Arizona national guard, the United States armed forces reserves or the regular component of the United States armed forces does not expire and is extended one hundred eighty days after the date the military member is able to perform activities necessary under the license if the member both:

1. Is released from active duty service.

2. Suffers an injury as a result of active duty service that temporarily prevents the member from being able to perform activities necessary under the license.

36-1905. Sponsors; duties

A. A sponsor shall directly train and supervise a temporary licensee. The director shall prescribe by rule a reasonable number of hours of training and supervision required. A sponsor may not sponsor more than two temporary licensees at one time.

B. A sponsor and the temporary licensee are equally liable for violations of this chapter and rules adopted pursuant to this chapter that are committed by the temporary licensee.

C. A sponsor who violates this section is subject to disciplinary action as prescribed pursuant to section 36-1934.

36-1906. Registering place of business with director

A. A person who holds a license shall notify the director in writing of the address of the place or places where the person engages in the practice of fitting and dispensing hearing aids, the practice of audiology or the practice of speech-language pathology and of any subsequent change of address.

B. The director shall keep a record of the places of practice of persons who hold licenses.

36-1907. Practicing without a license; prohibition

A. A person shall not engage in the practice of fitting and dispensing hearing aids, audiology or speech-language pathology or display a sign or in any other way advertise or claim to be a hearing aid dispenser, an audiologist or a speech-language pathologist unless the person holds an active license in good standing issued by the director as provided in this chapter.

B. A person shall not engage in performing the duties of a speech-language pathology assistant or claim to be a speech-language pathology assistant unless the person holds an active license in good standing issued by the director as provided by this chapter.

C. A licensee shall conspicuously post a license issued pursuant to this chapter in the licensee’s office or place of business.

36-1908. Fees

The director shall prescribe and collect fees from persons who are regulated under this chapter for the following:

1. An original application for a regular or temporary license.

2. An original issuance of a regular or temporary license.

3. An original application for a regular or temporary license if an examination pursuant to section 36-1924 is required.

4. A renewal of a regular or temporary license.

5. An issuance of a duplicate regular or temporary license.

6. A late fee.

36-1909. Bill of sale; requirements

A. A hearing aid dispenser or dispensing audiologist shall deliver a bill of sale to each person supplied with a hearing aid by the hearing aid dispenser or the dispensing audiologist or at that person's order or direction.

B. A bill of sale shall contain the hearing aid dispenser's or the dispensing audiologist's signature and shall show the address of that person's regular place of practice and the number of that person's license, a description of the make and model of the hearing aid and the amount charged. The bill of sale shall also state the serial number and the condition of the hearing aid as to whether it is new, used or rebuilt.

C. A bill of sale shall contain language that verifies that the client has been informed about audio switch technology, including benefits such as increased access to telephones and assistive listening devices. If the hearing device purchased by the client has audio switch technology, the client shall be informed of the proper use of the technology. The client shall be informed that an audio switch is also referred to as a telecoil, t-coil or t-switch.

D. A bill of sale shall contain language that informs the client about the Arizona telecommunications equipment distribution program established by section 36-1947 that provides assistive telecommunications devices to residents of this state who have hearing loss.

36-1921. Persons not affected by chapter

This chapter does not:

1. Apply to a person while engaged in the practice of recommending hearing aids if such practice is part of the academic curriculum of an accredited institution of higher education or part of a program conducted by a public or charitable institution, or a nonprofit organization which is primarily supported by voluntary contributions unless they sell hearing aids.

2. Apply to any person engaging in the practice of measuring human hearing for the purpose of selection of hearing aids provided that the person or the organization that employs that person does not sell hearing aids or hearing aid accessories.

3. Prevent a health care professional who is licensed or certified under title 32 from acting within the scope of that person's license or certificate.

4. Apply to a person who is credentialed by this state as a teacher of the deaf from acting within the scope of those credentials.

5. Apply to a student, intern or trainee pursuing a course of study in audiology or speech-language pathology in a nationally or regionally accredited institution of higher education or training institution if all of the following are true:

(a) The activities are part of a planned course of study at that institution.

(b) The person is designated by a title that clearly indicates the status appropriate to the person's level of education.

(c) The person works under the supervision of a person who is licensed in this state as an audiologist or a speech-language pathologist.

(d) Before a person receives services from a student or a temporary licensee, the supervising licensee provides written notification of this fact to the patient.

6. Apply to any person certified by the department of health services for the school hearing screening program

36-1922. Reciprocity

A. The director may issue a license to a person who is currently licensed in another state or jurisdiction that the director determines meets the minimum licensure requirements of this chapter. The person shall apply for licensure and pay all applicable fees as prescribed by this chapter.

B. The applicant shall provide information the director determines is necessary to investigate the status of the applicant's current license.

36-1923. Hearing aid dispensers; licensure requirements

A. An applicant for a hearing aid dispenser license shall pay to the director a nonrefundable application fee and shall show to the satisfaction of the director that the applicant:

1. Has an education equivalent to a four-year course in an accredited high school or has continuously engaged in the practice of fitting and dispensing hearing aids during the three years preceding August 11, 1970.

2. Has not had the applicant's license revoked or suspended by a state within the preceding two years and is presently not ineligible for licensure in any state due to prior revocation or suspension.

B. An applicant for a hearing aid dispenser license who is notified by the director that the applicant has fulfilled the requirements of subsection A of this section shall appear to be examined by written and practical tests as designated by the director in order to demonstrate that the applicant is qualified to practice the fitting and dispensing of hearing aids.

C. The director shall give at least two and not more than four examinations of the type described in this section in each calendar year unless there is an insufficient number of applicants for the second annual examination.

36-1924. Examination for license

A. The examination provided for in this article shall consist of:

1. A demonstration of minimal knowledge in the techniques of testing hearing and fitting and evaluating hearing aids.

2. A knowledge of the medical and rehabilitation facilities, for children and adults with hearing disorders, in this state.

3. Tests of knowledge in the following areas as they pertain to the fitting of hearing aids:

(a) Physics.

(b) The human hearing mechanism, including its functions and causes of its disorders.

(c) The function of hearing aids.

4. Practical tests of proficiency in the techniques of taking ear mold impressions and measurement of hearing by pure tone audiometry, including the air, bone and masking methods, and speech audiometry and other skills as they pertain to the candidacy for, selection of and adaptation of hearing aids.

5. A knowledge of rehabilitation and hearing conservation techniques as they relate only to hearing aids and related devices.

B. The examination shall not be constructed to require knowledge or abilities inconsistent with the realistic services of a hearing aid dispenser or with the requirements of sound public health practices.

C. To provide adequate tests of proficiency, the examination requirements provided in this section may be changed when deemed necessary due to technological advances.

36-1925. Educational materials; bills of sale; notice requirements

The department shall establish an awareness campaign for hearing aid dispensers and post on its website educational materials regarding the bill of sale notice requirements prescribed in section 36-1909.

36-1926. Temporary license; sponsorship; termination of sponsorship

A. An applicant who fulfills the requirements of section 36-1923, subsection A may apply to the director for a temporary license.

B. On receiving an application as provided by subsection A of this section, accompanied by an application fee and proof of sponsorship, the director shall issue a temporary license. A temporary license allows the licensee to practice the fitting and dispensing of hearing aids for a twelve-month period.

C. An applicant shall provide proof to the satisfaction of the director that the applicant is or will be supervised and trained for fitting and dispensing activities by a sponsor licensed pursuant to this chapter.

D. A sponsor may terminate sponsorship at any time and for any reason. The director shall not review the reasons for the termination. A temporary license terminates on the date that the director receives notice from the sponsor that the sponsor is terminating sponsorship. This notice shall be accompanied by documentation that the sponsor has notified the licensee of the termination. The director shall prescribe by rule how the sponsor shall document this notification of termination. A person whose license is terminated shall apply for a new temporary license as prescribed by this section and shall not practice until granted a license.

E. A temporary licensee shall take an examination within six months after issuance of a temporary license. If the person takes and fails the examination, the person may renew the temporary license once before the temporary license expires. The person shall take the next examination following the issuance of the renewal license.

F. The director may revoke or suspend a temporary license in the same manner and for the same reasons as prescribed pursuant to section 36-1934.

G. The director may deny an application for a temporary license if the applicant has previously held a temporary license and renewed the temporary license.

36-1934. Denial, revocation or suspension of license; hearings; alternative sanctions

A. The director may deny, revoke or suspend a license issued under this chapter for any of the following reasons:

1. Being convicted of a felony or misdemeanor involving moral turpitude. The record of the conviction or a certified copy from the clerk of the court where the conviction occurred or from the judge of that court is sufficient evidence of conviction.

2. Securing a license under this chapter through fraud or deceit.

3. Committing unprofessional conduct or incompetence in the conduct of the licensee's practice.

4. Using a false name or alias in the licensee's professional practice.

5. Violating any of the provisions of this chapter.

6. Failing to comply with existing federal regulations regarding fitting and dispensing a hearing aid.

B. If the director determines pursuant to a hearing that grounds exist to revoke or suspend a license, the director may do so permanently or for a fixed period of time and may impose conditions as prescribed by rule.

C. The department may deny a license without holding a hearing. After receiving notification of the denial, the applicant may request a hearing to review the denial.

D. The department shall conduct any hearing to revoke or suspend a license or impose a civil penalty under section 36-1939 pursuant to title 41, chapter 6, article 10.

E. Instead of denying, revoking or suspending a license, the director may file a letter of concern, issue a decree of censure, prescribe a period of probation or restrict or limit the practice of a licensee.

36-1936. Unlawful acts

A person may not:

1. Sell, barter, or offer to sell or barter, a license.

2. Purchase or procure by barter a license with intent to use it as evidence of the holder's qualification to engage in the practice of fitting and dispensing hearing aids.

3. Alter materially a license with fraudulent intent.

4. Use or attempt to use as a valid license one which has been purchased, fraudulently obtained, counterfeited or materially altered.

5. Wilfully make a false, material statement in an application or related document for a license or for renewal of a license.

36-1937. Injunctive relief

The director may enforce any provision of this chapter by injunction or by any other appropriate proceeding. No such proceeding shall be barred by any proceeding had or pending pursuant to any other provisions of this chapter, or by the imposition of any fine or term of imprisonment pursuant thereto.

36-1938. Violation; classification

Violation of any provision of this chapter is a class 3 misdemeanor.

36-1939. Civil penalties; enforcement

A. The director may impose a civil penalty of not more than five hundred dollars for a violation of this chapter or a rule adopted pursuant to this chapter.

B. The attorney general and the county attorney may bring an action in the name of this state to enforce civil penalties imposed pursuant to this section. Actions shall be brought in the superior court in the county where the violation occurs.

C. The director may impose penalties assessed pursuant to this section in addition to other penalties imposed pursuant to this chapter.

D. All monies collected from civil penalties collected for violation of this chapter or a rule adopted pursuant to this chapter shall be deposited in the state general fund.

36-1940. Audiologists; licensure requirements

A. A person who wishes to be licensed as an audiologist shall:

1. Submit a nonrefundable application fee as prescribed by section 36-1908.

2. Submit evidence satisfactory to the director that the applicant has:

(a) A doctoral degree with an emphasis in audiology from a nationally or regionally accredited college or university in an accredited program consistent with the standards of this state's universities.

(b) Completed supervised clinical rotations in audiology from a nationally or regionally accredited college or university in an accredited program consistent with the standards of this state's universities.

3. Pass an examination pursuant to section 36-1902, subsection G. The applicant must have completed the examination within three years before the date of application for licensure pursuant to this article.

4. Not have had a license revoked or suspended by a state within the preceding two years and not be presently ineligible for licensure in any state because of a prior revocation or suspension.

B. A person who has a doctoral degree in audiology and who wishes to be licensed as an audiologist to fit and dispense hearing aids shall:

1. Submit a nonrefundable application fee as prescribed by section 36-1908.

2. Submit evidence satisfactory to the director that the applicant has:

(a) A doctoral degree with an emphasis in audiology from a nationally or regionally accredited college or university in a program consistent with the standards of this state's universities.

(b) Completed supervised clinical rotations in audiology from a nationally or regionally accredited college or a university in an accredited program that is consistent with the standards of this state's universities.

3. Pass an examination pursuant to section 36-1902, subsection G. The applicant must have completed the examination within three years before the date of application for licensure pursuant to this article.

4. Pass an examination approved by the director in jurisprudence and ethics related to this chapter within six months after initial licensure. The director shall offer the examination at least four times each calendar year.

5. Not have had a license revoked or suspended by a state within the preceding two years and not be presently ineligible for licensure in any state because of a prior revocation or suspension.

C. A person who wishes to be licensed as an audiologist to fit and dispense hearing aids and who was awarded a master's degree in audiology before December 31, 2007 must:

1. Submit a nonrefundable application fee as prescribed pursuant to section 36-1908.

2. Submit evidence satisfactory to the director that the applicant meets the requirements prescribed in section 36-1940.02, subsection C for a waiver of the educational and clinical rotation requirements of this article.

3. Pass an audiology examination pursuant to section 36-1902, subsection E. The applicant must have completed the examination within three years before the date of application for licensure pursuant to this article unless the applicant is currently practicing audiology and meets the audiology examination waiver requirements of section 36-1940.02, subsection D.

4. Pass the hearing aid dispenser's examination pursuant to section 36-1924.

5. Not have had a license to practice as an audiologist or hearing aid dispenser revoked or suspended by another state within the preceding two years and not currently be ineligible for licensure in any state because of a prior revocation or suspension.

D. The director shall adopt rules prescribing criteria for approved postgraduate professional experience.

36-1940.01. Speech-language pathologist; licensure requirements

A. A person who wishes to be licensed as a speech-language pathologist shall:

1. Submit a nonrefundable application fee as prescribed by section 36-1908.

2. Submit evidence satisfactory to the director that the applicant has:

(a) A master's degree in speech-language pathology or the equivalent from a nationally or regionally accredited college or university in a program consistent with the standards of this state's universities.

(b) Completed a supervised clinical practicum in speech-language pathology from a nationally or regionally accredited college or university in a program consistent with the standards of this state's universities.

(c) Completed postgraduate professional experience in the field of speech-language pathology approved by the director.

3. Pass an examination pursuant to section 36-1902, subsection G.

4. Not have had a license revoked or suspended by a state within the preceding two years and not be presently ineligible for licensure in any state because of a prior revocation or suspension.

B. A person who wishes to be licensed as a speech-language pathologist whose practice is limited to providing services to pupils under the authority of a local education agency or state-supported institution shall:

1. Submit a nonrefundable application fee as provided by section 36-1908.

2. Submit proof of an employee or contractor relationship with a local education agency or a state-supported institution.

3. Hold a certificate in speech and language therapy awarded by the state board of education.

C. The director shall adopt rules prescribing criteria for approved postgraduate professional experience.

36-1940.02. Waiver of licensure and examination requirements

A. The advisory committee appointed under section 36-1902 may recommend to the director a waiver of the educational requirements of sections 36-1940 and 36-1940.01 if an applicant submits proof satisfactory to the department that the applicant received professional education in another country equivalent to the education and practicum requirements of this article.

B. The department shall waive the examination requirements of section 36-1940.01 under either of the following conditions:

1. The applicant presents proof satisfactory to the department that the applicant is currently licensed in a state, district or territory of this country that has standards that are at least equivalent to those of this state.

2. The applicant holds a certificate of clinical competence in speech-language pathology from a nationally recognized speech-language hearing association approved by the department in the field for which the applicant is applying for licensure.

C. The department shall waive the education and clinical rotation requirements of section 36-1940 if an applicant submits proof satisfactory to the director that the applicant either:

1. Is currently licensed in a state that has standards that are at least equivalent to those of this state.

2. Has a master's degree in audiology that was awarded by an accredited program before December 31, 2007 and has completed postgraduate professional experience in audiology as approved by the director.

D. The department shall waive the audiology examination requirements of section 36-1940 if either:

1. The applicant presents proof satisfactory to the department that the applicant is currently licensed and practicing audiology in this state or in another state that has standards that are at least equivalent to those of this state.

2. The applicant presents proof satisfactory to the department that the applicant is currently practicing audiology under the authority and supervision of an agency of the United States government or of another board, agency or department of another state and holds a certificate in audiology from a recognized credentialing body approved by the director.

E. The department shall waive the hearing aid dispensing examination requirements of section 36-1940 if:

1. The applicant presents proof satisfactory to the department that the applicant holds a current license that includes dispensing and that is issued by another state that has standards that are at least equivalent to those of this state.

2. The applicant passes an examination approved by the director in jurisprudence and ethics related to this chapter within six months after initial licensure. The director shall offer the examination at least four times each calendar year.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 22, Article 3

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: September 4, 2024

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

FROM: Council Staff

DATE: August 15, 2024

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**
Title 9, Chapter 22, Article 3

Summary

This Five-Year Review Report from the Arizona Health Care Cost Containment System (AHCCCS) relates to seventeen (17) rules in Title 9, Chapter 22, Article 3 related to General Eligibility Requirements for individuals applying for AHCCCS medical coverage.

In the prior 5YRR for these rules, which was approved by the Council in October 2019, AHCCCS did not propose to take any action regarding these rules.

Proposed Action

In the current report, AHCCCS is proposing to amend five (5) rules to improve their clarity, conciseness, understandability, consistency, effectiveness, and enforcement as outlined in more detail below. AHCCCS indicates it plans to complete changes to the rules by submitting a Notice of Final Rulemaking to the Council in October 2024.

1. Has the agency analyzed whether the rules are authorized by statute?

AHCCCS cites both general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

AHCCCS indicates the actual impact of the rules aligns with and remains the same as had been anticipated in the last rulemaking, which anticipated no economic, small business, and consumer impact.

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?

AHCCCS indicates the rules under review have a greater benefit than cost because many of the eligibility requirements come from federal regulation and are required for receipt of federal funds. AHCCCS has revisited the entirety of Article 3 and determined that the processes in this article pose the lowest burden possible for the public and AHCCCS's members.

4. Has the agency received any written criticisms of the rules over the last five years?

AHCCCS 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?

AHCCCS indicates the rules are generally clear, concise, and understandable except for the following:

- R9-22-301
    - Rule to be updated to correct a typographical error: "USCIS" means the United States Citizenship ~~Citizen~~ and Immigration Services.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

AHCCCS indicates the rules are generally consistent with other rules and statutes except for the following:

- R9-22-305(1)
    - Section to be removed as this requirement was removed from federal regulation, effective 6/3/2024, and is on track to be removed from systems and policy in autumn 2024: ~~Take all necessary steps to obtain any annuities, pensions, retirement, disability benefits to which they are entitled, unless they can show good cause for not doing so.~~
- R9-22-305(4)
    - Section to be updated to state that the declaration is not required to be in writing. In accordance with federal regulation, the declaration may be provided verbally and the signature recorded during a telephonic application: A ~~written~~ declaration~~, signed under penalty of perjury,~~ must be provided for each person for whom benefits are being sought stating whether the individual is a citizen or national of

the United States, and, if that individual is not a citizen or national of the United States, that the individual is a qualified alien. The declaration must be provided by the individual for whom eligibility is being sought or an adult member of the individual's family or household.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

AHCCCS indicates the rules are generally effective in achieving their objectives except for the following:

- R9-22-301
  - Rule to be updated to correct the definition of "BHS." The division is no longer within ADHS and has moved to AHCCCS in 2016: "BHS" means ~~the division of~~ Behavioral Health Services ~~within the Arizona Department of Health Services.~~
- R9-22-315(B)
  - Section describes three delivery options but only provides information on the date the notice is considered sent for two of the three methods. Detail on electronic notifications to be added: Notice of Adverse Action. The Administration or its designee shall personally deliver or send, by mail, or electronic means a Notice of Adverse Action to the person affected by the action. For the purpose of this Section, the date of the Notice of Adverse Action shall be the date of personal delivery to the applicant, ~~or~~ the postmark date~~;~~ if mailed~~.~~, or the email date if emailed.

8. Has the agency analyzed the current enforcement status of the rules?

AHCCCS indicates the rules are enforced as written except for the following:

- R9-22-302(1)(A)
  - Behavioral Health Services (BHS) sites no longer exist, and designated provider sites are captured under R9-22-302(1)(C) as "Any other site, including hospitals.."
- R9-22-304(F)
  - Section to be updated as the new minimum timeframe is 15 days, effective 6/3/2024: The Administration or its designee shall give an applicant or member at least ~~10~~15 days from the date of a written or electronic request for information to provide required verification.
- R9-22-305(4)
  - Section to be updated to state that the declaration is not required to be in writing. In accordance with federal regulation, the declaration may be provided verbally and the signature recorded during a telephonic application: A ~~written~~ declaration~~, signed under penalty of perjury,~~ must be provided for each person for whom benefits are being sought stating whether the individual is a citizen or national of the United States, and, if that individual is not a citizen or national of the United States, that the individual is a qualified alien. The declaration must be provided by

the individual for whom eligibility is being sought or an adult member of the individual's family or household.

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

AHCCCS indicates 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?

AHCCCS indicates these rules do not require an issuance of a regulatory permit, license, or agency authorization.

11. Conclusion

This 5YRR from AHCCCS relates to seventeen (17) rules in Title 9, Chapter 22, Article 3 related to General Eligibility Requirements for individuals applying for AHCCCS medical coverage. AHCCCS is proposing to amend five (5) rules to improve their clarity, conciseness, understandability, consistency, effectiveness, and enforcement and plans to complete changes to the rules by submitting a Notice of Final Rulemaking to the Council in October 2024.

Council staff recommends approval of this report.

AHCCCS
Arizona Health Care Cost Containment System

Katie Hobbs, Governor
Carmen Heredia, Cabinet Executive Officer
and Executive Deputy Director

June 18, 2024

VIA EMAIL: grrc@azdoa.gov

Jessica Klein, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 302
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 22, Article 3;

Dear Ms. Klein

Please find enclosed AHCCCS's Five-Year Review Report for Title 9, Chapter 22, Article 3 due on July 26, 2024.

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Sladjana Kuzmanovic at 602-417-4232 or sladjana.kuzmanovic@azahcccs.gov.

Sincerely,

Nicole Fries
Deputy General Counsel

Attachments

www.azahcccs.gov
602-417-4000
801 East Jefferson Street, Phoenix, AZ 85034

Arizona Health Care Cost Containment System

(AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 22, Article 3

June 2024

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 36-2903.01

Specific Statutory Authority: A.R.S. §§ 36-2904, 36-2933

2. The objective of each rule:

Rule	Objective
R9-22-301	This rule explains general eligibility definitions.
R9-22-302	This rule explains AHCCCS eligibility application requirements.
R9-22-303	This rule explains which services and members are eligible for prior quarter coverage.
R9-22-304	This rule explains how eligibility information for members is verified by AHCCCS.
R9-22-305	This rule explains the requirements for eligibility for AHCCCS programs.
R9-22-306	This rule explains AHCCCS's responsibilities for determining member's eligibility.
R9-22-307	This rule outlines what will be contained in approvals & denials from AHCCCS.
R9-22-308	This rule explains the basis where eligibility may be reinstated by AHCCCS.
R9-22-309	This rule states AHCCCS's responsibilities for members' personal information.
R9-22-310	This rule explains who is ineligible for AHCCCS programs.
R9-22-311	This rule states a person determined eligible assigns rights to the system their benefits.
R9-22-312	This rule explains how eligibility notices from AHCCCS are sent and included details.
R9-22-313	This rule explains when an application for eligibility may be withdrawn.
R9-22-314	This rule explains how a member may withdrawal from AHCCCS medical coverage.
R9-22-315	This rule explains what a Notice of Adverse Action must contain.
R9-22-316	This rule outlines exemptions from sponsor deemed income.
R9-22-317	This rule outlines what is considered sponsor deemed income.

3. Are the rules effective in achieving their objectives? **Yes ___ No _X__**

R9-22-301	Rule to be updated to correct the definition of "BHS." The division is no longer within ADHS and has moved to AHCCCS in 2016: "BHS" means ~~the division of~~ Behavioral Health Services ~~within the Arizona Department of Health Services.~~

R9-22-315(B)	Section describes three delivery options but only provides information on the date the notice is considered sent for two of the three methods. Detail on electronic notifications to be added: Notice of Adverse Action. The Administration or its designee shall personally deliver or send, by mail, or electronic means a Notice of Adverse Action to the person affected by the action. For the purpose of this Section, the date of the Notice of Adverse Action shall be the date of personal delivery to the applicant, ~~or~~ the postmark date~~,~~ if mailed~~.~~, or the email date if emailed.

4. Are the rules consistent with other rules and statutes? **Yes ___ No _X__**

R9-22-305(1)	Section to be removed as this requirement was removed from federal regulation, effective 6/3/2024, and is on track to be removed from systems and policy in autumn 2024: ~~Take all necessary steps to obtain any annuities, pensions, retirement, disability benefits to which they are entitled, unless they can show good cause for not doing so.~~
R9-22-305(4)	Section to be updated to state that the declaration is not required to be in writing. In accordance with federal regulation, the declaration may be provided verbally and the signature recorded during a telephonic application: A ~~written~~ declaration~~, signed under penalty of perjury,~~ must be provided for each person for whom benefits are being sought stating whether the individual is a citizen or national of the United States, and, if that individual is not a citizen or national of the United States, that the individual is a qualified alien. The declaration must be provided by the individual for whom eligibility is being sought or an adult member of the individual's family or household.

5. Are the rules enforced as written? **Yes ___ No _X_**

R9-22-302(1)(A)	Behavioral Health Services (BHS) sites no longer exist, and designated provider sites are captured under R9-22-302(1)(C) as "Any other site, including hospitals.."
R9-22-304(F)	Section to be updated as the new minimum timeframe is 15 days, effective 6/3/2024: The Administration or its designee shall give an applicant or member at least ~~10~~15 days from the date of a written or electronic request for information to provide required verification.
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	of the United States, and, if that individual is not a citizen or national of the United States, that the individual is a qualified alien. The declaration must be provided by the individual for whom eligibility is being sought or an adult member of the individual's family or household.

6. Are the rules clear, concise, and understandable? **Yes ___ No _X_**

R9-22-301	Rule to be updated to correct a typographical error: "USCIS" means the United States Citizenship ~~Citizen~~ and Immigration Services.

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:

During the last rulemaking, Administration anticipated no economic, small business, and consumer impact and the actual impact is as it was anticipated. The actual impact aligns with and remains the same as had been anticipated in the last rulemaking process.

These regulations govern eligibility of members and AHCCCS and other State responsibilities to them. None of the changes proposed in this 5YRR have any effect on the economic impact of this chapter. The Administration does not anticipate any economic, small business or consumer financial impact beyond the cost of the agency operations. Substantive and procedural rights of members are not affected, nor are any of the programs of the Administration. These proposed changes are merely clarifying.

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 prior course of action was 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:

These rules have a greater benefit than cost because many of the eligibility requirements come from federal regulation and are required for receipt of federal funds. AHCCCS has revisited the entirety of Article 3 and determined that the processes in this article pose the lowest burden possible for the public and AHCCCS members.

12. Are the rules more stringent than corresponding federal laws? **Yes ___ No _X_**

The rule is not more stringent than any 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:

These rules do not require an issuance of a regulatory permit, license, or agency authorization, therefore, compliance with the general permit requirements of A.R.S. 41-1037 or explanation why the agency believes an exception applies is not applicable.

14. Proposed course of action

AHCCCS plans to complete changes to the rules by submitting a Notice of Final Rulemaking to the Council in October 2024 enacting all the changes outlined in this report to bring the language of the rules into alignment as well as to improve clarity and conciseness.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

Introduction:

The Arizona Health Care Cost Containment System (AHCCCS) is promulgating this rulemaking due to the Administration requesting a waiver of the requirement to provide three months of retroactive coverage to new AHCCCS members. AHCCCS is seeking the flexibility to limit retroactive coverage to the first day of the month of application, consistent with Arizona's policy prior to passage of the Affordable Care Act. Accordingly, AHCCCS is requesting that the Centers for Medicare and Medicaid Services (CMS) waive Section 1902(a)(34) of the Social Security Act (the Act) and 42 CFR 435.915 to the extent necessary to enable the State not to provide medical coverage for any of the three month prior to the month in which the member's Medicaid application was filed. Additionally, AHCCCS is requesting an exemption from the waiver for children under age 19, individuals who are pregnant and those in the 60-day post-partum period beginning with the last day of pregnancy.

The waiver of Prior Quarter Coverage and the corresponding repeal of the rules promote the objectives of the Medicaid program by (1) creating efficiencies that ensure Medicaid's sustainability for members over the long term; (2) encouraging members to obtain and maintain health coverage, even when healthy; and (3) encouraging members to apply for Medicaid expeditiously when they believe they meet the criteria for eligibility. Repealing quarter coverage promotes the objectives of title XIX by encouraging beneficiaries to obtain and maintain health coverage, even when healthy. Incentivizing members to retain health care coverage will increase continuity of care by reducing gaps in coverage for Medicaid beneficiaries who subsequently lose coverage or who sign up for Medicaid only when sick. Specifically, for those who are aged, blind or disabled, or who may need long-term services and supports through Medicaid, a waiver from prior quarter coverage will encourage beneficiaries to apply for Medicaid expeditiously when they believe they meet the criteria for eligibility to ensure primary or secondary coverage through Medicaid to receive these services if the need arises. Also, a waiver from prior quarter coverage and the corresponding repeal of these rules promote alignment between Medicaid and commercial coverage to facilitate smoother beneficiary transition. Because the prior quarter coverage eligibility process is resource-intensive, repealing prior quarter coverage eligibility will allow the Agency to utilize resources more effectively and efficiently. Arizona will increase efforts to educate and encourage Arizona residents to apply for AHCCCS coverage.

Subject to CMS approval of the prior quarter eligibility waiver, the rulemaking will be necessary to comply with the waiver and to relieve AHCCCS from the financial inefficiencies associated with the administrative and operational costs of implementing prior quarter coverage. In addition, the rulemaking will decrease State expenditures and improve the fiscal health of the State by not extending Title XIX eligibility earlier than the first day of the month in which the individual applies for Title XIX eligibility. Failure to amend and repeal these rules to conform to an approved waiver will result in continued expenditures by AHCCCS for the substantial administrative and

operational

costs associated with implementation of the prior quarter coverage eligibility process for the low percentage of AHCCCS members who qualify for prior quarter coverage eligibility. Because the prior quarter coverage eligibility process is resource-intensive, repealing prior quarter coverage eligibility will allow the Agency to utilize resources more effectively and efficiently.

Purpose of Rule:

Under current regulation, if a new AHCCCS member would have qualified for AHCCCS coverage during any portion of three months immediately preceding the month in which the member applied for AHCCCS coverage, AHCCCS is required to reimburse providers for any AHCCCS-covered service received by the member during that period. As explained above, AHCCCS is seeking the flexibility to limit retroactive coverage to the month of application, consistent with Arizona's policy prior to passage of the Affordable Care Act. Under the proposed policy, individuals will continue to receive retroactive coverage effective as of the first day of the month in which the Medicaid application was filed.

1. **Identification of rulemaking.**

   The Administration is in the process of requesting a waiver from the federal prior quarter coverage eligibility requirement, specified in 42 CFR 435.915. Therefore, AHCCCS is requesting authorization to initiate the process of repealing and amending rules regarding prior quarter coverage so that the repeal can be implemented expeditiously upon federal approval.

   More specifically, 42 CFR 435.915 requires the Administration to provide Prior Quarter (PQ) eligibility. Prior quarter eligibility is when a person who applies for AHCCCS may also qualify for Title XIX eligibility in any one of the three previous months prior to application. While A.R.S. § 36-2903(A) provides that the system's reimbursement responsibility is prospective from the date of the eligibility determination, AHCCCS has implemented prior quarter coverage to ensure federal financial participation for Arizona's Medicaid Program. Although AHCCCS had previously obtained federal approval waiving compliance from prior quarter coverage eligibility, as of January 1, 2014, AHCCCS was required by CMS to implement prior quarter eligibility. However, the Administration is seeking a new waiver from CMS so that the Administration is not required to provide Title XIX eligibility for any of the three previous months prior to the month of application.

   Arizona is proposing to limit retroactive coverage to the month of application for all Title XIX AHCCCS members. Since its implementation in 2014, the Prior Quarter Coverage policy has resulted in a cost of $69,955,595 (total funds). This Proposal to Waive Prior Quarter Coverage would result in an estimated savings of $39,431,100 (total funds) in State Fiscal Year (SFY) 2019.

Prior Quarter Coverage Historical Expenditures	
State Fiscal Year	**Total Funds**

2014	$19,809
2015	$15,743,139
2016	$21,708,207
2017	$21,347,704
2018 (partial year actual expenditures of 7/1 to11/30/17)	$11,136,736
Total	**$69,955,595**

The Administration's proposed rulemaking would repeal rules R9-22-202(F)(4), 303, 703(H), and 1910 because these rules refer exclusively to prior quarter eligibility. The proposed rulemaking would also amend rules R9- 22-502(A), 1202(D)(1), 1407(B), 1501(F), R9-28-401.01, and R9-29-210 because these rules refer in part to prior quarter eligibility and coverage and those portions of the rule will be removed or amended back to the text of the rule prior to January 1, 2014.

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

The changes to these rules will cease coverage of eligible medical expenses, up to the allowable limit, in the months up to the prior quarter, and will instead cover eligible medical expenses incurred only in the month of eligibility.

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 expenses incurred by the Administration related to determining eligibility for prior quarter coverage and determining what medical expenses can be covered are greater than the benefit to members.

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

The Administration does not anticipate a change in frequency in conduct with the rulemaking.

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

The Administration and State General Fund will benefit from this rulemaking due to the costs saved, as outlined above. An unknown, but low, number of members will bear the costs of this rulemaking if they would have previously been considered eligible for prior quarter coverage and will now only have eligible medical expenses covered, up to the allowable limit, in the month they are found eligible, instead of any of the three months prior to the month of application.

3. Cost-benefit analysis.

a. Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking including the number of new full-time employees necessary to implement and enforce the proposed rule:

i. Cost:

The Administration anticipates no increase in cost to the implementing agency.

ii. Benefit:

The Administration anticipates a benefit to the implementing agency as a cost saving due to a decrease in employee hours previously required to calculate the prior quarter coverage costs of newly eligible members. It is not possible to calculate the specific number of hours that will be saved until the rule has been implemented since it is not possible to calculate how many members would be eligible for this coverage in advance.

iii. Need for additional Full-time Employees:

The Administration does not anticipate the need to hire full-time employees as a result of this rulemaking.

b. Probable costs and benefits to political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.

This rulemaking does not directly affect political subdivisions.

4. General description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the rulemaking.

The Administration anticipates that public and private employment will not be impacted by the changes.

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

a. Identification of the small businesses subject to the proposed rulemaking.

The Administration anticipates there may be a marginal fiscal impact on small businesses inasmuch as they are providers of services to members who would previously have been eligible for prior quarter coverage. However, since the number of members who may qualify for prior quarter coverage and the medical expenses which would be covered Title XIX expenses cannot be quantified, the fiscal impact is anticipated to be limited.

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

The Administration anticipates no impact on the administrative expenses of these small businesses because the proposed rule does not require a change in claim submission coding or procedure.

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

i. **Establishing less stringent compliance or reporting requirements in the rule for small businesses;**
This rule does not impose compliance or reporting requirements on small businesses beyond those already necessary to comply with federal law and state statute.

ii. Establishing less stringent schedules deadlines in the rule for compliance or reporting requirements for small businesses;
This rule does not impose compliance or reporting requirements on small businesses beyond those requirements that are necessary to comply with federal law and state statute.

iii. **Consolidate or simplify the rule's compliance or reporting requirements for small businesses;**
This rule does not impose compliance or reporting requirements on small businesses beyond those requirements that are necessary to comply with federal law and state statute.

iv. Establish performance standards for small businesses to replace design or operational standards in the rule; and
This rule does not establish performance standards for small businesses beyond those requirements that are necessary to comply with federal law and state statute.

v. Exempting small businesses from any or all requirements of the rule.
Exempting small businesses is not applicable to this rule.

d. The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.
The effect of the rule on private persons cannot be quantified because the number of individuals who qualify for prior quarter coverage fluctuates, as do the extent of healthcare services which qualify for coverage. However, any change is not anticipated to be a great amount based on the averaged, aggregated state general fund savings calculated.

6. Statement of the probable effect on state revenues.
It is anticipated that the rule will have a result in an estimated savings of $39,431,100 (total funds) in State Fiscal Year (SFY) 2019.

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

The Administration did not consider other alternatives because the revisions to the rule are the most cost effective and efficient method of complying with federal law and state law.

8. **A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data.**

The Administration did not consider any specific data to base the rule upon.

R9-22-217. Services Included in the Federal Emergency Services Program

A. Definition. Notwithstanding the definition in R9-22-201, for the purposes of this Section, an emergency medical or behavioral health condition for a FES member means a medical condition or a behavioral health condition, including labor and delivery, manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:
1. Placing the member's health in serious jeopardy,
2. Serious impairment to bodily functions,
3. Serious dysfunction of any bodily organ or part, or
4. Serious physical harm to another person.

B. Services. "Emergency services for a FES member" mean those medical or behavioral health services provided for the treatment of an emergency condition. Emergency services include outpatient dialysis services for a FES member with End Stage Renal Disease (ESRD) where a treating physician has certified for the month in which services are received that in the physician's opinion the absence of receiving dialysis at least three times per week would reasonably be expected to result in:
1. Placing the member's health in serious jeopardy, or
2. Serious impairment of bodily function, or
3. Serious dysfunction of a bodily organ or part.

C. Covered services. Services are considered emergency services if all of the criteria specified in subsection (A) are satisfied at the time the services are rendered. The Administration shall determine whether an emergency condition exists on a case-by-case basis.

D. Prior authorization. A provider is not required to obtain prior authorization for emergency services for FES members. Prior authorization for outpatient dialysis services is met when the treating physician has completed and signed a monthly certification as described in subsection (B).

E. Services rendered through the Federal Emergency Services Program are subject to all exclusions and limitation on services in this Article including but not limited to the limitations on inpatient hospital services in R9-22-204.

Historical Note

Adopted under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by exempt rulemaking at 7 A.A.R. 5701, effective December 1, 2001 (Supp. 01-4). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5480, effective December 6, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 3351, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by exempt rulemaking at 17 A.A.R. 1868, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

R9-22-218. Repealed

Historical Note

Section R9-22-218 renumbered from R9-22-206 effective January 1, 1996, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Third Special Session, Ch. 1, § 5; filed with the Office of the Secretary of State December 28, 1995 (Supp. 95-4). Section repealed effective September 22, 1997 (Supp. 97-3).

ARTICLE 3. GENERAL ELIGIBILITY REQUIREMENTS

R9-22-301. General Eligibility Definitions

Definitions. In addition to definitions contained in R9-22-101 and A.R.S. § 36-2901, the words and phrases in this Article, Article 14 and Article 15 have the following meanings unless the context explicitly requires another meaning:

"Applicant," notwithstanding R9-22-101, means a person listed on an application for whom AHCCCS coverage is being sought.

"BHS" means the division of Behavioral Health Services within the Arizona Department of Health Services.

"CRS" means the program administered by the Administration or its designee that provides covered medical services and covered support services in accordance with A.R.S. 36-261.

"DCSS" means the Division of Child Support Services, which is the division within the Department that administers the Title IV-D program and includes a contract agent operating a child support enforcement program on behalf of the Department.

"FAA" means the Family Assistance Administration, the administration within the Department's Division of Benefits and Medical Eligibility with responsibility for providing cash and food stamp assistance to a member and for determining eligibility for AHCCCS medical coverage.

"Income" means combined earned and unearned income.

"Medical support" means to provide health care coverage in the form of health insurance or court-ordered payment for medical care.

"Member" means an applicant who has been determined to qualify for AHCCCS coverage by the Administration or its designee.

"Pre-enrollment process" means the process that provides an applicant the opportunity to choose an AHCCCS health plan before the determination of eligibility is completed.

"Resources" means real and personal property, including liquid assets.

"Sponsor" means an individual who signs the USCIS I-864 Affidavit of Support agreeing to support a non-citizen as a condition of the non-citizen's admission for permanent residence in the United States.

"Sponsor deemed income" means the unearned income deemed available to the applicant named on the USCIS I-864 Affidavit of Support.

"SVES" means the State Verification and Exchange System, a system through which the Department exchanges income and benefit information with the Internal Revenue Service, Social Security Administration, and State Wage and Unemployment Insurance Benefit data files.

"USCIS" means the United States Citizen and Immigration Services.

Historical Note
Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-301 renumbered together with former Section R9-22-102 as Section R9-22-101 and amended effective October 1, 1983 (Supp. 83-5). New Section R9-22-301 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (B), paragraph (8), subsection (E), paragraph (3), and subsection (J), paragraph (5) effective October 1, 1986 (Supp. 86-5). Amended subsections (C) and (E) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsections (B) and (C) effective October 1, 1987; amended subsection (D) effective December 22, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section reserved by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4). New Section made by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014; the adoption of this Section was slated to be codified in Supp. 14-1 but due to a clerical error, was not published. The new Section was published in Supp. 20-4 and no additional amendments have been made to this Section since January 7, 2014 (Supp. 20-4).

R9-22-302. AHCCCS Eligibility Application

Application Process

1. Right to apply. A person may apply for AHCCCS medical coverage by submitting an Administration-approved application to the Administration or its designee, an FAA office, or one of the following outstation locations:
   a. A BHS site;
   b. A Federally Qualified Health Center or disproportionate share hospital under 42 U.S.C. 1396r-4; or
   c. Any other site, including a hospital, approved by the Administration or its designee.
2. Application. To initiate the application process, the Administration or its designee will accept an application from the applicant, an adult who is in the applicant's household, as defined in 42 CFR 435.603(f), or family, as defined in section 36B(d)(1) of the Internal Revenue Service (IRS) Code, an authorized representative, or if the applicant is a minor or incapacitated, someone acting responsibly for the applicant by submitting a written or online application under 42 CFR 435.907.
   a. A phone or written application must contain at least the following to be submitted to the Administration or its designee:
      i. Applicant's legible name,
      ii. Address or location where the applicant can be reached,
      iii. Signature of the person submitting the application,
      iv. Date the application was signed.
      v. The Administration or its designee shall require that a third party witness the signing and attest by signing the application if the individual signing the application signs with a mark.
   b. An online application must be completed in full in order to be submitted to the Administration or its designee.
3. Incomplete application. If the application is incomplete, the Administration or its designee shall do at least one of the following:
   a. Contact an applicant or an applicant's representative by telephone or electronic medium to obtain the missing information required for an eligibility determination;
   b. Mail a request for additional information to an applicant or an applicant's representative, allowing 10 days from the date of the request to provide the required additional information; or
   c. Meet with the applicant, representative, or household member.
4. Date of application. The date of application is the date application is received by the Administration or its designee either on-line or at a location listed in subsection (1).
5. Complete application form. The Administration or its designee shall consider an application complete when all questions are answered. The same person as listed under subsection (2) is the person that must sign the completed application. The application shall be witnessed and signed by a third party if the individual signing the application signs with a mark.
6. Assistance with application. The Administration or its designee shall allow a person of the applicant's choice to accompany, assist, and represent the applicant in the application process.

Historical Note
Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-302 repealed, new Section R9-22-302 adopted effective November 20, 1984 (Supp. 84-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section reserved by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4). New Section made by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014; the adoption of this Section was slated to be codified in Supp. 14-1 but due to a clerical error, was not published. The new Section was published in Supp. 20-4 and no additional amendments have been made to this Section since January 7, 2014 (Supp. 20-4).

R9-22-303. Prior Quarter Eligibility

A. Subject to CMS approval, prior quarter coverage eligibility shall be limited to applicants who meet the requirements in subsection (B) and who also:
1. Are eligible during any of the three months prior to application; and
2. Received one or more covered services described in 9 A.A.C. 22, Article 2 and Article 12, and 9 A.A.C. 28, Article 2 during the month; and
3. Would have qualified for Medicaid at the time services were received if the person had applied regardless of whether the person is alive when the application is made.

B. Prior quarter coverage eligibility is limited to applicants who are:
1. Under the age of 19, or
2. Pregnant, or

3. In the 60 day post-partum period beginning with the last day of the pregnancy.

Historical Note

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-303 repealed, new Section R9-22-303 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (A) effective February 26, 1988 (Supp. 88-1). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section made by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4). Amended by final rulemaking at 25 A.A.R. 1849, with an immediate effective date of July 1, 2019 (Supp. 19-3).

R9-22-304. Verification of Eligibility Information

A. Except as provided in subsection (E), if information provided by or on behalf of an applicant or member on an application, renewal form or otherwise does not conflict with information obtained by the agency through an electronic data match, the Administration or its designee shall determine or renew eligibility based on such information.

B. The Administration or its designee shall not require an applicant, member, or representative to provide additional verification unless the verification cannot be obtained electronically or the verification obtained electronically conflicts with information provided by or on behalf of the applicant or member.

C. If information provided by or on behalf of an applicant or member does conflict with information obtained through an electronic data match, the applicant or member shall provide the Administration or its designee with information or documentation necessary to verify eligibility, including evidence originating from an agency, organization, or an individual with actual knowledge of the information.

D. Income information obtained through an electronic data match shall be considered reasonably compatible with income information provided by or on behalf of an individual if both meet or both exceed the applicable income limit.

E. The Administration or its designee shall not accept the applicant's or member's statement by itself as verification of:

1. SSN;
2. Qualified alien status, except as described under 42 USC 1320b-7(d)(4)(A); or
3. Citizenship, except as described under 42 USC 1396a(ee)(1).

F. The Administration or its designee shall give an applicant or member at least 10 days from the date of a written or electronic request for information to provide required verification. The Administration or its designee may deny the application or discontinue eligibility if an applicant or a member does not provide the required information timely.

Historical Note

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-304 repealed, new Section R9-22-304 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-304 made by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-305. Eligibility Requirements

As a condition of eligibility, the Administration or its designee must require applicants, and members to do the following:

1. Take all necessary steps to obtain any annuities, pensions, retirement, disability benefits to which they are entitled, unless they can show good cause for not doing so.
2. Furnish a SSN under 42 CFR 435.910 and 435.920, or in the absence of an SSN, provide proof of a submitted application of SSN. The Administration or its designee will assist in obtaining or verifying the applicant's SSN under 42 CFR 435.910 if an applicant cannot recall the applicant's SSN or has not been issued a SSN. An applicant is not required to furnish an SSN if the applicant is not able to legally obtain a SSN. The Administration or its designee shall determine eligibility notwithstanding the applicant's lack of a SSN, if the applicant is cooperating with the Administration or its designee to obtain a SSN and obtain a SSN prior to the next scheduled review of eligibility.
3. Provide proof of residency of Arizona. An applicant or a member is not eligible unless the applicant or member is a resident of Arizona under 42 CFR 435.403 effective October 1, 2012, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
4. A written declaration, signed under penalty of perjury, must be provided for each person for whom benefits are being sought stating whether the individual is a citizen or national of the United States, and, if that individual is not a citizen or national of the United States, that the individual is a qualified alien. The declaration must be provided by the individual for whom eligibility is being sought or an adult member of the individual's family or household.
5. Each applicant who claims qualified alien status must provide either:
   a. Alien registration documentation or other proof of immigration registration from the Immigration and Naturalization Service that contains the individual's alien admission number or alien file number (or numbers if the individual has more than one number), or
   b. Other documents that the Administration or its designee accepts as evidence of immigration status, such as:
      i. A Form I-94 Departure Record issued by the USCIS,
      ii. A Foreign Passport,
      iii. A USCIS Parole Notice,
      iv. A Victim of Trafficking Certification or Eligibility Letter issued by the US DHHS Office of Refugee Resettlement,
      v. Other documentation consistent with 42 CFR 435.406 or 435.407.
   c. Sufficient information for the Administration or its designee to obtain electronic verification of immigration status from the USCIS.
6. If a person for whom eligibility is being sought, states that they are an alien, that person is not required to comply with subsections (4) and (5); however, if they do not comply with those sections, and if they meet all other eligibility criteria, benefits will be limited to those necessary to treat an emergency medical condition.

Historical Note

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-305 repealed, new Section R9-22-305 adopted effective November 20, 1984 (Supp. 84-6). Amended subsection (A) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (A) effective February 26, 1988 (Supp. 88-1). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-305 made by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-306. Administration, Administration's designee or Member Responsibilities

A. The Administration or its designee is responsible for the following:

1. The Administration or its designee shall determine eligibility within 90 days for an applicant applying on the basis of disability and 45 days for all other applicants, unless:
   a. The agency cannot reach a decision because the applicant or an examining physician delays or fails to take a required action, or
   b. When there is an administrative or other emergency beyond the agency's control.
2. If an applicant dies while an application is pending, the Administration or its designee shall complete an eligibility determination for the deceased applicant.
3. The Administration or its designee shall complete an eligibility determination on an application filed on behalf of a deceased applicant.
4. During the application process the Administration or its designee shall provide information to the applicant or member explaining the requirements to:
   a. Cooperate with DCSS in establishing paternity and enforcing medical support, except in circumstances when good cause under 42 CFR 433.147 exists for not cooperating;
   b. Establish good cause for not cooperating with DCSS in establishing paternity and enforcing medical support, when applicable;
   c. Report a change listed under subsection (B)(3)(c) no later than 10 days from the date the applicant or member knows of the change;
   d. Send to the Administration or its designee any medical support payments resulting from a court order;
   e. Cooperate with the Administration or its designee's assignment of rights and securing payments received from any liable party for a member's medical care.
5. Offer to help the applicant or member to complete the application form and to obtain the required verification;
6. Provide the applicant or member with information explaining:
   a. The eligibility and verification requirements for AHCCCS medical coverage;
   b. The requirement that the applicant or member obtain and provide a SSN to the Administration or its designee;
   c. How the Administration or its designee uses the SSN;
7. Explain to the applicant or member the practice of exchange of eligibility and income information through the electronic service established by the Secretary;
8. Explain to the applicant and member the right to appeal an adverse action under R9-22-315;
9. Use any information provided by the member to complete data matches with potentially liable parties;
10. Explain the eligibility review process;
11. Explain the AHCCCS pre-enrollment process;
12. Use the Systematic Alien Verification for Entitlements (SAVE) process to verify qualified alien status;
13. Provide information regarding the penalties for perjury and fraud on the application;
14. Review any verification items provided by the applicant or member and inform the member of any additional verification items and time-frames within which the applicant or member shall provide information to the Administration or its designee;
15. Explain to the applicant or member the applicant's and member's responsibilities under subsection (B);
16. Transfer the applicant's information to other insurance affordability programs as described under 42 CFR 435.1200(e) when the applicant does not qualify for Medicaid;
17. Attain a written record of a collateral contact: such as a verbal statement from a representative of an agency or organization, or an individual with actual knowledge of the information;
18. Complete a review of eligibility:
   a. Any time there is a change in a member's circumstance that may affect eligibility,
   b. For a member approved for the MED program under R9-22-1435 through R9-22-1440 before the end of the six-month eligibility period,
   c. Of each member's continued eligibility for AHCCCS medical coverage once every 12 months;
19. The Administration or its designee shall discontinue eligibility and notify the member of the discontinuance under R9-22-307 if the member:
   a. Fails to comply with the review of eligibility,
   b. Fails to comply under 42 CFR 433.148 with the requirements and conditions of eligibility under this Article regarding assignment of rights and cooperation of establishing paternity and obtaining medical support, or
   c. Does not meet the eligibility requirements; and
20. Redetermine eligibility for a person terminated from the SSI cash program.
   a. Continuation of AHCCCS medical coverage. The Administration shall continue AHCCCS medical coverage for a person terminated from the SSI cash program until a redetermination of eligibility is completed.
   b. Coverage group screening. Before terminating a person from the SSI cash program, the Administration shall determine if the person is eligible for coverage as a person described in A.R.S. §§ 36-2901(6)(a)(i) through (vi) or 36-2934.
   c. Eligibility decision.
      i. If a person is eligible under this Article or 9 A.A.C. 28, Article 4, the Administration shall send a notice informing the applicant that AHCCCS medical coverage is approved.
      ii. If a person is ineligible, the Administration shall send a notice to deny AHCCCS medical coverage.

B. Applicant and Member Responsibilities.

1. An applicant or a member shall authorize the Administration or its designee to obtain verification for initial eligibility or continuation of eligibility.
2. As a condition of eligibility, an applicant or a member shall:
   a. Provide the Administration or its designee with complete and truthful information. The Administration or its designee may deny an application or discontinue eligibility if:
      i. The applicant or member fails to provide information necessary for initial or continuing eligibility;
      ii. The applicant or member fails to provide the Administration or its designee with written authorization or electronic authorization to permit the Administration or its designee to obtain necessary initial or continuing eligibility verification;
      iii. The applicant or member fails to provide verification under R9-22-304 after the Administration or its designee made an effort to obtain the necessary verification but has not obtained the necessary information; or
      iv. The applicant or member does not assist the Administration or its designee in resolving incomplete, inconsistent, or unclear information that is necessary for initial or continuing eligibility;
   b. Cooperate with the Division of Child Support Services (DCSS) in establishing paternity and enforcing medical support obligations when requested unless good cause exists for not cooperating under 42 CFR 433.147 as of October 1, 2012, which is incorporated by reference, on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol St., NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments. The Administration or its designee shall not deny AHCCCS eligibility to an applicant who would otherwise be eligible, is a minor child, and whose parent or legal representative does not cooperate with the medical support requirements or first- and third-party liability requirements under Article 10 of this Chapter; and
   c. Provide the information needed to pursue third party coverage for medical care, such as:
      i. Name of policyholder,
      ii. Policyholder's relationship to the applicant or member,
      iii. Name and address of the insurance company, and
      iv. Policy number.
3. A member or an applicant shall:
   a. Send to the Administration or its designee any medical support payments received while the member is eligible that result from a medical support order;
   b. Cooperate with the Administration or its designee regarding any issues arising as a result of Eligibility Quality Control described under A.R.S. § 36-2903.01; and
   c. Inform the Administration or its designee of the following changes within 10 days from the date the applicant or member knows of a change:
      i. In address;
      ii. In the household's composition;
      iii. In income;
      iv. In resources, when required under the Medical Expense Deduction (MED) program;
      v. In Arizona state residency;
      vi. In citizenship or immigrant status;
      vii. In first- or third-party liability that may contribute to the payment of all or a portion of the person's medical costs;
      viii. That may affect the member's or applicant's eligibility, including a change in a woman's pregnancy status;
      ix. Death;
      x. Change in marital status; or
      xi. Change in school attendance.
4. As a condition of eligibility, an applicant or a member shall cooperate with the assignment of rights as required by R9-22-311. If the applicant or member receives medical care and services for which a first or third party is or may be liable, the applicant or member shall cooperate with the Administration or its designee in assisting, identifying and providing information to assist the Administration or its designee in pursuing any first or third party who is or may be liable to pay for medical care and services.
5. A pregnant woman under A.R.S. § 36-2901(6)(a)(ii) is not required to provide the Administration or its designee with information regarding paternity or medical support from a father of a child born out of wedlock.

C. Administration or its designee responsibilities at Eligibility Renewal.

1. The Administration or its designee shall renew eligibility without requiring information from the individual if able to do so based on reliable information available to the agency, including through an electronic data match. If able to renew eligibility based on such information, the Administration or its designee shall send the member notice of:
   a. The eligibility determination; and
   b. The member's requirement to notify the Administration or its designee if any of the information contained in the renewal notice is inaccurate.
2. If unable to renew eligibility, the Administration or its designee shall:
   a. Send a pre-populated renewal form listing the information needed to renew eligibility,
   b. Give the member 30 days from the date of the renewal form to submit the signed renewal form and the information needed,
   c. Send the member notice of the renewal decision under R9-22-312 or R9-22-1413(B) as applicable.

Historical Note

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-306 repealed, new Section R9-22-306 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (B), paragraphs (1) and (6) effective October 1, 1986 (Supp. 86-5). Amended subsection (B), paragraph (1) and added a new subsection (N) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (B) effective October 1, 1987; amended subsection (N) effective December 22, 1987 (Supp. 87-4). Amended effective April 13, 1990 (Supp.

90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-306 made by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-307. Approval or Denial of Eligibility

A. Approval. If the applicant meets all the eligibility requirements and conditions of eligibility of this Article, the Administration or its designee shall approve the application and provide the applicant with an approval notice. The approval notice shall contain:
1. The name of each approved applicant,
2. The effective date of eligibility for each approved applicant,
3. The reason and the legal citations if a member is approved for only emergency medical services, and
4. The applicant's right to appeal the decision.

B. Denial. If an applicant fails to meet the eligibility requirements or conditions of eligibility of this Article, the Administration or its designee shall deny the application and provide the applicant with a denial notice. The denial notice shall contain:
1. The name of each ineligible applicant,
2. The specific reason why the applicant is ineligible,
3. The income and resource calculations for the applicant compared to the income or resource standards for eligibility when the reason for the denial is due to the applicant's income or resources exceeding the applicable standard,
4. The legal citations supporting the reason for the ineligibility,
5. The location where the applicant can review the legal citations,
6. The date of the application being denied; and
7. The applicant's right to appeal the decision and request a hearing.

Historical Note

Adopted effective August 30, 1982 (Supp. 82-4). Amended subsections (A) and (C), added subsection (G) and (H) effective October 1, 1983 (Supp. 83-5). Former Section R9-22-307 repealed, new Section R9-22-307 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (A) as an emergency effective December 4, 1985 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-6). Permanent amendment to subsection (A) effective February 5, 1986 (Supp. 86-1). Amended subsections (E) and (F) effective October 1, 1986 (Supp. 86-5). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (A) effective February 26, 1988 (Supp. 88-1). Amended effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 8, 1996; filed with the Office of the Secretary of State November 6, 1996 (Supp. 96-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-307 made by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-308. Reinstating Eligibility

The Administration or its designee shall reopen an application or reinstate eligibility of a member when any of the following conditions are met:
1. The denial or discontinuance of eligibility was due to an administrative error,
2. The discontinuance of eligibility was due to noncompliance with a condition of eligibility and the applicant or member complies prior to the effective date of the discontinuance,
3. The member informs the Administration or its designee of a change of circumstances prior to the effective date of the discontinuance, that would allow for continued eligibility, or
4. Following a discontinuance, the member qualifies for continuation of medical coverage pending an appeal.

Historical Note

Adopted effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1983 (Supp. 83-5). Amended by adding subsection (C) effective March 2, 1984 (Supp. 84-2). Former Section R9-22-308 repealed, new Section R9-22-308 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Change in heading only effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-308 made by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-309. Confidentiality and Safeguarding of Information

The Administration or its designee shall maintain the confidentiality of an applicant or member's records and limit the release of safeguarded information under R9-22-512 and 6 A.A.C. 12, Article 1. In the event of a conflict between R9-22-512 and 6 A.A.C. 12, Article 1, R9-22-512 prevails.

Historical Note

Adopted effective August 30, 1984 (Supp. 82-4). Amended (D)(1)(d) effective October 1, 1983 (Supp. 83-5). Former Section R9-22-309 repealed, new Section R9-22-309 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Amended subsection (F) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsections (A), (B) and (C) effective October 1, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2). Amended effective May 30, 1989 (Supp. 89-2). Amended effective

April 13, 1990 (Supp. 90-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-309 made by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-310. Ineligible Person

A person is not eligible for AHCCCS medical coverage if the person is:

1. An inmate of a public institution, or
2. Over age 64 and is residing in an Institution for Mental Disease under 42 CFR 435.1009 except as allowed in 42 USC 1396d(h) or as allowed under the Administration's Section 1115 waiver.

Historical Note

Adopted effective August 30, 1982 (Supp. 82-4). Amended (B)(7) and added subsections (C) and (D) effective October 1, 1983 (Supp. 83-5). Former Section R9-22-310 repealed, new Section R9-22-310 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (B) and deleted subsection (C) effective October 1, 1986 (Supp. 86-5). Amended subsection (B), paragraph (7) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (B) effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-310 made by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-311. Assignment of Rights Under Operation of Law

By operation of law and under A.R.S. § 36-2903, a person determined eligible assigns rights to the system medical benefits to which the person is entitled.

Historical Note

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-311 repealed, new Section R9-22-311 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Change in heading only effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended effective April 13, 1990 (Supp. 90-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-311 made by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-312. Member Notices

A. Contents of notice. The Administration or its designee shall issue a notice by mail, personal delivery, or electronic means when an action is taken regarding a person's eligibility or premiums. The notice shall contain the following information:

1. The date of the notice issued;
2. A statement of the action being taken;
3. The effective date of the action;
4. The specific reason for the intended action;
5. If eligibility is being discontinued due to income in excess of the income standards, the actual figures used in the eligibility determination and the amount by which the person exceeds income standards;
6. If a premium is imposed or increased, the actual figures used in determining the premium amount;
7. The specific law or regulation that supports the action, or a change in federal or state law that requires an action;
8. An explanation of the member's rights to an appeal and continued benefits.

B. Advance notice of changes in eligibility or premiums. "Advance notice" means a notice that is issued to a person at least 10 days before the effective date of the change. Except as specified in subsection (C), advance notice shall be issued whenever the following adverse action is taken:

1. To discontinue or suspend or reduce eligibility or covered services; or
2. To impose a premium or increase a person's premium.

C. The Administration or its designee shall issue a Notice of Adverse Action to a member no later than the effective date of action if:

1. The Administration or its designee receives a request to withdraw;
2. A person provides information that requires termination of eligibility or an increase or imposition of the premium and the person signs a clear written statement waiving advance notice;
3. A person cannot be located and mail sent to that person has been returned as undeliverable;
4. A person has been admitted to a public institution where the person is ineligible under R9-22-310;
5. A person has been approved for Medicaid or CHIP in another state; or
6. The Administration or its designee has information that confirms the death of the person.

Historical Note

Adopted effective August 30, 1982 (Supp. 82-4). Amended subsections (A) and (B), added subsection (D) effective October 1, 1983 (Supp. 83-5). Former Section R9-22-312 repealed, new Section R9-22-312 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (A) effective October 1, 1986 (Supp. 86-5). Change in heading only effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (A) effective October 1, 1987 (Supp. 87-4). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-312 made by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-313. Withdrawal of Application

A. An applicant may withdraw an application at any time before the Administration or its designee completes an eligibility determination by making an oral or written request for withdrawal to the Administration or its designee and stating the reason for withdrawal.

B. If an applicant orally requests withdrawal of the application, the Administration or its designee shall document the:

1. Date of the request,
2. Name of the applicant for whom the withdrawal applies, and

3. Reason for the withdrawal.

C. An applicant may withdraw an application in writing by:
1. Completing an Administration-approved voluntary withdrawal form; or
2. Submitting a written, signed, and dated request to withdraw the application.

D. The effective date of the withdrawal is the date of the application.

E. If an applicant requests to withdraw an application, the Administration or its designee shall:
1. Deny the application, and
2. Notify the applicant of the denial following the notice requirements under R9-22-307.

Historical Note

Adopted effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1983 (Supp. 83-5). Amended subsections (C) and (D) as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended subsections (D) and (E) as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. Former Section R9-22-313 repealed, new Section R9-22-313 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Amended subsections (B), (C), (E) and (G) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsections (B) and (C) effective December 22, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Amended effective December 13, 1993 (Supp. 93-4). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 8, 1996; filed with the Office of the Secretary of State November 6, 1996 (Supp. 96-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-313 made by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-314. Withdrawal from AHCCCS Medical Coverage

A. A member may withdraw from AHCCCS medical coverage at any time by giving oral or written notice of withdrawal to the Administration or its designee. The member or the member's legal or authorized representative shall provide the Administration or its designee with:
1. The reason for the withdrawal,
2. The date the notice is effective, and
3. The name of the member for whom AHCCCS medical coverage is being withdrawn.

B. If a notice of withdrawal does not identify specific members the Administration or its designee shall discontinue eligibility for any members that the person submitting the withdrawal has legal authority to act on behalf of.

C. The Administration or its designee shall notify the member of the discontinuance as required by R9-22-312.

Historical Note

Adopted effective August 30, 1982 (Supp. 82-4). Amended subsection (A) and added subsection (F) as an emergency effective February 28, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Amended subsection (A) and added subsection (F) as a permanent rule effective May 16, 1983; text of the amended rule identical to the emergency (Supp. 83-3). Former Section R9-22-314 repealed, new Section R9-22-314 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended effective May 30, 1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-314 made by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-315. Notice of Adverse Action

A. Adverse actions. An applicant or member may appeal, as described under Chapter 34, by requesting a hearing from the Administration or its designee concerning any of the following adverse actions:
1. Complete or partial denial of eligibility under R9-22-307 and R9-22-313(E);
2. Suspension, termination, or reduction of AHCCCS medical coverage under R9-22-307, R9-22-312 and R9-22-314;
3. Delay in the eligibility determination beyond the timeframes under this Article;
4. The imposition of or increase in a premium or copayment; or
5. The effective date of eligibility.

B. Notice of Adverse Action. The Administration or its designee shall personally deliver or send, by mail, or electronic means a Notice of Adverse Action to the person affected by the action. For the purpose of this Section, the date of the Notice of Adverse Action shall be the date of personal delivery to the applicant or the postmark date, if mailed.

C. Automatic change and hearing rights.
1. An applicant or a member is not entitled to a hearing if the sole issue is a federal or state law requiring an automatic change adversely affecting some or all recipients.
2. An applicant or a member is entitled to a hearing if a federal or state law requires an automatic change and the applicant or member timely files an appeal that alleges a misapplication of the facts to the law.

Historical Note

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-315 repealed, new Section R9-22-315 adopted effective November 20, 1984 (Supp. 84-6). Repealed effective October 1, 1985 (Supp. 85-5). New Section R9-22-315 adopted effective February 5, 1986 (Supp. 86-1). Amended effective February 26, 1988 (Supp. 88-1). Amended effective April 13, 1990 (Supp. 90-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-315 made by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-316. Exemptions from Sponsor Deemed Income

A. An applicant shall provide proof to the Administration or its designee when claiming an exemption from sponsor deemed income.

B. The Administration or its designee shall grant an exemption from deeming a sponsor's income for a Lawful Permanent Resident applicant if the applicant:
1. Adjusted immigration status to Lawful Permanent Resident from status as a refugee or asylee;
2. Is the spouse or dependent child of the sponsor and lives with the sponsor;
3. Is indigent as specified in subsection (C);
4. Is a victim of domestic violence or extreme cruelty as specified in subsection (D); or
5. Has acquired 40 qualified quarters of work credit based on earnings as specified in subsection (E).

C. Exemption from sponsor deeming based on indigence.
1. The Administration or its designee shall consider the applicant indigent and grant an exemption from sponsor deemed income for an applicant, for a period of 12 months beginning with the first month of eligibility if all the following are met:
   a. An applicant is indigent if all of the following are met:
      i. The applicant does not reside with the applicant's sponsor;
      ii. The applicant does not receive free room and board; and
      iii. The applicant's total gross income including monies received from the sponsor and the value of any vendor payments received for food, utilities, or shelter does not exceed 100% of the FPL for the size of the income group.
2. The Administration or its designee shall send a notice under 8 U.S.C. 1631(e)(2) to the Attorney General's Office when approving an applicant who is exempt from sponsor deemed income due to indigence.

D. The Administration or its designee shall grant an exemption from sponsor deemed income for an applicant who is a victim of domestic violence or extreme cruelty under 8 CFR 204.2 for a period of 12 months beginning with the first month of eligibility. The Administration or its designee shall redetermine the exemption status at each renewal.
1. The Administration or its designee considers an applicant to be a victim of domestic violence or extreme cruelty when all of the following are met:
   a. The applicant is the victim, the parent of a child victim, or the child of a parent victim;
   b. The perpetrator of the domestic violence or extreme cruelty was the spouse or parent of the victim or other family member related by blood, marriage or adoption to the victim;
   c. The perpetrator was residing in the same household as the victim when the abuse occurred;
   d. The abuse occurred in the United States;
   e. The applicant did not participate in the domestic violence or cruelty; and
   f. The victim does not currently live with the perpetrator.
2. The applicant shall provide proof that the applicant or the applicant's child is a victim of domestic violence or extreme cruelty by presenting one of the following:
   a. USCIS form I-360 Petition for Ameriasian, Widow, or Special Immigrant;
   b. USCIS form I-797 USCIS approval of the I-360 petition;
   c. Reports or affidavits concerning the domestic violence or cruelty documented by police, judges, or other court officials, medical personnel, school officials, clergy, social workers, counseling or mental health personnel, or other social service agency personnel;
   d. Legal documentation, such as an order of protection against the perpetrator or an order convicting the perpetrator of committing an act of domestic violence or extreme cruelty that chronicles the existence of domestic violence or extreme cruelty;
   e. Evidence that indicates that the applicant sought safe haven in a battered women's shelter or similar refuge because of the domestic violence or extreme cruelty against the applicant or the applicant's child; or
   f. Photographs of the applicant or applicant's child showing visible injury.

E. The Administration or its designee shall grant an exemption from sponsor deemed income for an applicant who has reached 40 qualifying quarters of work credit.
1. The Administration or its designee shall not count quarters credited after January 1, 1997 that were earned while the applicant was receiving any federal means-tested benefits.
2. The Administration or its designee shall not count the 40 qualifying quarters of work credit unless the credited quarters are:
   a. Quarters that the applicant worked;
   b. Quarters worked by the applicant's spouse or deceased spouse during their marriage; or
   c. Quarters worked by the applicant's parents when the applicant was under age 18.

Historical Note

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-316 repealed, new Section R9-22-316 adopted as an emergency effective February 9, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Former Section R9-22-316 repealed, new Section R9-22-316 adopted as a permanent rule effective May 16, 1983; text of permanent rule identical to the emergency (Supp. 83-3). Amended effective October 1, 1983 (Supp. 83-5). Correction subsection (A), paragraph (1) amended effective October 1, 1983, (Supp. 83-6). Amended as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. Former Section R9-22-316 repealed, new Section R9-22-316 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (C) effective October 1986 (Supp. 86-5). Change in heading only effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-316 made by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-317. Sponsor Deemed Income

A. The Administration or its designee shall use income of a USCIS sponsor to determine eligibility for a non-citizen applicant, whether or not the income is available, to the non-citizen applicant unless exempt under R9-22-316.

B. Counting the income from a sponsor.
1. This Section applies to non-citizen applicants who:
   a. Are Lawful Permanent Residents under 8 CFR 101.3;
   b. Applied for Lawful Permanent Resident Status on or after December 19, 1997;
   c. Are sponsored by an individual who signed a USCIS I-864 Affidavit of Support; and
   d. Are eligible for full AHCCCS medical coverage.
2. Sponsor deemed income shall be considered the income of the non-citizen applicant only.
3. The Administration or its designee shall not use the provisions of this Section when:
   a. The applicant becomes a naturalized U.S. citizen;
   b. The applicant qualifies for an exemption listed in R9-22-316; or
   c. The sponsor dies.

C. Determining income from a sponsor.
1. For an applicant who is exempt from sponsor deeming under R9-22-316, only cash contributions actually received from the sponsor are countable income to the applicant.
2. For an applicant to whom the sponsor's income is deemed, the Administration or its designee shall exclude any cash contributions received from the sponsor.

D. Calculation of income from a sponsor.
1. The Administration or its designee shall include the total gross income of the sponsor and the sponsor's spouse, when living with the sponsor;
2. The Administration or its designee shall subtract an amount equal to 100% of the FPL for the sponsor's household size from the total gross income under (D)(1); and
3. The amount calculated under subsection (D)(2) is deemed as income to the applicant for purposes of determining eligibility.

Historical Note
Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-317 repealed, new Section R9-22-317 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1986 (Supp. 86-5). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-317 made by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-318. Repealed

Historical Note
Adopted effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1983 (Supp. 83-5). Amended as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. Former Section R9-22-318 repealed, new Section R9-22-318 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (A) and added subsection (C) effective October 1, 1986 (Supp. 86-5). Amended subsection (A) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (B) effective October 1, 1987; amended subsection (A) effective December 22, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended effective December 13, 1993 (Supp. 93-4). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 8, 1996; filed with the Office of the Secretary of State November 6, 1996 (Supp. 96-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

R9-22-319. Repealed

Historical Note
Adopted effective August 30, 1982 (Supp. 82-4). Amended as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. Former Section R9-22-319 repealed, new Section R9-22-319 adopted effective November 20, 1984 (Supp. 84-6). Amended effective May 30, 1989 (Supp. 89-2). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

R9-22-320. Repealed

Historical Note
Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-320 repealed, new Section R9-22-320 adopted effective November 20, 1984 (Supp. 84-6). Amended effective April 13, 1990 (Supp. 90-2). Repealed effective December 13, 1993 (Supp. 93-4).

R9-22-321. Repealed

Historical Note
Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-321 repealed, new Section R9-22-321 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsections (B) through (E) effective October 1, 1986 (Supp. 86-5). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended effective October 1, 1987 (Supp. 87-4). Amended subsections (B) and (D) effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

R9-22-322. Repealed

Historical Note
Adopted effective August 30, 1982 (Supp. 82-4). Amended as an emergency effective May 27, 1983 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-3). Former Section R9-22-322 repealed, new Section R9-

22-322 adopted effective October 1, 1983 (Supp. 83-5). Amended as an emergency effective May 18, 1984 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. Former Section R9-22-322 repealed, new Section R9-22-322 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Change in heading only effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended effective September 29, 1992 (Supp. 92-3). Amended December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

R9-22-323. Repealed

Historical Note

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-323 repealed, new Section R9-22-323 adopted effective October 1, 1983 (Supp. 83-5). Amended as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. Former Section R9-22-323 repealed, new Section R9-22-323 adopted effective November 20, 1984 Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsections (B) through (D) effective October 1, 1986 (Supp. 86-5). Amended subsections (A), (B) and (D) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsections (B), (D) and (E) effective October 1, 1987 (Supp. 87-4). Amended subsections (B) and (D) effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

R9-22-324. Repealed

Historical Note

Adopted as an emergency effective July 27, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R9-22-324 adopted as an emergency renumbered as Section R9-22-327. New Section R9-22-324 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-324 repealed, former Section R9-22-323 renumbered as Section R9-22-324 and adopted as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Former Section R9-22-324 repealed, new Section R9-22-324 adopted as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. Former Section R9-22-324 repealed, new Section R9-22-324 adopted effective November 20, 1984 (Supp. 84-6). Change in heading only effective October 1, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

R9-22-325. Repealed

Historical Note

Adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-325 repealed, new Section R9-22-325 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1987 (Supp. 87-4). Amended effective December 13, 1993 (Sup. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

R9-22-326. Repealed

Historical Note

Adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-326 repealed, new Section R9-22-326 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (A) effective October 1, 1986 (Supp. 86-5). Amended subsection (A) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Change in heading only effective October 1, 1987 (Supp. 87-4). Amended subsection (A) effective May 30, 1989 (Supp. 89-2). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

R9-22-327. Repealed

Historical Note

Former Section R9-22-324 adopted as an emergency effective July 27, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days renumbered as Section R9-22-327 and adopted as a permanent rule effective October 1, 1983 (Supp. 83-5). Former Section R9-22-327 repealed, new Section R9-22-327 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsections (A), (D), (E), (G), (H), and (I) effective October 1, 1986 (Supp. 86-5). Amended subsection (D) and added a new subsection (J) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsections (A) and (E) effective October 1, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

R9-22-328. Repealed

Historical Note

Adopted as an emergency effective October 6, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Emergency Expired. New Section R9-22-328 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsections (A) and (E) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (D) effective October 1, 1987 (Supp. 87-4). Amended subsection (D) effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

R9-22-329. Repealed

Historical Note

Adopted as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Adopted as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. New Section R9-22-329 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (B) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

R9-22-330. Repealed

Historical Note

Adopted as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. New Section R9-22-330 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (A) effective October 1, 1986 (Supp. 86-5). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (A) effective October 1, 1987 (Supp. 87-4). Amended subsection (A) effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

R9-22-331. Repealed

Historical Note

Adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended effective October 1, 1987 (Supp. 87-4). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

R9-22-332. Repealed

Historical Note

Adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1,1985 (Supp. 85-5). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

R9-22-333. Repealed

Historical Note

Adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

R9-22-334. Repealed

Historical Note

Adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

R9-22-335. Repealed

Historical Note

Adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended by adding subsection (C) effective October 1, 1986 (Supp. 86-5). Amended subsection (B) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

R9-22-336. Repealed

Historical Note

Adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended by adding subsection (C) effective September 16, 1987 (Supp. 87-3). Amended subsection (A) effective October 1, 1987 (Supp. 87-4). Amended effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

R9-22-337. Repealed

Historical Note

Adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp 86-5). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Correction to subsection (B), paragraph (1) (Supp. 87-3). Amended subsection (C) effective December 22, 1987 (Supp. 87-4). Amended subsection (C) effective December 22, 1987 (Supp. 87-4). Amended effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

R9-22-338. Repealed

Historical Note

Adopted effective November 20, 1984 (Supp. 84-6). Heading changed effective October 1, 1985 (Supp. 85-5). Change in heading only effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

R9-22-339. Repealed

Historical Note

Adopted effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Amended subsection (B) effective October 1, 1987 (Supp. 87-4). Amended effective January 14, 1997 (Supp. 97-1). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

R9-22-340. Reserved

Historical Note

Adopted effective October 1, 1986 (Supp. 86-5). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

R9-22-341. Repealed

Historical Note
Adopted effective March 1, 1987, filed December 31, 1986 (Supp. 86-6). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

R9-22-342. Repealed

Historical Note
Adopted effective September 29, 1992 (Supp. 92-3). Amended effective September 22, 1997 (Supp. 97-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

R9-22-343. Repealed

Historical Note
Adopted under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

R9-22-344. Repealed

Historical Note
Adopted under an exemption from the provisions of the Administrative Procedure Act, effective October 8, 1996; filed with the Office of the Secretary of State November 6, 1996 (Supp. 96-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

ARTICLE 4. PENALTY FOR OBTAINING ELIGIBILITY BY FRAUD

R9-22-401. Definitions
Definitions. The following definitions apply specifically to terms used within this Article:

"Amounts incurred by the system" include capitation payments, costs incurred by any contractor in excess of capitation, reinsurance, and other administrative, legal or investigative costs associated with a person who obtained eligibility contrary to A.R.S. §§ 36-2905.04 and/or A.R.S. § 36-2991.

"Application for eligibility" means any request for benefits administered by AHCCCS under the authority of A.R.S. Title 36, Chapter 29, including applications for presumptive eligibility submitted to hospitals as described under Article 16 of this Chapter.

"Penalty" means an amount not to exceed the amounts incurred by the system during any time period that the person would have been ineligible for benefits but for the false or fraudulent information provided on the application for eligibility. A penalty does not include, and does not need to be reduced by, the amount of any overpayments that AHCCCS may be entitled to recoup from a person who violated A.R.S. § 36-2905.04 and/or A.R.S. § 36-2991.

Historical Note
Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-401 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective January 31, 1986 (Supp. 86-1). Amended effective January 31, 1997 (Supp. 97-1). Amended by final rulemaking at 5 A.A.R. 867, effective March 4, 1999 (Supp. 99-1). Section repealed by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). New Section made by final rulemaking at 22 A.A.R. 3191, effective October 19, 2016 (Supp. 16-4).

R9-22-402. Determining the Amount of the Penalty

A. AHCCCS shall determine the amount of a penalty according to A.R.S. § 36-2905.04(B) or A.R.S. § 36-2991(B), whichever is applicable, and this Article.

B. In addition to any penalty imposed pursuant to ARS §§ 36-2905.04 or 36-2991, and this Article, the Administration may also recoup from the person the amounts incurred by the system as a part of the notice and appeal process described in this Article.

Historical Note
Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-402 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective January 31, 1986 (Supp. 86-1). Amended effective January 14, 1997 (Supp. 97-1). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Section repealed by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). New Section made by final rulemaking at 22 A.A.R. 3191, effective October 19, 2016 (Supp. 16-4).

R9-22-403. Mitigating and Aggravating Circumstances

A. AHCCCS shall consider any of the following to be mitigating circumstances when determining the amount of a penalty for obtaining eligibility by fraud.

1. Degree of culpability. The degree of culpability of a person is a mitigating circumstance if the person did not intend to provide or cause to be provided false information on the application for eligibility but was negligent as to the truthfulness of the information provided.
2. Prior Offenses. At the time of the submittal of the application the person:
   a. Did not have any prior criminal convictions; and
   b. Had not been held civilly liable for defrauding a public assistance program.
3. Financial condition. The financial condition of a person who violates A.R.S. §§ 36-2905.04 or 36-2991 is a mitigating circumstance if the imposition of a penalty without reduction will render the person incapable of obtaining necessities of life such as food, clothing, and shelter. AHCCCS may consider the resources available to the person when determining the amount of the penalty.
4. Other matters as justice may require. AHCCCS shall take into account other circumstances of a mitigating nature, if in the interest of justice; the circumstances require a reduction of the penalty.

B. AHCCCS shall consider any of the following to be aggravating circumstances when determining the amount of a penalty for obtaining eligibility by fraud.

1. Degree of culpability. The degree of culpability of a person who provides or causes to be provided false information on the application for eligibility is an aggravating circumstance if the person knows or had reason to know that the information provided on the application for eligibility was false, or the person failed to correct the false information prior to AHCCCS incurring a financial loss as a result of the application for eligibility.

36-2903.01. Additional powers and duties; report; definition

A. The director of the Arizona health care cost containment system administration may adopt rules that provide that the system may withhold or forfeit payments to be made to a noncontracting provider by the system if the noncontracting provider fails to comply with this article, the provider agreement or rules that are adopted pursuant to this article and that relate to the specific services rendered for which a claim for payment is made.

B. The director shall:

1. Prescribe uniform forms to be used by all contractors. The rules shall require a written and signed application by the applicant or an applicant's authorized representative, or, if the person is incompetent or incapacitated, a family member or a person acting responsibly for the applicant may obtain a signature or a reasonable facsimile and file the application as prescribed by the administration.

2. Enter into an interagency agreement with the department to establish a streamlined eligibility process to determine the eligibility of all persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). At the administration's option, the interagency agreement may allow the administration to determine the eligibility of certain persons, including those defined pursuant to section 36-2901, paragraph 6, subdivision (a).

3. Enter into an intergovernmental agreement with the department to:

(a) Establish an expedited eligibility and enrollment process for all persons who are hospitalized at the time of application.

(b) Establish performance measures and incentives for the department.

(c) Establish the process for management evaluation reviews that the administration shall perform to evaluate the eligibility determination functions performed by the department.

(d) Establish eligibility quality control reviews by the administration.

(e) Require the department to adopt rules, consistent with the rules adopted by the administration for a hearing process, that applicants or members may use for appeals of eligibility determinations or redeterminations.

(f) Establish the department's responsibility to place sufficient eligibility workers at federally qualified health centers to screen for eligibility and at hospital sites and level one trauma centers to ensure that persons seeking hospital services are screened on a timely basis for eligibility for the system, including a process to ensure that applications for the system can be accepted on a twenty-four hour basis, seven days a week.

(g) Withhold payments based on the allowable sanctions for errors in eligibility determinations or redeterminations or failure to meet performance measures required by the intergovernmental agreement.

(h) Recoup from the department all federal fiscal sanctions that result from the department's inaccurate eligibility determinations. The director may offset all or part of a sanction if the department submits a corrective action plan and a strategy to remedy the error.

4. By rule establish a procedure and time frames for the intake of grievances and requests for hearings, for the continuation of benefits and services during the appeal process and for a grievance process at the contractor level. Notwithstanding sections 41-1092.02, 41-1092.03 and 41-1092.05, the administration shall develop rules to establish the procedure and time frame for the informal resolution of grievances and appeals. A grievance that is not related to a claim for payment of system covered services shall be filed in writing with and received by the administration or the prepaid capitated provider or program contractor not later than sixty days after the date of the adverse action, decision or policy implementation being grieved. A grievance that is related to a claim for payment of system covered services must be filed in writing and received by the administration or the prepaid capitated provider or program contractor within twelve months after the date of service, within twelve months

after the date that eligibility is posted or within sixty days after the date of the denial of a timely claim submission, whichever is later. A grievance for the denial of a claim for reimbursement of services may contest the validity of any adverse action, decision, policy implementation or rule that related to or resulted in the full or partial denial of the claim. A policy implementation may be subject to a grievance procedure, but it may not be appealed for a hearing. The administration is not required to participate in a mandatory settlement conference if it is not a real party in interest. In any proceeding before the administration, including a grievance or hearing, persons may represent themselves or be represented by a duly authorized agent who is not charging a fee. A legal entity may be represented by an officer, partner or employee who is specifically authorized by the legal entity to represent it in the particular proceeding.

5. Apply for and accept federal funds available under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) in support of the system. The application made by the director pursuant to this paragraph shall be designed to qualify for federal funding primarily on a prepaid capitated basis. Such funds may be used only for the support of persons defined as eligible pursuant to title XIX of the social security act or the approved section 1115 waiver.

6. At least thirty days before the implementation of a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

7. In addition to the cost sharing requirements specified in subsection D, paragraph 4 of this section:

(a) Charge monthly premiums up to the maximum amount allowed by federal law to all populations of eligible persons who may be charged.

(b) Implement this paragraph to the extent permitted under the federal deficit reduction act of 2005 and other federal laws, subject to the approval of federal waiver authority and to the extent that any changes in the cost sharing requirements under this paragraph would permit this state to receive any enhanced federal matching rate.

C. The director is authorized to apply for any federal funds available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state funds appropriated for the administration and operation of the system may be used as matching funds to secure federal funds pursuant to this subsection.

D. The director may adopt rules or procedures to do the following:

1. Authorize advance payments based on estimated liability to a contractor or a noncontracting provider after the contractor or noncontracting provider has submitted a claim for services and before the claim is ultimately resolved. The rules shall specify that any advance payment shall be conditioned on the execution before payment of a contract with the contractor or noncontracting provider that requires the administration to retain a specified percentage, which shall be at least twenty percent, of the claimed amount as security and that requires repayment to the administration if the administration makes any overpayment.

2. Defer liability, in whole or in part, of contractors for care provided to members who are hospitalized on the date of enrollment or under other circumstances. Payment shall be on a capped fee-for-service basis for services other than hospital services and at the rate established pursuant to subsection G of this section for hospital services or at the rate paid by the health plan, whichever is less.

3. Deputize, in writing, any qualified officer or employee in the administration to perform any act that the director by law is empowered to do or charged with the responsibility of doing, including the authority to issue final administrative decisions pursuant to section 41-1092.08.

4. Notwithstanding any other law, require persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 to be financially responsible for any cost sharing requirements established in a state plan or a section 1115 waiver and approved by the centers for medicare and

medicaid services. Cost sharing requirements may include copayments, coinsurance, deductibles, enrollment fees and monthly premiums for enrolled members, including households with children enrolled in the Arizona long-term care system.

E. The director shall adopt rules that further specify the medical care and hospital services that are covered by the system pursuant to section 36-2907.

F. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection shall consider the differences between rural and urban conditions on the delivery of hospitalization and medical care.

G. For inpatient hospital admissions and outpatient hospital services on and after March 1, 1993, the administration shall adopt rules for the reimbursement of hospitals according to the following procedures:

1. For inpatient hospital stays from March 1, 1993 through September 30, 2014, the administration shall use a prospective tiered per diem methodology, using hospital peer groups if analysis shows that cost differences can be attributed to independently definable features that hospitals within a peer group share. In peer grouping the administration may consider such factors as length of stay differences and labor market variations. If there are no cost differences, the administration shall implement a stop loss-stop gain or similar mechanism. Any stop loss-stop gain or similar mechanism shall ensure that the tiered per diem rates assigned to a hospital do not represent less than ninety percent of its 1990 base year costs or more than one hundred ten percent of its 1990 base year costs, adjusted by an audit factor, during the period of March 1, 1993 through September 30, 1994. The tiered per diem rates set for hospitals shall represent no less than eighty-seven and one-half percent or more than one hundred twelve and one-half percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1994 through September 30, 1995 and no less than eighty-five percent or more than one hundred fifteen percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1995 through September 30, 1996. For the periods after September 30, 1996 no stop loss-stop gain or similar mechanisms shall be in effect. An adjustment in the stop loss-stop gain percentage may be made to ensure that total payments do not increase as a result of this provision. If peer groups are used, the administration shall establish initial peer group designations for each hospital before implementation of the per diem system. The administration may also use a negotiated rate methodology. The tiered per diem methodology may include separate consideration for specialty hospitals that limit their provision of services to specific patient populations, such as rehabilitative patients or children. The initial per diem rates shall be based on hospital claims and encounter data for dates of service November 1, 1990 through October 31, 1991 and processed through May of 1992. The administration may also establish a separate reimbursement methodology for claims with extraordinarily high costs per day that exceed thresholds established by the administration.

2. For rates effective on October 1, 1994, and annually through September 30, 2011, the administration shall adjust tiered per diem payments for inpatient hospital care by the data resources incorporated market basket index for prospective payment system hospitals. For rates effective beginning on October 1, 1999, the administration shall adjust payments to reflect changes in length of stay for the maternity and nursery tiers.

3. Through June 30, 2004, for outpatient hospital services, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to the covered charges. Beginning on July 1, 2004 through June 30, 2005, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to covered charges. If the hospital increases its charges for outpatient services filed with the Arizona department of health services pursuant to chapter 4, article 3 of this title, by more than 4.7 percent for dates of service effective on or after July 1, 2004, the hospital specific cost-to-charge ratio will be reduced by the amount that it exceeds 4.7 percent. If charges exceed 4.7 percent, the effective date of the increased charges will be the effective date of the adjusted Arizona health care cost containment system cost-to-charge ratio. The administration shall develop the methodology for a capped fee-for-service schedule and a statewide cost-to-charge ratio. Any covered outpatient service not included in the capped fee-for-service schedule shall be reimbursed by applying the statewide cost-to-charge ratio that is based on the services not included in the capped fee-for-service schedule. Beginning on July 1, 2005, the administration shall reimburse clean claims with dates of service on or after July 1, 2005, based on the capped fee-for-service schedule or the statewide cost-to-charge

ratio established pursuant to this paragraph. The administration may make additional adjustments to the outpatient hospital rates established pursuant to this section based on other factors, including the number of beds in the hospital, specialty services available to patients and the geographic location of the hospital.

4. Except if submitted under an electronic claims submission system, a hospital bill is considered received for purposes of this paragraph on initial receipt of the legible, error-free claim form by the administration if the claim includes the following error-free documentation in legible form:

(a) An admission face sheet.

(b) An itemized statement.

(c) An admission history and physical.

(d) A discharge summary or an interim summary if the claim is split.

(e) An emergency record, if admission was through the emergency room.

(f) Operative reports, if applicable.

(g) A labor and delivery room report, if applicable.

Payment received by a hospital from the administration pursuant to this subsection or from a contractor either by contract or pursuant to section 36-2904, subsection I is considered payment by the administration or the contractor of the administration's or contractor's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.

5. For services rendered on and after October 1, 1997, the administration shall pay a hospital's rate established according to this section subject to the following:

(a) If the hospital's bill is paid within thirty days of the date the bill was received, the administration shall pay ninety-nine percent of the rate.

(b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate.

(c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. In developing the reimbursement methodology, if a review of the reports filed by a hospital pursuant to section 36-125.04 indicates that further investigation is considered necessary to verify the accuracy of the information in the reports, the administration may examine the hospital's records and accounts related to the reporting requirements of section 36-125.04. The administration shall bear the cost incurred in connection with this examination unless the administration finds that the records examined are significantly deficient or incorrect, in which case the administration may charge the cost of the investigation to the hospital examined.

7. Except for privileged medical information, the administration shall make available for public inspection the cost and charge data and the calculations used by the administration to determine payments under the tiered per diem system, provided that individual hospitals are not identified by name. The administration shall make the data and calculations available for public inspection during regular business hours and shall provide copies of the data and calculations to individuals requesting such copies within thirty days of receipt of a written request. The administration may charge a reasonable fee for the provision of the data or information.

8. The prospective tiered per diem payment methodology for inpatient hospital services shall include a mechanism for the prospective payment of inpatient hospital capital related costs. The capital payment shall

include hospital specific and statewide average amounts. For tiered per diem rates beginning on October 1, 1999, the capital related cost component is frozen at the blended rate of forty percent of the hospital specific capital cost and sixty percent of the statewide average capital cost in effect as of January 1, 1999 and as further adjusted by the calculation of tier rates for maternity and nursery as prescribed by law. Through September 30, 2011, the administration shall adjust the capital related cost component by the data resources incorporated market basket index for prospective payment system hospitals.

9. For graduate medical education programs:

(a) Beginning September 30, 1997, the administration shall establish a separate graduate medical education program to reimburse hospitals that had graduate medical education programs that were approved by the administration as of October 1, 1999. The administration shall separately account for monies for the graduate medical education program based on the total reimbursement for graduate medical education reimbursed to hospitals by the system in federal fiscal year 1995-1996 pursuant to the tiered per diem methodology specified in this section. The graduate medical education program reimbursement shall be adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Subject to legislative appropriation, on an annual basis, each qualified hospital shall receive a single payment from the graduate medical education program that is equal to the same percentage of graduate medical education reimbursement that was paid by the system in federal fiscal year 1995-1996. Any reimbursement for graduate medical education made by the administration shall not be subject to future settlements or appeals by the hospitals to the administration. The monies available under this subdivision shall not exceed the fiscal year 2005-2006 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement, except for monies distributed for expansions pursuant to subdivision (b) of this paragraph.

(b) The monies available for graduate medical education programs pursuant to this subdivision shall not exceed the fiscal year 2006-2007 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Graduate medical education programs eligible for such reimbursement are not precluded from receiving reimbursement for funding under subdivision (c) of this paragraph. Beginning July 1, 2006, the administration shall distribute any monies appropriated for graduate medical education above the amount prescribed in subdivision (a) of this paragraph in the following order or priority:

(i) For the direct costs to support the expansion of graduate medical education programs established before July 1, 2006 at hospitals that do not receive payments pursuant to subdivision (a) of this paragraph. These programs must be approved by the administration.

(ii) For the direct costs to support the expansion of graduate medical education programs established on or before October 1, 1999. These programs must be approved by the administration.

(c) The administration shall distribute to hospitals any monies appropriated for graduate medical education above the amount prescribed in subdivisions (a) and (b) of this paragraph for the following purposes:

(i) For the direct costs of graduate medical education programs established or expanded on or after July 1, 2006. These programs must be approved by the administration.

(ii) For a portion of additional indirect graduate medical education costs for programs that are located in a county with a population of less than five hundred thousand persons at the time the residency position was created or for a residency position that includes a rotation in a county with a population of less than five hundred thousand persons at the time the residency position was established. These programs must be approved by the administration.

(d) The administration shall develop, by rule, the formula by which the monies are distributed.

(e) Each graduate medical education program that receives funding pursuant to subdivision (b) or (c) of this paragraph shall identify and report to the administration the number of new residency positions created by the funding provided in this paragraph, including positions in rural areas. The program shall also report information related to the number of funded residency positions that resulted in physicians locating their practices in this state. The administration shall report to the joint legislative budget committee by February 1 of each year on the number of new residency positions as reported by the graduate medical education programs.

(f) Local, county and tribal governments and any university under the jurisdiction of the Arizona board of regents may provide monies in addition to any state general fund monies appropriated for graduate medical education in order to qualify for additional matching federal monies for providers, programs or positions in a specific locality and costs incurred pursuant to a specific contract between the administration and providers or other entities to provide graduate medical education services as an administrative activity. Payments by the administration pursuant to this subdivision may be limited to those providers designated by the funding entity and may be based on any methodology deemed appropriate by the administration, including replacing any payments that might otherwise have been paid pursuant to subdivision (a), (b) or (c) of this paragraph had sufficient state general fund monies or other monies been appropriated to fully fund those payments. These programs, positions, payment methodologies and administrative graduate medical education services must be approved by the administration and the centers for medicare and medicaid services. The administration shall report to the president of the senate, the speaker of the house of representatives and the director of the joint legislative budget committee on or before July 1 of each year on the amount of money contributed and number of residency positions funded by local, county and tribal governments, including the amount of federal matching monies used.

(g) Any funds appropriated but not allocated by the administration for subdivision (b) or (c) of this paragraph may be reallocated if funding for either subdivision is insufficient to cover appropriate graduate medical education costs.

10. Notwithstanding section 41-1005, subsection A, paragraph 9, the administration shall adopt rules pursuant to title 41, chapter 6 establishing the methodology for determining the prospective tiered per diem payments that are in effect through September 30, 2014.

11. For inpatient hospital services rendered on or after October 1, 2011, the prospective tiered per diem payment rates are permanently reset to the amounts payable for those services as of October 1, 2011 pursuant to this subsection.

12. The administration shall adopt a diagnosis-related group based hospital reimbursement methodology consistent with title XIX of the social security act for inpatient dates of service on and after October 1, 2014. The administration may make additional adjustments to the inpatient hospital rates established pursuant to this section for hospitals that are publicly operated or based on other factors, including the number of beds in the hospital, the specialty services available to patients, the geographic location and diagnosis-related group codes that are made publicly available by the hospital pursuant to section 36-437. The administration may also provide additional reimbursement for extraordinarily high cost cases that exceed a threshold above the standard payment. The administration may also establish a separate payment methodology for specific services or hospitals serving unique populations.

H. The director may adopt rules that specify enrollment procedures, including notice to contractors of enrollment. The rules may provide for varying time limits for enrollment in different situations. The administration shall specify in contract when a person who has been determined eligible will be enrolled with that contractor and the date on which the contractor will be financially responsible for health and medical services to the person.

I. The administration may make direct payments to hospitals for hospitalization and medical care provided to a member in accordance with this article and rules. The director may adopt rules to establish the procedures by which the administration shall pay hospitals pursuant to this subsection if a contractor fails to make timely payment to a hospital. Such payment shall be at a level determined pursuant to section 36-2904, subsection H

or I. The director may withhold payment due to a contractor in the amount of any payment made directly to a hospital by the administration on behalf of a contractor pursuant to this subsection.

J. The director shall establish a special unit within the administration for the purpose of monitoring the third-party payment collections required by contractors and noncontracting providers pursuant to section 36-2903, subsection B, paragraph 10 and subsection F and section 36-2915, subsection E. The director shall determine by rule:

1. The type of third-party payments to be monitored pursuant to this subsection.

2. The percentage of third-party payments that is collected by a contractor or noncontracting provider and that the contractor or noncontracting provider may keep and the percentage of such payments that the contractor or noncontracting provider may be required to pay to the administration. Contractors and noncontracting providers must pay to the administration one hundred percent of all third-party payments that are collected and that duplicate administration fee-for-service payments. A contractor that contracts with the administration pursuant to section 36-2904, subsection A may be entitled to retain a percentage of third-party payments if the payments collected and retained by a contractor are reflected in reduced capitation rates. A contractor may be required to pay the administration a percentage of third-party payments that are collected by a contractor and that are not reflected in reduced capitation rates.

K. The administration shall establish procedures to apply to the following if a provider that has a contract with a contractor or noncontracting provider seeks to collect from an individual or financially responsible relative or representative a claim that exceeds the amount that is reimbursed or should be reimbursed by the system:

1. On written notice from the administration or oral or written notice from a member that a claim for covered services may be in violation of this section, the provider that has a contract with a contractor or noncontracting provider shall investigate the inquiry and verify whether the person was eligible for services at the time that covered services were provided. If the claim was paid or should have been paid by the system, the provider that has a contract with a contractor or noncontracting provider shall not continue billing the member.

2. If the claim was paid or should have been paid by the system and the disputed claim has been referred for collection to a collection agency or referred to a credit reporting bureau, the provider that has a contract with a contractor or noncontracting provider shall:

(a) Notify the collection agency and request that all attempts to collect this specific charge be terminated immediately.

(b) Advise all credit reporting bureaus that the reported delinquency was in error and request that the affected credit report be corrected to remove any notation about this specific delinquency.

(c) Notify the administration and the member that the request for payment was in error and that the collection agency and credit reporting bureaus have been notified.

3. If the administration determines that a provider that has a contract with a contractor or noncontracting provider has billed a member for charges that were paid or should have been paid by the administration, the administration shall send written notification by certified mail or other service with proof of delivery to the provider that has a contract with a contractor or noncontracting provider stating that this billing is in violation of federal and state law. If, twenty-one days or more after receiving the notification, a provider that has a contract with a contractor or noncontracting provider knowingly continues billing a member for charges that were paid or should have been paid by the system, the administration may assess a civil penalty in an amount equal to three times the amount of the billing and reduce payment to the provider that has a contract with a contractor or noncontracting provider accordingly. Receipt of delivery signed by the addressee or the addressee's employee is prima facie evidence of knowledge. Civil penalties collected pursuant to this subsection shall be deposited in the state general fund. Section 36-2918, subsections C, D and F, relating to the imposition, collection and enforcement of civil penalties, apply to civil penalties imposed pursuant to this paragraph.

L. The administration may conduct postpayment review of all claims paid by the administration and may recoup any monies erroneously paid. The director may adopt rules that specify procedures for conducting postpayment review. A contractor may conduct a postpayment review of all claims paid by the contractor and may recoup monies that are erroneously paid.

M. Subject to title 41, chapter 4, article 4, the director or the director's designee may employ and supervise personnel necessary to assist the director in performing the functions of the administration.

N. The administration may contract with contractors for obstetrical care who are eligible to provide services under title XIX of the social security act.

O. Notwithstanding any other law, on federal approval the administration may make disproportionate share payments to private hospitals, county operated hospitals, including hospitals owned or leased by a special health care district, and state operated institutions for mental disease beginning October 1, 1991 in accordance with federal law and subject to legislative appropriation. If at any time the administration receives written notification from federal authorities of any change or difference in the actual or estimated amount of federal funds available for disproportionate share payments from the amount reflected in the legislative appropriation for such purposes, the administration shall provide written notification of such change or difference to the president and the minority leader of the senate, the speaker and the minority leader of the house of representatives, the director of the joint legislative budget committee, the legislative committee of reference and any hospital trade association within this state, within three working days not including weekends after receipt of the notice of the change or difference. In calculating disproportionate share payments as prescribed in this section, the administration may use either a methodology based on claims and encounter data that is submitted to the administration from contractors or a methodology based on data that is reported to the administration by private hospitals and state operated institutions for mental disease. The selected methodology applies to all private hospitals and state operated institutions for mental disease qualifying for disproportionate share payments.

P. Disproportionate share payments made pursuant to subsection O of this section include amounts for disproportionate share hospitals designated by political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents. Subject to the approval of the centers for medicare and medicaid services, any amount of federal funding allotted to this state pursuant to section 1923(f) of the social security act and not otherwise spent under subsection O of this section shall be made available for distribution pursuant to this subsection. Political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents may designate hospitals eligible to receive disproportionate share payments in an amount up to the limit prescribed in section 1923(g) of the social security act if those political subdivisions, tribal governments or universities provide sufficient monies to qualify for the matching federal monies for the disproportionate share payments.

Q. Notwithstanding any law to the contrary, the administration may receive confidential adoption information to determine whether an adopted child should be terminated from the system.

R. The adoption agency or the adoption attorney shall notify the administration within thirty days after an eligible person receiving services has placed that person's child for adoption.

S. If the administration implements an electronic claims submission system, it may adopt procedures pursuant to subsection G of this section requiring documentation different than prescribed under subsection G, paragraph 4 of this section.

T. In addition to any requirements adopted pursuant to subsection D, paragraph 4 of this section, notwithstanding any other law, subject to approval by the centers for medicare and medicaid services, beginning July 1, 2011, members eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 shall pay the following:

1. A monthly premium of fifteen dollars, except that the total monthly premium for an entire household shall not exceed sixty dollars.

2. A copayment of five dollars for each physician office visit.

3. A copayment of ten dollars for each urgent care visit.

4. A copayment of thirty dollars for each emergency department visit.

U. Subject to the approval of the centers for medicare and medicaid services, political subdivisions of this state, tribal governments and any university under the jurisdiction of the Arizona board of regents may provide to the Arizona health care cost containment system administration monies in addition to any state general fund monies appropriated for critical access hospitals in order to qualify for additional federal monies. Any amount of federal monies received by this state pursuant to this subsection shall be distributed as supplemental payments to critical access hospitals.

V. For the purposes of this section, "disproportionate share payment" means a payment to a hospital that serves a disproportionate share of low-income patients as described by 42 United States Code section 1396r-4.

36-2904. Prepaid capitation coverage; requirements; long-term care; dispute resolution; award of contracts; notification; report

A. The administration may expend public funds appropriated for the purposes of this article and shall execute prepaid capitated health services contracts, pursuant to section 36-2906, with group disability insurers, hospital and medical service corporations, health care services organizations and any other appropriate public or private persons, including county-owned and operated facilities, for health and medical services to be provided under contract with contractors. The administration may assign liability for eligible persons and members through contractual agreements with contractors. If there is an insufficient number of qualified bids for prepaid capitated health services contracts for the provision of hospitalization and medical care within a county, the director may:

1. Execute discount advance payment contracts, pursuant to section 36-2906 and subject to section 36-2903.01, for hospital services.

2. Execute capped fee-for-service contracts for health and medical services, other than hospital services. Any capped fee-for-service contract shall provide for reimbursement at a level of not to exceed a capped fee-for-service schedule adopted by the administration.

B. During any period in which services are needed and no contract exists, the director may do either of the following:

1. Pay noncontracting providers for health and medical services, other than hospital services, on a capped fee-for-service basis for members and persons who are determined eligible. However, the state shall not pay any amount for services that exceeds a maximum amount set forth in a capped fee-for-service schedule adopted by the administration.

2. Pay a hospital subject to the reimbursement level limitation prescribed in section 36-2903.01.

If health and medical services are provided in the absence of a contract, the director shall continue to attempt to procure by the bid process as provided in section 36-2906 contracts for such services as specified in this subsection.

C. Payments to contractors shall be made monthly or quarterly and may be subject to contract provisions requiring the retention of a specified percentage of the payment by the director, a reserve fund or other contract provisions by which adjustments to the payments are made based on utilization efficiency, including incentives for maintaining quality care and minimizing unnecessary inpatient services. Reserve funds withheld from contractors shall be distributed to contractors who meet performance standards established by the director. Any reserve fund established pursuant to this subsection shall be established as a separate account within the Arizona health care cost containment system fund.

D. Except as prescribed in subsection E of this section, a member defined as eligible pursuant to section 36-2901, paragraph 6, subdivision (a) may select, to the extent practicable as determined by the administration, from among the available contractors of hospitalization and medical care and may select a primary care physician or primary care practitioner from among the primary care physicians and primary care practitioners participating in the contract in which the member is enrolled. The administration shall provide reimbursement only to entities that have a provider agreement with the administration and that have agreed to the contractual requirements of that agreement. Except as provided in sections 36-2908 and 36-2909, the system shall only provide reimbursement for any health or medical services or costs of related services provided by or under referral from the primary care physician or primary care practitioner participating in the contract in which the member is enrolled. The director shall establish requirements as to the minimum time period that a member is assigned to specific contractors in the system.

E. For a member defined as eligible pursuant to section 36-2901, paragraph 6, subdivision (a), item (v) the director shall enroll the member with an available contractor located in the geographic area of the member's residence. The member may select a primary care physician or primary care practitioner from among the

primary care physicians or primary care practitioners participating in the contract in which the member is enrolled. The system shall only provide reimbursement for health or medical services or costs of related services provided by or under referral from a primary care physician or primary care practitioner participating in the contract in which the member is enrolled. The director shall establish requirements as to the minimum time period that a member is assigned to specific contractors in the system.

F. If a person who has been determined eligible but who has not yet enrolled in the system receives emergency services, the director shall provide by rule for the enrollment of the person on a priority basis. If a person requires system covered services on or after the date the person is determined eligible for the system but before the date of enrollment, the person is entitled to receive these services in accordance with rules adopted by the director, and the administration shall pay for the services pursuant to section 36-2903.01 or, as specified in contract, with the contractor pursuant to the subcontracted rate or this section.

G. The administration shall not pay claims for system covered services that are initially submitted more than six months after the date of the service for which payment is claimed or after the date that eligibility is posted, whichever date is later, or that are submitted as clean claims more than twelve months after the date of service for which payment is claimed or after the date that eligibility is posted, whichever date is later, except for claims submitted for reinsurance pursuant to section 36-2906, subsection C, paragraph 6. The administration shall not pay claims for system covered services that are submitted by contractors for reinsurance after the time period specified in the contract. The director may adopt rules or require contractual provisions that prescribe requirements and time limits for submittal of and payment for those claims. Notwithstanding any other provision of this article, if a claim that gives rise to a contractor's claim for reinsurance or deferred liability is the subject of an administrative grievance or appeal proceeding or other legal action, the contractor shall have at least sixty days after an ultimate decision is rendered to submit a claim for reinsurance or deferred liability. Contractors that contract with the administration pursuant to subsection A of this section shall not pay claims for system covered services that are initially submitted more than six months after the date of the service for which payment is claimed or after the date that eligibility is posted, whichever date is later, or that are submitted as clean claims more than twelve months after the date of the service for which payment is claimed or after the date that eligibility is posted, whichever date is later. For the purposes of this subsection:

1. "Clean claims" means claims that may be processed without obtaining additional information from the subcontracted provider of care, from a noncontracting provider or from a third party but does not include claims under investigation for fraud or abuse or claims under review for medical necessity.

2. "Date of service" for a hospital inpatient means the date of discharge of the patient.

3. "Submitted" means the date the claim is received by the administration or the prepaid capitated provider, whichever is applicable, as established by the date stamp on the face of the document or other record of receipt.

H. In any county having a population of five hundred thousand or fewer persons, a hospital that executes a subcontract other than a capitation contract with a contractor for the provision of hospital and medical services pursuant to this article shall offer a subcontract to any other contractor providing services to that portion of the county and to any other person that plans to become a contractor in that portion of the county. If such a hospital executes a subcontract other than a capitation contract with a contractor for the provision of hospital and medical services pursuant to this article, the hospital shall adopt uniform criteria to govern the reimbursement levels paid by all contractors with whom the hospital executes such a subcontract. Reimbursement levels offered by hospitals to contractors pursuant to this subsection may vary among contractors only as a result of the number of bed days purchased by the contractors, the amount of financial deposit required by the hospital, if any, or the schedule of performance discounts offered by the hospital to the contractor for timely payment of claims.

I. This subsection applies to inpatient hospital admissions and to outpatient hospital services on and after March 1, 1993. The director may negotiate at any time with a hospital on behalf of a contractor for services provided pursuant to this article. If a contractor negotiates with a hospital for services provided pursuant to this article, the following procedures apply:

1. The director shall require any contractor to reimburse hospitals for services provided under this article based on reimbursement levels that do not in the aggregate exceed those established pursuant to section 36-2903.01 and under terms on which the contractor and the hospital agree. However, a hospital and a contractor may agree on a different payment methodology than the methodology prescribed by the director pursuant to section 36-2903.01. The director by rule shall prescribe:

(a) The time limits for any negotiation between the contractor and the hospital.

(b) The ability of the director to review and approve or disapprove the reimbursement levels and terms agreed on by the contractor and the hospital.

(c) That if a contractor and a hospital do not agree on reimbursement levels and terms as required by this subsection, the reimbursement levels established pursuant to section 36-2903.01 apply.

(d) That, except if submitted under an electronic claims submission system, a hospital bill is considered received for purposes of subdivision (f) on initial receipt of the legible, error-free claim form by the contractor if the claim includes the following error-free documentation in legible form:

(i) An admission face sheet.

(ii) An itemized statement.

(iii) An admission history and physical.

(iv) A discharge summary or an interim summary if the claim is split.

(v) An emergency record, if admission was through the emergency room.

(vi) Operative reports, if applicable.

(vii) A labor and delivery room report, if applicable.

(e) That payment received by a hospital from a contractor is considered payment by the contractor of the contractor's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third party payors or in situations covered by title 33, chapter 7, article 3.

(f) That a contractor shall pay for services rendered on and after October 1, 1997 under any reimbursement level according to paragraph 1 of this subsection subject to the following:

(i) If the hospital's bill is paid within thirty days of the date the bill was received, the contractor shall pay ninety-nine per cent of the rate.

(ii) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the contractor shall pay one hundred per cent of the rate.

(iii) If the hospital's bill is paid any time after sixty days of the date the bill was received, the contractor shall pay one hundred per cent of the rate plus a fee of one per cent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

2. In any county having a population of five hundred thousand or fewer persons, a hospital that executes a subcontract other than a capitation contract with a provider for the provision of hospital and medical services pursuant to this article shall offer a subcontract to any other provider providing services to that portion of the county and to any other person that plans to become a provider in that portion of the county. If a hospital executes a subcontract other than a capitation contract with a provider for the provision of hospital and medical services pursuant to this article, the hospital shall adopt uniform criteria to govern the reimbursement levels paid by all providers with whom the hospital executes a subcontract.

J. If there is an insufficient number of, or an inadequate member capacity in, contracts awarded to contractors, the director, in order to deliver covered services to members enrolled or expected to be enrolled in the system within a county, may negotiate and award, without bid, a contract with a health care services organization holding a certificate of authority pursuant to title 20, chapter 4, article 9. The director shall require a health care services organization contracting under this subsection to comply with section 36-2906.01. The term of the contract shall not extend beyond the next bid and contract award process as provided in section 36-2906 and shall be no greater than capitation rates paid to contractors in the same county or counties pursuant to section 36-2906. Contracts awarded pursuant to this subsection are exempt from the requirements of title 41, chapter 23.

K. A contractor may require that a subcontracting or noncontracting provider shall be paid for covered services, other than hospital services, according to the capped fee-for-service schedule adopted by the director pursuant to subsection A, paragraph 2 of this section or subsection B, paragraph 1 of this section or at lower rates as may be negotiated by the contractor.

L. The director shall require any contractor to have a plan to notify members of reproductive age either directly or through the parent or legal guardian, whichever is most appropriate, of the specific covered family planning services available to them and a plan to deliver those services to members who request them. The director shall ensure that these plans include provisions for written notification, other than the member handbook, and verbal notification during a member's visit with the member's primary care physician or primary care practitioner.

M. The director shall adopt a plan to notify members of reproductive age who receive care from a contractor who elects not to provide family planning services of the specific covered family planning services available to them and to provide for the delivery of those services to members who request them. Notification may be directly to the member, or through the parent or legal guardian, whichever is most appropriate. The director shall ensure that the plan includes provisions for written notification, other than the member handbook, and verbal notification during a member's visit with the member's primary care physician or primary care practitioner.

N. The director shall prepare a report that represents a statistically valid sample and that indicates the number of children age two by contractor who received the immunizations recommended by the national centers for disease control and prevention while enrolled as members. The report shall indicate each type of immunization and the number and percentage of enrolled children in the sample age two who received each type of immunization. The report shall be done by contract year and shall be delivered to the governor, the president of the senate and the speaker of the house of representatives no later than April 1, 2004 and every second year thereafter.

O. If the administration implements an electronic claims submission system it may adopt procedures pursuant to subsection I, paragraph 1 of this section requiring documentation different than prescribed under subsection I, paragraph 1, subdivision (d) of this section.

36-2933. Eligibility determination; application; enrollment

A. A person who is seeking services pursuant to this article shall submit an application for eligibility for the system to the administration which shall review the completed application to determine if the person meets the residency and if applicable, the alienage requirements adopted pursuant to section 36-2932, subsection K and the eligibility criteria prescribed in section 36-2934.

B. The administration shall conduct a preadmission screening pursuant to section 36-2936 to determine if the applicant is eligible for services.

C. A person who is a resident of this state and, if not a citizen of the United States, who meets the alienage requirements of federal law and who meets the eligibility criteria prescribed in section 36-2934 and who is determined eligible for services pursuant to section 36-2936 shall be enrolled in the system, unless such person is enrolled in the Arizona health care cost containment system pursuant to article 1 of this chapter and only needs convalescent care as defined by the director by rule.

D. On enrollment in the system, the administration shall conduct post-eligibility treatment of income and resources of the member as prescribed in section 36-2932, subsection L.

E. The director may enter into an interagency agreement with the department under which the department may:

1. Determine whether all persons with developmental disabilities as defined in section 36-551 who apply to the system meet the eligibility criteria prescribed in subsection A of this section.

2. Conduct preadmission screening pursuant to subsection B of this section on persons with developmental disabilities as defined in section 36-551 to determine if the applicant is eligible for services.

3. Conduct post-eligibility treatment of income and resources pursuant to subsection D of this section for a member who has a developmental disability as defined in section 36-551.

D-10.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 22, Article 17

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: September 4, 2024

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

FROM: Council Staff

DATE: August 15, 2024

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**
Title 9, Chapter 22, Article 17

Summary

This Five-Year Review Report (5YRR) from the Arizona Health Care Cost Containment System (AHCCCS) relates to five (5) rules in Title 9, Chapter 22, Article 17 regarding Enrollment. Specifically, the rules establish parameters for enrollment of a member with an AHCCCS contractor.

In the prior report for these rules, which was approved by the Council in May 2019, AHCCCS proposed to amend rule R9-22-1702 as the "Freedom of Choice" period should be changed to 90 days to align with 42 C.F.R. 438. Additionally, AHCCCS indicated the Family Planning Services Extension Program referenced in Subsection D of this rule was a waiver program that was not continued past January 1, 2014 and should be removed. However, AHCCCS indicates it did not complete the prior proposed course of action as it determined these recommendations did not merit an exemption from the rulemaking moratorium. Additionally, AHCCCS indicates agency resources at the time had been diverted to address COVID-19 public health emergency.

Council staff notes the 2014 report for these rules also proposed to amend rule R9-22-1702 and, as indicated in the 2019 report, this proposed course of action was not completed as AHCCCS again determined that the change did not warrant an exemption from the

rulemaking moratorium. As such, some of the changes proposed in the current report were first identified more than ten years ago.

Proposed Action

In the current report, AHCCCS is proposing to amend rules R9-22-1702, R9-22-1703, and R9-22-1704 to improve their clarity, conciseness, understandability, consistency, and enforcement as outlined in more detail below. AHCCCS indicates it has received an exception from the rulemaking moratorium from the Governor's office to begin a rulemaking immediately following the Council's approval of this report in order to make the changes to the rules outlined above. AHCCCS anticipates submitting this rulemaking to Council by October 22, 2024.

1. Has the agency analyzed whether the rules are authorized by statute?

AHCCCS cites both general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

AHCCCS indicates the economic, small business, and consumer impact of this chapter is as it was anticipated in the last rulemaking. In the last rulemaking, it was anticipated that none of the changes would have any effect on the economic impact of this chapter and the actual economic impact remains the same as had been anticipated. Furthermore, AHCCCS does not anticipate any economic, small business, and consumer impact from the currently proposed changes in this report. The proposed changes are merely clarifying.

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?

AHCCCS states that the proposed changes will provide clarity and align with federal requirements. Since the federal requirements govern the current administration of this program there will be no additional costs to members, and the benefit of these changes will provide added clarity, while keeping these rules in compliance with federal regulation.

4. Has the agency received any written criticisms of the rules over the last five years?

AHCCCS 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?

AHCCCS indicates the rules are generally clear, concise, and understandable except for the following:

- R9-22-1703(A)

- ~~Effective date of enrollment. A member's date of enrollment is the date enrollment action is taken by the Administration. However, if a plan change occurs for an annual enrollment choice, the effective date is the month of the member's enrollment anniversary date.~~ A member's date of enrollment and the financial liability is the effective date of eligibility but no earlier than the first of the application month. While any retroactive dates of service show as PPC, the member is considered enrolled with the plan for those dates.

- R9-22-1704(A)(3)
  - Rule is outdated. The choice period is under 42 C.F.R. 438 is 90 days, therefore it shall be updated to: "The Administration shall notify the mother of the right to choose a different contractor for her newborn child. The mother may make her choice within 90 ~~30~~ days from the date of notice of enrollment."

6. Has the agency analyzed the rules' consistency with other rules and statutes?

AHCCCS indicates the rules are generally consistent with other rules and statutes except for the following:

- R9-22-1704(A)(3)
  - Rule is obsolete. The choice period is under 42 C.F.R. 438 is 90 days, therefore it shall be updated to: "The Administration shall notify the mother of the right to choose a different contractor for her newborn child. The mother may make her choice within 90 ~~30~~ days from the date of notice of enrollment."

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

AHCCCS indicates the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

AHCCCS indicates the rules are enforced as written except for the following:

- R9-22-1702(D)
  - Rule is obsolete. The Family Planning Services Extension Program expired at the end of 2013. 1704(A)(3) references the choice period provided for newborns. This section (1702(D)) shall be repealed:
  - ~~Family Planning Services Extension Program. A member eligible for the Family Planning Services Extension Program under R9-22-1431, shall remain enrolled with the member's contractor of record or IHS.~~

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

AHCCCS indicates 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?

AHCCCS indicates the rules do not require the issuance of a permit, license, or agency authorization.

11. Conclusion

This 5YRR from AHCCCS relates to five (5) rules in Title 9, Chapter 22, Article 17 regarding Enrollment. Specifically, the rules establish parameters for enrollment of a member with an AHCCCS contractor. AHCCCS is proposing to amend rules R9-22-1702, R9-22-1703, and R9-22-1704 to improve their clarity, conciseness, understandability, consistency, and enforcement. AHCCCS indicates it has received an exception from the rulemaking moratorium from the Governor's office to begin a rulemaking immediately following the Council's approval of this report in order to make the changes outlined above. AHCCCS anticipates submitting this rulemaking to Council by October 22, 2024.

Council staff recommends approval of this report.

AHCCCS
Arizona Health Care Cost Containment System

Katie Hobbs, Governor
Carmen Heredia, Cabinet Executive Officer
and Executive Deputy Director

May 15, 2024

VIA EMAIL: grrc@azdoa.gov

Jessica Klein, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 302
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 22, Article 17;

Dear Ms. Klein:

Please find enclosed AHCCCS's Five-Year Review Report for Title 9, Chapter 22, Article 17 due on May 30, 2024.

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Sladjana Kuzmanovic at 602-417-4232 or sladjana.kuzmanovic@azahcccs.gov.

Sincerely,

Nicole Fries
Deputy General Counsel

Attachments

Arizona Health Care Cost Containment System

(AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 22, Article 17

May 2024

1. **Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. § 36-2903.01.

Specific Statutory Authority: A.R.S. § 36-2903.01.

2. **The objective of each rule:**

Rule	Objective
R9-22-1701	Provides definitions related specifically to enrollment of a member with an AHCCCS contractor.
R9-22-1702	Establishes parameters for enrollment of a member with an AHCCCS contractor. The rule addresses the following areas: General enrollment, fee-for-service, foster care, family planning, and enrollment changes.
R9-22-1703	Defines the effective date of enrollment with a contractor and provides for financial liability of a contractor as specified in contract.
R9-22-1704	Defines the general requirements for enrollment of a newborn child and provides the financial liability of a contractor as specified in contract. Requires the Administration to notify the mother of the newborn's enrollment and give the mother the opportunity to select a different contractor or Indian Health Service (IHS).
R9-22-1705	Establishes parameters for the guaranteed enrollment period. This rule addresses effective enrollment and disenrollment dates, exceptions to the guaranteed enrollment period, and retroactive adjustments.

3. **Are the rules effective in achieving their objectives?** **Yes _X__ No ___**

4. **Are the rules consistent with other rules and statutes?** **Yes ____ No _X_**

R9-22-1704(A)(3)	Rule is obsolete. The choice period is under 42 C.F.R. 438 is 90 days, therefore it shall be updated to: "The Administration shall notify the mother of the right to choose a different contractor for her newborn child. The mother may make her choice within 90 ~~30~~ days from the date of notice of enrollment."

5. **Are the rules enforced as written?** **Yes ___No _X_**

R9-22-1702(D)	Rule is obsolete. The Family Planning Services Extension Program expired at the end of 2013. 1704(A)(3) references the choice period provided for newborns. This section (1702(D)) shall be repealed: ~~Family Planning Services Extension Program. A member eligible for the Family Planning Services Extension Program under R9-22-1431, shall remain enrolled with the member's contractor of record or IHS.~~

6. Are the rules clear, concise, and understandable? **Yes __** **No _X_**

R9-22-1703(A)	Rule shall be updated to read: ~~Effective date of enrollment. A member's date of enrollment is the date enrollment action is taken by the Administration. However, if a plan change occurs for an annual enrollment choice, the effective date is the month of the member's enrollment anniversary date.~~ A member's date of enrollment and the financial liability is the effective date of eligibility but no earlier than the first of the application month. While any retroactive dates of service show as PPC, the member is considered enrolled with the plan for those dates.
R9-22-1704(A)(3)	Rule is outdated. The choice period is under 42 C.F.R. 438 is 90 days, therefore it shall be updated to: "The Administration shall notify the mother of the right to choose a different contractor for her newborn child. The mother may make her choice within 90 ~~30~~ days from the date of notice of enrollment."

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, small business, and consumer impact of this chapter is as it was anticipated in the last rulemaking. In the last rulemaking, it was anticipated that none of these changes would have any effect on the economic impact of this chapter and the actual economic impact remains the same as had been anticipated.

The Administration does not anticipate any economic, small business, and consumer impact with the currently proposed changes in this 5YRR. Proposed changes are merely clarifying including updating an outdated rule regarding amount of days a mother has to choose a different contractor for a newborn after notice of enrollment, clarifying when member's effective date of eligibility is, and repealing another outdated rule. Substantive and procedural rights of members are not affected, nor are any of the programs of the Administration. These proposed changes are merely clarifying.

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 recommendations made in the prior 5YRR were not made because the agency determined these recommendations did not merit an exemption from the rulemaking moratorium. Agency resources at the time had been diverted to address COVID-19 public health emergency. At this time, the 5YRR adopts those changes recommended in the prior 5YRR as well as few additional technical and clarifying changes, and AHCCCS has already received approval of an exemption from the rulemaking moratorium from the Governor's Office and plans to initiate the regular rulemaking immediately following GRRC's approval of this 5YRR.

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 proposed changes will provide clarity and align with federal requirements. Since the federal requirements govern the current administration of this program there will be no additional costs to members, and the benefit of these changes will provide added clarity, while keeping these rules in compliance with federal regulation.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No _X__

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 do not require an issuance of a regulatory permit, license, or agency authorization.

14. Proposed course of action

The Administration has received an approval from the Governor's office to begin a rulemaking immediately following GRRC's approval of this report in order to make the changes outlined above and update the rules in Article 17. The Administration anticipates submitting this rulemaking to Council by October 22, 2024.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

Introduction:

As of February 1, 2008, 1,083,791 Arizona residents were eligible for AHCCCS, which comprises approximately 17-18 percent of Arizona's total population.

Of the total AHCCCS eligible population, 975,248 persons were eligible and enrolled to receive acute care services. As of February 1, 2008, 9,584 women qualify for the SOBRA program.

Overview of Current Process:

Currently, the Administration and the Department process applications received from the public for medical service programs. One of the populations which qualifies for AHCCCS is known as SOBRA for pregnant women. Previously, the statute authorized a pregnant woman with an income no greater than 133% of the Federal Poverty Level (FPL) to qualify for AHCCCS. The new legislation, effective September 2007, increased the income limit to 150% of the FPL. As of April 1, 2008 the new FPL limit will be $10,400 annually for one person, each additional person $3,600 is added.

In addition, the Department will be conducting eligibility reviews through various communication forums including in person, by phone or electronically. The current rules reflecting this process require scheduled interviews. In an effort to streamline processes and remove barriers to participation, the rule has been changed to remove the interview requirement. If there is information needed to complete the eligibility determination, the Department will obtain it or contact the member for assistance in obtaining the information.

Also, the Department and the Administration currently accept enrollment choices an applicant makes at the time of application or during the 16 day timeframe given after the notice of enrollment is sent to the applicant. The 16 day time frame is being extended to 30 days.

Purpose of Rule:

This rulemaking reflects changes as required by legislation to increase the income limit to 150% of the FPL for SOBRA pregnant women. It also reflects the more flexible form of processing applications for and renewals of eligibility. In addition, enrollment change time frames are expanded from 16 days to 30 days.

1. Identification of rulemaking.

Rule:

R9-22-101 – has been updated to reflect correct cross-references to where the definitions can be found, in addition to removing or adding definitions that applied to multiple rules in Chapter 22.

R9-22-117 – has been repealed to place the definitions that apply to Article 17 at the beginning of that article.

R9-22-1406 – has been updated to describe an application process which incorporates a flexible form of communication with an applicant. A scheduled interview is now an option rather than a requirement.

R9-22-1408 - has been updated to describe the current applicant and member responsibility to provide information and cooperate with conditions of eligibility when applying for or receiving AHCCCS medical services.

R9-22-1410 - has been repealed and replaced with a new section of "Department Responsibilities", the Departments responsibilities have been described when processing an application for AHCCCS medical services.

R9-22-1413 - has been updated to remove the scheduled interview as a requirement of the eligibility determination process.

R9-22-1428 – has been updated to change the SOBRA Pregnant woman income limit from 133% to 150% of the FPL as required by A.R.S. § 36-2903.01.

R9-22-1431 - has been updated to change the SOBRA Pregnant woman FPL from 133% to 150% as required by A.R.S. § 36-2903.01.

R9-22-1701 has been repealed and replaced with a new section providing definitions that specifically apply to Article 17 enrollment requirements.

R9-22-1702 has been repealed and replaced with a new section describing when a member will be enrolled with a contractor. This section was previously described in R9-22-1701, but due to the addition of definitions to this article, the rule numbers have shifted and required the creation of this new section. In addition, the Administration has added language explaining that the enrollment requirements listed in (A) will be used unless the member has pre-selected a contractor on the application. In rule where the timeframe to choose a contractor has been changed from 16 days to 30 days, the time frame begins from the date the notice of enrollment choice is generated. It has also been noted that an auto assignment occurs immediately when a member has not selected a contractor or more than 90 days of disenrollment have occurred. The notice of enrollment choice is then generated, where the member may change from the contractor he/she has been auto assigned to another. Requirements are added where the Administration will provide 60 day advance notice when a member may change contractors by his/her anniversary date of enrollment. Disenrollment requirements have also been added to clarify when a member may disenroll from a contractor. Further technical changes have been made updating cross references and clarifying language.

R9-22-1703 has been repealed and replaced with a new section describing when enrollment is effective. This section was previously described in R9-22-1702, but due to the addition of definition to this article, the rule numbers have shifted

and required the creation of this new section. Language was omitted in reference to notification to a contractor of each member's enrollment. This requirement is in contract and not necessary in rule.

R9-22-1704 has been repealed and replaced with a new section describing how a newborn is enrolled. This section was previously described in R9-22-1703, but due to the addition of definition to this article, the rule numbers have shifted and required the creation of this new section. Within this section the timeframe to change plans was changed from 16 days to 30 days from the notice of enrollment rather than the initial interview. The section describing a mother's ability to choose a different contractor for the newborn was omitted, as it is already outlined in (A)(3).

R9-22-1705 has been created as a new section describing the guaranteed enrollment period. This section was previously described in R9-22-1704, but due to the addition of definitions to this article, the rule numbers have shifted and required the creation of this new section. An additional requirement was added that the administration shall not grant a guarantee period when the member's whereabouts are unknown, or the Administration has lost contact with the member. Further technical changes have been made updating cross references.

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

It is anticipated that the contractors, private sector, members, providers, small businesses, political subdivisions, the Department, and the Administration will be minimally impacted by the changes to the rule language since these changes will require system changes and administrative costs. The areas of rule that describe the SOBRA pregnant woman's federal poverty level will be changed from 133% to 150%. It is anticipated that this increase in FPL will allow up to 1128 more uninsured pregnant women to meet the income requirements and qualify for medical assistance.

The areas of rule that describe the eligibility interview requirements have been changed to allow more flexibility for the Department, the Administration, or applicants and members in collecting all necessary information and determining eligibility. The Department currently completes eligibility determination for 100,000 to 120,000 intake applications per month.

The Administration is proposing amendments to the rules to revise, reorganize, and clarify the enrollment requirements as specified in the Administration's Section 1115 Waiver. The enrollment rule updates are anticipated to have minimal administrative and operational impact on the Administration. Where a member is currently given 16 days to choose a plan, they will have 30 days. This change will require system changes and policy changes. The member will benefit from the additional time to decide which plan he or she prefers.

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

The Administration

The Department

The applicant or member

The taxpayers

The providers

3. Cost benefit analysis.

a. Probable costs and benefits to implementing agency and other agencies directly affected.

The Administration or the Department will incur minimal programming and operational costs changing the FPL from 133 to 150%, changing the required scheduled interview, and changing the enrollment choice period from 16 days to 30 days. It is also anticipated that the change to no longer require a scheduled interview may reduce administrative costs to the Administration and the Department associated with members losing eligibility due to missed interviews and then having to reapply to reinstate their coverage.

b. Probable costs and benefits to political subdivision directly affected.

There are no anticipated costs or benefits to political subdivisions.

c. Probable costs and benefits to businesses directly affected, including anticipated effect on revenues or payroll for employers.

There are no anticipated costs or benefits to any businesses. The providers may benefit from an increase in pregnant women who can receive AHCCCS medical services.

4. General description of the probable impact on private and public employment in business, agencies, and political subdivisions directly affected by the rulemaking.

There are no anticipated impacts on private or public employments as a result of the changes in this rulemaking.

5. Statement of probable impact of the rule on small businesses, including:

a. Identification of the small businesses subject to the rulemaking.

There are no anticipated impacts on small businesses as a result of the changes in this rulemaking. Where a provider may be considered a small business, the impact will be an increase of patients to provide medical services to.

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

There are no anticipated costs for small businesses as a result of the changes in this rulemaking.

c. Description of methods agency may use to reduce the impact on small business, which may include:

i. Establishing less costly compliance requirements;

The Administration finds that the changes in this rulemaking are not anticipated to be costly and do not require a less costly compliance requirement.

ii. Establishing less costly schedules or less stringent deadlines for compliance; and

The Administration finds that the changes in this rulemaking are not anticipated to be costly and do not require a less costly schedules or deadlines for compliance.

iii. Exempting small businesses from any or all requirements.

None.

d. The probable cost and benefit to private persons and consumers who are directly affected by the rulemaking.

It is anticipated that taxpayers will have an increased cost in taxes to support the additional eligible pregnant woman population that will now qualify for the income requirements of 150% FPL. Currently, 9,584 members qualify for the FPL. With the expansion, it is anticipated that between 226 and 1,128 more pregnant women will qualify. This cost is anticipated to be $.061M to $2.45 M in state funds.

The newly qualifying pregnant women will benefit from this increase of FPL and qualify for the SOBRA program to receive medical services. Consumers will benefit because they no longer will have to take time away from work, family, etc., to attend an eligibility interview.

6. Statement of the probable effect on state revenues.

With the increase in FPL for SOBRA women, it is anticipated to support the cost of the expanded FPL limits, it will increase cost to state revenues between $.061M to $2.45 M. All other rule changes are anticipated to have a minimal to no impact on state revenues.

The sum of $1,800,000 from the state general fund was appropriated in fiscal year 2007-2008 to the Administration for the increase in the income eligibility limit for pregnant women pursuant to A.R.S § 36-2901.

The sum of $3,536,500 in expenditure authority of federal monies was appropriated in fiscal year 2007-2008 to the Administration for the increase in the income eligibility limit for pregnant women

7. Description of any less intrusive or less costly alternative.

AHCCCS believes the changes to the rule reflect the most efficient and cost-effective method for AHCCCS and other parties involved.

repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-1621. Reserved

R9-22-1622. Repealed

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-1623. Repealed

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-1624. Repealed

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-1625. Repealed

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-1626. Repealed

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-1627. Repealed

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-1628. Repealed

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-1629. Repealed

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-1630. Repealed

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-1631. Repealed

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-1632. Reserved

R9-22-1633. Repealed

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-1634. Repealed

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-1635. Reserved

R9-22-1636. Repealed

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

ARTICLE 17. ENROLLMENT

R9-22-1701. Enrollment-Related Definitions
In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

"Annual enrollment choice" means the annual opportunity for a person to change contractors.

"Auto-assignment algorithm" or "Algorithm" means a formula used by the Administration to assign to a contractor a member who did not make a timely choice under R9-22-1702.

"CMDP" means Comprehensive Medical and Dental Program.

"Disenrollment" means the discontinuance of a person's entitlement to receive covered services from a contractor of record.

"Enrollment" means the process by which an eligible person becomes a member of a contractor's plan.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended to correct a typographical error, filed in the Office of the Secretary of State October 30, 2001 (Supp. 01-4). Amended by exempt rulemaking at 7 A.A.R. 5701,

effective December 1, 2001 (Supp. 01-4). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4). Section repealed; new Section made by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2).

R9-22-1702. Enrollment of a Member with an AHCCCS Contractor

A. General enrollment requirements. The Administration shall enroll a member with a contractor as described in this Section, unless the member has pre-selected a contractor on the application:
1. Except as provided in subsections (A)(3), (A)(5), and (C), a member who is determined to be eligible under this Chapter and resides in an area served by more than one contractor, may choose an available contractor serving the member's GSA within 30 days from the date of notice of enrollment. A Native American member may select IHS or another available contractor.
2. If the member does not make a choice under subsection (A)(1), the Administration shall immediately auto-assign the member to:
   a. IHS if the member is a Native American living on a reservation,
   b. A contractor based on family continuity, or
   c. A contractor by using the auto-assignment algorithm.
3. If the member's period of ineligibility and disenrollment from the contractor of record is for a period of less than 90 days, the Administration shall enroll the member with the member's most recent contractor of record, if available, except if:
   a. The member no longer resides in the contractor's GSA;
   b. The contractor's contract is suspended or terminated;
   c. The member was previously enrolled with CMDP but at the time of re-enrollment the member is not a foster care child;
   d. The member chooses another contractor or chooses IHS, if available to the member, during the annual enrollment choice period; or
   e. The member was previously enrolled with a contractor but at the time of re-enrollment the member is a foster care child.
4. When the member's disenrollment period is more than 90 days, the member may select a contractor as described in subsection (A)(1).
5. The Administration shall not enroll a member with a contractor if a member:
   a. Is eligible for the FESP under R9-22-1419;
   b. Is eligible for less than 30 days from the date the Administration receives notification of a member's eligibility, except for a member who is enrolled with CMDP or IHS;
   c. Is eligible only for a retroactive period of eligibility, except for a member who is enrolled with CMDP or IHS; or
   d. Resides in an area not served by a contractor.

B. Fee-for-service coverage. A member not enrolled with a contractor under subsection (A)(5) shall obtain covered medical services from an AHCCCS-registered provider on a fee-for-service basis under Article 7.

C. Foster care child. The Administration shall enroll a member with CMDP if the member is a foster care child under A.R.S. § 8-512.

D. Family Planning Services Extension Program. A member eligible for the Family Planning Services Extension Program under R9-22-1431, shall remain enrolled with the member's contractor of record or IHS.

E. Contractor or IHS enrollment change for a member.
1. The Administration shall change a member's enrollment if the member requests a change to an available contractor or IHS during an annual enrollment period. A Native American may change from an available contractor to IHS or from IHS to an available contractor at any time.
2. The Administration shall approve a change in enrollment for any member if the change is a result of the final outcome of a grievance under 9 A.A.C. 34.
3. A member may choose a different contractor if the member moves into a GSA not served by the current contractor or if the contractor is no longer available. If the member does not select a contractor, the Administration shall auto-assign the member as provided in subsection (A)(2).
4. The Administration shall provide the member 60-day advance notice of the member's option to change plans by the member's annual enrollment date.
5. A member may disenroll from a plan if:
   a. The member moves out of the GSA;
   b. The plan does not, because of moral or religious objections, cover the service a member seeks; or
   c. The member needs related services to be performed at the same time; not all related services are available within the network; and the member's primary care provider or another provider determines that receiving the services separately would subject the member to unnecessary risk.
6. For exceptions to this Article, the Administration shall approve a change for an enrolled member as determined by the Director.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2).

R9-22-1703. Effective Date of Enrollment with a Contractor

A. Effective date of enrollment. A member's date of enrollment is the date enrollment action is taken by the Administration. However, if a plan change occurs for an annual enrollment choice, the effective date is the month of the member's enrollment anniversary date.

B. Financial liability of the contractor. The contractor shall be financially liable for an enrolled member's care as specified in contract.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2).

R9-22-1704. Newborn Enrollment

A. General.
1. The Administration shall enroll a newborn child of an eligible mother with an available contractor or IHS, based on the mother's enrollment.
2. The Administration shall auto-assign a newborn child of an eligible mother who is not enrolled with a contractor or IHS or who is enrolled with CMDP. When a mother enrolled in CMDP has a newborn and the newborn is surrendered to Administration on Children, Youth and Families (ACYF), the newborn is then enrolled with CMDP.
3. The Administration shall notify the mother of the right to choose a different contractor for her newborn child. The mother may make her choice within 30 days from the date of notice of enrollment.

B. Financial liability for newborns. The contractor shall be financially liable for the medical care of a newborn as specified in contract.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended to correct a typographical error, filed in the Office of the Secretary of State October 30, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2).

R9-22-1705. Guaranteed Enrollment Period

A. General. Except for members enrolled with IHS or CMDP, the Administration shall provide a guaranteed enrollment period for a one-time period that begins on the effective date of the member's initial enrollment with a contractor and ends on the last day of the fifth full calendar month after the date of the member's initial enrollment.

B. Exceptions to guaranteed period. The Administration shall not grant a guaranteed enrollment period or shall terminate a guaranteed enrollment period as provided in subsection (C), if the member:
1. Did not meet the conditions of eligibility when initially enrolled with the contractor;
2. Except as provided in 9 A.A.C. 22, Article 12, is an inmate of a public institution as defined in 42 CFR 435.1010;
3. Dies;
4. Moves out-of-state;
5. Voluntarily withdraws from the AHCCCS program;
6. Is adopted; or
7. Has whereabouts that are unknown.

C. Disenrollment effective date. The Administration shall terminate any guaranteed enrollment period to which the member is not entitled effective on:
1. The date the member is admitted to a public institution under subsection (B);
2. The member's date of death;
3. The last day of the month in which the Administration receives notification that a member moved out-of-state;
4. The date the Administration receives written notification of the member's voluntary withdrawal from the AHCCCS program;
5. The last day of the month in which the Administration receives notification that a member's adoption proceedings are finalized; or
6. The last day of the month in which the Administration receives notification that a member's whereabouts are unknown.

D. Retroactive adjustments. The Administration shall adjust the member's eligibility and enrollment retroactively under subsection (C).

Historical Note
New Section made by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2).

ARTICLE 18. RESERVED

EMERGENCY RULEMAKING

ARTICLE 18. PROVIDER EXCLUSION RULES

EMERGENCY RULEMAKING

R9-22-1801. Definitions

"Administration" has the meaning defined in A.R.S. § 36-2901.

"Affiliation" has the meaning defined in 42 C.F.R. § 424.502.

"Managing employee" has the meaning defined in 42 C.F.R. § 455.101.

"Member" has the meaning defined in A.R.S. § 36-2901.

"Person with an ownership or control interest" has the meaning defined in 42 C.F.R. § 455.101 and 42 C.F.R. § 455.102.

"System" has the meaning defined in A.R.S. § 36-2901.

Historical Note
Section made by emergency rulemaking at 29 A.A.R. 1577 (July 14, 2023), with an immediate effective date of July 3, 2023; effective for 180 days (Supp. 23-3).

EMERGENCY RULEMAKING

R9-22-1802. Basis for Exclusion

A. In addition to such grounds for exclusion set for in subsections (A) and (B) of A.R.S. § 36-2930.05, the Administration, in its sole discretion, may exclude:
1. Any individual or entity which has failed to comply with any requirement, term, or condition set forth in any agreement with the Administration;
2. Any individual or entity which has failed to remit any indebtedness or overpayment as required by A.A.C. R9-22-713;
3. Any entity which has a managing employee or any entity with a person with an ownership or control interest that:
   a. Has failed to remit any indebtedness or overpayment as required by A.A.C. R9-22-713;
   b. Has an affiliation with an organization which has failed to remit any indebtedness or overpayment as required by A.A.C. R9-22-713;
4. Any individual or any entity with a managing employee or a person with an ownership or control interest that has been convicted of a criminal offense which the Administration, in its sole discretion, determines may represent an undue risk of fraud, waste, or abuse of the system or an undue risk of harm to members;

36-2903.01. Additional powers and duties; report; definition

A. The director of the Arizona health care cost containment system administration may adopt rules that provide that the system may withhold or forfeit payments to be made to a noncontracting provider by the system if the noncontracting provider fails to comply with this article, the provider agreement or rules that are adopted pursuant to this article and that relate to the specific services rendered for which a claim for payment is made.

B. The director shall:

1. Prescribe uniform forms to be used by all contractors. The rules shall require a written and signed application by the applicant or an applicant's authorized representative, or, if the person is incompetent or incapacitated, a family member or a person acting responsibly for the applicant may obtain a signature or a reasonable facsimile and file the application as prescribed by the administration.

2. Enter into an interagency agreement with the department to establish a streamlined eligibility process to determine the eligibility of all persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). At the administration's option, the interagency agreement may allow the administration to determine the eligibility of certain persons, including those defined pursuant to section 36-2901, paragraph 6, subdivision (a).

3. Enter into an intergovernmental agreement with the department to:

(a) Establish an expedited eligibility and enrollment process for all persons who are hospitalized at the time of application.

(b) Establish performance measures and incentives for the department.

(c) Establish the process for management evaluation reviews that the administration shall perform to evaluate the eligibility determination functions performed by the department.

(d) Establish eligibility quality control reviews by the administration.

(e) Require the department to adopt rules, consistent with the rules adopted by the administration for a hearing process, that applicants or members may use for appeals of eligibility determinations or redeterminations.

(f) Establish the department's responsibility to place sufficient eligibility workers at federally qualified health centers to screen for eligibility and at hospital sites and level one trauma centers to ensure that persons seeking hospital services are screened on a timely basis for eligibility for the system, including a process to ensure that applications for the system can be accepted on a twenty-four hour basis, seven days a week.

(g) Withhold payments based on the allowable sanctions for errors in eligibility determinations or redeterminations or failure to meet performance measures required by the intergovernmental agreement.

(h) Recoup from the department all federal fiscal sanctions that result from the department's inaccurate eligibility determinations. The director may offset all or part of a sanction if the department submits a corrective action plan and a strategy to remedy the error.

4. By rule establish a procedure and time frames for the intake of grievances and requests for hearings, for the continuation of benefits and services during the appeal process and for a grievance process at the contractor level. Notwithstanding sections 41-1092.02, 41-1092.03 and 41-1092.05, the administration shall develop rules to establish the procedure and time frame for the informal resolution of grievances and appeals. A grievance that is not related to a claim for payment of system covered services shall be filed in writing with and received by the administration or the prepaid capitated provider or program contractor not later than sixty days after the date of the adverse action, decision or policy implementation being grieved. A grievance that is related to a claim for payment of system covered services must be filed in writing and received by the administration or the prepaid capitated provider or program contractor within twelve months after the date of service, within twelve months

after the date that eligibility is posted or within sixty days after the date of the denial of a timely claim submission, whichever is later. A grievance for the denial of a claim for reimbursement of services may contest the validity of any adverse action, decision, policy implementation or rule that related to or resulted in the full or partial denial of the claim. A policy implementation may be subject to a grievance procedure, but it may not be appealed for a hearing. The administration is not required to participate in a mandatory settlement conference if it is not a real party in interest. In any proceeding before the administration, including a grievance or hearing, persons may represent themselves or be represented by a duly authorized agent who is not charging a fee. A legal entity may be represented by an officer, partner or employee who is specifically authorized by the legal entity to represent it in the particular proceeding.

5. Apply for and accept federal funds available under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) in support of the system. The application made by the director pursuant to this paragraph shall be designed to qualify for federal funding primarily on a prepaid capitated basis. Such funds may be used only for the support of persons defined as eligible pursuant to title XIX of the social security act or the approved section 1115 waiver.

6. At least thirty days before the implementation of a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

7. In addition to the cost sharing requirements specified in subsection D, paragraph 4 of this section:

(a) Charge monthly premiums up to the maximum amount allowed by federal law to all populations of eligible persons who may be charged.

(b) Implement this paragraph to the extent permitted under the federal deficit reduction act of 2005 and other federal laws, subject to the approval of federal waiver authority and to the extent that any changes in the cost sharing requirements under this paragraph would permit this state to receive any enhanced federal matching rate.

C. The director is authorized to apply for any federal funds available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state funds appropriated for the administration and operation of the system may be used as matching funds to secure federal funds pursuant to this subsection.

D. The director may adopt rules or procedures to do the following:

1. Authorize advance payments based on estimated liability to a contractor or a noncontracting provider after the contractor or noncontracting provider has submitted a claim for services and before the claim is ultimately resolved. The rules shall specify that any advance payment shall be conditioned on the execution before payment of a contract with the contractor or noncontracting provider that requires the administration to retain a specified percentage, which shall be at least twenty percent, of the claimed amount as security and that requires repayment to the administration if the administration makes any overpayment.

2. Defer liability, in whole or in part, of contractors for care provided to members who are hospitalized on the date of enrollment or under other circumstances. Payment shall be on a capped fee-for-service basis for services other than hospital services and at the rate established pursuant to subsection G of this section for hospital services or at the rate paid by the health plan, whichever is less.

3. Deputize, in writing, any qualified officer or employee in the administration to perform any act that the director by law is empowered to do or charged with the responsibility of doing, including the authority to issue final administrative decisions pursuant to section 41-1092.08.

4. Notwithstanding any other law, require persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 to be financially responsible for any cost sharing requirements established in a state plan or a section 1115 waiver and approved by the centers for medicare and

medicaid services. Cost sharing requirements may include copayments, coinsurance, deductibles, enrollment fees and monthly premiums for enrolled members, including households with children enrolled in the Arizona long-term care system.

E. The director shall adopt rules that further specify the medical care and hospital services that are covered by the system pursuant to section 36-2907.

F. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection shall consider the differences between rural and urban conditions on the delivery of hospitalization and medical care.

G. For inpatient hospital admissions and outpatient hospital services on and after March 1, 1993, the administration shall adopt rules for the reimbursement of hospitals according to the following procedures:

1. For inpatient hospital stays from March 1, 1993 through September 30, 2014, the administration shall use a prospective tiered per diem methodology, using hospital peer groups if analysis shows that cost differences can be attributed to independently definable features that hospitals within a peer group share. In peer grouping the administration may consider such factors as length of stay differences and labor market variations. If there are no cost differences, the administration shall implement a stop loss-stop gain or similar mechanism. Any stop loss-stop gain or similar mechanism shall ensure that the tiered per diem rates assigned to a hospital do not represent less than ninety percent of its 1990 base year costs or more than one hundred ten percent of its 1990 base year costs, adjusted by an audit factor, during the period of March 1, 1993 through September 30, 1994. The tiered per diem rates set for hospitals shall represent no less than eighty-seven and one-half percent or more than one hundred twelve and one-half percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1994 through September 30, 1995 and no less than eighty-five percent or more than one hundred fifteen percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1995 through September 30, 1996. For the periods after September 30, 1996 no stop loss-stop gain or similar mechanisms shall be in effect. An adjustment in the stop loss-stop gain percentage may be made to ensure that total payments do not increase as a result of this provision. If peer groups are used, the administration shall establish initial peer group designations for each hospital before implementation of the per diem system. The administration may also use a negotiated rate methodology. The tiered per diem methodology may include separate consideration for specialty hospitals that limit their provision of services to specific patient populations, such as rehabilitative patients or children. The initial per diem rates shall be based on hospital claims and encounter data for dates of service November 1, 1990 through October 31, 1991 and processed through May of 1992. The administration may also establish a separate reimbursement methodology for claims with extraordinarily high costs per day that exceed thresholds established by the administration.

2. For rates effective on October 1, 1994, and annually through September 30, 2011, the administration shall adjust tiered per diem payments for inpatient hospital care by the data resources incorporated market basket index for prospective payment system hospitals. For rates effective beginning on October 1, 1999, the administration shall adjust payments to reflect changes in length of stay for the maternity and nursery tiers.

3. Through June 30, 2004, for outpatient hospital services, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to the covered charges. Beginning on July 1, 2004 through June 30, 2005, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to covered charges. If the hospital increases its charges for outpatient services filed with the Arizona department of health services pursuant to chapter 4, article 3 of this title, by more than 4.7 percent for dates of service effective on or after July 1, 2004, the hospital specific cost-to-charge ratio will be reduced by the amount that it exceeds 4.7 percent. If charges exceed 4.7 percent, the effective date of the increased charges will be the effective date of the adjusted Arizona health care cost containment system cost-to-charge ratio. The administration shall develop the methodology for a capped fee-for-service schedule and a statewide cost-to-charge ratio. Any covered outpatient service not included in the capped fee-for-service schedule shall be reimbursed by applying the statewide cost-to-charge ratio that is based on the services not included in the capped fee-for-service schedule. Beginning on July 1, 2005, the administration shall reimburse clean claims with dates of service on or after July 1, 2005, based on the capped fee-for-service schedule or the statewide cost-to-charge

ratio established pursuant to this paragraph. The administration may make additional adjustments to the outpatient hospital rates established pursuant to this section based on other factors, including the number of beds in the hospital, specialty services available to patients and the geographic location of the hospital.

4. Except if submitted under an electronic claims submission system, a hospital bill is considered received for purposes of this paragraph on initial receipt of the legible, error-free claim form by the administration if the claim includes the following error-free documentation in legible form:

(a) An admission face sheet.

(b) An itemized statement.

(c) An admission history and physical.

(d) A discharge summary or an interim summary if the claim is split.

(e) An emergency record, if admission was through the emergency room.

(f) Operative reports, if applicable.

(g) A labor and delivery room report, if applicable.

Payment received by a hospital from the administration pursuant to this subsection or from a contractor either by contract or pursuant to section 36-2904, subsection I is considered payment by the administration or the contractor of the administration's or contractor's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.

5. For services rendered on and after October 1, 1997, the administration shall pay a hospital's rate established according to this section subject to the following:

(a) If the hospital's bill is paid within thirty days of the date the bill was received, the administration shall pay ninety-nine percent of the rate.

(b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate.

(c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. In developing the reimbursement methodology, if a review of the reports filed by a hospital pursuant to section 36-125.04 indicates that further investigation is considered necessary to verify the accuracy of the information in the reports, the administration may examine the hospital's records and accounts related to the reporting requirements of section 36-125.04. The administration shall bear the cost incurred in connection with this examination unless the administration finds that the records examined are significantly deficient or incorrect, in which case the administration may charge the cost of the investigation to the hospital examined.

7. Except for privileged medical information, the administration shall make available for public inspection the cost and charge data and the calculations used by the administration to determine payments under the tiered per diem system, provided that individual hospitals are not identified by name. The administration shall make the data and calculations available for public inspection during regular business hours and shall provide copies of the data and calculations to individuals requesting such copies within thirty days of receipt of a written request. The administration may charge a reasonable fee for the provision of the data or information.

8. The prospective tiered per diem payment methodology for inpatient hospital services shall include a mechanism for the prospective payment of inpatient hospital capital related costs. The capital payment shall

include hospital specific and statewide average amounts. For tiered per diem rates beginning on October 1, 1999, the capital related cost component is frozen at the blended rate of forty percent of the hospital specific capital cost and sixty percent of the statewide average capital cost in effect as of January 1, 1999 and as further adjusted by the calculation of tier rates for maternity and nursery as prescribed by law. Through September 30, 2011, the administration shall adjust the capital related cost component by the data resources incorporated market basket index for prospective payment system hospitals.

9. For graduate medical education programs:

(a) Beginning September 30, 1997, the administration shall establish a separate graduate medical education program to reimburse hospitals that had graduate medical education programs that were approved by the administration as of October 1, 1999. The administration shall separately account for monies for the graduate medical education program based on the total reimbursement for graduate medical education reimbursed to hospitals by the system in federal fiscal year 1995-1996 pursuant to the tiered per diem methodology specified in this section. The graduate medical education program reimbursement shall be adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Subject to legislative appropriation, on an annual basis, each qualified hospital shall receive a single payment from the graduate medical education program that is equal to the same percentage of graduate medical education reimbursement that was paid by the system in federal fiscal year 1995-1996. Any reimbursement for graduate medical education made by the administration shall not be subject to future settlements or appeals by the hospitals to the administration. The monies available under this subdivision shall not exceed the fiscal year 2005-2006 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement, except for monies distributed for expansions pursuant to subdivision (b) of this paragraph.

(b) The monies available for graduate medical education programs pursuant to this subdivision shall not exceed the fiscal year 2006-2007 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Graduate medical education programs eligible for such reimbursement are not precluded from receiving reimbursement for funding under subdivision (c) of this paragraph. Beginning July 1, 2006, the administration shall distribute any monies appropriated for graduate medical education above the amount prescribed in subdivision (a) of this paragraph in the following order or priority:

(i) For the direct costs to support the expansion of graduate medical education programs established before July 1, 2006 at hospitals that do not receive payments pursuant to subdivision (a) of this paragraph. These programs must be approved by the administration.

(ii) For the direct costs to support the expansion of graduate medical education programs established on or before October 1, 1999. These programs must be approved by the administration.

(c) The administration shall distribute to hospitals any monies appropriated for graduate medical education above the amount prescribed in subdivisions (a) and (b) of this paragraph for the following purposes:

(i) For the direct costs of graduate medical education programs established or expanded on or after July 1, 2006. These programs must be approved by the administration.

(ii) For a portion of additional indirect graduate medical education costs for programs that are located in a county with a population of less than five hundred thousand persons at the time the residency position was created or for a residency position that includes a rotation in a county with a population of less than five hundred thousand persons at the time the residency position was established. These programs must be approved by the administration.

(d) The administration shall develop, by rule, the formula by which the monies are distributed.

(e) Each graduate medical education program that receives funding pursuant to subdivision (b) or (c) of this paragraph shall identify and report to the administration the number of new residency positions created by the funding provided in this paragraph, including positions in rural areas. The program shall also report information related to the number of funded residency positions that resulted in physicians locating their practices in this state. The administration shall report to the joint legislative budget committee by February 1 of each year on the number of new residency positions as reported by the graduate medical education programs.

(f) Local, county and tribal governments and any university under the jurisdiction of the Arizona board of regents may provide monies in addition to any state general fund monies appropriated for graduate medical education in order to qualify for additional matching federal monies for providers, programs or positions in a specific locality and costs incurred pursuant to a specific contract between the administration and providers or other entities to provide graduate medical education services as an administrative activity. Payments by the administration pursuant to this subdivision may be limited to those providers designated by the funding entity and may be based on any methodology deemed appropriate by the administration, including replacing any payments that might otherwise have been paid pursuant to subdivision (a), (b) or (c) of this paragraph had sufficient state general fund monies or other monies been appropriated to fully fund those payments. These programs, positions, payment methodologies and administrative graduate medical education services must be approved by the administration and the centers for medicare and medicaid services. The administration shall report to the president of the senate, the speaker of the house of representatives and the director of the joint legislative budget committee on or before July 1 of each year on the amount of money contributed and number of residency positions funded by local, county and tribal governments, including the amount of federal matching monies used.

(g) Any funds appropriated but not allocated by the administration for subdivision (b) or (c) of this paragraph may be reallocated if funding for either subdivision is insufficient to cover appropriate graduate medical education costs.

10. Notwithstanding section 41-1005, subsection A, paragraph 9, the administration shall adopt rules pursuant to title 41, chapter 6 establishing the methodology for determining the prospective tiered per diem payments that are in effect through September 30, 2014.

11. For inpatient hospital services rendered on or after October 1, 2011, the prospective tiered per diem payment rates are permanently reset to the amounts payable for those services as of October 1, 2011 pursuant to this subsection.

12. The administration shall adopt a diagnosis-related group based hospital reimbursement methodology consistent with title XIX of the social security act for inpatient dates of service on and after October 1, 2014. The administration may make additional adjustments to the inpatient hospital rates established pursuant to this section for hospitals that are publicly operated or based on other factors, including the number of beds in the hospital, the specialty services available to patients, the geographic location and diagnosis-related group codes that are made publicly available by the hospital pursuant to section 36-437. The administration may also provide additional reimbursement for extraordinarily high cost cases that exceed a threshold above the standard payment. The administration may also establish a separate payment methodology for specific services or hospitals serving unique populations.

H. The director may adopt rules that specify enrollment procedures, including notice to contractors of enrollment. The rules may provide for varying time limits for enrollment in different situations. The administration shall specify in contract when a person who has been determined eligible will be enrolled with that contractor and the date on which the contractor will be financially responsible for health and medical services to the person.

I. The administration may make direct payments to hospitals for hospitalization and medical care provided to a member in accordance with this article and rules. The director may adopt rules to establish the procedures by which the administration shall pay hospitals pursuant to this subsection if a contractor fails to make timely payment to a hospital. Such payment shall be at a level determined pursuant to section 36-2904, subsection H

or I. The director may withhold payment due to a contractor in the amount of any payment made directly to a hospital by the administration on behalf of a contractor pursuant to this subsection.

J. The director shall establish a special unit within the administration for the purpose of monitoring the third-party payment collections required by contractors and noncontracting providers pursuant to section 36-2903, subsection B, paragraph 10 and subsection F and section 36-2915, subsection E. The director shall determine by rule:

1. The type of third-party payments to be monitored pursuant to this subsection.

2. The percentage of third-party payments that is collected by a contractor or noncontracting provider and that the contractor or noncontracting provider may keep and the percentage of such payments that the contractor or noncontracting provider may be required to pay to the administration. Contractors and noncontracting providers must pay to the administration one hundred percent of all third-party payments that are collected and that duplicate administration fee-for-service payments. A contractor that contracts with the administration pursuant to section 36-2904, subsection A may be entitled to retain a percentage of third-party payments if the payments collected and retained by a contractor are reflected in reduced capitation rates. A contractor may be required to pay the administration a percentage of third-party payments that are collected by a contractor and that are not reflected in reduced capitation rates.

K. The administration shall establish procedures to apply to the following if a provider that has a contract with a contractor or noncontracting provider seeks to collect from an individual or financially responsible relative or representative a claim that exceeds the amount that is reimbursed or should be reimbursed by the system:

1. On written notice from the administration or oral or written notice from a member that a claim for covered services may be in violation of this section, the provider that has a contract with a contractor or noncontracting provider shall investigate the inquiry and verify whether the person was eligible for services at the time that covered services were provided. If the claim was paid or should have been paid by the system, the provider that has a contract with a contractor or noncontracting provider shall not continue billing the member.

2. If the claim was paid or should have been paid by the system and the disputed claim has been referred for collection to a collection agency or referred to a credit reporting bureau, the provider that has a contract with a contractor or noncontracting provider shall:

(a) Notify the collection agency and request that all attempts to collect this specific charge be terminated immediately.

(b) Advise all credit reporting bureaus that the reported delinquency was in error and request that the affected credit report be corrected to remove any notation about this specific delinquency.

(c) Notify the administration and the member that the request for payment was in error and that the collection agency and credit reporting bureaus have been notified.

3. If the administration determines that a provider that has a contract with a contractor or noncontracting provider has billed a member for charges that were paid or should have been paid by the administration, the administration shall send written notification by certified mail or other service with proof of delivery to the provider that has a contract with a contractor or noncontracting provider stating that this billing is in violation of federal and state law. If, twenty-one days or more after receiving the notification, a provider that has a contract with a contractor or noncontracting provider knowingly continues billing a member for charges that were paid or should have been paid by the system, the administration may assess a civil penalty in an amount equal to three times the amount of the billing and reduce payment to the provider that has a contract with a contractor or noncontracting provider accordingly. Receipt of delivery signed by the addressee or the addressee's employee is prima facie evidence of knowledge. Civil penalties collected pursuant to this subsection shall be deposited in the state general fund. Section 36-2918, subsections C, D and F, relating to the imposition, collection and enforcement of civil penalties, apply to civil penalties imposed pursuant to this paragraph.

L. The administration may conduct postpayment review of all claims paid by the administration and may recoup any monies erroneously paid. The director may adopt rules that specify procedures for conducting postpayment review. A contractor may conduct a postpayment review of all claims paid by the contractor and may recoup monies that are erroneously paid.

M. Subject to title 41, chapter 4, article 4, the director or the director's designee may employ and supervise personnel necessary to assist the director in performing the functions of the administration.

N. The administration may contract with contractors for obstetrical care who are eligible to provide services under title XIX of the social security act.

O. Notwithstanding any other law, on federal approval the administration may make disproportionate share payments to private hospitals, county operated hospitals, including hospitals owned or leased by a special health care district, and state operated institutions for mental disease beginning October 1, 1991 in accordance with federal law and subject to legislative appropriation. If at any time the administration receives written notification from federal authorities of any change or difference in the actual or estimated amount of federal funds available for disproportionate share payments from the amount reflected in the legislative appropriation for such purposes, the administration shall provide written notification of such change or difference to the president and the minority leader of the senate, the speaker and the minority leader of the house of representatives, the director of the joint legislative budget committee, the legislative committee of reference and any hospital trade association within this state, within three working days not including weekends after receipt of the notice of the change or difference. In calculating disproportionate share payments as prescribed in this section, the administration may use either a methodology based on claims and encounter data that is submitted to the administration from contractors or a methodology based on data that is reported to the administration by private hospitals and state operated institutions for mental disease. The selected methodology applies to all private hospitals and state operated institutions for mental disease qualifying for disproportionate share payments.

P. Disproportionate share payments made pursuant to subsection O of this section include amounts for disproportionate share hospitals designated by political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents. Subject to the approval of the centers for medicare and medicaid services, any amount of federal funding allotted to this state pursuant to section 1923(f) of the social security act and not otherwise spent under subsection O of this section shall be made available for distribution pursuant to this subsection. Political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents may designate hospitals eligible to receive disproportionate share payments in an amount up to the limit prescribed in section 1923(g) of the social security act if those political subdivisions, tribal governments or universities provide sufficient monies to qualify for the matching federal monies for the disproportionate share payments.

Q. Notwithstanding any law to the contrary, the administration may receive confidential adoption information to determine whether an adopted child should be terminated from the system.

R. The adoption agency or the adoption attorney shall notify the administration within thirty days after an eligible person receiving services has placed that person's child for adoption.

S. If the administration implements an electronic claims submission system, it may adopt procedures pursuant to subsection G of this section requiring documentation different than prescribed under subsection G, paragraph 4 of this section.

T. In addition to any requirements adopted pursuant to subsection D, paragraph 4 of this section, notwithstanding any other law, subject to approval by the centers for medicare and medicaid services, beginning July 1, 2011, members eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 shall pay the following:

1. A monthly premium of fifteen dollars, except that the total monthly premium for an entire household shall not exceed sixty dollars.

2. A copayment of five dollars for each physician office visit.

3. A copayment of ten dollars for each urgent care visit.

4. A copayment of thirty dollars for each emergency department visit.

U. Subject to the approval of the centers for medicare and medicaid services, political subdivisions of this state, tribal governments and any university under the jurisdiction of the Arizona board of regents may provide to the Arizona health care cost containment system administration monies in addition to any state general fund monies appropriated for critical access hospitals in order to qualify for additional federal monies. Any amount of federal monies received by this state pursuant to this subsection shall be distributed as supplemental payments to critical access hospitals.

V. For the purposes of this section, "disproportionate share payment" means a payment to a hospital that serves a disproportionate share of low-income patients as described by 42 United States Code section 1396r-4.

D-11.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 28, Article 4

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: September 4, 2024

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

FROM: Council Staff

DATE: August 15, 2024

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**
Title 9, Chapter 28, Article 4

Summary

This Five-Year Review Report (5YRR) from the Arizona Health Care Cost Containment System (AHCCCS) relates to fifteen (15) rules regarding Long Term Care System Eligibility and Enrollment. Specifically, these rules address TEFRA liens (a lien under the federal Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982), define terms, and address various aspects of enrollment and eligibility for the Arizona Long Term Care System (ALTCS) program.

In the prior 5YRR for these rules, which was approved by the Council in May 2019, AHCCCS indicated that the term "ICF-MR" (Intermediate Care Facility for the Mentally Retarded) in rule R9-28-406 was changed in 2013 to "ICF-IID" (Intermediate Care Facility for Individuals with Intellectual Disability). AHCCCS proposed to amend R9-28-406 by expedited rulemaking within 180 days of approval of the 2019 report. However, AHCCCS indicates it did not complete the prior proposed course of action as it determined these recommendations did not merit an exemption from the rulemaking moratorium. Additionally, AHCCCS indicates agency resources at the time had been diverted to address COVID-19 public health emergency.

Proposed Action

In the current report, AHCCCS indicates it has reiterated those changes recommended in the prior 5YRR as well as few additional technical and clarifying changes to rules R9-28-401, R9-28-406, and R9-28-413 to improve the clarity, conciseness, understandability, and enforcement of the rules as outlined in more detail below. AHCCCS indicates it has received an exception from the rulemaking moratorium from the Governor's office to begin a rulemaking immediately following the Council's approval of this report in order to make the changes to the rules outlined above. AHCCCS anticipates submitting this rulemaking to Council by October 22, 2024.

1. Has the agency analyzed whether the rules are authorized by statute?

AHCCCS cites both general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

As a result of this five-year review, AHCCCS has determined that there was no economic, small business, or consumer impact because of the previous rulemaking. Specifically, there was no economic impact due to the technical rule changes, clarifications to when resource criteria is considered for Arizona Long-Term Care (ALTCS) eligibility, or as a result of the updated income requirements for ALTCS eligibility.

AHCCCS has proposed several changes because of this five-year review, for which AHCCCS does not anticipate any economic, small business, or consumer impact. Proposed changes include clarifications to the rules—substantive and procedural rights of members are not affected, nor are any of the programs of AHCCCS. These proposed changes are merely clarifying; therefore, the economic impact remains the same as the prior 5YRR.

Stakeholders are identified as ALTCS applicants and members, as well as AHCCCS.

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?

AHCCCS has determined that the proposed changes will provide clarity and align with federal requirements. Since the federal requirements govern the current administration of this program there will be no additional costs to members, and the benefit of these changes will provide added clarity, while keeping these rules in compliance with federal regulation.

4. Has the agency received any written criticisms of the rules over the last five years?

AHCCCS 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?

AHCCCS indicates the rules are generally clear, concise, and understandable except for the following:

- R9-28-406(C)
  - Rule shall be updated to read: Inmate of a public institution. An inmate of a public institution ~~is not~~ may be eligible for the ALTCS program if federal financial participation (FFP) is not available as described under R9-22-310.
- R9-28-413(A)
  - Rule shall be updated to read: A member's enrollment with an EPD program contractor. The Administration shall enroll an ALTCS elderly or physically disabled member with an EPD program contractor assigned to that Geographic Service Area (GSA).

6. Has the agency analyzed the rules' consistency with other rules and statutes?

AHCCCS indicates the rules are generally consistent with other rules and statutes except for the following:

- R9-28-406
  - Name was changed in 2013 and rule shall be updated to read: "ICF-IID" (Intermediate Care Facility for Individuals with Intellectual Disability) ~~"ICF-MR" (Intermediate Care Facility for the Mentally Retarded)~~

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

AHCCCS indicates the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

AHCCCS indicates the rules are enforced as written except for the following:

- R9-28-401(A)(4)
  - Rule is no longer accurate and shall be updated to read: An applicant or representative who files an ALTCS application may withdraw the application for ALTCS coverage either orally or in writing to ~~the~~ any ALTCS eligibility office~~. where the application was filed.~~

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

AHCCCS indicates 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?

AHCCCS indicates the rules do not require the issuance of a permit, license, or agency authorization.

11. Conclusion

This 5YRR from AHCCCS relates to fifteen (15) rules regarding Long Term Care System Eligibility and Enrollment. Specifically, these rules address TEFRA liens, define terms, and address various aspects of enrollment and eligibility for the ALTCS program. AHCCCS is proposing technical and clarifying changes to rules R9-28-401, R9-28-406, and R9-28-413 to improve the clarity, conciseness, understandability, and enforcement of the rules. AHCCCS indicates it has received an exception from the rulemaking moratorium from the Governor's office to begin a rulemaking immediately following the Council's approval of this report in order to make the changes to the rules outlined above. AHCCCS anticipates submitting this rulemaking to Council by October 22, 2024.

Council staff recommends approval of this report.

AHCCCS
Arizona Health Care Cost Containment System

Katie Hobbs, Governor
Carmen Heredia, Cabinet Executive Officer
and Executive Deputy Director

May 15, 2024

VIA EMAIL: grrc@azdoa.gov

Jessica Klein, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 302
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 28, Article 4;

Dear Ms. Klein

Please find enclosed AHCCCS's Five-Year Review Report for Title 9, Chapter 28, Article 4 due on May 30, 2024.

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Sladjana Kuzmanovic at 602-417-4232 or sladjana.kuzmanovic@azahcccs.gov.

Sincerely,

Nicole Fries
Deputy General Counsel

Attachments

Arizona Health Care Cost Containment System

(AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 28, Article 4

May 2024

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 36-2932.

Specific Statutory Authority: A.R.S. §§ 36-2933, 36-2934 and 36-2934.01.

2. The objective of each rule:

Rule	Objective
R9-28-401	The objective of the rule is to list eligibility and enrollment-related definitions.
R9-28-401.01	The objective of the rule is to establish guidelines for application for ALTCS coverage, conditions of eligibility and effective dates.
R9-28-406	The objective of the rule is to establish provisions for treatment of different living arrangements for the ALTCS program.
R9-28-407	The objective of the rule is to establish resource requirements for ALTCS eligibility.
R9-28-408	The objective of the rule is to establish income requirements for ALTCS eligibility.
R9-28-409	The objective of the rule is to establish provisions for allowable transfers of assets and penalties for transfers of assets that do not meet the criteria for allowable transfers.
R9-28-410	The objective of the rule is to establish provisions for the treatment of resources and income of an institutionalized person with a spouse in the community. The rule also provides specific provisions for transfers of assets and hearing rights applicable to community spouses and institutionalized spouses.
R9-28-411	The objective of the rule is to establish requirements for reporting specified changes to the Administration, requirements for the processing of changes and redeterminations by the Administration, and requirements for notice of action on the changes and redeterminations.
R9-28-412	The objective of the rule is to establish general requirements for enrollment of members with a program contractor.
R9-28-413	The objective of the rule is to establish requirements for the enrollment of elderly or physically disabled ALTCS members.
R9-28-414	The objective of the rule is to establish requirements for the enrollment of developmentally disabled ALTCS members.

R9-28-415	The objective of the rule is to establish requirements for the enrollment of American Indian ALTCS members.
R9-28-416	The objective of the rule is to establish requirements for the enrollment of ALTCS members when there is no Elderly or Physically Disabled (EPD) or tribal contractor in a geographical service area, or the member is only eligible for services during prior period coverage.
R9-28-417	The objective of the rule is to establish requirements for the Administration to notify the program contractor when a member is enrolled or disenrolled from the ALTCS program. The rule also establishes requirements for the program contractor to notify the Administration when a change occurs that may affect a member's eligibility for the ALTCS program.
R9-28-418	The objective of the rule is to establish requirements for disenrolling an ALTCS member.

3. Are the rules effective in achieving their objectives? **Yes _X__ No _**

4. Are the rules consistent with other rules and statutes? **Yes ___ No _X_**

R9-28-406	Name was changed in 2013 and rule shall be updated to read: "ICF-IID" (Intermediate Care Facility for Individuals with Intellectual Disability) ~~"ICF-MR" (Intermediate Care Facility for the Mentally Retarded)~~

5. Are the rules enforced as written? **Yes ____ No _X_**

R9-28-401(A)(4)	Rule is no longer accurate and shall be updated to read: An applicant or representative who files an ALTCS application may withdraw the application for ALTCS coverage either orally or in writing to ~~the~~ any ALTCS eligibility office~~.~~ ~~where the application was filed.~~

6. Are the rules clear, concise, and understandable? **Yes _X_ No __**

R9-28-406(C)	Rule shall be updated to read: Inmate of a public institution. An inmate of a public institution ~~is not~~ may be eligible for the ALTCS program if federal financial participation (FFP) is not available as described under R9-22-310.
R9-28-413(A)	Rule shall be updated to read: A member's enrollment with an EPD program contractor. The Administration shall enroll an ALTCS elderly or physically disabled member with an EPD program contractor assigned to that Geographic Service Area (GSA).

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, small business, and consumer impact of this chapter is as it was anticipated in the last rulemaking. In the last rulemaking, among technical rule changes, rules were also updated to clarify when resource criteria is considered for Arizona Long-Term Care (ALTCS) eligibility including clarification regarding when certain assets are disregarded when reviewing resources. Description of income requirements was also updated for persons applying for ALTCS eligibility. It was anticipated that none of these changes would have any effect on the economic impact of this chapter and the actual economic impact remains the same as had been anticipated.

The Administration does not anticipate any economic, small business, and consumer impact with the currently proposed changes in this 5YRR. Proposed changes are merely clarifying including updating ALTCS eligibility office locations where applicant may withdraw application, clarification that inmate of a public institution may be eligible for the ALTCS program if federal financial participation is not available to them, and clarifying an acronym stated in a rule. Substantive and procedural rights of members are not affected, nor are any of the programs of the Administration. These proposed changes are merely clarifying.

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 recommendations made in the prior 5YRR were not made because the agency determined these recommendations did not merit an exemption from the rulemaking moratorium. Agency resources at the time had been diverted to address COVID-19 public health emergency. At this time, the 5YRR adopts those changes recommended in the prior 5YRR as well as few additional technical and clarifying changes, and AHCCCS has already received approval of an exemption from the rulemaking moratorium from the Governor's Office and plans to initiate the regular rulemaking immediately following GRRC's approval of this 5YRR.

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 proposed changes will provide clarity and align with federal requirements. Since the federal requirements govern the current administration of this program there will be no additional costs to members, and the benefit of these changes will provide added clarity, while keeping these rules in compliance with federal regulation.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No _X__

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 do not require an issuance of a regulatory permit, license, or agency authorization.

14. Proposed course of action

The Administration has received an approval from the Governor's office to begin a rulemaking immediately following GRRC's approval of this report in order to make the changes outlined above and update the rules in Article 17. The Administration anticipates submitting this rulemaking to Council by October 22, 2024.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

ARIZONA LONG-TERM CARE SYSTEM

Introduction:

Overview of Current Process:

Purpose of Rule:

1. Identification of rulemaking.

R9-28-402 was amended to remove the coverage groups. Eligibility criteria is described through out Article 4.

R9-28-403 was amended to update the date of the incorporation of reference

R9-28-405 an amendment to the content of the rule was not necessary, but a clarification to the title was made changing the word "enumeration" to "number".

R9-28-406 was amended to clarify what is considered an institutional setting. The gross income limit and net income limit critirea for ALTCS Acute care was removed because….. and clarified with …..

R9-28-407 was updated to clarify when resource criteria is considered for eligibility based on begin aged 65 or over, blind or disabled. Then a clarification was also provided when certain assets are disregarded when reviewing resources, i.e. assets assigned for the expense of a burial. Additionally language was incorporated specifying where resource determination is not used when a person qualifies for the SOBRA program as described in the Waiver; this was a requirement already in practice and is described in the section related to income.
The Administration allows certain resources to be disregarded when considering eligibility. The amount refunded for purchased HCBS services needs to be clarified and a sentence added explaining that resources are not considered for those that qualify through the Sobra requirements.

R9-28-408 was updated to describe income requirements when a person applies for ALTCS eligibility.
Subsection (B) clarifies when eligibility is based on SSI aged 65 or over, blind or disabled. Also clarifying where the income of the parent or spouse of a minor child is not counted and when a person that may be a spouse is excluded. These clarifications reflect current practice.
Subsection (E) updates the federal and state law reference.
Subsection (F) clarifies the % of FBR used depending on countable income and residential settings.
Subsection (G) terms previously used of "post eligibility treatment of income" where changed to "share of cost". Also clarification of when a spousal allowance is deducted from the share of cost when a lawful Arizona marriage is not

proven. This clarification was needed otherwise Community spouse criteria would apply. The subsections where arranged in the order of deduction required by the federal requirements.

R9-28-409 was updated with the Deficit Reduction Act provisions promulgated in 42 U.S.C. 1396p(c) regarding transfers.

Subsection (E) describes how the value of the transferred asset is calculated and used to determine the months of ineligibility. The amount of ALTCS coverage cost for each month is deducted from the value of the transferred asset, therefore calculated the number of months the person will be ineligible to receive ALTCS coverage.

Subsection (F) describes where revocable and irrevocable annuities are also evaluated as a transfer.

Subsection (I) describes the circumstances that must be considered for a person to claim Undue Hardship.

R9-28-410 was updated with current cross-references and the allowed deductions list was put in order of deduction required by the federal regulations.

Subsection (E)(3) further describes when the community spouse's current income will be counted to determine resources. This clarification was incorporated to describe current practice.

R9-28-411

Subsection (A) was updated to describe the type of identification that a person can use when reporting a change. Also a further description of when a person should report a change that affects the share of cost. This change is currently described in AHCCCS State Plan, and has been incorporated into rule for clarification.

Subsection (B) the term "redetermination" or "redetermine" was changed to "renewal" or "renew". The team decided this term was appropriate and currently used in practice.

Subsection (C) the term "redetermination" or "redetermine" was changed to "renewal" or "renew". The team decided this term was appropriate and currently used in practice. Also where the term of "post eligibility computation of income" is referred to the term "share of cost" is appropriate and currently used in practice. The changes also further describe when a renewal or change can cause a change in coverage from Acute to ALTCS or vise versa. The additional circumstance added to rule was the home equity regulation in R9-28-407.01.

Subsection (D) describes the contents of notices that are sent to the member when there is a change in coverage or discontinuance. The rule was updated to ensure that the figures used to calculate the share of cost are included in this notice. Also when providing an advance notice of a reduction in benefits was updated to remove the change in living arrangements and transfer criteria since a reduction in benefits can occur for various reasons not only the living arrangements. This is current practice and not a new requirement.

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R9-28-412 thru R9-28-416 – After review of these rules the enrollment options and clarification of the member's choice should be made for each of the scenarios.

R9-28-417 - After review of these rules the Administration also notifies the Tribal case management entity of a member's enrollment or disenrollment.

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

2. **Identification of the persons who will be directly affected by, bear the costs of or directly benefit from the rule making.**

3. **Cost benefit analysis.**
   a. **Probable costs and benefits to implementing agency and other agencies directly affected.**

   b. **Probable costs and benefits to political subdivision directly affected.**

   c. **Probable costs and benefits to businesses directly affected, including anticipated effect on revenues or payroll for employers.**

4. **General description of the probable impact on private and public employment in business, agencies, and political subdivisions directly affected by the rulemaking.**

5. **Statement of probable impact of the rule on small businesses, including:**
   a. **Identification of the small businesses subject to the rulemaking.**

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

   c. **Description of methods agency may use to reduce the impact on small business, which may include:**
      i. **Establishing less costly compliance requirements;**

      ii. **Establishing less costly schedules or less stringent deadlines for compliance; and**

      iii. **Exempting small businesses from any or all requirements.**

   d. **The probable cost and benefit to private persons and consumers who are directly affected by the rulemaking.**

6. **Statement of the probable effect on state revenues.**

7. **Description of any less intrusive or less costly alternative.**

G. For a member requiring medically necessary NF or ICF-IID services for longer than 90 days, the program contractor shall request the Administration to conduct a reassessment under R9-28-306.

Historical Note

New Section renumbered from R9-28-306 and amended by final rulemaking at 7 A.A.R. 5824, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 12 A.A.R. 4007, effective October 5, 2006 (Supp. 06-4). Amended by final expedited rulemaking at 28 A.A.R. 3303 (October 14, 2022), with an immediate effective date of September 23, 2022 (Supp. 22-3).

ARTICLE 4. ELIGIBILITY AND ENROLLMENT

R9-28-401. Eligibility and Enrollment-Related Definitions

Definitions. For purposes of this Article, the following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, have the following meanings unless the context of the Chapter explicitly requires another meaning:

"ALTCS acute care services" means services under 9 A.A.C. 22, Articles 2 and 12, that are provided to a person who meets ALTCS eligibility requirements in 9 A.A.C. 28, Article 4 and who:

Lives in an acute care living arrangement described in R9-28-406; or

Is not eligible for long-term care benefits, described in R9-28-409, due to a transfer under R9-28-409 without receiving fair consideration, or

Has refused institutionalized or HCBS services.

"Community spouse" means the husband or wife of an institutionalized person who has entered into a contract of marriage, recognized as valid by the state of Arizona, and who does not live in a medical institution.

"CSRD" means Community Spouse Resource Deduction, the amount of a married couple's resources that is excluded in the eligibility determination to prevent impoverishment of the community spouse as determined under R9-28-410.

"Fair consideration" means income, real or personal property, services, or support and maintenance equal to or exceeding the fair market value of the income or resources that were transferred.

"First continuous period of institutionalization" means the first period beginning on or after September 30, 1989 that the applicant was institutionalized for 30 consecutive days or more. To be considered institutionalized, the applicant must:

Have resided in a medical institution;

Have received paid formal Home and Community Based Services (HCBS);

Have received a combination of medical institutionalization and HCBS, or

Intend to receive HCBS and either:

Requests a Resource Assessment and is determined in need if institutional services by a Resource Assessment Medical Evaluation; or

Applies for ALTCS and is determined medically eligible by the Pre-Admission Screening (PAS).

"Institutionalized" means residing in a medical institution or receiving or expecting to receive HCBS that prevent the person from being placed in a medical institution as determined by the PAS.

"Medically eligible" means meeting the ALTCS medical eligibility criteria under Article 3 of this Chapter.

"MMMNA" means Minimum Monthly Maintenance Needs Allowance.

"Redetermination" means a periodic review of all eligibility factors for a recipient.

"Representative" means a person other than a spouse or a parent of a dependent child, who applies for ALTCS on behalf of another person.

"Share of costs" means the amount an ALTCS recipient is required to pay toward the cost of long term care services.

"Spouse" means a person legally married under Arizona law, a person eligible for Social Security benefits as the spouse of another person, or a person living with another person of the opposite sex and the couple represents themselves in the community as husband and wife.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 5138, effective January 3, 2004 (Supp. 03-4). Section repealed; new Section made by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

R9-28-401.01. General

A. Application for ALTCS coverage.

1. The Administration shall provide a person the opportunity to apply for ALTCS as described under Chapter 22, Article 3, unless specified otherwise in this Section.
2. To apply for ALTCS, a person shall submit an application to an ALTCS eligibility office.
   a. The application shall contain the applicant's name and address.
   b. Before the application is approved, a person listed in A.A.C. R9-22-302(2) shall sign the application.
   c. A witness shall also sign the application if an applicant signs the application with a mark.
   d. The date of application is the date the application is received by the Administration or its designee as described in R9-22-302.
3. Except as provided in R9-22-306, the Administration shall determine eligibility within 45 days from the date of application.
4. An applicant or representative who files an ALTCS application may withdraw the application for ALTCS coverage either orally or in writing to the ALTCS eligibility office where the application was filed. The Administration shall provide the applicant with a denial notice under subsection (E).
5. If an applicant dies while an application is pending, the Administration shall complete an eligibility determination for the deceased applicant.
6. If a person dies before an application is filed, the Administration shall complete an eligibility determination on an application filed on behalf of the deceased applicant, if the application is filed in the month of the person's death.

B. Conditions of ALTCS eligibility. Except for persons identified in subsection (C), the Administration shall approve a person for ALTCS if all conditions of eligibility are met. The conditions of eligibility are:
1. Citizenship and alien status under Chapter 22, Article 3;
2. SSN under Chapter 22, Article 3;
3. Living arrangements under R9-28-406;
4. Resources under R9-28-407;
5. Income under R9-28-408;
6. Transfers under R9-28-409;
7. A legally authorized person shall assign rights to the Administration for medical support and for payment of medical care from any first- and third-parties as described under R9-22-311;
8. A person shall take all necessary steps to obtain annuity, pension, retirement, and disability benefits for which a person may be entitled;
9. State residency under R9-22-305;
10. Medical eligibility as specified in Chapter 28, Article 3; and
11. Providing information and verification as specified under Chapter 22, Article 3.

C. Persons eligible for Title IV-E or Title XVI are only required to meet the conditions under subsection (B)(6), (B)(10), (B)(11) and with respect to trusts, A.R.S. § 36-2934.01.

D. Eligibility effective date.
1. Eligibility is effective on the first day of the month that all eligibility requirements are met, including the period described under R9-22-303.
2. The effective date of eligibility for an applicant who moves into Arizona is no sooner than the date Arizona residency is established.
3. The effective date of eligibility for an inmate applying for medical coverage is the date the applicant no longer meets the definition of an inmate of a public institution.

E. Notice. The Administration shall send a person a notice of the decision regarding the person's application. The notice shall include a statement of the action and an explanation of the person's hearing rights as specified in 9 A.A.C. 34 and:
1. Approval. If the applicant meets all the eligibility requirements and conditions of eligibility of this Article, the Administration or its designee shall approve the application and provide the applicant with an approval notice. The approval notice shall contain:
   a. The name of each approved applicant,
   b. The effective date of eligibility for each approved applicant,
   c. The amount of share of cost, and
   d. The applicant's right to appeal the decision.
2. Denial. If an applicant fails to meet the eligibility requirements or conditions of eligibility of this Article, the Administration or its designee shall deny the application and provide the applicant with a denial notice. The denial notice shall contain:
   a. The name of each ineligible applicant,
   b. The specific reason why the applicant is ineligible,
   c. The income and resource calculations for the applicant compared to the income or resource standards for eligibility when the reason for the denial is due to the applicant's income or resources exceeding the applicable standard,
   d. The legal citations supporting the reason for the ineligibility,
   e. The location where the applicant can review the legal citations, and
   f. The applicant's right to appeal the decision and request a hearing.

F. Confidentiality. The Administration shall maintain the confidentiality of a person's record under A.A.C. R9-22-512.

Historical Note
New Section made by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2). Amended by final rulemaking at 19 A.A.R. 3320, effective November 30, 2013 (Supp. 13-4). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

R9-28-402. Repealed

Historical Note
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective July 13, 1992 (Supp. 92-3). Amended effective November 5, 1993 (Supp. 93-4). Repealed effective November 4, 1998 (Supp. 98-4). New Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Repealed by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

R9-28-403. Repealed

Historical Note
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective April 25, 1990 (Supp. 90-2). Amended effective July 13, 1992 (Supp. 92-3). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Repealed by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

R9-28-404. Repealed

Historical Note
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective April 25, 1990 (Supp. 90-2). Amended effective July 13, 1992 (Supp. 92-3). Amended effective November 5, 1993 (Supp. 93-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Repealed by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

R9-28-405. Repealed

Historical Note
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Repealed by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

R9-28-406. ALTCS Living Arrangements

A. Long-term care living arrangements. A person may be eligible for ALTCS services, under Article 2, while living in one of the following settings:
1. Institutional settings:
   a. A Nursing Facility (NF) defined in 42 U.S.C. 1396r(a),

b. An Institution for Mental Diseases (IMD) for a person who is either under age 21 or age 65 or older,
c. An Intermediate Care Facility for the Mentally Retarded (ICF-MR) for a person with developmental disabilities,
d. A hospice (free-standing, hospital, or nursing facility subcontracted beds) defined in A.R.S. § 36-401; or

2. Home and community-based services (HCBS) settings:
a. A person's home defined in R9-28-101(B), or
b. Alternative HCBS settings defined in R9-28-101(B).

B. ALTCS acute care living arrangements.

1. A person applying for and otherwise entitled to receive ALTCS coverage shall receive only ALTCS acute care coverage if residing in one of the following living arrangements, settings, or locations:
a. A noncertified medical facility, or
b. A medical facility that is registered with AHCCCS but does not have a contract with an ALTCS program contractor, or
c. At home or in an alternative HCBS setting when the person refuses HCBS services, or
d. A licensed or certified HCBS facility that is not registered with AHCCCS.

2. Eligibility income limits.
a. For a person residing in a setting described in subsection (1)(a) or (1)(b), the gross income limit is 300 percent of the Federal Benefit Rate (FBR).
b. For a person residing in a setting described in subsection (1)(c) or (1)(d), the net income limit is 100 percent of the FBR.

C. Inmate of a public institution. An inmate of a public institution is not eligible for the ALTCS program if federal financial participation (FFP) is not available as described under R9-22-310.

Historical Note
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

R9-28-407. Resource Criteria for Eligibility

A. The following Medicaid-eligible persons shall be deemed to meet the resource requirements for ALTCS eligibility unless ineligible due to federal and state laws regarding trusts.
1. A person receiving Supplemental Security Income (SSI);
2. A person receiving Title IV-E Foster Care Maintenance payment; or
3. A person receiving a Title IV-E Adoption Assistance.

B. Except as provided in subsection (C), if a person's ALTCS eligibility is most closely related to SSI and is not included in subsection (A), the Administration shall determine eligibility using resource criteria in 42 U.S.C. 1382(a)(1)(B), 42 U.S.C. 1382b, and 20 CFR 416 Subpart L. The resource limit for an individual is $2,000 or $3,000 for a couple under 20 CFR 416.1205.

C. The Administration permits the following exceptions to the resource criteria for a person identified in subsection (B):
1. Resources of the spouse or parent of a minor child are disregarded beginning the first day in the month the person is institutionalized.
2. The value of household goods and personal effects is excluded.
3. The value of oil, timber, and mineral rights is excluded.
4. The value of all of the following shall be disregarded:
a. Term insurance;
b. Burial insurance;
c. Assets that a person has irrevocably assigned to fund the expense of a burial;
d. The cash value of all life insurance if the face value does not exceed $1,500 total per insured person and the policy has not been assigned to fund a pre-need burial plan or has a legally binding designation as a burial fund;
e. The value of any burial space held for the purpose of providing a place for the burial of the person, a spouse, or any other member of the immediate family;
f. $1,500 of the equity value of an asset that has a legally binding designation as a burial fund or a revocable burial arrangement if there is no irrevocable burial arrangement;
g. During the time a person remains continuously eligible, all appreciation in the value of the assets in subsection (C)(4)(f) will be disregarded; and
h. The amount of a payment refunded by a nursing facility after ALTCS approval is only excluded for six months beginning with the month the refund was received. The Administration shall evaluate the refund in accordance with R9-28-409 if transferred without receiving something of equal value.

D. For an institutionalized spouse, a resource disregard is allowed under 42 U.S.C. 1396r-5(c).

E. Trusts are evaluated in accordance with federal and state laws to determine eligibility.

F. A person shall provide information and verification necessary to determine the countable value of resources.

Historical Note
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

R9-28-408. Income Criteria for Eligibility

A. The following Medicaid-eligible persons shall be deemed to meet the income requirements for ALTCS eligibility unless ineligible due to federal and state laws regarding trusts.
1. A person receiving Supplemental Security Income (SSI);
2. A person receiving Title IV-E Foster Care Maintenance Payments; or
3. A person receiving Title IV-E Adoption Assistance.

B. If the person is not included in subsection (A), the Administration shall count the income described in 42 U.S.C. 1382a and 20 CFR 416 Subpart K to determine eligibility with the following exceptions:
1. Income types excluded by 42 U.S.C. 1382a(b) for determining net income are also excluded in determining gross income to determine eligibility;

2. Income of the parent or spouse of a minor child is counted as part of income under 42 CFR 435.602, except that the income of the parent or spouse is disregarded for the month beginning when the person is institutionalized;
3. In-kind support and maintenance, under 42 U.S.C. 1382a(a)(2)(A), are excluded for both net and gross income tests;
4. The income exceptions under A.A.C. R9-22-1503(B) apply to the net income test; and
5. Income described in subsection (C) is excluded.

C. The following are income exceptions:
1. Disbursements from a trust are considered in accordance with federal and state law; and
2. For an institutionalized spouse, a person defined in 42 U.S.C. 1396r-5(h)(1), income is calculated in accordance with 42 U.S.C. 1396r-5(b).

D. Income eligibility. Except as provided in R9-28-406(B)(2)(b), countable income shall not exceed 300 percent of the FBR.

E. The Administration shall determine the amount a person shall pay for the cost of ALTCS services and the post-eligibility treatment of income (share-of-cost) under A.R.S. § 36-2932(L) and 42 CFR 435.725 or 42 CFR 435.726. The Administration shall consider the following in determining the share-of-cost:
1. Income types excluded by 42 U.S.C. 1382a(b) for determining net income are excluded in determining share-of-cost.
2. SSI benefits paid under 42 U.S.C. 1382(e)(1)(E) and (G) to a person who receives care in a hospital or nursing facility are not included in calculating the share-of-cost.
3. The share-of-cost of a person with a spouse is calculated as follows:
   a. If an institutionalized person has a community spouse under 42 U.S.C. 1396r-5(h), share-of-cost is calculated under R9-28-410 and 42 U.S.C. 1396r-5(b) and (d); and
   b. If an institutionalized person does not have a community spouse, share of cost is calculated solely on the income of the institutionalized person.
4. Income assigned to a trust is considered in accordance with federal and state law.
5. The following expenses are deducted from the share-of-cost of an eligible person to calculate the person's share-of-cost:
   a. A personal-needs allowance (PNA) equal to 300 percent of the FBR for a person who receives or intends to receive HCBS or who resides in a medical institution for less than the full calendar month. A personal-needs allowance equal to 15 percent of the FBR for a person residing in a medical institution for a full calendar month, except:
      i. The PNA shall be increased above 15% of the FBR by the amount of income garnished for child support under a court order, including administrative fees garnished for collection efforts, but only to the extent that the amount garnished is not deducted as a monthly allowance for the dependent under any other provision of the post-eligibility process. The increase to the PNA due to the garnishment shall not exceed the actual garnishment paid in the month for which the PNA is calculated; and
      ii. The PNA shall be increased above 15% of the FBR by the amount of income garnished for spousal maintenance under a judgment and decree for dissolution of marriage, including administrative fees garnished for collection efforts, but only to the extent that the amount garnished is not deducted as a monthly allowance for the spouse under any other provision of the post-eligibility process. The increase to the PNA due to the garnishment shall not exceed the actual garnishment paid in the month for which the PNA is calculated.
   b. A spousal allowance, equal to the FBR minus the income of the spouse, if a spouse but no children remain at home;
   c. A household allowance equal to the standard specified in Section 2 of the Aid for Families with Dependent Children (AFDC) State Plan as it existed on July 16, 1996 for the number of household members minus the income of the household members if a spouse and children remain at home;
   d. Expenses for medical and remedial care services if the expenses were for services rendered to the applicant or beneficiary and prescribed by a health care practitioner acting within the scope of practice as defined by State law. The applicant or recipient must have, or have had, a legal obligation to pay the medical or remedial expense. Deductions do not include the cost of services to the extent a third party paid for, or is liable for, the service. Deductions for expenses incurred prior to application are limited to expenses incurred during the three months prior to the filing of an application. Documents shall be submitted within a reasonable time as determined by the Director.
   e. An amount determined by the Director for the maintenance of a single person's home for not longer than six months if a physician certifies that the person is likely to return home within that period; or
   f. An amount for Medicare and other health insurance premiums, deductibles, or coinsurance not subject to third-party reimbursement; and
6. The deductible expense under subsection (5)(d) shall not include any amount for a service covered under the Title XIX State Plan.

F. A person shall provide information and verification of income under A.R.S. § 36-2934(G) and 20 CFR 416.203.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1). Amended by final rulemaking at 24 A.A.R. 667, effective March 6, 2018 (Supp. 18-1).

R9-28-409. Transfer of Assets

A. The provisions in this Section apply to an institutionalized person who has, or whose spouse has, transferred assets and received less than the fair market value (uncompensated value) as specified in A.R.S. § 36-2934(B) and 42 U.S.C. 1396p(c)(1)(A), July 1, 2009, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732

N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

B. A person shall report transfer of assets. The Administration shall evaluate all transfers made during or after the look-back period under 42 U.S.C. 1396p(c)(1)(B), July 1, 2009, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments. The person shall provide verification of any transfer.

C. Certain transfers are permitted under 42 U.S.C. 1396p(c)(2), July 1, 2009, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

D. If the Administration determines a disqualification period applies due to a transfer, and the person is otherwise eligible, the person may remain eligible for ALTCS acute care services but shall be disqualified for receiving ALTCS coverage under 42 U.S.C. 1396p(c)(1)(E), July 1, 2009, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

E. Period of disqualification for transfers.

1. Calculating a period of disqualification at application. The uncompensated value of all transfers shall be divided by the monthly private pay rate. The result of this calculation equals the number of months of ineligibility.
2. Calculating a period of disqualification after approval:
   a. For one or more transfers occurring in one calendar month or in consecutive months, the period of disqualification is determined under subsection (E)(1). The period of disqualification begins with the month that the first transfer was made.
   b. For transfers occurring in nonconsecutive calendar months, the period of disqualification for each transfer of assets shall be determined separately under subsection (E)(1) to determine if the periods of disqualification overlap.
      i. Periods of disqualification that overlap shall be added together and shall run consecutively, beginning with the month the first transfer was made.
      ii. Periods of disqualification that do not overlap are each applied separately beginning the month that the transfer was made.

F. Transfers of assets for less than fair market value are presumed to have been made to establish eligibility for ALTCS services.

G. Rebuttal of disqualification.

1. A person found ineligible for ALTCS services by reason of a transfer of assets for uncompensated value shall have the right to rebut the disqualification for reasons stated under 42 U.S.C. 1396p(c)(2)(C), July 1, 2009, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
2. The person shall have the burden of rebutting the presumption.
3. If a person rebuts a transfer on the basis of debt repayment, the Administration shall determine the validity of the debt and payment amount under A.R.S. § 44-101.

H. Undue hardship. The transfer penalty period may be waived if denial of eligibility for long term care services creates an undue hardship.

1. The Administration shall consider whether the transfer penalty period can be waived when:
   a. The individual is otherwise eligible for ALTCS benefits and application of the transfer of assets provision would deprive the individual of medical care such that the individual's life or health would be endangered, or
   b. The individual is otherwise eligible for ALTCS benefits and is deprived of food, clothing, shelter or other necessities of life as evidenced by the fact that the individual's income is less than or equal to the Federal Poverty Level (FPL);
2. The transfer penalty period shall be waived when:
   a. The individual is incapacitated as established by the Court or by a physician; and
   b. The individual who had the legal authority to handle the applicant's finances has violated the terms of that legal authority; and
   c. An individual acting on the applicant's behalf has exhausted all legal remedies to regain the asset, such as but not limited to, filing a police report and seeking recovery through civil court.
3. The transfer penalty period shall not be waived when:
   a. The applicant was mentally competent and would have been aware of the consequences of the transfers at the time the transfers occurred; or
   b. The applicant gave another person specific legal authority to make the transfers, such as a conservator, or a person granted the applicant's financial power of attorney when the applicant was competent to do so, and the person did not violate the limits of that authority in making the transfers.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

R9-28-410. Community Spouse

A. The methodology in this Section applies to an institutionalized person who has a community spouse.

B. If the institutionalized person's most current period of continuous institutionalization began on or after September 30, 1989, the Administration shall use the methodology for the treatment of resources under 42 U.S.C. 1396r-5(c).

1. The following resource criteria shall be used in addition to the criteria specified in R9-28-407 to be eligible:
   a. Resources owned by a couple at the beginning of the first continuous period of institutionalization from and after September 30, 1989, shall be computed from the first day of institutionalization. The total value of resources owned by the institutionalized spouse and the community spouse, and a spousal share equal to one-half of the total value, are computed under 42 U.S.C. 1396r-5(c)(1).
   b. The Community Spouse Resource Deduction (CSRD) is calculated under 42 U.S.C. 1396r-5(f)(2).

c. The CSRD is subtracted from the total resources of the couple to determine the amount of the couple's resources considered available to the institutionalized spouse at the time of application under 42 U.S.C. 1396r-5(c)(2).
i. Resources in excess of the CSRD must be equal to or less than the standard for a person specified in R9-28-407.
ii. The CSRD is allowed as a deduction for 12 consecutive months beginning with the first month in which the institutionalized spouse is eligible for ALTCS benefits. Beginning with the 13th month, the separate property of the institutionalized spouse must be within the resource standard for a person specified in R9-28-407.
iii. If a person who was previously eligible for ALTCS as an institutionalized person with a community spouse reapplies for ALTCS after a break in institutionalization of more than 30 days, the CSRD will be allowed as a deduction from resources for a 12-month period in addition to the period in subsection (c)(ii).

2. Resources are excluded as specified in R9-28-407, except that one vehicle is totally excluded regardless of its value, and any additional vehicles are included using equity value.
3. The Director may grant eligibility if the Administration determines that a denial of eligibility would create an undue hardship for the institutionalized spouse.

C. This Section applies to the income eligibility and post-eligibility treatment of income beginning September 30, 1989, regardless of when the first period of institutionalization began.
1. Income payments are attributed to the institutionalized person and the community spouse under 42 U.S.C. 1396r-5(b)(2).
2. Income is excluded as specified in R9-28-408.
3. The institutionalized spouse's income eligibility is determined by combining the income of the institutionalized person and the community spouse and dividing by two. If the institutionalized person is not eligible using this method, the income eligibility shall be based on the income received in the person's name.
4. The following allowances described in 42 U.S.C. 1396r-5(d)(1) and (2) are allowed as deductions from the institutionalized spouse's income in determining share-of-cost:
a. A personal-needs allowance specified in R9-28-408(E)(5);
b. A community spouse monthly income allowance, but only to the extent that the institutionalized spouse's income is made available to or for the benefit of the community spouse;
c. A family allowance for each family member equal to one-third of the amount remaining after deducting the countable income of the household member from a Minimum Monthly Maintenance Needs Allowance (MMMNA);
d. An amount for medical or remedial services as specified in R9-28-408; and
e. An amount for Medicare and other health insurance premiums, deductibles, or coinsurance not subject to third-party reimbursement.

D. Transfers.
1. The institutionalized spouse may transfer to any of the following an amount of resources equal to the CSRD without affecting eligibility under 42 U.S.C. 1396r-5(f). The institutionalized spouse may transfer resources to:
a. The community spouse; or
b. Someone other than the community spouse if the resources are for the sole benefit of the community spouse.
2. The institutionalized spouse is allowed a period of 12 consecutive months, beginning with the first month of eligibility, to transfer resources in excess of the resource standard in R9-28-407 to the persons listed in subsection (D)(1).
3. All other transfers by the institutionalized person or transfers by the community spouse are treated under the provisions in R9-28-409.

E. Specific hearing rights as described under 9 A.A.C. 34 apply to a person whose eligibility is determined under this Section.
1. The institutionalized spouse or the community spouse is entitled to a fair hearing if dissatisfied with the determination of any of the following:
a. The community spouse monthly income allowance,
b. The amount of monthly income allocated to the community spouse,
c. The computation of the spousal share of resources,
d. The attribution of resources, or
e. The CSRD.
2. The hearing officer may increase the amount of the MMMNA if either the community spouse or institutionalized spouse establishes that the community spouse needs income above the established MMMNA due to exceptional circumstances.
3. The hearing officer may increase the amount of the CSRD to allow the community spouse to retain enough resources to generate income to meet the MMMNA. The hearing officer may allow the community spouse to retain an amount of resources necessary to purchase a single premium life annuity that would furnish monthly income sufficient to bring the community spouse's total monthly income up to the MMMNA.

Historical Note
New Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

R9-28-411. Changes, Redeterminations, and Notices

A. Reporting and verifying changes.
1. A person shall report to the ALTCS eligibility office the following changes for a person, a person's spouse, or a person's dependent children under 42 CFR 435.916:
a. A change of address;
b. An admission to or discharge from a medical facility, public institution, or private institution;
c. A change in the household's composition;
d. A change in income;
e. A change in resources;
f. A determination of eligibility for other benefits;
g. A death;
h. A change in marital status;
i. An improvement in the person's medical condition;
j. A change in school attendance;
k. A change in Arizona state residency;

l. A change in citizenship or alien status;
m. Receipt of an SSN under R9-22-305;
n. A transfer of assets under R9-28-409;
o. A change in trust income and disbursements in accordance with state and federal law;
p. A change in first- or third-party liability that may be responsible for payment of all or a portion of the person's medical costs;
q. A change in first-party medical insurance premiums;
r. A change in the household expenses used to calculate the community spouse monthly income allowance described in R9-28-410;
s. A change in the amount of the community spouse monthly income allowance that is provided to the community spouse by the institutionalized spouse under R9-28-410; and
t. Any other change that may affect the person's eligibility or share-of-cost.

2. A change shall be reported either orally or in writing as described under R9-22-306.

B. Processing of changes and redeterminations. A person's eligibility shall be redetermined at least one time every 12 months and when changes occur, under 42 CFR 435.916. A person's share-of-cost, specified in R9-28-408, shall be redetermined whenever a change occurs that may affect the post-eligibility computation of income.

C. Actions that may result from a redetermination or change. Processing a redetermination or change shall result in one of the following findings:
1. No change in eligibility or the post-eligibility computation of income;
2. Discontinuance of eligibility if a condition of eligibility is no longer met;
3. Suspension of eligibility if a condition of eligibility is temporarily not met;
4. A change in the post-eligibility computation of income and the person's share-of-cost; or
5. A change in service from ALTCS to ALTCS acute care services, or from ALTCS acute care services to ALTCS, caused by changes in a person's living arrangement, specified in R9-28-406, or a transfer of assets specified in R9-28-409.

D. Notices.
1. Contents of notice. The Administration shall issue a notice when an action is taken regarding a person's eligibility or computation of share-of-cost. The notice shall contain the following information:
a. A statement of the action being taken;
b. The effective date of the action;
c. The specific reason for the intended action;
d. The actual figures used in the eligibility determination and specify the amount by which the person exceeds income standards if eligibility is being discontinued because either a person's resources exceed the resource limit, or a person's income exceeds the income limit;
e. The specific law or regulation that supports the action, or a change in federal or state law that requires an action;
f. An explanation of a person's right to request an evidentiary hearing as described under 9 A.A.C. 34; and
g. An explanation of the date by which a request for hearing must be received so that eligibility or the current share-of-cost may be continued.

2. Advance notice of changes in eligibility or share-of-cost. "Advance notice" means a notice that is issued to a person at least 10 days before the effective date of change. Except as specified in subsection (D)(3), advance notice shall be issued whenever the following adverse action is taken:
a. To discontinue or suspend eligibility if an eligible person no longer meets a condition of eligibility, either ongoing or temporarily;
b. To affect post-eligibility computation of income and increase a person's share-of-cost; or
c. To reduce benefits from ALTCS to ALTCS acute care services due to a change from a long-term care living arrangement to an acute care living arrangement, specified in R9-28-406(B), or due to a transfer with uncompensated value, specified in R9-28-409.

3. Adverse actions. An applicant or member may appeal, as described under 9 A.A.C. 34, by requesting a hearing from the Administration or its designee concerning any of the adverse actions if:
a. A person provides a clear, written statement, signed by the person, that a person no longer desires services;
b. A person provides information that requires termination of eligibility or an increase in the share-of-cost and the person signs a clear written statement waiving advance notice;
c. A person cannot be located and mail sent to that person has been returned as undeliverable;
d. A person has been admitted to a public institution where the person is ineligible for ALTCS under R9-28-406; or
e. A person has been approved for Medicaid in another state;
f. The Administration has information that confirms the death of the person;
g. The person's primary care provider has prescribed a change in the level of medical care; or
h. The notice involves an adverse determination regarding the PAS, specified in A.R.S. § 36-2936.

E. Transitional. HCBS services may be provided to a person who is no longer at risk of institutionalization but who continues to require significant long-term care services under A.R.S. § 36-2936(D).

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

R9-28-412. General Enrollment

A. Program contractors. The Administration shall enroll each ALTCS member with:
1. An elderly and physically disabled (EPD) program contractor,
2. The developmentally disabled (DD) program contractor,
3. A tribal program contractor, or
4. The AHCCCS fee-for-service program.

B. Enrollment choice. An ALTCS member may choose a program contractor:
1. At the time of application, or

2. If the ALTCS member establishes a home outside of the GSA.

C. Annual enrollment. If an ALTCS member is elderly or physically disabled and lives in a GSA served by more than one program contractor, a member may change to an available program contractor during the annual enrollment choice period.

D. A program contractor is responsible for the enrolled ALTCS member as described in R9-28-712, County-of-Fiscal Responsibility.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2).

R9-28-413. Enrollment with an Elderly and Physically Disabled (EPD) Program Contractor

A. A member's enrollment with an EPD program contractor. The Administration shall enroll an ALTCS elderly or physically disabled member with an EPD program contractor assigned to that GSA.

B. New member makes a choice of an EPD program contractor. The Administration shall provide a new member an opportunity to choose an EPD program contractor, if an ALTCS member is elderly or physically disabled, and lives in a GSA served by more than one EPD program contractor.

C. New member who makes no choice of an EPD program contractor. The Administration shall enroll an elderly or physically disabled new member that lives in a GSA with more than one EPD program contractor and who makes no choice of an EPD program contractor under the following:

1. Criteria. The Administration will prioritize enrollment based on continuity of care and enroll a member with an EPD program contractor chosen under the following criteria, including but not limited to:
   a. A member's living arrangement, and
   b. A member's primary care practitioner.
2. Algorithm. The Administration shall enroll a member through an algorithm as specified in contract, when a member has a choice of more than one EPD program contractor and the criteria in subsection (C)(1) does not apply.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

R9-28-414. Enrollment with the DD Program Contractor

A member's DD program contractor. The Administration shall enroll a member including an American Indian with the DES Division of Developmental Disabilities as specified in A.R.S. § 36-2940, if the ALTCS member is eligible for services for the developmentally disabled.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

R9-28-415. Enrollment with a Tribal Program Contractor

A. On-reservation. Notwithstanding R9-28-412, the Administration shall enroll an American Indian ALTCS member who is elderly or physically disabled with the ALTCS tribal program contractor as specified in A.R.S. § 36-2932 if the person:

1. Lives on-reservation of a tribe participating as an ALTCS tribal program contractor, or
2. Lived on-reservation of a tribe participating as an ALTCS tribal program contractor immediately prior to placement in an off-reservation NF or alternative HCBS setting.

B. Off-reservation. The Administration shall enroll an American Indian ALTCS member who is elderly or physically disabled with an EPD program contractor under R9-28-413, if the member lives off-reservation, and does not have on-reservation status as specified in subsection (A)(2).

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

R9-28-416. Enrollment with the Fee-for-Service (FFS) Program

A. No tribal or EPD program contractor in GSA. The Administration shall enroll an ALTCS elderly or physically disabled member who resides in an area with no ALTCS tribal program contractor or EPD program contractor in the AHCCCS FFS program under A.R.S. § 36-2945.

B. Prior period coverage. The Administration shall enroll a member in AHCCCS fee-for-service program if a member is eligible for ALTCS services only during prior period coverage.

C. The Administration shall enroll a member in the AHCCCS fee-for-service program if the member is eligible for ALTCS services during the prior quarter period.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

R9-28-417. Notification Requirements

A. Administration responsibilities. The Administration shall notify a member's program contractor when a member is enrolled or disenrolled from the ALTCS program. The Administration shall include the following in the notification:

1. The member's name,
2. The member's identification number,
3. The member's effective date of enrollment or disenrollment, and
4. The member's share-of-cost on a monthly enrollment roster.

B. Program contractor's responsibilities. The program contractor shall notify the Administration if an ALTCS member has any change that may affect eligibility including but not limited to:

1. A change in residential address,
2. A change in medical or functional condition,
3. A change in living arrangement including:
   a. Alternative HCBS setting,
   b. Home,
   c. Nursing facility, or
   d. Other living arrangement not specified in this subsection,
4. Change in resource or income, or

5. Death.

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

R9-28 418. Disenrollment
The Administration shall disenroll an ALTCS member on the last day of the month following receipt of appropriate notification under R9-28-411 except:

1. The Administration shall disenroll an ALTCS member who dies. A member's last day of enrollment shall be the date of death.
2. The Administration shall disenroll a member immediately when the member voluntarily withdraws from the ALTCS program.
3. If ALTCS benefits have been continued pending an eligibility appeal decision and the discontinuance is upheld as specified in 9 A.A.C. 34, the Administration shall disenroll a member effective on the date of the hearing decision.

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

ARTICLE 5. PROGRAM CONTRACTOR AND PROVIDER STANDARDS

R9-28-501. Program Contractor and Provider Standards – Related Definitions
Definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, have the following meanings unless the context of the Chapter explicitly requires another meaning:

"Certification" means a voluntary process by which a federal or state regulatory entity grants recognition to a person, facility, or organization that has met certain qualifications specified by the regulatory entity, allowing the person, facility, or organization to use the word "certified" in a title or designation.

"Therapeutic leave" means that a member leaves an institutional facility for a period that does not exceed nine days per contract year.

Historical Note
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). New Section made by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4406, effective January 3, 2009 (Supp. 08-4).

R9-28-501.01. Pre-Existing Conditions
A program contractor shall comply with the pre-existing condition requirements in A.A.C. R9-22-502.

Historical Note
New Section made by final rulemaking at 14 A.A.R. 4406, effective January 3, 2009 (Supp. 08-4).

R9-28-502. Long-term Care Provider Requirements

A. A provider shall obtain any necessary authorization from the program contractor or the Administration for services provided to a member.

B. A provider shall maintain and make available to a program contractor and to the Administration, financial, and medical records for not less than five years from the date of final payment, or for records relating to costs and expenses to which the Administration has taken exception, five years after the date of final disposition or resolution of the exception. The provider shall maintain records that meet uniform accounting standards and generally accepted practices for maintenance of medical records, including detailed specification of all patient services delivered, the rationale for delivery, and the service date.

Historical Note
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended subsection (E) effective June 6, 1989 (Supp. 89-2). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

R9-28-503. Licensure and Certification for Long-term Care Institutional Facilities

A. A nursing facility shall not provide services to a member unless the facility is licensed by Arizona Department of Health Services, Medicare- and Medicaid-certified, and meets the requirements in 42 CFR 442, as of October 1, 2004, and 42 CFR 483, as of October 1, 2004, incorporated by reference, on file with the Administration, and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments.

B. An ICF-MR shall not provide services to a member unless the ICF-MR is Medicaid-certified and meets the requirements in A.R.S. § 36-2939(B)(1) and 42 CFR 442, Subpart C, as of October 1, 2004, and 42 CFR 483, as of October 1, 2004, incorporated by reference, on file with the Administration and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments.

C. A nursing facility or ICF-MR that provides services to a member shall register as a provider with the Administration to receive reimbursement. The Administration shall not register a provider unless the provider meets the licensure and certification requirements of subsection (A) or (B).

Historical Note
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective November 5, 1993 (Supp. 93-4). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4406, effective January 3, 2009 (Supp. 08-4).

R9-28-504. Standards of Participation, Licensure, and Certification for HCBS Providers

A. A noninstitutional long-term care provider shall not register with the Administration unless the provider meets the requirements of the Arizona Department of Health Services' rules for licensure, if applicable.

B. Additional qualifications to provide services to a member:

1. A community residential setting and a group home for a person with developmental disabilities shall be licensed

36-2932. Arizona long-term care system; powers and duties of the director; expenditure limitation

A. The Arizona long-term care system is established. The system includes the management and delivery of hospitalization, medical care, institutional services and home and community based services to members through the administration, the program contractors and providers pursuant to this article together with federal participation under title XIX of the social security act. The director in the performance of all duties shall consider the use of existing programs, rules and procedures in the counties and department where appropriate in meeting federal requirements.

B. The administration has full operational responsibility for the system, which shall include the following:

1. Contracting with and certification of program contractors in compliance with all applicable federal laws.

2. Approving the program contractors' comprehensive service delivery plans pursuant to section 36-2940.

3. Providing by rule for the ability of the director to review and approve or disapprove program contractors' requests for proposals for providers and provider subcontracts.

4. Providing technical assistance to the program contractors.

5. Developing a uniform accounting system to be implemented by program contractors and providers of institutional services and home and community based services.

6. Conducting quality control on eligibility determinations and preadmission screenings.

7. Establishing and managing a comprehensive system for assuring the quality of care delivered by the system as required by federal law.

8. Establishing an enrollment system.

9. Establishing a member case management tracking system.

10. Establishing and managing a method to prevent fraud by applicants, members, eligible persons, program contractors, providers and noncontracting providers as required by federal law.

11. Coordinating benefits as provided in section 36-2946.

12. Establishing standards for the coordination of services.

13. Establishing financial and performance audit requirements for program contractors, providers and noncontracting providers.

14. Prescribing remedies as required pursuant to 42 United States Code section 1396r. These remedies may include the appointment of temporary management by the director, acting in collaboration with the director of the department of health services, in order to continue operation of a nursing care institution providing services pursuant to this article.

15. Establishing a system to implement medical child support requirements, as required by federal law. The administration may enter into an intergovernmental agreement with the department of economic security to implement this paragraph.

16. Establishing requirements and guidelines for the review of trusts for the purposes of establishing eligibility for the system pursuant to section 36-2934.01 and posteligibility treatment of income pursuant to subsection L of this section.

17. Accepting the delegation of authority from the department of health services to enforce rules that prescribe minimum certification standards for adult foster care providers pursuant to section 36-410, subsection B. The administration may contract with another entity to perform the certification functions.

18. Assessing civil penalties for improper billing as prescribed in section 36-2903.01, subsection K.

C. For nursing care institutions and hospices that provide services pursuant to this article, the director shall contract periodically as deemed necessary and as required by federal law for a financial audit of the institutions and hospices that is certified by a certified public accountant in accordance with generally accepted auditing standards or conduct or contract for a financial audit or review of the institutions and hospices. The director shall notify the nursing care institution and hospice at least sixty days before beginning a periodic audit. The administration shall reimburse a nursing care institution or hospice for any additional expenses incurred for professional accounting services obtained in response to a specific request by the administration. On request, the director of the administration shall provide a copy of an audit performed pursuant to this subsection to the director of the department of health services or that person's designee.

D. Notwithstanding any other provision of this article, the administration may contract by an intergovernmental agreement with an Indian tribe, a tribal council or a tribal organization for the provision of long-term care services pursuant to section 36-2939, subsection A, paragraphs 1, 2, 3 and 4 and the home and community based services pursuant to section 36-2939, subsection B, paragraph 2 and subsection C, subject to the restrictions in section 36-2939, subsections D and E for eligible members.

E. The director shall require as a condition of a contract that all records relating to contract compliance are available for inspection by the administration subject to subsection F of this section and that these records are maintained for five years. The director shall also require that these records are available on request of the secretary of the United States department of health and human services or its successor agency.

F. Subject to applicable law relating to privilege and protection, the director shall adopt rules prescribing the types of information that are confidential and circumstances under which that information may be used or released, including requirements for physician-patient confidentiality. Notwithstanding any other law, these rules shall provide for the exchange of necessary information among the program contractors, the administration and the department for the purposes of eligibility determination under this article.

G. The director shall adopt rules to specify methods for the transition of members into, within and out of the system. The rules shall include provisions for the transfer of members, the transfer of medical records and the initiation and termination of services.

H. The director shall adopt rules that provide for withholding or forfeiting payments made to a program contractor if it fails to comply with a provision of its contract or with the director's rules.

I. The director shall:

1. Establish by rule the time frames and procedures for all grievances and requests for hearings consistent with section 36-2903.01, subsection B, paragraph 4.

2. Apply for and accept federal monies available under title XIX of the social security act in support of the system. In addition, the director may apply for and accept grants, contracts and private donations in support of the system.

3. Not less than thirty days before the administration implements a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

J. The director may apply for federal monies available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state monies appropriated for

the administration of the system may be used as matching monies to secure federal monies pursuant to this subsection.

K. The director shall adopt rules that establish requirements of state residency and qualified alien status as prescribed in section 36-2903.03. The administration shall enforce these requirements as part of the eligibility determination process. The rules shall also provide for the determination of the applicant's county of residence for the purpose of assignment of the appropriate program contractor.

L. The director shall adopt rules in accordance with the state plan regarding posteligibility treatment of income and resources that determine the portion of a member's income that shall be available for payment for services under this article. The rules shall provide that a portion of income may be retained for:

1. A personal needs allowance for members receiving institutional services of at least fifteen per cent of the maximum monthly supplemental security income payment for an individual or a personal needs allowance for members receiving home and community based services based on a reasonable assessment of need.

2. The maintenance needs of a spouse or family at home in accordance with federal law. The minimum resource allowance for the spouse or family at home is twelve thousand dollars adjusted annually by the same percentage as the percentage change in the consumer price index for all urban consumers (all items; United States city average) between September 1988 and the September before the calendar year involved.

3. Expenses incurred for noncovered medical or remedial care that are not subject to payment by a third party payor.

M. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection may consider the differences between rural and urban conditions on the delivery of services.

N. The director shall not adopt any rule or enter into or approve any contract or subcontract that does not conform to federal requirements or that may cause the system to lose any federal monies to which it is otherwise entitled.

O. The administration, program contractors and providers may establish and maintain review committees dealing with the delivery of care. Review committees and their staff are subject to the same requirements, protections, privileges and immunities prescribed pursuant to section 36-2917.

P. If the director determines that the financial viability of a nursing care institution or hospice is in question, the director may require a nursing care institution and a hospice providing services pursuant to this article to submit quarterly financial statements within thirty days after the end of its financial quarter unless the director grants an extension in writing before that date. Quarterly financial statements submitted to the department shall include the following:

1. A balance sheet detailing the institution's assets, liabilities and net worth.

2. A statement of income and expenses, including current personnel costs and full-time equivalent statistics.

Q. The director may require monthly financial statements if the director determines that the financial viability of a nursing care institution or hospice is in question. The director shall prescribe the requirements of these statements.

R. The total amount of state monies that may be spent in any fiscal year by the administration for long-term care shall not exceed the amount appropriated or authorized by section 35-173 for that purpose. This article 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.

36-2933. Eligibility determination; application; enrollment

A. A person who is seeking services pursuant to this article shall submit an application for eligibility for the system to the administration which shall review the completed application to determine if the person meets the residency and if applicable, the alienage requirements adopted pursuant to section 36-2932, subsection K and the eligibility criteria prescribed in section 36-2934.

B. The administration shall conduct a preadmission screening pursuant to section 36-2936 to determine if the applicant is eligible for services.

C. A person who is a resident of this state and, if not a citizen of the United States, who meets the alienage requirements of federal law and who meets the eligibility criteria prescribed in section 36-2934 and who is determined eligible for services pursuant to section 36-2936 shall be enrolled in the system, unless such person is enrolled in the Arizona health care cost containment system pursuant to article 1 of this chapter and only needs convalescent care as defined by the director by rule.

D. On enrollment in the system, the administration shall conduct post-eligibility treatment of income and resources of the member as prescribed in section 36-2932, subsection L.

E. The director may enter into an interagency agreement with the department under which the department may:

1. Determine whether all persons with developmental disabilities as defined in section 36-551 who apply to the system meet the eligibility criteria prescribed in subsection A of this section.

2. Conduct preadmission screening pursuant to subsection B of this section on persons with developmental disabilities as defined in section 36-551 to determine if the applicant is eligible for services.

3. Conduct post-eligibility treatment of income and resources pursuant to subsection D of this section for a member who has a developmental disability as defined in section 36-551.

36-2934. Eligibility criteria; qualifications for coverage; liquidation of assets

A. A person meets the eligibility criteria of this article and the section 1115 waiver if the person satisfies one of the following:

1. Is eligible pursuant to section 36-2901, paragraph 6, subdivision (a), item (i) or (ii) on the date of application for medical assistance under this article and meets the resource requirements prescribed by federal law.

2. Would be eligible for supplemental security income for the aged, blind or persons with disabilities or temporary assistance for needy families but is not receiving cash payment.

3. Would be eligible for supplemental security income for the aged, blind or persons with disabilities or under section 1931(b) of the social security act except for the person's institutional status.

4. Is in a medical institution for a period of not less than thirty consecutive days and except for the person's income the person would be eligible for supplemental security income for the aged, blind or disabled or temporary assistance for needy families and the person's gross income before deductions does not exceed three hundred per cent of the supplemental security income benefit rate established by section 1611(b)(1) of the social security act.

5. Would be eligible for medical assistance under the state plan if the person was institutionalized and a determination has been made that except for the provision of home and community based services the person would require the level of care provided in a hospital, skilled nursing facility or intermediate care facility.

B. In addition to meeting the requirements of subsection A of this section, a person may not have, within the time specified in federal law before filing an application for eligibility pursuant to section 36-2933, transferred or assigned for less than fair consideration assets as defined by federal law for the purpose of meeting the eligibility criteria pursuant to this section. If a transfer or assignment occurred, the administration may deny eligibility for a period in accordance with federal law. Transfers that are permitted under federal law shall not serve to disqualify a person from eligibility for services pursuant to this article. This subsection also applies to persons who are eligible pursuant to section 36-2901, paragraph 6, subdivision (a) and who receive medical assistance under article 1 of this chapter.

C. In addition to meeting the requirements of subsection A, paragraph 3 of this section, the director may require that a person's net income shall not exceed a state income standard established by the director, which is less than three hundred per cent of the supplemental security income benefit rate established by section 1611 of the social security act.

D. Notwithstanding any other provision of this section, a person shall not receive services under this article who is not eligible pursuant to title XIX of the social security act or the section 1115 waiver.

E. The administration shall periodically review the eligibility pursuant to this section of each member in accordance with federal law.

F. The administration shall determine a person's eligibility pursuant to this section within the time periods required or allowed by federal law.

G. An applicant shall provide the administration with a statement in accordance with federal law containing at least the following information:

1. The amount of personal and real property in which the applicant has an interest.

2. All income that the applicant received during the period immediately before application.

3. Any assets as defined by federal law assigned or transferred by the applicant within the time prescribed by federal law immediately before filing the application for eligibility pursuant to section 36-2933.

4. Any further information the director by rule requires to determine eligibility.

H. A designated representative, as defined pursuant to rules adopted by the director, or a public employee who prepares and signs, or assists in preparing, an application for benefits under this article on behalf of an applicant is not civilly liable for good faith acts and omissions.

36-2934.01. Creation of trusts; eligibility for the system; share of cost

A. The administration has sole authority to qualify any trusts that are created pursuant to section 1917(d)(4)(A), (B) and (C) of the social security act and shall require that the trustee provide the following information and assurances when the trustee submits trust documents to the administration for approval:

1. Specific language that protects the state's beneficiary interest in the trust and that names the administration or the state medicaid agency as the primary beneficiary of the trust if the trust is terminated before or on the death of the member. The trust document shall state that the trustee shall pay on a monthly basis the share of cost amount established by the posteligibility treatment of income determination pursuant to subsection D of this section.

2. A provision that requires the direct deposit of all income assigned to the trust by the grantor, when legally permissible, into an account titled to the trust.

3. A detailed description of how the trust funds will be administered and disbursed. The trustee shall submit the description at the same time that the trustee submits the trust document to the administration for review. The administration shall review the planned disbursements or plan approved by the probate court and render a decision on the appropriateness of the disbursements or plan within the time frames established by federal law for processing applications for medical assistance. The administration may extend this limit to enable a trustee to amend a trust or to provide additional information requested by the administration. The trustee shall report to the administration any new trust funding or modifications to the planned disbursements from the trust no less than forty-five days before the intended action or change by the trustee. Under extenuating circumstances, the trustee may forgo the forty-five day reporting requirement and provide notice to the administration within thirty days from the date of disbursement. If the administration determines that the disbursement was not appropriate, or that any other provisions of the trust or this section have been violated, the administration shall consider the trust in accordance with subsection F of this section. The trustee may appeal this decision, but the provisions described in subsections I and J of this section shall be applied if the administration's action is affirmed. On request of the administration, the trustee shall provide verification of how the funds were administered.

4. A statement signed by the trustee acknowledging that an adverse action may be taken against the member's eligibility for the system if the trustee improperly violates the terms of the trust or the requirements of this section or if the trustee takes any action that limits the administration's beneficiary interest in the trust.

5. Specific language that protects the trust for the benefit of the trust beneficiary. The trust document shall state that disbursements shall not be made for other than those purposes allowed pursuant to this section.

B. For a trust that qualifies pursuant to subsection A of this section, the trustee shall not make any disbursements from the trust other than for the following:

1. Reasonable legal and professional expenses related to the trust including:

(a) Trust taxes.

(b) Trust investment fees.

(c) Reasonable professional expenses, including trustee, accounting and attorney fees related to the administration of the trust.

2. The posteligibility share of cost as computed pursuant to section 36-2932.

3. For trusts created pursuant to section 1917(d)(4)(B) of the social security act, a disbursement to the beneficiary equal to the personal needs allowance as computed pursuant to section 36-2932.

4. Health insurance premiums, medically necessary medical expenses and special medical needs of the beneficiary including:

(a) Expenses required to make the home accessible to the person.

(b) The purchase and maintenance of a specially equipped vehicle titled to the trust or to the beneficiary with a lien against the vehicle held by the trust in an amount equal to the current market value of the vehicle.

(c) Durable medical equipment.

(d) Over-the-counter supplies and medications, including diapers, lotions and cleansing wipes.

(e) Personal care services that are determined to be medically necessary by the beneficiary's physician and that are provided by a person who is registered by the administration to provide the services, including a financially responsible relative of the beneficiary. Trust disbursements for personal care services provided by a financially responsible relative shall not exceed the administration's fee-for-service rate for the personal care services. For the purposes of this subdivision, "financially responsible relative" means the spouse of the beneficiary or, if the beneficiary is a child under eighteen years of age, the parent of the beneficiary.

5. Maintenance payments for the spouse or family in accordance with 42 United States Code section 1396r-5(d)(1) and (2) and section 36-2932, subsection L.

6. Guardianship and conservatorship fees for the trust beneficiary based on the fair market value of the services provided.

7. The following expenses for the benefit of the beneficiary, excluding gifts to, payments for or loans to other persons, whether these are in cash or in kind:

(a) Entertainment, educational or vocational needs or items that are consistent with the person's ability to use these items.

(b) Other expenses that are individually approved by the director.

(c) Living expenses for food, clothing and shelter. If home property or other real property is purchased by the trust it must be titled to the trust.

(d) Income taxes owed on income from trust investments or on income of the beneficiary that is assigned to the trust when an actual tax liability is established.

(e) Provision for burial expenses that is limited to one of the following methods:

(i) Purchase of a prepaid burial plan funded by an irrevocable life insurance policy, irrevocable burial account, irrevocable trust account or irrevocable escrow account.

(ii) Purchase of life insurance to fund a burial plan for the beneficiary with a face value that does not exceed one thousand five hundred dollars after allowing deductions for burial plot items as defined by the administration.

(iii) Funding a burial fund account in an amount not to exceed one thousand five hundred dollars.

(f) Travel expenses for a companion if a companion is required to enable the beneficiary to travel for nonmedical reasons.

C. For trusts that qualify pursuant to subsection A of this section, the administration shall consider only the person's proportionate share of expenses as for the benefit of the trust beneficiary if these expenses also benefit others.

D. For trusts that are created pursuant to section 1917(d)(4)(A), (B) and (C) of the social security act, the administration shall require that the posteligibility treatment of income that is determined pursuant to section 36-2932 shall include the income assigned to the trust and any other countable income received by the member, excluding interest and dividends earned by the trust corpus and added to the principal. Each month the administration shall count for income eligibility purposes any disbursements made to the beneficiary and any payments made on behalf of the beneficiary for food or shelter. The administration shall count disbursements issued for the personal needs allowance pursuant to subsection B, paragraph 3 of this section as disbursements for food or shelter.

E. In order for a trust that is created pursuant to section 1917(d)(4)(B) of the social security act to be considered under this section, the sum of the individual's countable nontrust income and the income assigned to the trust, excluding interest and dividends earned by the trust corpus and added to the principal shall be equal to or less than the private pay rate established in the state plan.

F. For revocable or irrevocable trusts that are created pursuant to section 1917(d)(3)(A) or (B) of the social security act, the administration shall include the income that is received by the trust, excluding interest and dividends earned by the trust corpus and added to the principal or that is disbursed from the trust, whichever is greater, for both income eligibility calculations under section 36-2934 and posteligibility of income under section 36-2932. In determining eligibility for the system, the administration shall consider payments from the trust regardless of the purpose for which the payment is made.

G. Notwithstanding this section, a trust that is established before August 11, 1993 shall be evaluated in accordance with the provisions contained in the state plan.

H. If the administration determines that the trustee did not report changes in the amount of trust income or disbursements from the trust to the administration in the time frame and manner specified in subsection A of this section, the administration shall notify the member of the noncompliance and shall prospectively apply the adverse action that would have resulted if the change had been reported in a timely manner. If benefits for the system are continued by the administration pending a decision by the director after a hearing on a proposed adverse action that results from trust income or disbursements and the director upholds the administration, the administration shall apply the adverse action on a prospective basis.

I. The administration shall consider trust disbursements issued in violation of this section as a transfer in accordance with 42 United States Code section 1396p.

J. If the administration determines that the trustee is in violation of this section or the terms of a new or existing trust, the administration shall consider all trust assets held in the trust and income held in or produced by the trust, available to the beneficiary under 42 United States Code section 1396p(d)(3) until the trustee corrects the violation unless considering the assets and income available would create an undue hardship for the beneficiary.

D-12.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 2, Articles 1-5, Appendices 1-3 & 9

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: September 4, 2024

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

FROM: Council Staff

DATE: August 15, 2024

SUBJECT: **DEPARTMENT OF ENVIRONMENTAL QUALITY**
Title 18, Chapter 2, Articles 1-5, Appendices 1-3 & 9

Summary

This Five-Year Review Report (5YRR) from the Department of Environmental Quality (Department) relates to eighty (80) rules and three (3) appendices in Title 18, Chapter 2, Articles 1-5, Appendices 1-3 and 9. Specifically, these rules cover the following Articles:

- Article 1 - General Provisions
- Article 2 - Ambient Air Quality Standards; Area Designations, Classifications
- Article 3 - Permits and Permit Revisions
- Article 4 - Permit Requirements for New Major Sources and Major Modifications to Existing Major Sources
- Article 5. General Permits
- Appendix 1. Repealed
- Appendix 2. Test Methods and Protocols
- Appendix 3. Logging
- Appendix 9. Monitoring Requirements

In the prior 5YRR for these rules, which was approved by the Council in August 2019, the Department proposed to amend three (3) rules. For rule R18-2-101, the Department proposed to amend the rule by June 2019. R18-2-101 was amended through rulemaking which

became effective December 20, 2019. For rule R18-2-327, the Department proposed to amend the rule by January 2020. R18-2-327 was amended through rulemaking which became effective December 4, 2020. For rule R18-2-302.01, the Department proposed to amend the rule by May 2024. The Department indicates it is currently undergoing a rulemaking to satisfy this commitment. The Department now anticipates an August 2024 submittal timeframe due to on-going stakeholder engagement on the rulemaking.

Proposed Action

The Department indicates, on May 26, 2023, it received approval to initiate a rulemaking to amend rules in Articles 1, 3 and 5 for the following purposes: 1) to continue to allow permitted facilities to adopt voluntary permit conditions to protect ambient air quality; 2) to make technical corrections related to the Department's New Source Review (NSR) rules; 3) to correct the gaps between ADEQ's rules and the U.S. Environmental Protection Agency's (EPA) Title V requirements; 4) to update cross-reference changes throughout the Articles, and 5) fulfill ADEQ's 5YRR commitment to the Governor's Regulatory Review Council. The Department indicates these amendments will not increase regulatory burden beyond what is required by the Clean Air Act (CAA). The Department anticipates the proposed changes will improve clarity and regulatory flexibility for sources seeking permits, as well as bring the rules closer into alignment with the mandatory federal rules. The Department indicates changes will be made in Title 18, Chapter 2, Articles 1, 3, and 5 and anticipates submitting this rule to the Council in August 2024.

For the rules in Article 2, the Department indicates EPA has recently updated its PM2.5 standards. Subject to litigation, the Department will update its rules to conform with federal standards. The Department anticipates submitting this rulemaking to the Council in May 2025.

For the rules in Article 4, the Department indicates the CAA NSR requirements for serious ozone nonattainment areas need to be added in order to secure EPA approval of the next Phoenix-Mesa ozone nonattainment SIP. If approved by the Governor pursuant to A.R.S. 41-1039(B), the Department anticipates submitting this rule to the Council in May 2025.

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:

Overall, the Department believes that the qualitative assessment made in the 2019 Economic Impact Statement (EIS) regarding the State's economy, small business, and consumers remains accurate as no fees or costs associated with the Article have changed. The economic impact of Article 1, Article 2, Article 3, Article 4, Article 5, Appendix 2, Appendix 3, and Appendix 9 have all been consistent with their respective economic impact statements. The costs associated with issuing permits in Article 3 have increased over the last decade, however, the

resulting fees impose the least burden and are paid by applicants. Appendix 1 was repealed and has no impact on the state's economy, small businesses, or consumers.

Stakeholders are identified, largely, as entities seeking permits from or engaged in practices with the Department of Environmental Quality—specifically, in terms of air quality procedures and requirements.

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 rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieving the underlying regulatory objective.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department indicates it received numerous comments related to the rules reviewed which are summarized in section 7 of the Department's report. Furthermore, copies of the comments were submitted with the report and are included in the final materials for the Council's reference. Council staff believes the Department has adequately responded to the comments.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Department indicates the rules are generally clear, concise, and understandable except for the following:

- R18-2-302(E). Applicability; Registration; Classes of Permits
    - R18-2-302(E) does not permit a major source to take elective limits to become a registered source, pursuant to R18-2-302(B)(3). However, ADEQ believes the language of this section could be improved to make the meaning clearer and more understandable. Therefore, ADEQ is seeking to amend this rule language to clarify whether elective limits or controls can be considered in determining whether a source is a major source requiring a Class I permit. This will improve the clarity of the rules for the public and will not change the requirements of the rule.
- R18-2-309. Compliance Plan; Certification
    - It is unclear from the current rule language whether a permittee would be allowed to submit their compliance plan certification by electronic means. Therefore, ADEQ is seeking to amend this rule to make it clear that it is permissible to submit certifications by electronic means. This will improve the clarity of the rules for the public and will not change the substantive requirements of the rule. ADEQ also intends to update cross-references within this rule.
- R18-2-310.01(A)(1). Reporting Requirements
    - Currently, R18-2-310.01(A)(1) provides that owners or operators shall report emissions in excess of the limits established by the A.A.C Title 18, Chapter 2 or

the applicable permit. The rule specifies that the notification be by telephone or facsimile. ADEQ is seeking to amend this rule to make it clear that such notifications could also be submitted by electronic means.

- R18-2-324. Portable Sources
    - It is unclear how long a portable source can operate under its permit. ADEQ seeks to amend this rule to clarify that the period is 5 years.

6. <u>Has the agency analyzed the rules' consistency with other rules and statutes?</u>

The Department indicates the rules are generally consistent with other rules and statutes except for the following:

- R18-2-101(11). Definitions
    - The "potential to emit" definition in this rule is not consistent with the federal rules.
- R18-2-101(9). Definitions
    - The use of the term "air curtain destructor" or "air-curtain destructor" is not consistent with applicable federal regulations, namely: 40 CFR §§ 60.2970 through 60.2974. ADEQ is currently conducting a rulemaking to replace all instances of the term in Chapter 2 with "air curtain incinerator" to be consistent with applicable federal regulations. Upon receiving approval from the Governor pursuant to A.R.S. 41-1039(B), ADEQ will submit the rule to the Council for approval.
- R18-2-201. Particulate Matter: PM10 and PM2.5
    - With regard to the primary standard, it is not consistent with the federal standard for PM2.5, which EPA recently updated.
- R18-2-301. Definitions
    - The rule is not consistent with the federal rule, 40 CFR 70.2, that defines "alternative operating system."
- R18-2-307. Permit Review by the EPA and Affected States
    - Under 40 CFR § 70.8, ADEQ rules are required to state that the Department will submit a written response to substantive comments on a permit to EPA as part of the permitting process. ADEQ currently performs this as a routine matter, but the rule needs to be amended to conform to the federal requirement.
- R18-2-324. Portable Sources
    - ADEQ identified inconsistencies between this rule and the corresponding federal requirements under 40 CFR §§ 70.6(e) and 70.6(e)(2). These inconsistencies will be addressed in the rulemaking described in Section 3.
- R18-2-326(C)(1). Fees Related to Individual Permits
    - The use of the term "air curtain destructor" or "air-curtain destructor" is not consistent with applicable federal regulations, namely: 40 CFR §§ 60.2970 through 60.2974. ADEQ is conducting a rulemaking to replace all instances of the term in Chapter 2 with "air curtain incinerator" to be consistent with applicable federal regulations.

- Article 4. Permit Requirements for New Major Sources and Major Modifications to Existing Major Sources
    - Clean Air Act New Source Review (NSR) requirements serious ozone nonattainment areas need to be added to Article 4 rules in order to secure EPA approval of the next nonattainment area SIP for the Phoenix-Mesa ozone nonattainment area. These requirements will be addressed in a future rulemaking.
- R18-2-513. Portable Sources Covered under a General Permit
    - ADEQ identified inconsistencies between this rule and the corresponding federal requirements under 40 CFR §§ 70.6(e) and 70.6(e)(2). These inconsistencies will be addressed in the rulemaking described in Section 3.
- In general, ADEQ has identified updates to incorporations by reference to federal rules and is evaluating these references to determine updates to its rules.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department indicates that the rules are generally effective in achieving their objective, although minor amendments can be made. Specifically, recently, EPA notified the Department that its interpretation of A.A.C. R18-2-306.01, which allowed sources to take voluntary permit limitations in order to ensure compliance with the NAAQS, would no longer be accepted by the EPA. As a result, the Department is no longer able to issue permits that rely on this interpretation of A.A.C. R18-2-306.01. As such, the rule is not effective in achieving its objectives and the Department plans to amend the rule and bolster its voluntary permit condition program, which is detailed further in the Department's proposed course of action in the report.

8. Has the agency analyzed the current enforcement status of the rules?

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?

The Department indicates the rules are not more stringent than corresponding federal law. Section 12 of the Department's report details the federal laws corresponding to each Article reviewed.

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?

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(12), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

A.R.S. § 41-1001(12) defines "general permit" to mean "a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in

nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing."

The Department indicates the following rules in Article 3 were last amended after July 29, 2010 and govern permits authorized by A.R.S. § 49-426: R18-2-301, -302, -302.01, -303, -304, -310.01, -317, -317.01, -317.02, -320, -321, -324, -327, -330, -334. As such, these rules are in compliance with A.R.S. § 41-1037(A)(2) in that "[t]he issuance of an alternative type of permit, license or authorization is specifically authorized by state statute." The Department indicates the rules in Article 4 govern the issuance of permits authorized by A.R.S. § 49-426, and therefore are in compliance with A.R.S. § 41-1037(A)(2) through (6). The following rules in Article 5 were last amended after July 29, 2010 and govern general permits issued by the Department: R18-2-502, -503, -505, -512, -513, -514, and -515. These rules set forth applicable procedures, renewal processes, and changes to facilities granted coverage under a general permit. As such, they are in compliance with A.R.S. § 41-1037.

11. Conclusion

This Five-Year Review Report (5YRR) from the Department of Environmental Quality (Department) relates to eighty (80) rules and three (3) appendices in Title 18, Chapter 2, Articles 1-5, Appendices 1-3 and 9. Specifically, these rules cover the following Articles: Article 1 - General Provisions; Article 2 - Ambient Air Quality Standards; Area Designations, Classifications; Article 3 - Permits and Permit Revisions; Article 4 - Permit Requirements for New Major Sources and Major Modifications to Existing Major Sources; Article 5. General Permits; Appendix 2. Test Methods and Protocols; Appendix 3. Logging; Appendix 9. Monitoring Requirements.

The Department indicates, on May 26, 2023, it received approval to initiate a rulemaking to amend rules in Articles 1, 3 and 5 for the following purposes: 1) to continue to allow permitted facilities to adopt voluntary permit conditions to protect ambient air quality; 2) to make technical corrections related to the Department's New Source Review (NSR) rules; 3) to correct the gaps between ADEQ's rules and the U.S. Environmental Protection Agency's (EPA) Title V requirements; 4) to update cross-reference changes throughout the Articles, and 5) fulfill ADEQ's 5YRR commitment to the Governor's Regulatory Review Council. The Department indicates these amendments will not increase regulatory burden beyond what is required by the Clean Air Act (CAA). The Department anticipates the proposed changes will improve clarity and regulatory flexibility for sources seeking permits, as well as bring the rules closer into alignment with the mandatory federal rules. The Department indicates changes will be made in Title 18, Chapter 2, Articles 1, 3, and 5 and anticipates submitting this rule to the Council in August 2024.

For the rules in Article 2, the Department indicates EPA has recently updated its PM2.5 standards. Subject to litigation, the Department will update its rules to conform with federal standards. The Department anticipates submitting this rulemaking to the Council in May 2025.

For the rules in Article 4, the Department indicates the CAA NSR requirements for serious ozone nonattainment areas need to be added in order to secure EPA approval of the next Phoenix-Mesa ozone nonattainment SIP. If approved by the Governor pursuant to A.R.S. 41-1039(B), the Department anticipates submitting this rule to the Council in May 2025.

Council staff recommends approval of this report.

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

Katie Hobbs
Governor

Karen Peters
Cabinet Executive Officer
Executive Deputy Director

May 15, 2024

SENT VIA EMAIL ONLY

Jessica Klein, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, #305
Phoenix, AZ 85007
grrc@azdoa.gov

Re: Submittal of Five-Year Rule Review Report for A.A.C. Title 18, Chapter 2, Articles 1 – 5 and Appendices 1 – 3, and 9.

Dear Chair Klein:

I am pleased to submit to you, pursuant to A.R.S. § 41-1056 and A.A.C. R1-6-301, our agency's 5-Year Review Report for Title 18, Chapter 2, Articles 1 – 5 and Appendices 1 – 3, and 9.

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 Sierra Apillanes in the Air Quality Division at 602-771-1593, or apillanes.sierra@azdeq.gov, if you have any questions.

Sincerely,

DocuSigned by:
Karen Peters
72DC0E312D584BF...

Karen Peters
Cabinet Executive Officer
Arizona Department of Environmental Quality

Enclosures (3)

Arizona Department of Environmental Quality

Five-Year Review Report

Title 18. Environmental Quality

Chapter 2. Department of Environmental Quality – Air Pollution Control

Article 1. General

Article 2. Ambient Air Quality Standards; Area Designations; Classifications

Article 3. Permits and Permit Revisions

Article 4. Permit Requirements for New Major Sources and Major Modifications to Existing Major Sources

Article 5. General Permits

Appendix 1. Repealed

Appendix 2. Test Methods and Protocols

Appendix 3. Logging

Appendix 9. Monitoring Requirements

May 15, 2024

1. Authorization of the rule by existing statutes:

Article 1. General

General Statutory Authority: A.R.S. §§ 49-104(A)(1), 49-404, and 49-425

Article 2. Ambient Air Quality Standards; Area Designations; Classifications

General Statutory Authority: A.R.S. §§ 49-104(A)(1) and (B)(4), 49-401, 49-404, 49-425, and 49-447

Specific Statutory Authority: A.R.S. §§ 49-404, 49-405, 49-425(A), 49-447, and 49-541

Article 3. Permits and Permit Revisions

General Statutory Authority: A.R.S. §§ 49-104(A)(1) and (A)(10), 49-425, and 49-426

Specific Statutory Authority: A.R.S. §§ 49-422(B-C), 49-425, 49-426(C-D, I) and (H-I), 49-426.01, 49-426.02, 49-426.03, 49-428, 49-429 49-430, 49-431, 49-432(A), (C-F), 49-441, 49-443, 49-455, 49-464, 49-479, and 49-514

Article 4. Permit Requirements for New Major Sources and Major Modifications to Existing Major Sources

General Statutory Authority: A.R.S. §§ 49-104, 49-404, 49-425, and 49-426(C)

Specific Statutory Authority: A.R.S. §§ A.R.S. § 49-401.01 and 49-402(A)(1).

Article 5. General Permits

General Statutory Authority: A.R.S. §§ 49-104, 49-404, and 49-425

Specific Statutory Authority: A.R.S. §§ 49-425 and 49-426(H)

Appendix 1. Repealed

Appendix 2. Test Methods and Protocols

General Statutory Authority: A.R.S. §§ 49-425 and 49-426

Appendix 3. Logging

General Statutory Authority: A.R.S. §§ 49-425 and 49-426

Appendix 9. Monitoring Requirements

General Statutory Authority: A.R.S. § 49-426

2. The objective of each rule:

Rule	Objective
ARTICLE 1. GENERAL	
R18-2-101. Definitions	The objective of this rule is to provide definitions for select terms that are used in more than one Article within Chapter 2.
R18-2-102. Incorporated Materials	The objective of this rule is to incorporate specific materials by reference.
R18-2-103. Applicable Implementation Plan; Savings	The objective of this rule is to ensure that no rule will pre-empt or nullify the emissions standards included in the Arizona State Implementation Plan (SIP) without going through public notice and hearing process and receiving EPA approval.
ARTICLE 2. AMBIENT AIR QUALITY STANDARDS; AREA DESIGNATIONS; CLASSIFICATIONS	
R18-2-201. Particulate Matter: PM_{10} and $PM_{2.5}$	The objective of this rule is to set forth the primary and secondary National Ambient Air Quality Standards (NAAQS) for Particulate Matter 10 micrometers and smaller (PM_{10}) and Particulate Matter 2.5 micrometers and smaller ($PM_{2.5}$).
R18-2-202. Sulfur Oxides (Sulfur Dioxide)	The objective of this rule is to set forth the primary and secondary NAAQS for sulfur oxides (sulfur dioxide or SO2).
R18-2-203. Ozone	The objective of this rule is to set forth the primary and secondary NAAQS for ozone.
R18-2-204. Carbon monoxide	The objective of this rule is to set forth the primary and secondary NAAQS for carbon monoxide (CO).
R18-2-205. Nitrogen Oxides (Nitrogen Dioxide)	The objective of this rule is to set forth the primary and secondary NAAQS for nitrogen dioxide (NOx).
R18-2-206. Lead	The objective of this rule is to set forth the primary and secondary NAAQS for lead (Pb).
R18-2-207: Renumbered.	
R18-2-208: Reserved.	
R18-2-209: Reserved.	
R18-2-210. Attainment, Nonattainment, and Unclassifiable Area Designations	The objective of this rule is to incorporate by reference the legal descriptions and designations in 40 Code of Federal Regulations (C.F.R.) § 81.303 as federally designated attainment, nonattainment, and unclassifiable areas of the state for total suspended particulates (TSP), SO_2, CO, NOx, ozone, and PM into the state regulations.
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	The objective of the rule is to incorporate standardized methods and procedures to use in monitoring ambient air quality.
R18-2-216. Interpretation of Ambient Air Quality Standards and Evaluation of Air Quality Data	The objective of the rule is to provide the requirements and references necessary to interpret all ambient air quality standards and evaluate air quality data.

R18-2-217. Designation and Classification of Attainment Areas	The objective of the rule is to define the attainment and unclassified areas in the state, as well as provide procedures for changing area classifications. This rule is an integral part of the SIP developed to meet the NAAQS and is a key part of the Prevention of Significant Deterioration (PSD) Program.
R18-2-218. Limitation of Pollutants in Classified Attainment Areas	The objective of this rule is to define the maximum allowable increases in air pollution concentrations for classified attainment areas.
R18-2-219: Repealed.	
R18-2-220. Air Pollution Emergency Episodes	The objective of this rule is to establish procedures to prevent and mitigate ambient air quality violations at various stages.
ARTICLE 3. PERMITS AND PERMIT REVISIONS	
R18-2-301. Definitions	The objective of this rule is to provide definitions that apply to Article 3, in addition to those contained in R18-2-101.
R18-2-302. Applicability; Registration; Classes of Permits	The objective of this rule is to define Class I (Major Source Permits) and Class II (Minor Source Permits) permits and to which sources they apply.
R18-2-302.01. Source Registration Requirements	The objective of this rule is to outline source registration requirements and to streamline the application processing procedures for the registration program.
R18-2-303. Transition from Installation and Operating Permit Program to Unitary Permit Program; Registration Transition; Minor NSR Transition	The objective of this rule is to establish the basic transition mechanism for changing from separate installation and operation permitting requirements to a unitary permit system.
R18-2-304. Permit Application Processing Procedures	The objective of this rule is to set forth the Department's permit application procedures and processing standards.
R18-2-305. Public Records; Confidentiality	The objective of this rule is to establish specific procedures which define source confidentiality rights while protecting the public's right to know what is in a permit.
R18-3-306. Permit Contents	The objective of this rule is to define air quality permit content and to describe applicable conditions for optional provisions.
R18-2-306.01. Permits Containing Voluntarily Accepted Emissions Limitations and Standards	The objective of this rule is to provide procedures and requirements for those sources that wish to be classified as a "synthetic" minor source by including voluntary conditions in the sources permit.
R18-2-306.02. Expired.	
R18-2-307. Permit Review by the EPA and Affected States	The objective of this rule is to establish procedures for reviewing proposed Class I permits by EPA and affected States.
R18-2-308. Emission Standards and Limitations	The objective of this rule is to require Class I and Class II permits to contain all applicable standards for any item, even when multiple, different standards apply.
R18-2-309. Compliance Plan; Certification	The objective of this rule is to define permit compliance requirements and set deadlines for compliance certification.
R18-2-310. Affirmative Defenses for Excess Emissions Due	The objective of this rule is to establish reporting requirements for sources to report excess emissions, and provide for an affirmative defense for sources following an exceedance of an emission limit.
R18-2-310.01. Reporting Requirements	The objective of this rule is to provide reporting requirements for sources that exceed an emission limitation. Additionally, this rule allows sources to report excess emissions in order to qualify for the affirmative defense established by R18-2-310.
R18-2-311. Test Methods and Procedures	The objective of this rule is to specify the test methods and procedures applicable throughout Article 3.

R18-2-312. Performance Tests	The objective of this rule is to establish methods and requirements for acceptable performance tests.
R18-2-313. Existing Source Emission Monitoring	The objective of this rule is to provide continuous emission monitoring requirements for sources not covered by New Source Performance Standards (NSPS).
R18-2-314. Quality Assurance	The objective of this rule is to require certain permitted sources to submit a quality assurance plan to ADEQ.
R18-2-315. Posting of Permit	The objective of this rule is to require that the source's permit be posted on site, and that all equipment covered by the permit be marked with identifying numbers as to be clearly visible and accessible.
R18-2-316. Notice by Building Permit Agencies	The objective of this rule is to assist sources in compliance with review and notice requirements to obtain air quality permits.
R18-2-317. Facility Changes Allowed Without Permit Revisions - Class I	The objective of this rule is to describe the changes a Class I source may make at its facility that require notice but no permit revision, and the procedures that a source must follow when such changes are made.
R18-2-317.01. Facility Changes that Require a Permit Revision - Class II	The objective of this rule is to list all changes at a Class II source that require a permit revision.
R18-2-317.02. Procedures for Certain Changes that Do Not Require a Permit Revision - Class II	The objective of this rule is to list all changes at a Class II source that require either notice to ADEQ, or on-site logging.
R18-2-318. Administrative Permit Amendments	The objective of this rule is to provide a simplified mechanism for Class I and Class II sources to make administrative, non-controversial changes to their permits.
R18-2-318.01. Annual Summary Permit Amendments for Class II Permits	The objective of this rule is to allow annual amendments of permits to incorporate the changes made under R18-2-317.02 that can be incorporated into the permit without following the procedures required under R18-2-321.
R18-2-319. Minor Permit Revisions	The objective of this rule is to list and describe changes to Class I and Class II sources that qualify for a minor permit revision, requiring no public notice or hearing.
R18-2-320. Significant Permit Revisions	The objective of this rule is to describe changes to a facility that require significant permit revisions.
R18-2-321. Permit Reopenings; Revocation and Reissuance; Termination	The objective of this rule is to describe the circumstances under which a permit may be reopened prior to its expiration and when ADEQ may issue a Notice of Termination for the permit.
R18-2-322. Permit Renewal and Expiration	The objective of this rule is to provide procedures for periodic permit review.
R18-2-323. Permit Transfers	The objective of this rule is to establish criteria under which a permit may be transferred from one party to another.
R18-2-324. Portable Sources	The objective of this rule is to specify the permitting requirements for portable sources.
R18-2-325. Permit Shields	The objective of this rule is to provide that permit compliance means compliance with the law.
R18-2-326. Fees Related to Individual Permits	The objective of this rule is to set forth individual permit fees.
R18-2-326.01: Expired.	
R18-2-327. Emissions Inventory Questionnaire and Emissions Statement	The objective of this rule is to require sources to quantify their emissions and submit an annual emissions inventory to the Director of ADEQ.
R18-2-328. Conditional Orders	The objective of this rule is to provide the procedure for applying for and granting temporary relief from any applicable non-federal permitting requirements and a schedule for returning to compliance.

R18-2-329. Permits Containing the Terms and Conditions of Federal Delayed Compliance Orders (DCO) or Consent Decrees	The objective of the rule is to require that the terms of the federal compliance order or consent decree be incorporated into the permit of the subject source.
R18-2-330. Public Participation	The objective of this rule is to require that public notice, an opportunity to comment, and a hearing take place for certain permit related actions.
R18-2-331. Material Permit Conditions	The objective of this rule is to define what constitutes a material permit condition.
R18-2-332. Stack Height Limitation	The objective of this rule is to prevent sources constructed after December 31, 1970 from using excessively tall stacks as a means of avoiding installation of air pollution controls. The rule also establishes good engineering practice stack height.
R18-2-333. Acid Rain	The objective of this rule is to incorporate by reference the federal permitting requirements applicable to sulfur dioxide and oxides of nitrogen.
R18-2-334. Minor New Source Review	The objective of this rule is to describe which sources are subject to Minor New Source Review and define reasonably available control technology (RACT).
ARTICLE 4. PERMIT REQUIREMENTS FOR NEW MAJOR SOURCES AND MAJOR MODIFICATIONS TO EXISTING MAJOR SOURCES	
R18-2-401. Definitions	The objective of this rule is to provide definitions for terms used in Article 4, in addition to those contained in R18-2-101.
R18-2-402. General	The objective of the rule is to provide general rules for New Source Review (NSR) and Prevention of Significant Deterioration (PSD) permits. This section applies only to permits processed under Article 4.
R18-2-403. Permits for Sources Located in Nonattainment Areas	The objective of the rule is to describe the permitting requirements for sources in nonattainment areas considering construction of a new major source or to make a major modification to an existing source.
R18-2-404. Offset Standards	The objective of the rule is to describe how sources can obtain and quantify emission offsets when considering construction of a new major source or a major modification to an existing source.
R18-2-405. Special Rule for Major Sources of VOC or Nitrogen Oxides in Ozone Nonattainment Areas Classified as Serious or Severe	The objective of the rule is to implement detailed NSR provisions of the Clean Air Act (CAA) relating to 42 U.S.C. § 7511a(c)(6-8).
R18-2-406. Permit Requirements for Sources Located in Attainment Areas and Unclassifiable Areas	The objective of the rule is to provide the permit requirements for major sources located in attainment and unclassifiable areas.
R18-2-407. Air Quality Impact Analysis and Monitoring Requirements	The objective of the rule is to provide further monitoring and analysis requirements for R18-2-406(A)(5).
R18-2-408. Innovative Control Technology	The objective of the rule is to allow the owners or operators of a proposed new major source or modification to request that the Director approve a system of innovative control technology rather than best available control technology (BACT) requirements otherwise applicable to the source.
R18-2-409. Air Quality Models	The objective of this rule is to require modeling to be performed in a manner consistent with the guidelines specified in R18-2-406(A)(6)(a) when the Director requires a person requesting a permit or revision to perform air quality modeling. The rule also includes exceptions to the modeling requirement.

R18-2-410. Visibility and Air Quality Related Value Protection	The objective of the rule is to comply with EPA's Regional Haze Rule pursuant to CAA §§ 169-169(B) by describing source-by-source visibility impact analysis requirements for NSR and PSD sources operating or desiring to operate in or near Class I areas.
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	The objective of this rule is to establish requirements for any major source or modification located in a nonattainment or unclassifiable area that would cause or contribute to a violation of any NAAQS.
R18-2-412. PALs	The objective of the rule is to provide permit requirements for the use of plantwide applicability limitations (PALs) for any existing major source.
ARTICLE 5. GENERAL PERMITS	
R18-2-501. Applicability	The objective of the rule is to set forth when a general permit may be issued.
R18-2-502. General Permit Development	The objective of the rule is to establish criteria for persons to petition the Director for the development of a general permit, as well as the criteria for developing a general permit.
R18-2-503. Application for Coverage under General Permit	The objective of the rule is to provide requirements for sources in applying for authority to operate under a general permit, as well as requirements for ADEQ in processing general permits.
R18-2-504. Public Notice	The objective of the rule is to provide the public notice requirements for the issuance, revision, or renewal of a general permit.
R18-2-505. General Permit Renewal	The objective of the rule is to describe how the Director may renew general permits, and provides related information for sources.
R18-2-506. Relationship to Individual Permits	The objective of the rule is to allow for any source covered under a general permit to be excluded from coverage by applying for an individual source permit.
R18-2-507: Repealed.	
R18-2-508: Repealed.	
R18-2-509. General Permit Appeals	The objective of the rule is to allow for any person who comments on a proposed general permit to appeal the terms and conditions of the permit.
R18-2-510. Terminations of General Permits and Revocations of Authority to Operate under a General Permit	The objective of the rule is to describe circumstances under which a general permit can be terminated or the coverage for a source to be revoked.
R18-2-511. Fees Related to General Permits	The objective of the rule is to set forth the fees for general permits.
R18-2-512. Changes to Facilities Granted Coverage under General Permits	The objective of the rule is to establish which changes at a source that has been granted coverage under a general permit require authorization from the Director.
R18-2-513. Portable Sources Covered under a General Permit	The objective of the rule is to clarify the obligations of portable sources subject to a general permit.
R18-2-514. General Permit Compliance Certification	The objective of the rule is to require that owners or operators of a stationary source covered by a general permit to submit compliance certifications that meet certain requirements.
R18-2-515. Minor NSR in General Permit	The objective of the rule is to establish that a general permit may, under certain circumstances, contain emission limitations designed to assure the permit will comply with minor NSR under R18-2-334(C).
R18-2-515.01: Renumbered.	

R18-2-515.02: Renumbered.	
R18-2-516: Renumbered.	
R18-2-517: Renumbered.	
R18-2-518: Renumbered.	
R18-2-519: Renumbered.	
R18-2-520: Renumbered.	
R18-2-521: Renumbered.	
R18-2-522: Renumbered.	
R18-2-523: Renumbered.	
R18-2-524: Renumbered.	
R18-2-525: Renumbered.	
R18-2-526: Renumbered.	
R18-2-527: Renumbered.	
R18-2-528: Renumbered.	
R18-2-529: Renumbered.	
R18-2-530: Renumbered.	
APPENDIX 1. REPEALED	
APPENDIX 2. TEST METHODS AND PROTOCOLS	
Appendix 2	Appendix 2's objective is to contain all approved test methods and protocols into a single location and to supplement R18-2-311.
APPENDIX 3. LOGGING	
Appendix 3	Appendix 3's objective is to list requirements for log entries referenced in R18-2-317.01, R18-2-317.02, and R18-2-320.
APPENDIX 9. MONITORING REQUIREMENTS	
Appendix 9	Appendix 9's objective is to supplement various permitting rules, including R18-2-312 and R18-2-313, by detailing the steps that sources must take to conduct acceptable performance tests and continuous emission monitoring.

3. <u>Are the rules effective in achieving their objectives?</u> **Yes _X_ No __**

The rules are effective in achieving their objective, although minor amendments can be made. Recently, EPA notified ADEQ that its interpretation of A.A.C. R18-2-306.01, which allowed sources to take voluntary permit limitations in order to ensure compliance with the NAAQS, would no longer be accepted by the EPA. As a result, ADEQ is no longer able to issue permits that rely on this interpretation of A.A.C. R18-2-306.01. Given EPA's, the rule is not effective in achieving its objectives. ADEQ plans to amend the rule and bolster its voluntary permit condition program, which is detailed further in Section 14.

4. <u>Are the rules consistent with other rules and statutes?</u> **Yes _X_ No __**

Except as indicated below, the rules are consistent with other statutes and rules.

Rule	Explanation
R18-2-101(11). Definitions	The "potential to emit" definition in this rule is not consistent with the federal rules.
R18-2-101(9). Definitions	The use of the term "air curtain destructor" or "air-curtain destructor" is not consistent with applicable federal regulations, namely: 40 CFR §§ 60.2970 through 60.2974. ADEQ is currently conducting a rulemaking to replace all instances of the term in

	Chapter 2 with “air curtain incinerator" to be consistent with applicable federal regulations. Upon receiving approval from the Governor pursuant to A.R.S. 41-1039(B), ADEQ will submit the rule to Governor’s Regulatory Review Council (GRRC) for approval.
R18-2-201. Particulate Matter: PM_{10} and $PM_{2.5}$	With regard to the primary standard, it is not consistent with the federal standard for $PM_{2.5,}$ which EPA recently updated.
R18-2-301. Definitions	The rule is not consistent with the federal rule, 40 CFR 70.2, that defines “alternative operating system.”
R18-2-307. Permit Review by the EPA and Affected States	Under 40 CFR § 70.8, ADEQ rules are required to state that the Department will submit a written response to substantive comments on a permit to EPA as part of the permitting process. ADEQ currently performs this as a routine matter, but the rule needs to be amended to conform to the federal requirement.
R18-2-324. Portable Sources	ADEQ identified inconsistencies between this rule and the corresponding federal requirements under 40 CFR §§ 70.6(e) and 70.6(e)(2). These inconsistencies will be addressed in the rulemaking described in Section 3.
R18-2-326(C)(1). Fees Related to Individual Permits	The use of the term “air curtain destructor” or “air-curtain destructor” is not consistent with applicable federal regulations, namely: 40 CFR §§ 60.2970 through 60.2974. ADEQ is conducting a rulemaking to replace all instances of the term in Chapter 2 with “air curtain incinerator" to be consistent with applicable federal regulations.
Article 4. Permit Requirements for New Major Sources and Major Modifications to Existing Major Sources	Clean Air Act New Source Review (NSR) requirements serious ozone nonattainment areas need to be added to Article 4 rules in order to secure EPA approval of the next nonattainment area SIP for the Phoenix-Mesa ozone nonattainment area. These requirements will be addressed in a future rulemaking.
R18-2-513. Portable Sources Covered under a General Permit	ADEQ identified inconsistencies between this rule and the corresponding federal requirements under 40 CFR §§ 70.6(e) and 70.6(e)(2). These inconsistencies will be addressed in the rulemaking described in Section 3.
In General	ADEQ has identified updates to incorporations by reference to federal rules and is evaluating these references to determine updates to its rules.

5. <u>Are the rules enforced as written?</u> **Yes _X_ No __**

The rules are enforced as written.

6. <u>Are the rules clear, concise, and understandable?</u> **Yes _X_ No __**

The rules are clear, concise, and understandable; however, minor amendments can be made to further improve the clarity, conciseness, and understandability of rules as described in the table below.

Rule	Explanation
R18-2-302(E). Applicability; Registration; Classes of Permits	R18-2-302(E) does not permit a major source to take elective limits to become a registered source, pursuant to R18-2-302(B)(3). However, ADEQ believes the language of this section could be improved to make the meaning clearer and more understandable. Therefore, ADEQ is seeking to amend this rule language to clarify whether elective limits or controls can be considered in determining whether a source is a major source requiring a Class I permit. This will improve the clarity of the rules for the public and will not change the requirements of the rule.
R18-2-309. Compliance Plan; Certification	It is unclear from the current rule language whether a permittee would be allowed to submit their compliance plan certification by electronic means. Therefore, ADEQ is seeking to amend this rule to make it clear that it is permissible to submit certifications by electronic means. This will improve the clarity of the rules for the public and will not

	change the substantive requirements of the rule. ADEQ also intends to update cross-references within this rule.
R18-2-310.01(A)(1). Reporting Requirements	Currently, R18-2-310.01(A)(1) provides that owners or operators shall report emissions in excess of the limits established by the A.A.C Title 18, Chapter 2 or the applicable permit. The rule specifies that the notification be by telephone or facsimile. ADEQ is seeking to amend this rule to make it clear that such notifications could also be submitted by electronic means.
R18-2-324. Portable Sources	It is unclear how long a portable source can operate under its permit. ADEQ seeks to amend this rule to clarify that the period is 5 years.

7. Has the agency received written criticisms of the rules within the last five years? Yes _X_ No __

The following comments were received by ADEQ in response surveys sent out to stakeholders regarding Articles 1-5 and Appendices 1-3, and 9. The comments the Department received have been consolidated and or abbreviated for brevity. To see the original comments please refer to *Attachment B* of this report.

Rule	Criticism and Response
A.A.C. R18-2-101. Definitions	Criticism: Arizona Mining Association (AMA) suggests that ADEQ consider establishing a "catch-all" category under its "insignificant activity" definition based on potential emissions. A catch-all category is inherently needed because the listed categories of equipment and activities with emission levels deemed insignificant are not comprehensive. ADEQ Response: ADEQ understands there is some overlap between its "insignificant activity" and "trivial activity" categories. ADEQ will take this comment under further consideration for opportunities for future rulemaking, subject to Governor's approval.
A.A.C. R18-2-101(104). Definitions	Criticism: A rotary dryer is a stationary source and does not emit fugitive particulates. Since rotary dryer particulate emissions are not fugitive, A.R.S. 49-457 does not apply. Therefore, the rotary dryer should be removed from the rules as an agricultural best management practice for fugitive particulate matter and permit conditions such as R18-2-719. The codes that should be deleted are: R18-2-101.104 and R18-2-611.01(D)(2)(1) (Use of a rotary dryer to dry manure waste). ADEQ Response: ADEQ will take this comment under further consideration.
Article 3 (In General)	Criticism: ADEQ's current "unitary" air permitting program rules are no longer consistent with the operating permit program rules approved by EPA in 2001. ADEQ Response: ADEQ is actively working to address this issue in its Article 1, 3, and 5 rulemaking, which is underway. More details on this rulemaking can be found in the Proposed Course of Action section of this report.
A.A.C. R18-2-317.01 (A)(3). Facility Changes that Require a Permit Revision – Class II	Criticism: The basis and interpretation of this additional applicable requirement (which is not included in EPA's corresponding state operating permit program rules) is unclear. ADEQ's provisions for sources with a Class II permit should be no more stringent than EPA's provisions for operational flexibility and off-permit changes. ADEQ Response: The rule is not more stringent than federal provisions. ADEQ will take this comment under further consideration when looking for opportunities to provide more clarity within the rules.
A.A.C. R18-317.02. Procedures for Certain Changes that Do Not Require a Permit Revision – Class II	Criticism: AMA members have found the categories of certain changes subject to logging or notice to be unclear in practice and unnecessarily complex and prescriptive. ADEQ Response: ADEQ will take this comment under further consideration.
A.A.C. R18-2-317, A.A.C. R18-2-317.01,	Criticism: AMA provided a draft revision for the rules to provide a simplified and streamlined approach for changes allowed without permit revision at Class I and Class II

A.A.C. R18-2-317.02	sources consistent with EPA's provisions for operational flexibility and off-permit changes in its state operating permit program rules. ADEQ Response: ADEQ will take this comment under further consideration.
A.A.C. R18-2-319(A)(2). Minor Permit Revisions	Criticism: AMA requests that "substantive change" is replaced with "significant change" to align with EPA language for minor permit modification procedures. ADEQ Response: ADEQ will take this comment under further consideration.
A.A.C. R18-2-319(A)(6). Minor Permit Revisions	Criticism: AMA requests that ADEQ remove the additional requirement at (A)(6) so that ADEQ's rules are consistent with EPA's rules for state operating permit programs. ADEQ Response: ADEQ will take this comment under further consideration.
A.A.C. R18-2-319(B). Minor Permit Revisions	Criticism: ADEQ's minor permit revision procedures require that such procedures "shall" be used for certain changes, including several that otherwise would qualify as a change allowed without permit revision under EPA's provisions for operational flexibility and off-permit changes. Because the basis of these categories and the intent of using the mandatory term "shall" rather than then the permissive term "may" is unclear. AMA anticipates that ADEQ's provisions for minor permit revision procedures can be simplified and streamlined to apply to Class I and II sources in a manner consistent with EPA's provisions. ADEQ Response: The use of "shall" versus "may" within this rule was a deliberate decision by the Department to provide more clarity as to what sources have to do rather than outlining what sources may generally do.
A.A.C. R18-2-401. Definitions	Criticism: Include a definition of "Plant" or "Plantwide" in R18-2-401 so Plantwide Applicability Limitation can be better understood. ADEQ Response: ADEQ will take this comment under further consideration.
A.A.C. R18-2-412. PALs	Criticism: Use "Plantwide Applicability Limitation" as a title to R18-2-412 instead of "PAL." ADEQ Response: PAL is defined in R18-2-401 and "PAL" is used throughout Article 4. ADEQ will take this comment under further consideration.

8. Economic, small business, and consumer impact comparison:

Overall, ADEQ believes that the qualitative assessment made in the 2019 Economic Impact Statement (EIS) regarding the State's economy, small business, and consumers remains accurate as no fees or costs associated with the Article have changed. See *Attachment A.* ADEQ believes the rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieving the underlying regulatory objective.

Article 1.

ADEQ believes that this Article does not have a substantial economic impact on the State's economy, small business, or consumers. This Article contains definitions, incorporations by reference, and states that rules adopted will not preempt or nullify applicable requirements or emission standards in a State Implementation Plan. The rules in this Article do not generate costs.

Article 2.

ADEQ believes that this Article does not have a substantial economic impact on the State's economy, small business, or consumers. ADEQ believes that the qualitative assessment made in the 2019 EIS regarding the State's economy, small business, and consumers remains accurate and no fees or costs associated with the Article have changed. See *Attachment A.* Rules within this Article, such as R18-2-217, contain standard procedures and do not generate costs and benefits since they parallel the Clean Air Act.

Article 3.

ADEQ described the probable economic impacts of Article 3 in qualitative and quantitative terms in the EIS presented in the agency's 2019 Five-Year Rule Review report. See *Attachment A.* ADEQ believes the assessment made in the 2019 EIS regarding the State's economy, small business, and consumers remains accurate. The cost associated with issuing permits has increased over the last decade due to the increase in the cost of living and the need to balance revenues with expenditures, but the fees charged for ADEQ issuing these permits is paid by the applicants and imposes the least burden. The impact of these rules remains the same.

Article 4.

ADEQ described the probable economic impacts of Article 4 in qualitative and quantitative terms in the EIS presented in the agency's 2019 Five-Year Rule Review report. See *Attachment A.* ADEQ believes the assessment made in the 2019 EIS regarding the State's economy, small business, and consumers remains accurate.

Article 5.

ADEQ described the probable economic impacts of Article 5 in qualitative and quantitative terms in the EIS presented in the agency's 2019 Five-Year Rule Review report. See *Attachment A.* ADEQ believes the assessment made in the 2019 EIS regarding the State's economy, small business, and consumers remains accurate.

Appendix 1. Repealed

This Appendix has been repealed; therefore, there is no impact on the State's economy, small business, or consumers.

Appendix 2.

Appendix 2 was last updated effective May 2, 2018 (24 A.A.R. 1564) by an expedited rulemaking. Pursuant A.R.S. § 41-1055(D)(2), ADEQ was not required to prepare an EIS pursuant to Title 41, Chapter 6 of the Arizona Revised Statute for that expedited rulemaking. The last EIS was prepared in 2008 when Appendix 2 was amended by final rulemaking at 13 A.A.R. 4199 (effective January 5, 2008). As the amendment consisted of a technical change, this rulemaking did not create any economic impacts. The impact of this Appendix remains the same and remains consistent with what was predicted in the 2008 EIS.

Appendix 3.

ADEQ presented an economic impact discussion when it submitted a Five-Year Review Report on this Article in 2019. The impact of this Appendix remains the same. Appendix 3 was adopted by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999. Since adoption, ADEQ has not amended Appendix 3. The costs and benefits associated with this rulemaking have been consistent with what was predicted in the EIS. No additional impact or costs have accrued since this Appendix was adopted by ADEQ.

Appendix 9.

There has been no identified change in impact since the last amendment effective June 15, 1995. The Department presented an economic impact discussion when it submitted a Five-Year Review Report on this Article in 2019. The impact of this Appendix remains the same.

9. Has the agency received any business competitiveness analyses of the rules? Yes __ No _X_

ADEQ has not received a business competitiveness analysis of the rules.

10. Has the agency completed the course of action indicated in the agency's previous five-year review report?

In 2019, ADEQ submitted a 5 Year Rule Review for Articles 1, 2, 3, 4, and 5 and Appendices 1, 2, 3, and 9. In this 2019 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	Outcome and Explanation
Article 1		
R18-2-101. Definitions	ADEQ proposed amendments to the definitions for New Source Review (NSR) and the Prevention of Significant Deterioration (PSD) in Article 1 to make a minor change to the definition of the term "Significant" used in both and to add a new Significant Emission Rate (SER) for ammonia as a precursor to $PM_{2.5}$ in $PM_{2.5}$ nonattainment areas.	ADEQ amended the rules at 25 A.A.R. 3630, effective December 20, 2019. This amendment added a new SER for ammonia in $PM_{2.5}$ nonattainment areas and made a minor change to the definition of "significant," thus completing the course of action proposed for the rule in the previous 5YRR report (2019).
Article 3		
R18-2-302.01. Source Registration Requirements	On March 7, 2019, ADEQ received a comment from Tucson Electric Power (TEP) regarding the application of A.A.C. R18-2-302.01(F) to electrical generating units of less than 10 megawatts that are typically powered by diesel fueled reciprocating internal combustion engines. TEP requested ADEQ add Selective Catalytic Reduction (SCR) to the elective limit/control list in A.A.C. R18-2-302.01(F) to reduce the time and costs associated with the public process for source registration. ADEQ agreed with TEP's comment and proposed a course of action to submit changes to R18-2-302.01(F) by May 2024.	ADEQ is currently undergoing a rulemaking to satisfy this commitment. This rulemaking will add SCR to the elective limit/control list in the rule. In its 2019 5YRR, ADEQ anticipated submitting this rule to the Council in May 2024. Work on this rulemaking is on-going. *See* 29 A.A.R. 1477 (June 30, 2023). ADEQ now anticipates an August 2024 submittal timeframe due to on-going stakeholder engagement on the rulemaking.
R18-2-327. Emissions Inventory Questionnaire and Emissions Statement	ADEQ proposed to amend R18-2-327 to reduce the reporting burden for Class II sources. At the same time, ADEQ is considering amending the rule to require annual ozone precursor emission reporting questionnaires for all sources within ozone nonattainment areas in order to meet federal requirements. ADEQ anticipates submitting to GRRC by January 2020.	ADEQ amended this rule at 26 A.A.R. 3092, effective on December 4, 2020. The amendments now require stationary sources located in ozone nonattainment areas that also emit 25 tons or more per year of ozone precursors to submit annual emission statements to ADEQ and changed the frequency from annual reporting to a minimum of once every three years for some Class II sources. The amendments also now require annual ozone precursor emission reporting questionnaires for all sources within ozone nonattainment areas. These amendments completed the course of action proposed for the rule in the previous 5YRR report (2019).

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 believes the probable benefits of the articles reviewed outweigh their probable costs. The articles impose as few as possible burdens and costs to persons regulated by the articles by minimizing where possible the paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

Article	Analysis
Article 1	This Article contains definitions, incorporations by reference, and states that rules adopted will not preempt or nullify applicable requirements or emission standards in a State Implementation Plan. The rules in this Article do not generate costs or benefits.
Article 2	Pollutants currently regulated by Article 2 include CO, NOx, ozone, PM_{10}, Pb, and SO_2. These criteria pollutants make up the NAAQS which EPA updates regularly. Under Article 2, the potential costs are outweighed by the human health and environmental benefits that the rules provide by decreasing air pollution. The benefits from Article 2 include reductions in air pollution and the associated adverse health effects ranging from missed school and work days to premature mortality. The benefits of this article outweigh the probable costs as adoption and enforcement of national ambient air quality standards into Article 2 are necessary to comply with federal requirements and work to protect human health and the environment.
Article 3	The benefits from this article outweigh the possible costs as the implementation and enforcement of ADEQ's permitting program rules are necessary to comply with federal requirements. Adverse health effects from air pollution result in a number of economic and social consequences, including: loss of income and premature mortality. Issuing permits is the primary way the Department balances environmental protection with social and economic considerations. By issuing permits, approvals and certifications, ADEQ ensures facilities are legally built and operated and that discharges into the air are within healthy standards established by law. The process also enables citizens to stay informed and involved as decisions are made about proposed activities affecting the environmental quality of their community. As a result, ADEQ believes the probable benefits outweigh the probable costs.
Article 4	Implementation and enforcement of ADEQ's major source rules are necessary to comply with federal requirements for the program. No less intrusive or costly alternatives are available.
Article 5	The benefits of implementing this article outweigh the possible costs. Implementation and enforcement of ADEQ's permitting program rules are necessary to comply with federal requirements for the program. Adverse health effects from air pollution result in a number of economic and social consequences, including: loss of income and premature mortality. Issuing permits is the primary way the Department balances environmental protection with social and economic considerations. By issuing permits, approvals and certifications, ADEQ ensures facilities are legally built and operated and that discharges into the air are within healthy standards established by law. The process also enables citizens to stay informed and involved as decisions are made about proposed activities affecting the environmental quality of their community. As a result, ADEQ believes the probable benefits outweigh the probable costs.
Appendix 1	Repealed.
Appendix 2	Appendix 2 locates all approved test methods and protocols into a single location. The probable benefits of this appendix outweigh the probable costs to comply with federal requirements.
Appendix 3	Appendix 3 lists requirements for log entries, as required under R18-2-317.02(B) which helps track certain changes that do not require a permit revision. These benefits associated with logging outweigh the minimal cost of requiring log entries, which may include retaining the logs for five years and the cost of the log book itself.
Appendix 9	Appendix 9 details the steps that sources must take to conduct acceptable performance tests and continuous emission monitoring. This ensures that sources are operating at a permitted level and helps

	to track emissions. The costs of requiring performance tests and continuous emission monitoring is outweighed by the general benefit of protection of human health and the environment.

12. Are the rules more stringent than corresponding federal laws? Yes __ No _X_

The rules are not more stringent than corresponding federal laws.

Article	Analysis
Article 1	These rules are not more stringent than corresponding federal law, specifically, 42 U.S.C. 7401 and 40 CFR Parts 50-52. R18-2-101 is the definition section for Chapter 2, and many of the definitions mirror those under federal law and the Clean Air Act. R18-2-102 and R18-2-103 incorporate 40 CFR 51, Subpart F by reference and therefore are not more stringent than corresponding federal law.
Article 2	These rules are not more stringent than corresponding federal law, specifically, 42 U.S.C. § 7409 and 40 CFR Part 50. Rules R18-2-201 through -210 incorporate the federal standards by reference, and are therefore not more stringent than the corresponding federal law.
Article 3	These rules meet all the federal requirements under Title V of the Clean Air Act (42 U.S.C. §§ 7661-7661(f)), 42 U.S.C. § 7410(a)(2)(C), (F), and 40 CFR Parts 51 and 70. ADEQ's NSR Minor Sources program in rules R18-2-334 and R18-2-515 mirror the general federal requirements under CAA 110(a)(2)(X) and 40 CFR 51.160 and 51.164, and does not extend beyond federal requirements.
Article 4	The rules are not more stringent than corresponding federal law, specifically, Title I, Part C and D of the CAA §§ 160-193, 42 U.S.C. §§ 7470-7515, CAA § 110(a)(2)(C), (F) and 40 CFR Part 51. Article 4 rules regarding NSR for Major Sources mirror federal law under 40 CFR Part 51, Subpart 1, "Review of New Sources and Modifications.
Article 5	These rules are not more stringent than a corresponding federal law. Title I, Parts C and D of the CAA §§ 160-193, 42 U.S.C. §§ 7470-7515), CAA § 110(a)(2)(C), (F), 40 CFR Part 51 and A.R.S. § 49-426(H) give ADEQ the authority to issue permits based on the CAA. Permitting authority is required by CAA section 504(d) [42 U.S.C. § 7661c(d)]. Section 504 generally sets forth permit requirements and conditions. Sources that are subject to a New Source Performance Standard (NSPS) or a National Emissions Standards for Hazardous Pollutants (NESHAP) are required to obtain a Title V operating permit. Both NSPS under CAA § 111 [42 U.S.C. § 7411] and NESHAPs under CAA § 112 [U.S.C. § 7412] are federal requirements and are incorporated by reference in Title 18, Chapter 2, Articles 9, 11, and Appendix 2.
Appendix 1. Repealed	
Appendix 2	This rule meets the requirements under Parts C and D of Title I of the federal CAA; Part A of Title I of the CAA, as well as, 40 CFR Parts 60, 61, and 63 (subparts and appendices), and 42 U.S.C. § 110(a)(2)(C).
Appendix 3	This rule meets the requirements under Parts C and D of Title I of the CAA; Part A of Title I of the CAA, as well as, 40 CFR Parts 60, 61, and 63 (subparts and appendices), and 42 U.S.C. § 110(a)(2)(C).
Appendix 9	This rule meets the requirements under Parts C and D of Title I of the CAA; Part A of Title I of the CAA, as well as, 40 CFR Parts 51, 60, 61, and 63 (subparts and appendices), and 42 U.S.C. §§ 110(a)(2)(C) and 7410(a).

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:

Article	Analysis
Article 1	R18-2-101 and R18-2-102 were amended after July 29, 2010; however, these rules do not require the issuance of a regulatory permit license or authorization. R18-2-103 was last amended before July 29, 2010.

Article 2	R18-2-201, R18-2-203. R18-2-204, R18-2-210, and R18-2-215 through R18-2-220 were last amended after July 29, 2010. These rules do not require the issuance of a regulatory permit, license or agency authorization.
Article 3	R18-2-301, -302, -302.01, -303, -304, -310.01, -317, -317.01, -317.02, -320, -321, -324, -327, -330, -334 issue and govern permits authorized by A.R.S. § 49-426 and were amended after July 29, 2010. These rules are in compliance with A.R.S. § 41-1037(A)(2).
Article 4	These rules issue permits authorized by A.R.S. § 49-426, and therefore are in compliance with A.R.S. § 41-1037(A)(2-6).
Article 5	R18-2-502, -503, -505, -512, -513, -514, and -515 were amended after July 2010 and comply with A.R.S. § 41-1037 since these rules govern general permits issued by ADEQ. These rules set forth applicable procedures, renewal processes, and changes to facilities granted coverage under a general permit.
Appendix 1. Repealed	
Appendix 2	Appendix 2 was adopted prior to July 29, 2010.
Appendix 3	Appendix 3 was adopted prior to July 29, 2010.
Appendix 9	Appendix 9 was adopted prior to July 29, 2010.

14. Proposed course of action:

ADEQ initiated rulemakings that will affect the articles and appendices covered by this report. Additionally, ADEQ anticipates commencing another rulemaking to address some of these proposed courses of action. A brief summary and explanation of each anticipated rulemaking and the estimated dates that ADEQ proposes to submit the rulemakings to GRRC follows:

Article	Proposed Course of Action
Article 1	On May 26, 2023, ADEQ received approval to initiate a rulemaking to amend Article 1 rules for the following purposes: 1) to continue to allow permitted facilities to adopt voluntary permit conditions to protect ambient air quality; 2) to make technical corrections related to ADEQ's NSR rules; 3) to correct the gaps between ADEQ's rules and the U.S. EPA Title V requirements; 4) to update cross-reference changes throughout the Articles, and 5) fulfill ADEQ's five year rule review (5 YRR) commitment to the Governor's Regulatory Review Council. These amendments will not increase regulatory burden beyond what is required by the CAA. ADEQ anticipates the proposed changes will improve regulatory flexibility for sources seeking a permit, clarity, and bring the rules closer into alignment with the mandatory federal rules. Changes will be made in A.A.C. Title 18, Chapter 2, Articles 1, 3, and 5. As discussed above, in Section 10, ADEQ anticipates submitting this rule to the Council in August 2024. ● **R18-2-101. Definitions:** ADEQ is amending the definition of "potential to emit" to align with the federal language for the definition in 40 CFR Part 70 and updating cross references within the rules. ADEQ is currently finalizing a Notice of Final Expedited Rulemaking. This rulemaking updates the air pollution control rules in A.A.C. Title 18, Chapter 2 to make the following corrections: ● **R18-2-101. Definitions:** Replace the term "air curtain destructor" with "air curtain incinerator" throughout. This amendment will improve consistency between state and federal regulation.
Article 2	EPA has recently updated its $PM_{2.5}$ standards. Subject to litigation, ADEQ will update its rules to conform with federal standards. ADEQ anticipates submitting this rule to the Council in May 2025.
Article 3	On May 26, 2023, ADEQ received approval to initiate a rulemaking to amend Article 3 rules for the following purposes: 1) to continue to allow permitted facilities to adopt voluntary permit conditions to protect ambient air quality; 2) to make technical corrections related to ADEQ's NSR rules; 3) to correct the gaps between ADEQ's rules and the U.S. EPA Title V requirements; 4) to update cross-reference changes throughout the Articles, and 5) fulfill ADEQ's 5 YRR

commitment to the Governor's Regulatory Review Council. These amendments will not increase regulatory burden beyond what is required by the CAA. ADEQ anticipates the proposed changes will improve regulatory flexibility for sources seeking a permit, clarity, and bring the rules closer into alignment with the mandatory federal rules. Changes will be made in A.A.C. Title 18, Chapter 2, Articles 1, 3, and 5. ADEQ anticipates submitting this rule to the Council in August 2024.

- **R18-2-301. Definitions**: Amending the rule to define "alternative operating scenario" to align with federal language.
- **R18-2-302(E). Applicability; Registration; Classes of Permits:** Amending the rule to clarify whether elective limits or controls can be considered in determining whether a source is a major source requiring a Class I permit. This will improve the clarity of the rules for the public and will not change the substantive requirements of the rule.
- **R18-2-302.01. Source Registration Requirements:** Amending the rule to include selective catalytic reduction (SRC) to the elective limit or control list in the rule. This amendment will satisfy a commitment made in the 2019 Five-Year Rule Review report.
- **R18-2-304. Permit Application Processing Procedures:** Amend necessary cross-references within the rules.
- **R18-2-306. Permit Contents:** Amend cross-references within the rules.
- **R18-2-306.02. Establishment of an Emissions Cap:** ADEQ is proposing to reinstate R18-2-306.02, which provided for the establishment of voluntary emissions caps. This rule expired under A.R.S. § 41-1056(J) in 2016. Before its expiration, this rule allowed permitted sources to take voluntary permit caps for particular pollutants as a tons per year limit. Subsequently, ADEQ learned that this rule is still necessary for some permits. In order to allow sources to take or keep these voluntary emissions caps in the permits, the rule needs to be reinstated, as it existed prior to its expiration.
- **R18-2-306.03. Voluntary Air Permit Requirements for Air Quality Planning:** A new rule that allows sources the flexibility to choose additional limitations, controls, or other requirements beyond avoiding a Class I permit or other applicable requirements.
- **R18-2-307. Permit Review by the EPA and Affected States:** This rule needs to be amended to conform with the federal requirement under 40 CFR § 70.8 that requires ADEQ to submit a written response to substantive comments on a permit to EPA as part of the permitting process. ADEQ currently performs this as a routine matter, but the rule needs to be amended to conform to the federal requirement.
- **R18-2-309. Compliance Plan; Certification:** Amend to allow for submission of certifications by electronic means. This will improve the clarity of the rules for the public and will not change the substantive requirements of the rule. ADEQ will also update cross-references within the rules.
- **R18-2-310.01(A)(1). Reporting Requirements:** Amend to allow for notification by electronic means. This will improve the clarity of the rules for the public and will not change the substantive requirements of the rule.
- **R18-2-317.01. Facility Changes that Require a Permit Revision – Class II:** Amend to update cross-references within the rules.
- **R18-2-320. Significant Permit Revisions:** Amend to update cross-references within the rules.
- **R18-2-324. Portable Sources:** Amending to clarify how long a portable source can operate under its permit and outlining change of location requirements for portable sources. This amendment will close the gap between state rules and corresponding federal requirements (40 CFR §§ 70.6(e) and 70.6(e)(2)).

ADEQ is currently finalizing a Notice of Final Expedited Rulemaking. This rulemaking updates the air pollution control rules in A.A.C. Title 18, Chapter 2 to make the following corrections:

- **R18-2-326. Fees Related to Individual Permits:** Replace the term "air curtain destructor" with "air curtain incinerator" throughout. This amendment will improve consistency between state and federal regulation.

Article 4	The CAA NSR requirements for serious ozone nonattainment areas need to be added to Article 4 in order to secure EPA approval of the next Phoenix-Mesa ozone nonattainment SIP. If approved by the Governor pursuant to A.R.S. 41-1039(B), ADEQ anticipates submitting this rule to the Council in May 2025.
Article 5	On May 26, 2023, ADEQ received approval to initiate a rulemaking to amend Article 5 rules for the following purposes: 1) to continue to allow permitted facilities to adopt voluntary permit conditions to protect ambient air quality; 2) to make technical corrections related to ADEQ's NSR rules; 3) to correct the gaps between ADEQ's rules and the U.S. Environmental Protection Agency's (EPA) Title V requirements; 4) to update cross-reference changes throughout the Articles, and 5) fulfill ADEQ's 5 YRR commitment to the Governor's Regulatory Review Council. These amendments will not increase regulatory burden beyond what is required by the CAA. ADEQ anticipates the proposed changes will improve clarity and regulatory flexibility for sources seeking permits, as well as bring the rules closer into alignment with the mandatory federal rules. Changes will be made in A.A.C. Title 18, Chapter 2, Articles 1, 3, and 5. ADEQ anticipates submitting this rule to the Council in August 2024. ● **R18-2-501. Applicability:** Amend to update cross-references within the rules. ● **R18-2-513. Portable Sources Covered under a General Permit:** Amending to clarify how long a portable source can operate on its and outlining change of location requirements for portable sources. This amendment will close the gap between state rules and corresponding federal requirements (40 CFR §§ 70.6(e) and 70.6(e)(2)).

Attachment A - Economic Impact Statements

Attachment B - Comments Received

#1

COMPLETE

Collector:	Web Link 1 (Web Link)
Started:	Wednesday, December 06, 2023 11:05:55 AM
Last Modified:	Wednesday, December 06, 2023 11:08:39 AM
Time Spent:	00:02:43
IP Address:	160.2.83.79

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Q1

Please select the option that best describes your business/industry:

Mine

Q2

Optional: Please provide your name, position and an email address and/or phone number so ADEQ can follow up for clarification purposes, if necessary.

Name	**George Vlassis**
Position	**Manager**
Email Address	**Gvlassis1@gmail.com**
Phone Number	**9289658085**

Q3

Are the rules in Article 1 clear, concise and understandable?

Yes

Q4

Do the rules in Article 1 impose the least burden possible to achieve their objectives?

Yes

Q5

Please provide any other general comments you may have on the rules in Article 1:

Respondent skipped this question

Q6

Are the rules in Article 2 clear, concise and understandable?

Yes

Q7

Do the rules in Article 2 impose the least burden possible to achieve their objectives?

Yes

Q8

Please provide any other general comments you may have on the rules in Article 2:

Respondent skipped this question

Q9

Thank you for taking the time to complete our survey. ADEQ values your feedback. Please provide any other general comments you may have:

Respondent skipped this question

#2

COMPLETE

Collector:	Web Link 1 (Web Link)
Started:	Wednesday, December 06, 2023 3:13:05 PM
Last Modified:	Wednesday, December 06, 2023 3:17:39 PM
Time Spent:	00:04:33
IP Address:	67.1.152.73

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Q1

Please select the option that best describes your business/industry:

Other (please specify business type):
Municipality

Q2

Optional: Please provide your name, position and an email address and/or phone number so ADEQ can follow up for clarification purposes, if necessary.

Name	**Andrea Wood**
Position	**Mayor**
Email Address	**mayorwood@patagonia-az.gov**
Phone Number	**5203942229**

Q3

Are the rules in Article 1 clear, concise and understandable?

No,
If no, let us know specifically what is unclear and cite the section or subsection in comments::
Can they be more concise?

Q4

Do the rules in Article 1 impose the least burden possible to achieve their objectives?

No,
If no, let us know what could be improved::
Are the rules specific to the potential pollutant?

Q5

Please provide any other general comments you may have on the rules in Article 1:

Respondent skipped this question

Q6

Are the rules in Article 2 clear, concise and understandable?

No,
If no, let us know specifically what is unclear and cite the section or subsection in comments::
Can they be more concise?

Q7

Do the rules in Article 2 impose the least burden possible to achieve their objectives?

No,

If no, let us know what could be improved::

maybe connect the specific rules to the specific objective.

Q8

Please provide any other general comments you may have on the rules in Article 2:

Respondent skipped this question

Q9

Thank you for taking the time to complete our survey. ADEQ values your feedback. Please provide any other general comments you may have:

Respondent skipped this question

My comments are related to the changes to A.R.S 49-457 that limits Agricultural Best Management Practices to PM-10 fugitive sources. A.R.S. 49-457 reads (fugitive highlighted):

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.

Arizona Administrative Code (AAC) R18-2-611.4.u defines “Use of rotary dryer to dry manure waste”:

“Use of a rotary dryer to dry manure waste” means reducing 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 (ii) that must be made available within two days of Director’s request for inspection.

The following picture provides an image of a rotary dryer with a baghouse for poultry manure:

ROTARY DRYER (POULTRY MANURE, 30 TPH)

Buckeye, Arizona

This plant was commissioned to a client in Arizona who is drying poultry manure.

And a photo of its operation:

A rotary dryer is a stationary source is defined in A.R.S. 49-401.01.36:

> 36. "Stationary source" means any facility, building, equipment, device or machine that operates at a fixed location and that emits or generates air contaminants.

And AAC R18-2-101.104:

> "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."

A.R.S. 457.05.H.6 (Dust action general permit; best management practices; applicability; definitions) reads:

> "**Fugitive** dust" means particulate matter that could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening, that can be entrained in the ambient air and that is caused by human or natural activities, including the movement of soil, vehicles, equipment, blasting and wind. **Fugitive** dust does not include particulate matter emitted directly from the exhaust of motor vehicles and other internal combustion engines, from portable brazing, soldering or welding equipment or from pile drivers.

Clearly a rotary dryer is a stationary source and does **not** emit fugitive particulates. Since rotary dryer particulate emissions are **not** fugitive, A.R.S. 49-457 does not apply. Therefore, the rotary dryer should be removed from the AAC as an agricultural best management practice for fugitive particulate matter and permit conditions such as R18-2-719 applied. The codes that should be deleted are: R18-2-101.104 and R18-2-611.01.D.2.l (Use of a rotary dryer to dry manure waste.)

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January 5, 2024

Mr. Daniel Czecholinski
Director, Air Quality Division
Arizona Department of Environmental Quality
1110 W. Washington St.
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Sent via email to Director Czecholinski at czecholinski.daniel@azdeq.gov and copy to Deputy Director Krause at krause.hether@azdeq.gov.

Re: Survey Response to Five-Year Review of A.A.C. Title 18, Chapter 2, Article 3: Permits and Permit Revisions

Dear Mr. Czecholinski:

The Arizona Mining Association (AMA) appreciates the opportunity to respond to the Arizona Department of Environmental Quality (ADEQ) invitation to participate in its five-year review of A.A.C. Title 18, Chapter 2, Article 3: Permits and Permit Revisions. As ADEQ is aware, the AMA has previously expressed concerns with ADEQ's operating permit program rules and provided comments and suggestions for purposes of developing a rulemaking package to improve and streamline certain permitting and notification requirements, ensure consistency with the required elements of an operating permit program, and resolve the "gap" between ADEQ's current rules and those previously approved by the U.S. Environmental Protection Agency (EPA). The objectives of ADEQ's five-year review of its Article 3 rules are therefore of keen interest to AMA members. In support of that effort, the AMA is providing the following comments and suggested revisions to ADEQ's Article 3 rules that address some of the AMA's fundamental concerns.

I. Background on Gap between EPA-Approved Operating Permit Rules and Currently Effective ADEQ "Unitary" Air Permitting Rules

ADEQ's air permitting rules have been periodically revised since receiving EPA approval of the operating permit program rules. Most notably, ADEQ revised its new source review (NSR) permitting rules to incorporate revised EPA major NSR rules, update its minor NSR program, and address deficiencies previously identified by EPA.[1] Because ADEQ has a "unitary" air permitting program that implements NSR and operating permit program requirements via a single permit or permit revision, some of the NSR rule revisions also affected ADEQ's operating permit program rules. However, as part of its proposed partial approval and disapproval of ADEQ's revised NSR rules, EPA clarified that it was not evaluating those changes for compliance with Title V of the Clean Air Act and implementing regulations at 40 C.F.R. Part 70.

[1] *See* 18 A.A.R. 1542 (effective Aug. 7, 2012) and 23 A.A.R. 333 (effective Mar. 21, 2017).

> Rules R18–2–301 through R18–2–334 (Article 3 rules) also contain requirements to address the CAA title V requirements for operating permit programs, but we are not evaluating these rules for title V purposes at this time. We will evaluate the Article 3 rules for compliance with the requirements of title V of the Act and EPA's implementing regulations in 40 CFR part 70 following receipt of an official part 70 program revision submittal from ADEQ.[2]

As a result, some of ADEQ's current "unitary" air permitting program rules are no longer consistent with the operating permit program rules approved by EPA in 2001. This "gap" will remain until ADEQ submits its revised operating permit program rules to EPA in accordance with 40 C.F.R. § 70.4(i) and obtains EPA approval. EPA recognized this gap as part of its 2020 evaluation of ADEQs' Title V Operating Permit Program and recommended that ADEQ submit revisions to its operating permit program to EPA for approval once the remaining deficiencies in ADEQ's NSR program are addressed.[3] If EPA determines that ADEQ is not adequately administrating or enforcing an approved operating permits program, Arizona could be subject to certain federal sanctions as set forth in 40 C.F.R. § 70.10.

II. Missing or Inconsistent Operating Permit Program Elements

EPA's Title V Operating Permit program regulations at 40 C.F.R. Part 70 define the minimum elements required by the Clean Air Act for State operating permit programs.[4] The AMA has identified the following areas where ADEQ's Article 3 rules are missing or are inconsistent with EPA's rules for state operating permit programs.

A. *Changes Allowed Without Permit Revision*

Pursuant to 40 C.F.R. § 70.4(b)(12)(i), state operating permit programs "shall allow permitted sources to make section 502(b)(10) changes[5] without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and 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)." While ADEQ's Article 3 rules essentially incorporate these two requirements for changes allowed without permit revision for sources with a Class I (Title V) permit under A.A.C. R18-2-317.A.1 and 2, the rules include an additional requirement at A.A.C. R18-2-317.A.3 that such changes do not "trigger any additional applicable requirements." Because this additional requirement is not included in EPA's corresponding state operating permit program rules, the basis

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[2] 80 Fed. Reg. 14,044, 14,045, n.3 (Mar. 18, 2015).

[3] EPA, Arizona Department of Environmental Quality Title V Operating Permit Program Evaluation Final Report, at 20-21 (Dec. 2, 2020).

[4] *See* 40 C.F.R. § 70.1(a).

[5] EPA's rules for state operating permit programs define "Section 502(b)(10) changes" as follows:

> Section 502(b)(10) changes are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

40 C.F.R. § 70.2.

of the additional requirement and its interpretation remains unclear.[6] For example, if triggering an additional applicable requirement is interpretated synonymously with being subject to an applicable requirement, a change that included the addition of any emission source would be precluded because it would be subject, at a minimum, to generally applicable opacity standards. The AMA does not understand that such preclusion is consistent with the provisions for operational flexibility and off-permit changes in EPA's rules for state operating permit programs.

ADEQ's Article 3 rules for changes that require a permit revision at sources with a Class II permit include similar "trigger a new applicable requirement" language at A.A.C. R18-2-317.01. While the AMA recognizes that the provisions for sources with a Class II (non-Title V) permit are not subject to EPA's rules for state operating permit programs, it believes that ADEQ's provisions for sources with a Class II permit should be no more stringent than EPA's provisions for operational flexibility and off-permit changes.

In addition, while the AMA understands that ADEQ's procedures for changes allowed with a permit revision at a source with a Class II permit under 317.02 were intended to provide additional operational flexibility and clarity, AMA members have found the categories of certain changes subject to logging or notice to be unclear in practice and unnecessarily complex and prescriptive. For example, A.A.C. R18-2-317.02.C.4 provides that the following change may be made if the source provides written notice to the Department in advance of the change as follows: "A change that would trigger an applicable requirement that already exists in the permit: 30 days unless otherwise required by the applicable requirement." Similar to the comments above, it is unclear whether this change category refers to an emission source being subject to an applicable requirement that already exists in the permit (e.g., applicable to certain existing equipment) or something else. Furthermore, the requirement for 30 days advance notice is more stringent than the 7 days advance notice that would be required for a Section 502(b)(10) change at a source with a Class I (Title V) permit under EPA's state operating permit program rules. Other change categories present similar issues.

Lastly, EPA's state operating permit program rules at 40 C.F.R. § 70.4(b)(14) provide the following additional provisions for off-permit changes:

> If a State allows changes that are not addressed or prohibited by the permit, other than those described in paragraph (b)(15) of this section, to be made without a permit revision, provisions meeting the requirements of paragraphs (b)(14)(i) through (iii) of this section. Although a State may, as a matter of State law, prohibit sources from making such changes without a permit revision, any such prohibition shall not be enforceable by the Administrator or by citizens under the Act unless

[6] The AMA understands that the A.A.C. R18-2-317.A.3 requirement that such changes do not violate any applicable requirements is consistent with EPA guidance; the A.A.C. R18-2-317.A.5 requirement that changes do not contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements is consistent with the definition of "Section 502(b)(10) change"; and the A.A.C. R18-2-317.A.6 requirement that such changes do not constitute a minor NSR modification is necessary to ensure compliance with ADEQ's NSR requirements under its unitary permitting program.

> the prohibition is required by an applicable requirement. Any State procedures implementing such a State law prohibition must include the requirements of paragraphs (b)(14)(i) through (iii) of this section.
>
> (i) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.
>
> (ii) Sources must provide contemporaneous written notice to the permitting authority and EPA of each such change, except for changes that qualify as insignificant under the provisions adopted pursuant to § 70.5(c) of this part. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change.
>
> (iii) The change shall not qualify for the shield under § 70.6(f) of this part.
>
> (iv) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

While providing such provisions for off-permit changes is not mandatory under EPA's rules for state operating permit programs, the AMA understands that they are inherently necessary to address changes that otherwise qualify as a change allowed without permit revision but do not contravene an express permit term.[7] As contemplated by EPA, provisions providing for changes allowed without a permit revision would follow a three-tired approach where: (1) qualifying changes that contravened an express permit term would require 7 days advance notice; (2) qualifying changes that did not contravene an express permit term and did not qualify as an insignificant activity would require contemporaneous notice; and (3) qualifying changes that did not contravene an express permit term and did qualify as an insignificant activity would not require notice.[8]

As a possible approach to address these concerns, the AMA is providing suggested revisions to ADEQ's Article 3 rules at A.A.C. R18-2-317, 317.01, and 317.02 in the following strawman draft for ADEQ's consideration. As proposed by the AMA, the revisions would provide a simplified and streamlined approach for changes allowed without permit revision at Class I and Class II sources consistent with EPA's provisions for operational flexibility and off-permit changes in its state operating permit program rules.

AMA Strawman Draft Revisions to A.A.C. R18-2-317, 317.01, and 317.02

R18-2-317. Changes Allowed Without Permit Revisions

[7] While provisions for off-permit changes are not mandatory, if a state elects to provide such provisions, they must meet the requirements of 40 C.F.R. § 70.4(14)(i) through (iii) under EPA's rules for state operating permit programs.

[8] *See* Midwest Research Institute, *Manual for Categorizing Proposed Permit Changes under the Title V Operating Permit Program*, at 2-1-2-6 (Apr. 14, 1994) (prepared for EPA, Permits Programs Branch, Air Quality Management Division).

A. A permittee with a Class I or Class II 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;
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. 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.

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 for Class I sources) 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 required under subsection (D) shall include:

1. A brief description of the change;
2. The date on which the change will occur;
3. Any change in emissions of regulated air pollutants;
4. The pollutants emitted subject to the emissions trade, if any;

5. If applicable, 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. A permittee with a Class I or Class II permit may make changes that are not addressed or prohibited by the permit, other than those described in 40 C.F.R. § 70.4(b)(15), 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 any existing permit terms or conditions;
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.

G. For each such change under subsection (F), the permittee must provide contemporaneous written notice by certified mail or hand delivery to the Director (and the Administrator for Class I sources), except for changes that qualify as an insignificant activity or trivial activity as defined under R18-2-101. The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

H. Each notification required under subsection (G) shall include:

1. A brief description of the change;
2. The date when the proposed change would occur;
3. Any change in emissions of regulated air pollutants; and
4. Any applicable requirement that would apply as a result of the change.

I. The permit shield described in R18-2-325 shall not apply to any change made under this Section.

J. 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 notice under this Section.

K. The Director shall make available to the public monthly summaries of all notices received under this Section.

R18-2-317.01. Facility Changes that Require a Permit Revision - Class II [*To be deleted*].

R18-2-317.02. Procedures for Certain Changes that Do Not Require a Permit Revision - Class II [*To be deleted*].

B. *Expiration of A.A.C. R18-2-306.02 (Establishment of an Emissions Caps)*

Pursuant to Governor Ducey's Executive Order 2015-01, ADEQ was required to provide an evaluation of its rules with recommendations for which rules could be amended or repealed to reduce regulatory burden, administrative delay, and legal uncertainty. As part of its response, ADEQ allowed A.A.C. R18-2-306.02 (Establishment of an Emissions Cap) to expire on September 15, 2016.[9]

As required by EPA's rules for state operating permit programs at 40 C.F.R. 70.4(b)(12)(iii), ADEQ's current A.A.C. R18-2-306.A.14 rule provides that, upon request of a permit applicant, the Director shall issue a permit that contains terms and conditions allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. It therefore appears that A.A.C. R18-2-306.02, which has been approved by EPA as part of Arizona's state implementation plan (SIP)[10], provided the details on how to implement A.A.C. R18-2-306.A.14 (e.g., the criteria for providing replicable procedures to ensure that the emissions cap is enforceable, and that emissions trading conducted under it is quantifiable and enforceable). Accordingly, it is unclear what purpose would be served by allowing A.A.C. R18-2-306.02 to expire given that the establishment of terms and conditions for an emissions cap and emissions trading if requested by an applicant is a federally mandated part of ADEQ's operating permit program.

The AMA understands that ADEQ has recently developed draft rule language as part of its proposed "Voluntary Air Permit Requirements" rulemaking that would re-instate A.A.C. R18-2-306.02. The AMA generally supports such action because it would restore provisions intended to implement mandatory requirements under EPA's rules for state operating permit programs and eliminate a gap between ADEQ's Article 3 rules and the EPA-approved provisions in the Arizona SIP. The AMA is aware, however, that ADEQ commented on A.A.C. R18-2-306.02 as part of prior regulatory review recommendation to let that rule expire as follows:

> This provision has never been used. While in theory potentially useful, it is extremely difficult in practice to develop.

As part of the stakeholder process for ADEQ's proposed "Voluntary Air Permit Requirements" rulemaking, the AMA therefore requests further discussion of the difficulties that ADEQ has

[9] *See* 22 A.A.R. 2982, (Oct. 14, 2016).
[10] *See* 80 Fed. Reg. 67,319, 67,320 (Nov. 2, 2015).

identified in establishing an emissions cap and/or associated trading provisions under A.A.C. R18-2-306.02 as currently drafted. The AMA looks forward to working with ADEQ to develop possible ways to minimize such difficulties while remaining consistent with EPA's rules for state operating permit programs.

C. *Minor Permit Revision Procedures*

EPA's rules for state operating permit programs at 40 C.F.R. § 70.7(e)(2)(i)(A)(2) provide that minor permit modification procedures may be used only for those permit modifications that "[d]o not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit." ADEQ's corresponding provisions at A.A.C. R18-2-319.A.2 for minor permit revision procedures allowed for changes at a Class I source use the term "substantive changes" rather than "significant changes" as provided under EPA's rules and as used in ADEQ's provisions at A.A.C. R18-2-320.A requiring significant permit revision procedures for "[e]very significant change in existing monitoring permit terms or conditions." Accordingly, the AMA requests that ADEQ replace "substantive change" with "significant change" in A.A.C. R18-2-319.A.2.

In addition, ADEQ's provisions for minor permit revision procedures allowed for changes at a Class I source include an additional requirement at A.A.C. R18-2-319.A.6 that such changes "[a]re not changes in fuels not represented in the permit application or provided for in the permit," which is not included in EPA's corresponding provisions specifying the requirements for the use of minor permit modification procedures at 40 C.F.R. § 70.7(e)(2)(i)(A). Unless there is an appropriate regulatory basis for this inconsistency, the AMA requests that ADEQ remove the additional requirement at A.A.C. R18-2-319.A.6 so that ADEQ's rules are consistent with EPA's rules for state operating permit programs.

While not subject to EPA's rules for state operating permit programs, ADEQ's provisions for minor permit revision procedures at Class II sources under A.A.C. R18-2-319.B require that such procedures ***shall*** be used for certain changes, including several that otherwise would qualify as a change allowed without permit revision (e.g., a change that triggers a new applicable requirement) under EPA's provisions for operational flexibility and off-permit changes. Because the basis of these categories and the intent of using the mandatory term "shall" rather than the permissive term "may" is unclear, the AMA requests discussion of these issues during ADEQ's regulatory review. The AMA anticipates that ADEQ's provisions for minor permit revision procedures can be simplified and streamlined to apply to Class I and Class II sources in a manner consistent with EPA's provisions for operational flexibility and off-permit changes under its rules for state operating permit programs.

III. Definitions of "Insignificant Activity" and "Trivial Activity"

While the definitions of "insignificant activity" and "trivial activity" are not included in Article 3 of ADEQ's rules, those terms are used in Article 3 to determine the scope of permit application

requirements.[11] As previously discussed with ADEQ, comments on those definitions are provided below to help illustrate potential areas for improvement that could be addressed as part of ADEQ's regulatory review and the development of revisions to its operating permits program rules for submittal to EPA.

A. *Insignificant Activity "Catch-All" Category Based on Potential Emissions*

To help accommodate the AMA's proposed approach for streamlining and making ADEQ's "changes allowed without permit revision" provisions consistent with EPA's rules for state operating permit programs (see working draft revision to A.A.C. R18-2-317, 317.01, and 317.02 above), AMA suggests that ADEQ consider establishing a "catch-all" category under its "insignificant activity" definition based on potential emissions. A catch-all category is inherently needed because the listed categories of equipment and activities with emission levels deemed insignificant are not comprehensive. For example, EPA provides the following "insignificant emission levels" under its Part 71 operating permit program at 40 C.F.R. § 71.5(c)(11)(ii):

> ***Insignificant emissions levels***. Emissions meeting the criteria in paragraph (c)(11)(ii)(A) or (c)(11)(ii)(B) of this section need not be included in the application, but must be listed with sufficient detail to identify the emission unit and indicate that the exemption applies. Similar emission units, including similar capacities or sizes, may be listed under a single description, provided the number of emission units is included in the description. No additional information is required at time of application, but the permitting authority may request additional information during application processing.
>
> **(A)** ***Emission criteria for regulated air pollutants, excluding hazardous air pollutants (HAP)***. Potential to emit of regulated air pollutants, excluding HAP, for any single emissions unit shall not exceed 2 tpy.
>
> **(B)** ***Emission criteria for HAP***. Potential to emit of any HAP from any single emissions unit shall not exceed 1,000 lb per year or the de minimis level established under section 112(g) of the Act, whichever is less.

Similarly, EPA's Model List of Insignificant Activities," dated September 29, 1998, provides: "An insignificant activity is any activity, process, or emissions unit which is not subject to a source-specific requirement of a State Implementation Plan (SIP), preconstruction permit, or federal standard and which: (1) meets the "Criteria for Specific Source Categories"; or (2) emits no more than 0.5 tons per year of a federal hazardous air pollutant (HAP) and no more than two tons per year of a regulated pollutant that is not a HAP." Other jurisdictions such as Maricopa County similarly provide a "catch-all" category for insignificant activities based on potential emissions.[12]

[11] *See* A.A.C. R18-2-101.134 (defining "trivial activities" and providing that such activities that may be omitted from a permit or registration application) and R18-2-304.F.8 (providing that an application generally need not provide emissions data regarding insignificant activities).
[12] *See* County Rule 100, Section 200.61.

B. ***Insignificant Activity Categories***

1. Liquid Storage and Piping

a. *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*.

It is unclear why the content and throughput or capacity for each such tank is necessary. Because this information is not always readily available (i.e., threshold values for all small tanks greater than 350 gallons), perhaps there is a streamlined approach that could avoid this burden.

b. *Gasoline storage tanks with capacity of 10,000 gallons or less*.

Based on the experience of some member companies, inconsistent approaches have been taken when addressing applicable requirements for activities that otherwise qualify as "insignificant" and are below an applicability threshold for certain rules. For example, requirements for gasoline tanks and gasoline dispensing facilities (GDFs) would be included in the permit as applicable requirements when all gasoline storage tanks had a capacity of less than 10,000 gallons.

c. *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*.

Same comment as above in 1.a.

d. *Piping of fuel oils, used oil and transformer oil, provided the applicant includes a system description*.

It is unclear how a system description would be useful to ADEQ for purposes of a confirming assessment that emission levels would be insignificant.

e. *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.

Similar to the comments above, it is unclear how the information requested is helpful to ADEQ.

f. *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*.

It is unclear how storage tanks containing soaps in this category is distinguishable from the trivial activity category in A.A.C. R18-2-101.146.e.ii for "storage tanks . . . of any size containing soaps." Also, similar to the comments above on B.1.a, it is unclear why the content information is necessary.

2. Internal Combustion Engine Driven Equipment

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.

Member companies generally do not identify emergency engines as insignificant activities although they qualify because those companies want the applicable requirements included in the permit to help ensure compliance.

3. Low Emitting Processes

Equipment using water, water and soap or detergent, or a suspension of abrasives in water for purposes of cleaning or finishing.

It is unclear how this category is distinguishable from the trivial activity category in A.A.C. R18-2-101.146.b.xxiii for "Equipment using water, water and soap or detergent, or a suspension of abrasives in water for purposes of cleaning or finishing."

4. Site Maintenance

a. *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*.

Does this category include screens, conveyors, and mobile sources used to clean up material spilled off conveyors? What if the equipment is subject to a source-specific requirement other than A.A.C. R18-2-702.B or R18-2-730?

b. *Sanding of streets and roads to abate traffic hazards caused by ice and snow*.

It is unclear how this category is distinguishable from the trivial activity category in A.A.C. R18-2-101.146.c.vi for "Sanding of streets and roads to abate traffic hazards caused by ice and snow."

c. *Street and parking lot striping*.

It is unclear how this category is distinguishable from the trivial activity category in A.A.C. R18-2-101.146.c.vii for "Street and parking lot striping."

5. Sampling and Testing

a. *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*.

The trivial activity category in A.A.C. R18-2-101.146.f.ii includes "bench-scale laboratory equipment used for physical or chemical analysis, but not laboratory fume hoods or vents." AMA requests clarification on the distinction between these similar categories and how to address laboratory fume hoods and vents (which appear to emission points not emission sources).

b. *Individual sampling points, analyzers, and process instrumentation, whose operation may result in emissions but that are not regulated as emission units*.

It is unclear how this category is distinguishable from the trivial activity category in A.A.C. R18-2-101.146.f.vii for "Individual sampling points, analyzers, and process instrumentation, whose operation may result in

emissions but that are not regulated as emission units." AMA also requests clarification of the phrase "not regulated as emission units."

6. Ancillary Non-Industrial Activities

a. *General office activities, such as paper shredding, copying, photographic activities, and blueprinting, but not to include incineration*.

It is unclear how this category is distinguishable from the trivial activity category in A.A.C. R18-2-101.146.d.v for "General office activities, such as paper shredding, copying, photographic activities, pencil sharpening and blueprinting, but not including incineration" other than the inclusion of pencil sharpening.

b. *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*.

It is unclear how this category is distinguishable from the trivial activity category in A.A.C. R18-2-101.146.d.ix for "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."

c. *Activities directly used in the diagnosis and treatment of disease, injury or other medical condition*.

It is unclear how this category is distinguishable from the trivial activity category in A.A.C. R18-2-101.146.d.x for "Activities directly used in the diagnosis and treatment of disease, injury or other medical condition."

C. *Trivial Activity Categories*

1. Low-Emitting Combustion

Emergency or backup electrical generators at residential locations.

Would this category take precedence over a combustion engine that otherwise did not qualify as an insignificant activity under A.A.C. R18-2-101.68.b (e.g., used for more than 500 hours per year)?

2. Low or Non-Emitting Industrial Activities

a. *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*.

The second sentence identifying an insignificant activity should be included under A.A.C. R18-2-101.68. In addition, except for welding, the equipment and activities identified in the third sentence do not appear to be listed separately in the "trivial activity" definition.

b. *Drop hammers or hydraulic presses for forging or metalworking*.

This category is repeated in A.A.C. R18-2-101.146.b.iv and b.vii.

c. *Equipment using water, water and soap or detergent, or a suspension of abrasives in water for purposes of cleaning or finishing*.

See comment on B.3 above.

3. Building and Site Maintenance Activities

a. *Sanding of streets and roads to abate traffic hazards caused by ice and snow*.

See comment on B.4.b above.

b. *Street and parking lot striping*.

See comment on B.4.c above.

4. Incidental, Non-Industrial Activities

a. *General office activities, such as paper shredding, copying, photographic activities, pencil sharpening and blueprinting, but not including incineration.*

See comment on B.6.a above.

b. *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*.

The reference to "subsection (146)(c) of the definition of major source in this Section" appears to be incorrect.

c. *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*.

See comment on B.6.b above.

d. *Activities directly used in the diagnosis and treatment of disease, injury or other medical condition*.

See comment on B.6.c above.

6. Sampling and Testing

a. *Bench-scale laboratory equipment used for physical or chemical analysis, but not laboratory fume hoods or vents*.

See comment on B.5.a above.

b. *Individual sampling points, analyzers, and process instrumentation, whose operation may result in emissions but that are not regulated as emission units*.

See comment on B.5.b above.

The AMA hopes that the comments and suggestions above will serve to facilitate discussion as part of ADEQ's five-year review of its Article 3 rules. The AMA also would appreciate the opportunity to meet with ADEQ staff to discuss these issues in further detail, potential options and approaches, and next steps in the development of proposed revisions to ADEQ's operating permit program rules. As always, we thank ADEQ for its ongoing efforts to address issues of importance to our members.

Kind regards,

Steve Trussell
Executive Director
Arizona Mining Association

Attachments

#1

COMPLETE

Collector:	Web Link 1 (Web Link)
Started:	Tuesday, January 09, 2024 9:03:02 AM
Last Modified:	Tuesday, January 09, 2024 9:03:42 AM
Time Spent:	00:00:39
IP Address:	172.56.82.66

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Q1

Please select the option that best describes your business/industry:

Construction

Q2

Optional: Please provide your name, position and an email address and/or phone number so ADEQ can follow up for clarification purposes, if necessary.

Respondent skipped this question

Q3

Are the rules in Article 4 clear, concise and understandable?

No

Q4

Do the rules in Article 4 impose the least burden possible to achieve their objectives?

Yes

Q5

Please provide any other general comments you may have on the rules in Article 4:

Respondent skipped this question

Q6

Are the rules in Article 5 clear, concise and understandable?

No

Q7

Do the rules in Article 5 impose the least burden possible to achieve their objectives?

Yes

Q8

Please provide any other general comments you may have on the rules in Article 5:

Respondent skipped this question

Q9

Thank you for taking the time to complete our survey. ADEQ values your feedback. Please provide any other general comments you may have:

Respondent skipped this question

#2

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Tuesday, January 16, 2024 2:07:40 PM
Last Modified: Tuesday, January 16, 2024 2:08:37 PM
Time Spent: 00:00:57
IP Address: 98.153.48.198

Page 1

Q1

Please select the option that best describes your business/industry:

Mine

Q2

Optional: Please provide your name, position and an email address and/or phone number so ADEQ can follow up for clarification purposes, if necessary.

Name	**Clinton M. Kelland**
Position	**Mine Operations Manager**
Email Address	**ckelland@gce-pc.com**
Phone Number	**19283040340**

Q3

Are the rules in Article 4 clear, concise and understandable?

Yes

Q4

Do the rules in Article 4 impose the least burden possible to achieve their objectives?

Yes

Q5

Please provide any other general comments you may have on the rules in Article 4:

Respondent skipped this question

Q6

Are the rules in Article 5 clear, concise and understandable?

Yes

Q7

Do the rules in Article 5 impose the least burden possible to achieve their objectives?

Yes

Q8

Please provide any other general comments you may have on the rules in Article 5:

Respondent skipped this question

Q9

Thank you for taking the time to complete our survey. ADEQ values your feedback. Please provide any other general comments you may have:

Respondent skipped this question

#3

COMPLETE

Collector:	Web Link 1 (Web Link)
Started:	Thursday, January 18, 2024 7:56:06 AM
Last Modified:	Thursday, January 18, 2024 8:53:50 AM
Time Spent:	00:57:43
IP Address:	72.214.215.25

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Q1

Please select the option that best describes your business/industry:

Other (please specify business type):
Community Member

Q2

Optional: Please provide your name, position and an email address and/or phone number so ADEQ can follow up for clarification purposes, if necessary.

Name	**Dan**
Email Address	**blackson.daniel@yahoo.com**
Phone Number	**(623) 386-5160**

Q3

Are the rules in Article 4 clear, concise and understandable?

No,
If no, let us know specifically what is unclear and cite the section or subsection in comments::
Include a definition of “Plant” or “Plantwide” in R18-2-401 so Plantwide Applicability Limitation can be better understood.
Use “Plantwide Applicability Limitation” as a title to R18-2-412 instead of “PAL”

Q4

Do the rules in Article 4 impose the least burden possible to achieve their objectives?

Respondent skipped this question

Q5

Please provide any other general comments you may have on the rules in Article 4:

Respondent skipped this question

Q6

Are the rules in Article 5 clear, concise and understandable?

Yes

Q7

Do the rules in Article 5 impose the least burden possible to achieve their objectives?

Respondent skipped this question

Q8

Please provide any other general comments you may have on the rules in Article 5:

Respondent skipped this question

Q9

Thank you for taking the time to complete our survey. ADEQ values your feedback. Please provide any other general comments you may have:

Respondent skipped this question

NOTICES OF FINAL EXEMPT RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Final Exempt Rulemaking.

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the final exempt rule should be addressed to the agency proposing them. Refer to Item #5 to contact the person charged with the rulemaking.

NOTICE OF FINAL EXEMPT RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY AIR POLLUTION CONTROL

[R15-63]

PREAMBLE

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

R18-2-210	Amend
R18-2-610	Amend
R18-2-610.01	Amend
R18-2-610.02	New Section
R18-2-610.03	New Section
R18-2-611	Amend
R18-2-611.01	Amend
R18-2-611.02	New Section
R18-2-611.03	New Section
R18-2-612	Repeal
R18-2-612	New Section
R18-2-612.01	New Section
R18-2-613	Repeal
R18-2-613	New Section
R18-2-613.01	New Section
Appendix 2	Amend

2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific), and the statute or session law authorizing the exemption:

Authorizing Statutes: A.R.S. §§ 49-104(A)(10) and 49-404(A)

Implementing Statutes: A.R.S. § 49-457

Implementing Legislative Action: Senate Bill (SB) 1408 (Forty-ninth Legislature, Second Regular Session, 2010, Chapter 82, § 1)

Statute or Session Law Authorizing the Exemption: House Bill (HB) 2208 (Fiftieth Legislature, First Regular Session, 2011, Chapter 214, **§** 4)

3. The effective date of the rule and the agency's reason it selected the effective date:

July 2, 2015. HB 2208 (Fiftieth Legislature, First Regular Session, 2011, Chapter 214, **§** 4) states that the rule shall be effective immediately upon filing with the Secretary of State.

4. A list of all previous notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the exempt rulemaking:

Not applicable

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

Name: Heidi M. Haggerty

Address: Arizona Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007

Telephone: (602) 771-4815 (This number may be reached in-state by dialing 1-800-234-5677 and requesting the seven digit number.)

Fax: (602) 771-2366
E-mail: Haggerty.Heidi@azdeq.gov

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

Summary. This rulemaking, under the authority of Senate Bill (SB) 1408 (Forty-ninth Legislature, Second Regular Session, 2010, Chapter 82, § 1), signed by former Governor Brewer on April 16, 2010, expands the applicability of agricultural best management practices (BMPs) under A.R.S. § 49-457, to include the activities of irrigation districts in regulated areas established after June 1, 2009, which includes the Pinal County PM nonattainment area. A.R.S. § 49-457 (P)(1)(f). The BMPs are being added to reduce emissions of particulate matter by including practices related to activities of an irrigation district in moderate nonattainment areas designated after June 1, 2009, and includes BMPs from each of the categories: unpaved operation and maintenance roads, canals, and unpaved utility access roads.

In addition, this rulemaking amends the definitions of all the BMPs in order to make them more understandable, specific, and enforceable by ADEQ and the Department of Agriculture. This rulemaking also separates the rules by applicable nonattainment area (Maricopa, Moderate designated after June 1, 2009, and Pinal) for clarity and to further define more specific rules for commercial farmers and commercial animal operators within the Pinal County PM nonattainment area. Lastly, this rulemaking changes the reporting mechanisms for the crop and animal programs. Reports will be kept at the farm or animal operation each year and list the BMPs that are being implemented during the current year. Additionally, in the Pinal County PM nonattainment area, an expanded 3-year report will be turned in every three years by each farmer or animal operator with more specific information about their farms or operations. This information is necessary for an approvable State Implementation Plan (SIP) pursuant to A.R.S. §§ 49-404 and 49-406.

A.R.S. § 49-457 (F) gives rulemaking authority to the Agricultural Best Management Practices Committee (AgBMP Committee) and tasks ADEQ and the Department of Agriculture to provide technical assistance to the Committee.

Background.

History and Evolution of the AgBMP Program since 2007

Senate Bill 1552

Senate Bill (SB) 1552, which was signed by Governor Napolitano on July 2, 2007, mandated enactment of a variety of programs for reduction of PM_{10} in the Maricopa County nonattainment area and the Maricopa County portion of Area A for all contributing sources, including expansion of the AgBMP program. Forty-eighth Legislature, First Regular Session, 2007, Chapter 292, § 14. Section 20 of the bill authorized the exempt rule making that was published on December 7, 2007 (13 A.A.R. 4326). The exempt rule had an immediate effective date in compliance with section 41-1032, Arizona Revised Statutes, in order to comply with the December 31, 2007, deadline imposed by the EPA for submittal of the 5% Plan. It required that emission reductions occur during the critical winter time stagnant air condition period during which PM_{10} exceedances have historically occurred. This rulemaking was exempt from Title 41, Chapter 6, Article 3, Arizona Revised Statutes, which establishes the procedures and policies for rule making within the State agencies. Senate Bill 1552 also recognized the statutory authority, A.R.S. § 49-457, of the Governor's Agriculture Best Management Practices Committee (AgBMP Committee) to develop best management practices (BMPs) and, with the assistance of ADEQ, submit rules for publication in the *Arizona Administrative Register*.

Senate Bill 1225

SB 1225, signed by Governor Brewer on July 13, 2009, expanded the applicability of agricultural best management practices (BMPs) under A.R.S. § 49-457, to include activities of dairy, beef cattle feedlot, and poultry or swine facilities (animal operations). Forty-ninth Legislature, First Regular Session, 2009, Chapter 180, Senate Bill 1225, § 2. The BMPs were added to the rules on January 20, 2012 in order to further reduce emissions of particulate matter by including practices related to unpaved access connections, roads or feed lanes; animal waste handling and transporting; and arenas, corrals and pens. 18 A.A.R. 137. As part of the January 20, 2012 rulemaking, commercial animal operators in the Maricopa County PM_{10} nonattainment area and the Maricopa County portion of Area A were required to choose two BMPs from each category and commercial animal operators in moderate nonattainment areas designated after June 1, 2009, were required to choose one BMP from each category. The EPA designated a new West Pinal PM-10 Moderate Nonattainment Area in a Notice of Final Rulemaking published May 21, 2012 (77 FR 32024), effective July 2, 2012. The current rulemaking, further define BMP requirements for the Pinal County PM nonattainment area. Those animal operators will still have to choose one BMP from each category. In addition, commercial beef cattle feedlots will add water to pen surface on the day of a forecasted high risk day, and commercial dairy operations will apply water as a dust suppressant to roads with more than 20 Vehicle Daily Trips (VDT) on the day of a forecasted high risk day. The AgBMP Committee holds statutory authority under A.R.S.

§49-457 to develop BMPs for commercial animal operations.

Senate Bill 1408

SB 1408, signed by the Governor Brewer on April 16, 2010, expanded the applicability of the BMPs under A.R.S. § 49-457, to include the activities of irrigation districts in regulated areas established after June 1, 2009, which includes the Pinal County PM nonattainment area. Forty-ninth Legislature, Second Regular Session, 2010, Chapter 82, § 1. The current rulemaking adds BMPs to reduce particulate matter emissions from practices related to unpaved operation and maintenance roads, canals, and unpaved utility access roads. The AgBMP Committee holds statutory authority under A.R.S. §49-457 to develop BMPs for the irrigation districts.

Senate Bill 1193

SB 1193, signed by Governor Brewer on April 28, 2010, added new subsection O, which stated that the regulation of PM_{10} produced by regulated agricultural activities is a matter of statewide concern. Forty-ninth Legislature, Second Regular Session, 2010, Chapter 207, § 1. This would preclude any other county, city, town or political subdivision of this State to regulate these activities. This SB also changed the time limit for submitting a plan to the Natural Resources Conservation District (NRCD) or the department from 6 months to 60 days. These plans are only required if the director of ADEQ determines that a person engaged in a regulated activity is not in compliance with a general permit.

House Bill 2208

HB 2208, signed by Governor Brewer on April 25, 2011, added another category, Significant Agricultural Earthmoving Activities, to the crop BMPs. Fiftieth Legislature, First Regular Session, 2011, Chapter 214, § 4. These BMPs were added in the January 20, 2012 rulemaking in order to the rule to reduce particulate matter during these defined activities for Commercial farmers in Maricopa County PM_{10} nonattainment area and the Maricopa County portion of Area A and moderate nonattainment areas designated after June 1, 2009 (which included the Pinal County PM nonattainment area). 18 A.A.R. 137. Farmers in the Maricopa County serious PM_{10} nonattainment area must choose two BMPs to implement from this category. Farmers in moderate PM_{10} nonattainment areas must choose one BMP to implement from this category. In this rulemaking, farmers will need to choose only one BMP from this category for the more defined Pinal County PM_{10} nonattainment area. HB 2208 also gives the authority for the exempt rulemaking. The AgBMP Committee holds statutory authority under A.R.S. §49-457 to develop BMPs for significant agricultural earthmoving activities.

House Bill 2394

HB 2394 also amends A.R.S. § 49-457, was signed by Governor Ducey on April 9, 2015, and the statute as amended is effective from and after December 31, 2015. Fifty-second Legislature, First Regular Session, 2015, Chapter 243, § 1. The bill, in preparation for the exempt rulemaking herein, removes the 18-month delay for compliance with the agricultural general permit and requires immediate compliance with the permit. The bill also made a technical change.

Phoenix Planning area

Portions of Maricopa County were designated nonattainment for PM_{10} on November 15, 1990, under section 107(d)(4)(B) of the amended Clean Air Act (CAA). The boundaries of the nonattainment area are listed in 40 CFR § 81.303. The CAA requires state and local authorities to implement stricter particulate matter pollution controls in PM_{10} nonattainment areas. To that end, ADEQ and the Maricopa Association of Governments (MAG), acting under delegated authority, developed a state implementation plan for the area. The original plan and subsequent revisions failed to bring the area into attainment.

On June 6, 2007, at 72 FR 31183, the Environmental Protection Agency made a finding that the Phoenix Planning Area had not attained the National Ambient Air Quality Standard (NAAQS) for PM_{10} by the December 31, 2006, deadline mandated pursuant to the CAA. EPA based its Finding on monitored air quality data from 2004 through 2006.

ADEQ was required to submit by December 31, 2007, a five percent annual Reasonable Further Progress plan (5% Plan) that provides for attainment of the PM_{10} standard as required by CAA Section 189(d). The Maricopa Association of Governments (MAG) was been certified under A.A.C. 49-406 as the agency responsible for the development of the 5% Plan. The plan demonstrated three years of 5% annual reductions, which is expected to be sufficient for attainment. ADEQ submitted R18-2-610 and R18-2-611 as the agricultural community's contribution to the 5% Plan, as one of the Plan's contingency measures. On June 12, 2009, ADEQ submitted a negative declaration adopted by the Pinal County Board of Supervisors affirming that agricultural practices are not present in the Township 1 North, Range 8 East portion of this nonattainment area included within Pinal County.

On September 9, 2010, at 75 FR 54806, the Environmental Protection Agency (EPA) published a proposed rule

to approve in part and disapprove in part, the 5% Plan. EPA found, among other things, that the contingency measures did not meet the requirements of Clean Air Act (CAA) section 189(c). EPA proposed a limited approval and disapproval of R18-2-610 and R18-2-611 as submitted. EPA argued that the regulations strengthened the 5% Plan, but do not fully meet the requirements of CAA sections 100(a) and 189(b)(1)(B) for enforceable Best Available Control Measures (BACM) for agricultural sources of PM_{10} in the Maricopa Area.

On January 25, 2011, ADEQ withdrew the 5% Plan from EPA's consideration. All air quality rules and statues contained in the Plan remain in effect. MAG, ADEQ, and Maricopa County Air Quality Department (MCAQD) worked on the Plan in a cooperative and collaborative effort with the EPA, and submitted the plan on May 25, 2012. The AgBMP program, however, was not included as a control or contingency measure in the newly submitted 5% Plan. The EPA proposed approval of the Plan on February 6, 2014 at 79 FR 7118, and finalized approval of the 5% Plan on June 10, 2014 at 79 FR 33107. A maintenance plan is required to be submitted and approved by EPA before the area can be re-designated to attainment status.

Pinal County PM Nonattainment Area

The Pinal County PM Nonattainment Area includes both the West Pinal PM_{10} planning area and the West Central $PM_{2.5}$ planning area; the boundaries of the nonattainment areas are listed in 40 CFR § 81.303. On May 31, 2012, the EPA re-designate the area of Western Pinal County from "unclassifiable" to "nonattainment" for the 1987 National Ambient Air Quality Standards (NAAQS) for PM_{10}; the redesignation was effective on July 2, 2012. On February 3, 2011, the EPA re-designated the West Central Pinal $PM_{2.5}$ planning area to nonattainment for the 2006 NAAQS for $PM_{2.5}$, after waiting to collect more monitoring data. 76 FR 6056. On September 3, 2013, the EPA determined that the West Central Pinal $PM_{2.5}$ Nonattainment Area had attained those standards based on three years of monitoring data (clean data finding) and suspended several otherwise applicable requirements for nonattainment area plans. 78 FR 54394. Both a nonattainment plan and a maintenance plan are required to be submitted and approved by EPA before the area can be re-designated to attainment status.

New Sections added specifically to address the Pinal County PM nonattainment area are:

1) 610.03. Agricultural PM General Permit for Commercial Farms; Pinal County PM Nonattainment Area,
2) 611.03 Agricultural PM General Permit for Animal Operations; Pinal County PM Nonattainment Area,
3) R18-2-612. Definitions for R18-2-612.01, and
4) R18-2-612.01.Agricultural PM General Permit For Irrigation Districts; Moderate PM Nonattainment Areas Designated After June 1, 2009.

These sections contain identifiable control measures for the Pinal County PM nonattainment area and will be submitted to the EPA as a revision to the Arizona State Implementation Plan (SIP) along with any other Reasonably Available Control Measures (RACM) implemented to control PM emissions from identified significant sources in the area.

Section by Section Explanation of the Rules

R18-2-210. Attainment, Nonattainment, and Unclassifiable Area Designations

The rulemaking updates Arizona's incorporated by reference designation status in 40 CFR 81.303 as of July 1, 2014.

R18-2-610. Definitions for R18-2-610.01, R18-2-610.02, and R18-2-610.03

The rulemaking makes changes to many of the definitions for R18-2-610.01, R18-2-610.02, and R18-2-610.03 to provide additional clarity, specificity, and enforceability.

R18-2-610.01. Agricultural PM General Permit for Commercial Farms; Maricopa County PM Nonattainment Area

The rulemaking changes this rule to only for the Maricopa County PM nonattainment area and makes changes recordkeeping requirements specific to this area.

R18-2-610.02. Agricultural PM General Permit for Commercial Farms; Moderate PM Nonattainment Areas Designated After June 1, 2009, Except Pinal County PM Nonattainment Area

The rulemaking adds a new section that applies only to commercial farmers implementing AgBMPs in Moderate PM Nonattainment Areas Designated After June 1, 2009 (not including the Pinal County PM nonattainment area) and makes changes recordkeeping requirements specific to these areas.

R18-2-610.03. Agricultural PM General Permit for Commercial Farms; Pinal County PM Nonattainment Area

The rulemaking adds a new section that applies only to commercial farmers implementing AgBMPs in the Pinal

County PM nonattainment area and makes changes recordkeeping requirements specific to this area.

R18-2-611. Definitions for R18-2-611.01, R18-2-611.02, and R18-2-611.03
The rulemaking makes changes to many of the definitions for R18-2-611.01, R18-2-611.02, and R18-2-611.03 to provide additional clarity, specificity, and enforceability.

R18-2-611.01. Agricultural PM General Permit for Animal Operations; Maricopa County PM Nonattainment Areas
The rulemaking changes this rule to apply only to commercial animal operators implementing BMPs in the Maricopa County PM nonattainment area and makes changes recordkeeping requirements specific to this area.

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
The rulemaking changes this rule to apply only to commercial animal operators implementing BMPs Moderate PM Nonattainment Areas Designated After June 1, 2009 (not including the Pinal County PM nonattainment area) and makes changes recordkeeping requirements specific to these areas.

R18-2-611.03. Agricultural PM General Permit for Animal Operations; Pinal County PM Nonattainment Area
The rulemaking changes this rule to apply only to commercial animal operators implementing BMPs in the Pinal County PM nonattainment area and makes changes recordkeeping requirements specific to this area.

R18-2-612. Definitions for R18-2-612.01
This rulemaking repealed the Definitions for the Yuma AgBMP rule from R18-2-612, and added a new section R18-2-612 for Definitions for R18-2-612.01.

R18-2-612.01. Agricultural PM General Permit For Irrigation Districts; Moderate PM Nonattainment Areas Designated After June 1, 2009
This rulemaking added a new section R18-2-612.01 for the implementation of BMPs for Irrigation Districts located in moderate nonattainment areas designated after June 1, 2009 (which includes the Pinal County nonattainment area).

R18-2-613. Definitions for R18-2-613.01
This rulemaking repealed the Yuma AgBMP rule at R18-2-613, and added a new section R18-2-613 for Definitions for the Yuma AgBMP rule. No changes were made to the rule text.

R18-2-613.01. Yuma PM_{10} Nonattainment Area; Agricultural Best Management Practices
This rulemaking adds a new Section for the Yuma AgBMP rule, which was repealed from R18-2-613. No changes were made to the rule text.

Appendix 2. Test Methods and Protocols
This rulemaking incorporates by reference the Silt Content Test Method to Appendix 2. This test method is used in the Phoenix Planning Area for PM_{10}.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:
None

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:
The rule does not diminish a previous grant of authority of a political subdivision of this state.

9. The summary of the economic, small business, and consumer impact, if applicable:
Not applicable to this exempt rule.

10. A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking package (if applicable):
Not applicable

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments, if applicable:
Not applicable

12. Any other matters as prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not be limited to:

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

A general permit is used as described in A.R.S. § 49-457 (H).

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than the 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 such analysis was submitted.

13. A list of any incorporated by reference material and its location in the rule:

Incorporation	Location in the rule
40 CFR 81.303 (As of July 1, 2014)	R18-2-210
NRCS Practice Code 609, Surface Roughening, amended through November 2008.	R18-2-610(53)
NRCS National Agronomy Manual, Subpart 503.51, Estimating Crop Residue Cover, amended through February 2011.	R18-2-610(14), (15), (36), (47)
NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998.	R18-2-610(39), (56), R18-2-610.01(E)(1) and (E)(2), R18-2-610.02(E)(1) and (E)(2), R18-2-610.02(B)(6)(a) and (B)(6)(b)
NRCS Conservation Practice Standard, Code 380, Windbreak/Shelterbelt Establishment, amended through August 21, 2009	R18-2-610(65), R18-2-611(2)(x), (3)(r), and R18-2-612(33)
Silt Content Test Method	Appendix 2, Subsection (N), incorporated into R18-2-610 (51)

14. Whether the rule was previously made, amended, repealed, or renumbered as an emergency rule. If so, the agency shall state where the text changed between the emergency and exempt rulemaking packages:

Not applicable

15. The full text of the rule follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY AIR POLLUTION CONTROL

ARTICLE 2. AMBIENT AIR QUALITY STANDARDS; AREA DESIGNATIONS; CLASSIFICATIONS

Section
R18-2-210. Attainment, Nonattainment, and Unclassifiable Area Designations

ARTICLE 6. EMISSIONS FROM EXISTING AND NEW NONPOINT SOURCES

Section
R18-2-610. Definitions for ~~R18-2-611~~ R18-2-610.01, R18-2-610.02, and R18-2-610.03
R18-2-610.01. Agricultural PM_{10} General Permit for ~~Crop Operations~~ Commercial Farms; Maricopa County PM_{10} Nonattainment ~~Areas~~ Area
R18-2-610.02. Agricultural PM General Permit for Commercial Farms; Moderate PM Nonattainment Areas Designated After June 1, 2009, Except Pinal County PM Nonattainment Area
R18-2-610.03. Agricultural PM General Permit for Commercial Farms; Pinal County PM Nonattainment Area
R18-2-611. Definitions for R18-2-611.01, R18-2-611.02, and R18-2-611.03
R18-2-611.01. Agricultural ~~Animal Operations~~ PM_{10} General Permit for Animal Operations; ~~Moderate and~~ ~~Serious~~ Maricopa County PM_{10} Nonattainment Area~~s~~ ~~Except Yuma County~~
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
R18-2-611.03. Agricultural PM General Permit for Animal Operations; Pinal County PM Nonattainment Area
R18-2-612. Definitions for ~~R18-2-613~~ R18-2-612.01

R18-2-612.01. Agricultural PM General Permit For Irrigation Districts; Moderate PM Nonattainment Areas Designated After June 1, 2009, Including Pinal County PM Nonattainment Area
R18-2-613. ~~Yuma PM_{10} Nonattainment Area; Agricultural Best Management Practices~~ Definitions for R18-2-613.01
R18-2-613.01. Yuma PM_{10} Nonattainment Area; Agricultural Best Management Practices
Appendix 2. Test Methods and Protocols

ARTICLE 2. AMBIENT AIR QUALITY STANDARDS; AREA DESIGNATIONS; CLASSIFICATIONS

R18-2-210. Attainment, Nonattainment, and Unclassifiable Area Designations
40 CFR 81.303 as amended as of July 1, ~~2011~~ 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.

ARTICLE 6. EMISSIONS FROM EXISTING AND NEW NONPOINT SOURCES

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 ~~applied~~ to noncropland or commercial farm roads ~~to a depth sufficient to reduce dust generated from vehicle movement, wind or other erosive forces~~. 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_{10} emissions from a regulated agricultural activity.
5. "Cessation of Night Tilling" means the discontinuation of ~~night~~ tillage ~~tilling~~ 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 ~~reducing the number of passes~~ 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.

~~7~~8. "Combining tractor operations" means reducing soil compaction and ~~the number of passes~~ 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.

~~8~~9. "Commercial farm" means 10 or more contiguous acres of land used for agricultural purposes within the boundary of the Maricopa PM_{10} nonattainment area and Maricopa County portion of Area A, ~~or~~ a PM_{10} nonattainment area designated after June 1, 2009 as stated in A.R.S. § 49-457(P)(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.

~~9~~11. "Commercial farmer" means an individual, entity, or joint operation in general control of a commercial farm.

~~10~~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.

~~11~~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). ~~reducing wind erosion and PM_{10} emissions by using plants or a green manure crop seasonally to protect soil surfaces between crops and control soil movement.~~

~~12~~15. "Critical area planting" means reducing PM_{10} emissions and wind erosion by planting trees, shrubs, vines, grasses, or other vegetative cover on noncropland in order to maintain at least 60 percent ~~adequate~~ 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).

~~13~~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.

~~14~~17."Cross-wind ridges" means stabilizing soil and reducing PM_{10} 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. ~~Soil should be stable enough to sustain effective ridges.~~

~~15. "Cross-wind strip-cropping" means stabilizing soil and reducing PM_{10} emissions by growing strips of at least two crops: herbaceous cover or managing crop or herbaceous residue as a protective cover within the same field. Strips should be aligned as perpendicular as possible to the prevailing wind directions.~~

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.

~~16~~19. "Equipment modification" means reducing PM_{10} emissions and soil erosion during tillage ~~and~~ or ~~harvest~~ ground operations by modifying and maintaining an existing piece of agricultural equipment, ~~purchasing new equipment, increasing equipment size~~, 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.

~~17~~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.

~~18~~22."Forage Crop" means a product grown for consumption by any domestic animal.

~~19~~23."Genetically Modified" (GMO) means a living organism whose genetic material has been altered, changing one or more of its characteristics.

~~20. "GMO: Genetically Modified Organism" means a plant that has been altered by a genetic exchange with another organism.~~

~~21~~24."GPS: Global Position Satellite System" means using a satellite navigation system on farm equipment to calculate position in the field.

~~22~~25. "Green ~~Chop~~ chop" means reducing soil compaction, soil disturbance and ~~the number of passes~~ a minimum of one ground operation across a commercial farm by harvesting ~~of~~ 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.

~~23~~28."Integrated Pest Management" means reducing soil compaction and ~~the number of passes in~~ 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.

~~24~~29. ~~"~~Limited harvest activity ~~during a high-wind event"~~ means performing no ~~harvest or soil preparation activity~~ ground operations on a day identified by the Maricopa or Pinal County Dust Control Forecast to be high risk for dust generation. ~~when the measured wind speed as measured by a hand held anemometer is more than 25 miles per hour at the commercial farm site.~~

~~25~~30."Limited tillage activity ~~during a high-wind event~~" means performing no tillage operations ~~or soil preparation activity~~ on a day identified by the Maricopa or Pinal County Dust Control Forecast to be high risk for dust generation. ~~when the measured wind speed as measured by a hand held anemometer is more than 25 miles per hour at the commercial farm site.~~

~~26~~31."Maricopa PM_{10} nonattainment area" means the Phoenix planning area as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210.

~~27. "Mulching" means reducing PM_{10} emissions and wind erosion and preserving soil moisture by applying a protective layer of plant residue or other material that is not produced onsite to a soil surface to reduce soil movement.~~

~~28~~32. "Multi-year crop" means reducing PM_{10} emissions from wind erosion ~~or~~ 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.

~~29~~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 ~~private farm road,~~ ditch, ditch bank, equipment yard, storage yard, or well head.

34. "NRCS" means the Natural Resource Conservation Service.

~~30. "Night Tilling" means preparing the land for the raising of crops between the hours of 2:00 a.m. and 8:00 a.m.~~

~~31. "Organic farming practices" means using biological or non-chemical agricultural methods.~~

~~32. "Organic material application" means applying animal waste or biosolids to a soil surface.~~

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.

~~33~~36. "Permanent cover" means reducing PM_{10} 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 PM_{10} 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.

~~34~~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.

~~35~~41. "Precision Farming" means reducing ~~the number of passes~~ 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.

~~36~~42. "Reduce vehicle speed" means reducing PM_{10} emissions and soil erosion from the operation of farm vehicles or farm equipment on noncropland or commercial farm roads at speeds not to exceed ~~20~~ 15. This can be achieved through installation of engine speed governors, signage, or speed control devices.

~~37~~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.

~~38~~44. "Reduced tillage system" means reducing soil disturbance, soil and water loss, ~~the number of~~ 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.

~~39~~45. "Regulated agricultural activity" means a regulated agricultural activity as defined in A.R.S. § 49-457(P)(1)(a) through (P)(1)(d)~~(5)~~.

~~40~~46. "Regulated area" means ~~a~~ the regulated area as defined in A.R.S. § 49-457(P)(6).

~~41~~47. "Residue management" means reducing PM_{10} emissions and wind erosion by ~~managing the amount and distribution~~ 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 ~~emergence of a~~ 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).

~~42~~48. "Sequential cropping" means reducing PM_{10} 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.

~~43~~49. "Shuttle System/Larger Carrier" means reducing ~~the~~ one out of every four ~~number of~~ trips ~~passes~~ across a commercial farm by using multiple or larger bins/trailers ~~per trip~~ to haul commodity from the field.

~~44~~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 ~~crop preparation, cultivation~~ or harvest.

51. "Silt content test method" means the test method as described in Appendix 2.

~~45~~52."Stabilization of soil prior to plant emergence" means reducing PM_{10} emissions by applying water to soil ~~in between planting and~~ prior to crop emergence in order to cause the soil to form a visible crust.

~~46~~53."Surface roughening" means reducing PM_{10} emissions ~~and~~ 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).

~~47. "Stagnant Air Conditions" means a meteorological regime where warm air aloft overlies cooler air near the surface and little if any vertical mixing occurs.~~

~~48~~54."Synthetic particulate suppressant" means reducing PM_{10} emissions and wind erosion by providing a ~~surface barrier or binding soil particles together~~ 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.

~~49. "Tillage and harvest" means any mechanical practice that physically disturbs cropland or crops on a commercial farm.~~

55. "Tillage" means any mechanical practice that physically disturbs the soil, and includes preparation for planting, such as plowing, ripping, or discing.

~~50~~56."Tillage based on soil moisture" means reducing PM_{10} 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).

~~51~~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. ~~the soil surface is susceptible to wind erosion resulting in PM_{10}~~.

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.

~~52~~59."Track-out control system" means ~~reducing PM_{10} emissions~~ 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.

~~53~~60."Transgenic Crops" means reducing ~~the need~~ a minimum of one ~~for~~ tillage or ~~cultivation~~ ground operation~~s~~, the number of chemical spray applications, or soil disturbances by using plants that are genetically modified.

~~54~~61."Transplanting" means reducing ~~the number of passes in~~ 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. "VDT" (Vehicle trips per day) means trips per day made by one vehicle, in one direction.

~~55~~63."Watering" means reducing PM_{10} 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.

64. "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.

~~56~~65."Wind barrier" means reducing PM_{10} 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).

R18-2-610.01. Agricultural PM_{10} General Permit for Crop Operations; Maricopa County PM_{10} Nonattainment Area~~s~~

~~A. A commercial farmer shall comply with this Section by January 1, 2012. Until the end of the transition period on March 31, 2013, a commercial farmer shall maintain a record demonstrating compliance with this Section. The record shall be provided to the Director within two business days of notice to the commercial farmer. The record shall contain:~~

~~1. The name of the commercial farmer;~~

~~2. The mailing address or physical address of the commercial farm; and~~

~~3. The best management practices selected for tillage and harvest, noncropland, and cropland.~~

~~**B.** A commercial farmer, who begins a regulated agricultural activity after January 1, 2012, shall comply with this Section within three months of beginning the regulated agricultural activity.~~

~~**C**~~**A.** A commercial farmer within the Maricopa County ~~a Serious~~ PM_{10} Nonattainment Area shall implement at least two best management practices from each category to reduce PM_{10} emissions.

~~**D.** A commercial farmer within a Moderate PM_{10} Nonattainment Area shall implement at least one best management practice from each category to reduce PM_{10} emissions.~~

~~**E**~~**B.** A commercial farmer shall implement from the following best management practices, as described in subsection (~~C~~A) ~~or (D)~~, to reduce PM emissions during ~~harvest and~~ 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 ~~during a high-wind event~~,
7. Limited tillage activity ~~during a high-wind event~~,
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.

~~**F**~~**C.** A commercial farmer shall implement from the following best management practices, as described in subsection (~~C~~A) ~~or (D)~~, to reduce PM_{10} emissions from noncropland and commercial farm roads:

1. Access restriction,
2. Aggregate cover,
3. Wind barrier,
4. Critical area planting,
5. Organic material ~~application~~ cover,
6. Reduce vehicle speed,
7. Synthetic particulate suppressant,
8. Track-out control system, or
9. Watering.

~~**G**~~**D.** A commercial farmer shall implement from the following best management practices, as described in subsection (~~C~~A) ~~or (D)~~, to reduce PM_{10} emissions from cropland:

1. Wind barrier,
2. Cover crop,
3. Cross-wind ridges,
4. ~~Cross-wind strip-cropping~~,
5. ~~Integrated Pest Management,~~
6. ~~Organic material application~~ Chips/mulches,
7. ~~Mulching,~~
8. Multi-year crop,
9. Permanent cover,
10. Stabilization of soil prior to plant emergence,
11. ~~Precision Farming,~~
12. Residue management,
13. Sequential cropping, or
14. Surface roughening.

~~**H**~~**E.** A commercial farmer shall implement from the following best management practices, as described in subsection (~~C~~A) ~~or (D)~~, 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 ~~during high wind events~~ 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 ~~minimize the number of passes~~ reduce a minimum of one ground operation across a commercial farm by using equipment that is the most efficient means of moving the soil.~~; or~~
5. ~~Conduct Significant Agricultural Earth Moving Activities as close to possible to planting or otherwise stabilize the soil, except for emergency maintenance purposes~~

~~I. Beginning March 31, 2013, or within 90 days after the start of a new regulated agricultural activity, whichever is later, the commercial farmer shall complete and submit a Best Management Practices Program General Permit Record Form to the Arizona Department of Agriculture. Thereafter, the commercial farmer shall also complete and submit a Best Management Practices Program General Permit Record Form to the Arizona Department of Agriculture on March 31 of each calendar year. The Best Management Practice Program General Permit Record form shall include the following information:~~

1. ~~At least the required number of best management practices as described in subsection (C) or (D) that the commercial farmer implemented during the previous calendar year;~~
2. ~~At least the required number of best management practices as described in subsection (C) or (D) that the commercial farmer intends to implement during the current calendar year;~~
3. ~~The name, business address, and phone number of the commercial farmer responsible for the preparation and implementation of the best management practices;~~
4. ~~The signature of the commercial farmer and the date the form was signed.~~

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).

~~J. Beginning in Calendar Year 2014, and no more than once every subsequent three calendar years, the Director shall provide the commercial farmer with a Best Management Practices Program Periodic Survey. The commercial farmer may complete and submit the survey to the Arizona Department of Agriculture. The Periodic Survey shall include the following information:~~

1. ~~The type and acreage of each crop type planted during the calendar year that the survey is conducted,~~
2. ~~The total miles of unpaved roads at the commercial farm, and~~
3. ~~The total acreage of the unpaved equipment and traffic areas at the commercial farm.~~

~~K~~**G.** Records of any changes to the Best Management Practices identified in the most recently submitted 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.

~~L~~**H.** A person may develop ~~petition the Committee to consider~~ different practices to control PM_{10} emissions not contained in ~~either of the categories of subsection~~ subsections (B), (C), (D), or (E) ~~(E), (F), (G), or (H). The Committee may require~~ and may submit such practices that are proven effective through on-farm demonstration trials to ~~be conducted under the conditions established by~~ the Committee. The proposed new practices shall not become effective unless submitted ~~approved by the Committee~~ as described in A.R.S. § 49-457(L).

~~M~~**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.

~~N~~**J.** The Director shall not assess a fee to a commercial farmer for coverage under the agricultural PM_{10} general permit.

~~O~~**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.

~~P~~**L.** The Director shall document noncompliance with this Section before issuing a compliance order.

~~Q~~**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).

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.

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).

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 sections (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 one best management practice from each category to reduce PM emissions, as described below in subsections (1)(a), (2)(a), (3)(a), (4)(a), and (6), and at least two best management practices from subsection (5)(a). 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 one 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 one 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 (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. 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 one 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 (subsection vi, below), on the day before and during a day forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, a on a noncropland area that experiences more than 20 VDT from 2 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.
4. Commercial farm roads:
   a. A commercial farmer shall implement at least one 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 (subsection vi, below), 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 2 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,
      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 subsection (i) through (vii), and one from subsection (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. A commercial farmer shall implement at least one of the following best management practices, when conducting Significant Agricultural Earth Moving Activities as defined in R18-2-610:
   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 best management practices 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 3-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 3-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. The proposed new practices shall not become effective unless submitted as described in A.R.S. § 49-457(L).

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.
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(I), (J), and (K).

R18-2-611. Definitions for R18-2-611.01

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 2 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 PM_{10} 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(P)(5).
   l. "Regulated area" means the regulated area as defined in A.R.S. § 49-457(P)(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. "VDT" (Vehicle trips per day) means trips per day made by one vehicle, in one direction.

~~1~~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 ~~applied~~ to unpaved roads or feed lanes ~~to a depth sufficient to reduce dust generated from vehicle movement, wind or other erosive forces~~. 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_{10} 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_{10} emissions by fencing pathways from the corrals to the milking barn, ~~which are~~ restricting dairy cattle to surfaces with concrete floors.
~~f. "Commercial animal operator" means an individual, entity, or joint operation in general control of an animal operation.~~
~~g~~f. "Commercial dairy operation" means a dairy operation with more than 150 dairy cattle within the boundary of the Maricopa PM_{10} nonattainment area and Maricopa County portion of Area A, ~~or~~ a PM_{10} nonattainment area designated after June 1, 2009 as stated in A.R.S. § 49-457(P)(1)(f), or the Pinal County PM Nonattainment Area.
~~h~~g. "Cover manure hauling trucks" means reducing PM_{10} emissions by completely covering the top of the loaded area.
~~i~~h. "Covers for silage" means reducing PM_{10} emissions and wind erosion by using large plastic tarps to completely cover silage.
~~j~~i. "Do not run cattle" means reducing PM_{10} emissions by walking dairy cattle to the milking barn.
~~k~~j. "Feed higher moisture feed to dairy cattle" means reducing PM_{10} emissions by feeding dairy cattle one or ~~a~~ 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~~ green ~~Chop~~ chop.
~~l~~k. "Feed green chop" means feeding high moisture feed that contains at least 30% moisture directly to dairy cattle.
~~m~~l. "Groom manure surface" means reducing PM_{10} 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.
~~n~~m. "Hutches" means raised, roofed enclosures that protect the calves from the elements.
~~o~~n. "Pile manure between cleanings" means reducing PM_{10} emissions by collecting loose surface materials within the confines of the surface area of the occupied feed pen every two weeks. ~~to contain the loose manure materials.~~
~~p~~o. "Provide cooling in corral" means reducing PM_{10} emissions by using cooling systems ~~evaporative coolers~~ under the corral shades to reduce the ambient air temperature, thereby increasing stocking density in the cool areas of the corrals.
~~q~~p. "Provide shade in corral" means reducing PM_{10} 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.
~~r~~q. "Push equipment" means manure harvesting equipment pushed in front of a tractor.
~~s. "Regulated agricultural activity" means a regulated agricultural activity as defined in A.R.S. § 49-457(P)(5).~~
~~t. "Regulated area" means a regulated area as defined in A.R.S. § 49-457(P)(6).~~
~~u~~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.
~~v~~s. "Store and maintain feed stock" means reducing PM_{10} 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. ~~so that the feed stock is adequately contained~~.
~~w~~t. "Synthetic particulate suppressant" means reducing PM_{10} emissions and wind erosion by providing a ~~surface barrier or binding soil particles together~~ 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.
~~x~~u. "Use drag equipment to maintain pens" means reducing PM_{10} emissions by using manure ~~harvesting~~ equipment pulled behind a tractor instead of using push equipment, which avoids dust accumulation in floor depressions.
~~y~~v. "Use free stall housing" means reducing PM_{10} emissions by enclosing one cow per stall, which are outfitted with concrete floors.
~~z~~w. "Water misting systems" means reducing PM_{10} 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.
~~aa~~x."Wind barrier" means reducing PM_{10} 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).

~~2~~3. The following definitions apply to a commercial beef cattle feedlot:

a. "Add moisture to pen surface" means reducing PM_{10} 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_{10} emissions by adding molasses or tallow so that it equals ~~five~~ 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 ~~applied~~ to unpaved roads or feed lanes ~~to a depth sufficient to reduce dust generated from vehicle movement, wind or other erosive forces~~. 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_{10} 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.

e. "Bulk materials" means reducing PM_{10} emissions by using a closed conveyor system instead of vehicular means to move grain or other feedstuffs via non-vehicular means~~. distributing or hauling grain, supplements, or mixed feeds via motorized vehicle~~

~~f. "Commercial animal operator" means an individual, entity, or joint operation in general control of an animal operation~~.

~~g~~f. "Commercial beef cattle feedlot" means a beef cattle feedlot with more than 500 beef cattle within the boundary of the Maricopa PM_{10} nonattainment area and Maricopa County portion of Area A~~, or~~ a PM_{10} nonattainment area designated after June 1, 2009 as stated in A.R.S. § 49-457(P)(1)(f), or the Pinal County PM Nonattainment Area.

~~h~~g. "Concrete apron" means reducing PM_{10} 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.

~~i~~h. "Control cattle during movements" means reducing PM_{10} 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.

~~j~~i. "Cover manure hauling trucks" means reducing PM_{10} emissions by completely covering the top of the loaded area.

~~k~~j. "Feed higher moisture feed to beef cattle" means reducing PM_{10} emissions by feeding beef cattle feed that contains at least 30% moisture.

~~l~~k. "Frequent manure removal" means reducing PM_{10} emissions and wind erosion by harvesting loose manure on top of the pen surface at least once every six months.

~~m. "Higher moisture feeds" means reduce PM_{10} emissions by feeding beef cattle feed that contains at least 30% moisture.~~

~~n. "Increase manure moisture" means reducing PM_{10} emissions by increasing the fluids consumed and excreted by cattle.~~

~~o~~l. "Pile manure between cleanings" means reducing PM_{10} 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. ~~to contain the loose manure materials.~~

~~p~~m. "Provide shade in corral" means reducing PM_{10} 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~~n. "Push equipment" means manure harvesting equipment pushed in front of a tractor.

~~r. "Regulated agricultural activity" means a regulated agricultural activity as defined in A.R.S. § 49-457(P)(5).~~

~~s. "Regulated area" means a regulated area as defined in A.R.S. § 49-457(P)(6).~~

~~t~~o. "Store and maintain feed stock" means reducing PM_{10} 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. ~~so that the feed stock is adequately contained~~.

~~u~~p. "Synthetic particulate suppressant" means reducing PM_{10} emissions and wind erosion by providing a ~~surface barrier or binding soil particles together~~ 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.

~~v~~q. "Use drag equipment to maintain pens" means reducing $PM_{~~10~~}$ emissions by using manure harvesting equipment pulled behind a tractor instead of using push equipment, which avoids dust accumulation in floor depressions.

~~w~~r. "Wind barrier" means reducing PM_{10} 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~~4. The following definitions apply to a commercial poultry facility:

a. "Add moisture through ventilation systems" means reducing $PM_{~~10~~}$ emissions by using a ventilation system that is designed to allow stock to maintain their normal body temperature without difficulty while ~~adding sufficient~~ maintaining a minimum of 20% moisture in ~~to~~ the air within the housing system to bind small particles to larger particles.

b. "Add oil and/or moisture to the feed" means reducing $PM_{~~10~~}$ 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 ~~applied~~ to unpaved roads or feed lanes ~~to a depth sufficient to reduce dust generated from vehicle movement, wind or other erosive forces~~. 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 cage rows" means reducing $PM_{~~10~~}$ 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 $PM_{~~10~~}$ 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 $PM_{~~10~~}$ 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 animal operator" means an individual, entity, or joint operation in general control of an animal operation.~~

~~h~~g. "Commercial poultry facility" means a poultry operation with more than 25,000 egg laying hens within the boundary of the Maricopa $PM_{~~10~~}$ nonattainment area and Maricopa County portion of Area A, ~~or~~ a $PM_{~~10~~}$ nonattainment area designated after June 1, 2009 as stated in A.R.S. § 49-457(P)(1)(f), or the Pinal County PM Nonattainment Area.

~~i~~h. "Control vegetation on building exteriors" means reducing $PM_{~~10~~}$ emissions by removing, cutting, or trimming vegetation that accumulates $PM_{~~10~~}$ and restricts ventilation of the building, so as to leave approximately three feet between the vegetation and building.

~~j~~i. "Enclose transfer points" means reducing $PM_{~~10~~}$ 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.

~~k~~j. "House in fully enclosed ventilated buildings" means reducing $PM_{~~10~~}$ emissions by utilizing fully enclosed buildings with sufficient ventilation.

~~l~~k. "Maintain moisture in manure solids" means reducing $PM_{~~10~~}$ emissions by maintaining a moisture content of a minimum of 15% in the solids sufficient to bind small particles to larger particles.

~~m~~l. "Minimize drop distance" means reducing $PM_{~~10~~}$ emissions by designing the feed distribution system ~~to minimize the~~ 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.

~~n~~m. "Poultry" means any domesticated bird including chickens, turkeys, ducks, geese, guineas, ratites and squabs.

~~o. "Regulated agricultural activity" means a regulated agricultural activity as defined in A.R.S. § 49-457(P)(5).~~

~~p. "Regulated area" means a regulated area as defined in A.R.S. § 49-457(P)(6).~~

~~q~~n. "Remove spilled feed" means reducing $PM_{~~10~~}$ emissions by removing spilled feed from the housing facility at least once every 14 days.

~~r~~o. "Stack separated manure solids" means reducing $PM_{~~10~~}$ emissions and wind erosion by reducing the amount of exposed surface area of manure solids.

~~s~~p. "Store feed" means reducing $PM_{~~10~~}$ emissions by storing feed in a structure that is enclosed and weatherproof, which reduces air contact with the feed rations during feed storage.

~~t~~q. "Synthetic particulate suppressant" means reducing $PM_{~~10~~}$ emissions and wind erosion by providing a ~~surface barrier or binding soil particles together~~ 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.

~~u~~r. "Use enclosed feed distribution system" means reducing $PM_{~~10~~}$ 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.

~~v~~s. "Use a flexible discharge spout" means reducing $PM_{~~10~~}$ 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.

~~w~~t. "Use no bedding in the production facility" means reducing $PM_{~~10~~}$ emissions by not using bedding such as wood shavings, sawdust, peanut hulls, straw, or other organic material.

~~4~~5. The following definitions apply to a commercial swine facility:

a. "Add oil and/or moisture to the feed" means reducing $PM_{~~10~~}$ 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 $PM_{~~10~~}$ emissions by using a ventilation system that is designed to allow stock to maintain their normal body temperature without difficulty while ~~adding sufficient~~ maintaining minimum of 15% moisture ~~to~~ 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 ~~applied~~ to unpaved roads or feed lanes ~~to a depth sufficient to reduce dust generated from vehicle movement, wind or other erosive forces~~. 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 $PM_{~~10~~}$ 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 $PM_{~~10~~}$ emissions by cleaning fans, louvers, and soffit inlets between transfer of animal groups, but in any case, at least every 6 months.

f. "Clean pens, floors and walls in a commercial swine facility" means reducing $PM_{~~10~~}$ 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 6 months.

~~g. "Commercial animal operator" means an individual, entity, or joint operation in general control of a animal operation.~~

~~h~~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 $PM_{~~10~~}$ nonattainment area and Maricopa County portion of Area A, ~~or~~ a $PM_{~~10~~}$ nonattainment area designated after June 1, 2009 as stated in A.R.S. § 49-457(P)(1)(f), or the Pinal County PM Nonattainment Area. One thousand pounds equals one animal unit.

~~i~~h. "Control vegetation on building exteriors" means reducing $PM_{~~10~~}$ emissions by removing, cutting, or trimming vegetation that accumulates $PM_{~~10~~}$ and restricts ventilation of the building, so as to leave approximately three feet between the vegetation and the building.

~~j~~i. "Enclose transfer points" means reducing $PM_{~~10~~}$ emissions by enclosing the points of transfer between the enclosed, weatherproof storage structure and the enclosed feed distribution system, which reduces air contract with the feed rations during feed conveyance.

~~k~~j. "House in fully enclosed ventilated buildings" means reducing $PM_{~~10~~}$ emissions by utilizing fully enclosed buildings with sufficient ventilation.

~~l~~k. "Lagoon" means a liquid manure storage and treatment pond.

~~m~~l. "Maintain moisture in manure solids" means reducing PM_{10} emissions by maintaining a minimum moisture content of 10% in the solids sufficient to bind small particles to larger particles.

~~n~~m. "Minimize drop distance" means reducing $PM_{~~10~~}$ emissions by designing the feed distribution system ~~to minimize the~~ so that the distance the feed ration drops from the feed distribution system into feeders is three feet or less, which reduces air contact with the feed rations during feed conveyance.

~~o. "Regulated agricultural activity" means a regulated agricultural activity as defined in A.R.S. § 49-457(P)(5).~~

~~p. "Regulated area" means a regulated area as defined in A.R.S. § 49-457(P)(6).~~

~~q~~n. "Remove spilled feed" means reducing $PM_{~~10~~}$ emissions by removing spilled feed from the housing facility at least once every 14 days.

~~r~~o. "Slatted flooring" means reducing $PM_{~~10~~}$ 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 though 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.

~~s~~p. "Sloped concrete flooring" means reducing $PM_{~~10~~}$ emissions by pouring concrete with a minimum of 0.25% grade inside of the barns which provides drainage and easier cleaning of floor areas.

~~t~~q. "Stack separated manure solids" means reducing $PM_{~~10~~}$ emissions and wind erosion by reducing the amount of exposed surface area of manure solids.

~~u~~r. "Store feed" means reducing $PM_{~~10~~}$ emissions by storing feed in a structure that is enclosed and weatherproof, which reduces air contact with the feed rations during feed storage.

~~v~~s. "Store separated manure solids" means reducing $PM_{~~10~~}$ 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.

~~w~~t. "Synthetic particulate suppressant" means reducing $PM_{~~10~~}$ emissions and wind erosion by providing a ~~surface barrier or binding soil particles together~~ 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.

~~x~~u. "Use a flexible discharge spout" means reducing $PM_{~~10~~}$ 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.

~~y~~v. "Use enclosed feed distribution system" means reducing $PM_{~~10~~}$ 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.

~~z~~w. "Use no bedding in the production facility" means reducing $PM_{~~10~~}$ emissions by not using bedding such as wood shavings, sawdust, peanut hulls, straw, or other organic material.

R18-2-611.01. Agricultural ~~Animal Operations~~ $PM_{~~10~~}$ General Permit for Animal Operations; ~~Moderate and~~ ~~Serious~~ Maricopa County $PM_{~~10~~}$ Nonattainment Areas ~~Except Yuma County~~

~~**A.** A commercial animal operator in a regulated area shall comply with this Section by March 1, 2013.~~

~~**B.** A commercial animal operator, who begins a regulated agricultural activity after January 1, 2012, shall comply with this Section within 18 months of beginning the regulated agricultural activity.~~

~~**C**~~**A.** A commercial animal operator within a Serious $PM_{~~10~~}$ Nonattainment Area shall implement at least two best management practices from each category to reduce $PM_{~~10~~}$ emissions.

~~**D.** A commercial animal operator within a Moderate PM_{10} Nonattainment Area shall implement at least one best management practice from each category to reduce PM_{10} emissions.~~

~~**E**~~**B.** A commercial dairy operation shall implement the following best management practices, as described in subsection (~~C~~A) ~~or (D)~~, 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. Increase manure moisture,~~
   ~~f~~e. Cover manure hauling trucks, or
   ~~g~~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.

~~F~~C. A commercial beef cattle feedlot shall implement the following best management practices, as described in subsection (~~C~~A) ~~or (D)~~, 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. Increase Manure Moisture,~~
   ~~g~~f. Feed higher moisture feed to beef cattle,
   ~~h~~g. Control cattle during movements,
   ~~i~~h. Use drag equipment to maintain pens,
   ~~j~~i. Apply a fibrous layer, or
   ~~k~~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.

~~G~~D. A commercial poultry facility shall implement the following best management practices, as described in subsection (~~C~~A) ~~or (D)~~, 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.

~~H~~**E.** A commercial swine facility shall implement the following best management practices, as described in subsection (~~C~~A) ~~or (D)~~, 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.

~~I. Beginning March 31, 20132014, or within 90 days after the start of a new regulated agricultural activity, whichever is later, the commercial animal operator shall complete and submit a Best Management Practices Program General Permit Record Form to the Arizona Department of Agriculture. Thereafter, the commercial animal operator shall complete and submit the Best Management Practices Program General Permit Record Form by March 31st of each subsequent year. The Best Management Practices Program General Permit Record Form shall include the following information:~~

~~1. At least the required number of best management practices as described in subsection (C) or (D) that the commercial animal operator implemented during the previous calendar year;~~
~~2. At least the required number of best management practices as described in subsection (C) or (D) that the commercial animal operator intends to implement during the current calendar year;~~
~~3. The name, business address, and phone number of the commercial animal operator responsible for the preparation and implementation of the best management practices;~~
~~4. The signature of the commercial animal operator and the date the form was signed.~~

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, Unpaved Access Connections, and Unpaved Roads or Feed Lanes.

~~J. Beginning in Calendar Year 20142015, and no more than once every subsequent three calendar years, the Director shall provide the commercial animal operator with a Best Management Practices Program Periodic Survey. The commercial animal operator may complete and submit the survey to the Arizona Department of Agriculture. The Periodic Survey shall include the following information:~~

~~1. The number of animals in a commercial dairy operation, beef cattle feed lot, poultry facility or swine facility;~~
~~2. The total miles of unpaved roads at the commercial dairy operation, beef cattle feed lot, poultry facility or swine facility; and~~
~~3. 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.~~

~~K~~G. Beginning ~~March 31, 2013~~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. ~~identified in the most recently submitted Best Management Practices Program General Permit Record Form.~~ 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. ~~A commercial animal operator shall maintain a record demonstrating compliance with this Section for three years.~~

~~L~~H. A person may develop different practices not contained in subsection (B), (~~E~~C), (~~F~~D), or (~~G~~E), ~~or (H)~~ that reduce $PM_{~~10~~}$ and may submit such practices that are proven effective through on-~~farm~~ operation demonstration trials to the Committee. The new best management practices shall not become effective unless ~~approved~~ submitted as described in A.R.S. § 49-457(L).

~~M~~I. The Director shall not assess a fee to a commercial animal operator for coverage under the agricultural $PM_{~~10~~}$ general permit.

~~N~~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.

~~O~~K. The Director shall document noncompliance with this Section before issuing a compliance order.

~~P~~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).

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
   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).

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 category 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 2 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,
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.

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.

F. 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.

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 3-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 3-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 acknowledgement that water was applied on the day of a high risk day as predicted by the Pinal County Dust Control Forecast.

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 subsection (D), (E), (F), or (G) that reduce PM and may sub-

mit 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).

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(I), (J), and (K).

R18-2-612. Definitions for ~~R18-2-613~~ R18-2-612.01

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 PM_{10} 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 PM_{10} 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.~~
19. ~~"Limited activity during a high-wind event" means performing no tillage or soil preparation activity when the measured wind speed at six 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 PM_{10}.~~
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 PM_{10} within the Yuma PM_{10} 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 PM_{10}.~~
~~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 PM_{10} nonattainment area" means the Yuma PM_{10} planning area as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210.~~

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 used 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 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 PM_{10} 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 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 § 49-457(P)(1)(f) and A.R.S. § 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 PM_{10} 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).

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,
   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 of the 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; 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 3-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 3-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 subsection (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).

R18-2-613. ~~Yuma PM_{10} Nonattainment Area; Agricultural Best Management Practices~~ Definitions for R18-2-613.01

~~**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 PM_{10} 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 PM_{10} 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.~~

~~**G.** A commercial farmer shall implement at least one of the following best management practices to reduce PM_{10} 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 PM_{10}. A person may submit practices that are proven effective through on-farm 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.~~

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 PM_{10} 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 PM_{10} 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.
19. "Limited activity during a high-wind event" means performing no tillage or soil preparation activity when the measured wind speed at six 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 PM_{10}.
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 PM_{10} within the Yuma PM_{10} 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 PM_{10}.
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 PM_{10} nonattainment area" means the Yuma PM_{10} planning area as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210.

R18-2-613.01. Yuma PM_{10} 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 PM_{10} 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 PM_{10} 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.

G. A commercial farmer shall implement at least one of the following best management practices to reduce PM_{10} 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 PM_{10}. 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.

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 July 1, 2006, 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.

~~1.~~ **A.** 40 CFR 50;
~~2.~~ **B.** 40 CFR 50, Appendices A through N;
~~3.~~ **C.** 40 CFR 51, Appendix M, Section IV of Appendix S, and Appendix W;
~~4.~~ **D.** 40 CFR 52, Appendices D and E;
~~5.~~ **E.** 40 CFR 53;
~~6.~~ **F.** 40 CFR 58;
~~7.~~ **G.** 40 CFR 58, all appendices;
~~8.~~ **H.** 40 CFR 60, all appendices;
~~9.~~ **I.** 40 CFR 61, all appendices;
~~10.~~ **J.** 40 CFR 63, all appendices;
~~11.~~ **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 one 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.
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.
   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.
5. 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.)
6. 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.
7. 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.
8. 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.
9. Step 9: Examine Results. If the average silt loading is less than 0.33 oz/ft&sup2, the surface is STABLE. If the average silt loading is greater than or equal to 0.33 oz/ft&sup2, 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.

10. Independent Laboratory Analysis: You may choose to collect three 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.

TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

ARTICLE 4. SALES

Section
R12-5-405. Evidence of Taxes and Assessments Being Paid; Extension of Time to Pay

ARTICLE 4. SALES

R12-5-405. Evidence of Taxes and Assessments Being Paid; Extension of Time to Pay

A. ~~Receipt of taxes and/or assessments having been paid, for the current year must accompany~~ A holder of a Certificate of Purchase shall include, with the annual payments of principal and interest for ~~a~~ the certificate of purchase, proof that taxes and any other assessments have been paid for the current year.

B. ~~No extension of time will be granted for the payment of annual installments of principal on a Certificate of Purchase until current interest on unpaid principal balance has been paid and evidence of taxes and/or assessments having been paid is submitted to the Department.~~ An extension of time to pay an annual installment of principal or interest shall be made in accordance with R12-5-102(B).

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL

[R07-393]

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R18-2-210	Amend
R18-2-333	Amend
R18-2-901	Amend
R18-2-902	Amend
R18-2-1101	Amend
R18-2-1102	Amend
Appendix 2	Amend

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

Authorizing statutes: A.R.S. §§ 49-104(A)(10) and 49-404(A)

Implementing statutes: A.R.S. § 49-425(A)

3. The effective date of the rules:

January 5, 2008

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

Notice of Rulemaking Docket Opening: 13 A.A.R. 312, February 9, 2007

Notice of Proposed Rulemaking: 13 A.A.R. 1617, May 11, 2007

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

Name: Carrie Bojda

Address: ADEQ, Air Quality Planning Section
1110 W. Washington St.
Phoenix, AZ 85007

Telephone: (602) 771-4210 (Any ADEQ number may be reached in-state by dialing 1-800-234-5677, and asking for that extension.)

Fax: (602) 771-2366

E-mail: cb7@azdeq.gov

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

Summary. The Arizona Department of Environmental Quality (ADEQ) is adopting new and updated incorporations by reference of the following federal regulations in state rules: New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), Acid Rain, and other parts of Title 40 Code of Federal Regulations (CFR). The federal regulations would be incorporated as of July 1, 2006.

In addition to the incorporations by reference listed above, ADEQ is also making technical changes to rules in Articles 9, 11, and Appendix 2. These technical changes include updating the mailing address used in R18-2-902(B)(1) and R18-2-1102(B), adding the phrases "as an applicable requirement" and "as applicable requirements" to the incorporations by reference at R18-2-210 and Appendix 2, respectively, and improving the clarity and consistency of language used in Appendix 2.

Acid Rain. Federal Regulations already incorporated by reference from Title 40 CFR Parts 72, 74, 75, and 76, have been updated from July 1, 2004, to July 1, 2006, at R18-2-333. There was one major rulemaking promulgated by the Environmental Protection Agency (EPA) amending federal acid rain rules. It was the Clean Air Interstate Rule (CAIR) promulgated on May 12, 2005 (70 FR 25162). ADEQ is obligated under state and federal law to incorporate federal acid rain requirements in the permits issued by ADEQ. (See R18-2-306(A)(2) and 40 CFR 70.6(a)(1)).

NSPS and NESHAP Regulations. Federal Regulations already incorporated by reference from Title 40 CFR Parts 60, 61, and 63, have been updated from July 1, 2004, to July 1, 2006, at R18-2-901, R18-2-1101(A), and R18-2-1101(B). As explained further below, this includes new subparts and significantly revised subparts in Title 40 CFR Parts 60 and 63. Only minor and technical changes were made to Title 40 CFR Part 61.

Appendix 2. The provisions in Appendix 2 have been updated from July 1, 2004, to July 1, 2006. These provisions are cited throughout 18 A.A.C. 2, but are incorporated by reference once in Appendix 2 for convenience. The phrase "as applicable requirements" has also been added to the incorporation by reference to improve the clarity and consistency of language.

R18-2-210. The provisions in R18-2-210 have been updated from July 1, 2004, to July 1, 2006. The phrase "as an applicable requirement" has also been added to the incorporation by reference to improve the clarity and consistency of language. R18-2-210 incorporates by reference area attainment status designations for Arizona approved or designated by EPA pursuant to section 107 of the CAA.

ADEQ's intention in updating all of the incorporations by reference is to continue its delegated authority from EPA to implement and enforce NSPS, NESHAP, and acid rain programs in Arizona.

Descriptions of new federal subparts recently incorporated into Arizona's rules and significantly revised subparts, taken from EPA's Notices of Final Rulemakings appear below.

Federal Regulations Proposed to be Incorporated.

NSPS - 40 CFR PART 60

SUBPARTS ADDED:

Title 40 CFR 60 Subpart EEEE – Standards of Performance for New Stationary Sources: Other Solid Waste Incineration Units [Added at 70 FR 74870; 12/16/05]. EPA is promulgating new source performance standards (NSPS) for new "other" solid waste incineration units (OSWI). A source is subject to the NSPS if construction began on the incineration unit after December 9, 2004. The final rule for OSWI fulfills the requirements of sections 111 and 129 of the CAA. Under CAA section 111, NSPS must be developed for new sources that cause or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. The final rule, which addresses only the incineration of nonhazardous solid wastes, will protect public health by reducing exposure to air pollution.

Title 40 CFR 60 Subpart FFFF – Standards of Performance for Existing Sources: Other Solid Waste Incineration Units [Added at 70 FR 74870; 12/16/05]. EPA is promulgating emission guidelines for existing "other" solid waste incineration units (OSWI). A source will be subject to the emission guidelines if construction began on an incineration unit on or before December 9, 2004. The final rule for OSWI units fulfills the requirements of sections 111 and 129 which require EPA to promulgate emission guidelines for solid waste incineration units. The final rule, which addresses only the incineration of nonhazardous solid wastes, will protect public health by reducing exposure to air pollution.

SUBPARTS SIGNIFICANTLY REVISED:

Title 40 CFR 60 Subpart Da - Standards of Performance for Electric Utility Steam Generating Units for which Construction is Commenced After September 18, 1978 [Amended at 70 FR 51266; 08/30/05]. This action corrects and clarifies certain text of the final rule 70 FR 28606; 05/18/05. These corrections do not affect the substance of the action, nor do they change the rights or obligations of any party. Rather, this action merely corrects certain section designations to eliminate duplication with other rules.

[Amended at 71 FR 9866; 02/27/06]. This amendment revises the existing standards for PM emissions by reducing the numerical emission limits for both utility and industrial-commercial-institutional steam generating units and revises the existing standards for NO_x emissions by reducing the numerical emission limits for utility steam generating units. The amendments also revise the standards for SO_2 emissions for both electric utility and industrial-commercial-institutional steam generating units. The numerical standard for electric utility steam generating units has been reduced and the maximum percent reduction requirement has been increased. A numerical standard has been added for units presently subject to the NSPS and new industrial-commercial-institutional steam generating units and the maximum percent reduction requirement for new units has been increased. Both utility and industrial steam generating units can either meet a numerical limit or demonstrate a percent reduction. Several technical clarifications and compliance alternatives have been added to the existing provisions of the current rules. See also Subparts Db and Dc.

[Amended at 71 FR 33388; 06/09/06]. This action's purpose is to advise that revisions will not be made to the March 29, 2005, final rule entitled "Revision of December 2000 Regulatory Finding on the Emissions of Hazardous Air Pollutants From Electric Utility Steam Generating Units and the Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units from the Section 112(c) List," other than explaining in more detail what is meant by the effectiveness element in the term "necessary." A final decision is also being made regarding reconsideration of certain issues in the May 18, 2005, final rule entitled "Standards of Performance for New and Existing Utility Steam Generating Units" (CAMR). The only two substantive changes being made to CAMR involve revisions to the state mercury (Hg) allocations, and to the new source performance standards. Regulatory text is also being finalized that clarifies the applicability of CAMR to municipal waste combustors (MWC) and certain industrial boilers. See also Subparts Db and HHHH.

Title 40 CFR 60 Subpart Db – Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units [Amended at 71 FR 9866; 02/27/06]. This amendment revises the existing standards for PM emissions by reducing the numerical emission limits for both utility and industrial-commercial-institutional steam generating units and revises the existing standards for NO_x emissions by reducing the numerical emission limits for utility steam generating units. The amendments also revise the standards for SO_2 emissions for both electric utility and industrial-commercial-institutional steam generating units. The numerical standard for electric utility steam generating units has been reduced and the maximum percent reduction requirement has been increased. A numerical standard has been added for units presently subject to the NSPS and new industrial-commercial-institutional steam generating units and the maximum percent reduction requirement for new units has been increased. Both utility and industrial steam generating units can either meet a numerical limit or demonstrate a percent reduction. Several technical clarifications and compliance alternatives have been added to the existing provisions of the current rules. See also Subparts Da and Dc.

[Amended at 71 FR 33388; 06/09/06]. This action's purpose is to advise that revisions will not be made to the March 29, 2005, final rule entitled "Revision of December 2000 Regulatory Finding on the Emissions of Hazardous Air Pollutants From Electric Utility Steam Generating Units and the Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units from the Section 112(c) List," other than explaining in more detail what is meant by the effectiveness element in the term "necessary." A final decision is also being made regarding reconsideration of certain issues in the May 18, 2005, final rule entitled "Standards of Performance for New and Existing Utility Steam Generating Units" (CAMR). The only two substantive changes being made to CAMR involve revisions to the state mercury (Hg) allocations, and to the new source performance standards. Regulatory text is also being finalized that clarifies the applicability of CAMR to municipal waste combustors (MWC) and certain industrial boilers. See also Subparts Da and HHHH.

Title 40 CFR 60 Subpart Dc – Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units [Amended at 71 FR 9866; 02/27/06]. This amendment revises the existing standards for PM emissions by reducing the numerical emission limits for both utility and industrial-commercial-institutional steam generating units and revises the existing standards for NO_x emissions by reducing the numerical emission limits for utility steam generating units. The amendments also revise the standards for SO_2 emissions for both electric utility and industrial-commercial-institutional steam generating units. The numerical standard for electric utility steam generating units has been reduced and the maximum percent reduction requirement has been increased. A numerical standard has been added for units presently subject to the NSPS and new industrial-commercial-institutional steam generating units and the maximum percent reduction requirement for new units has been increased. Both utility and industrial steam generating units can either meet a numerical limit or demonstrate a percent reduction. Several technical clarifications and compliance alternatives have been added to the existing provisions of the current rules. See also Subparts Da and Db.

Title 40 CFR Subpart 60 Eb – Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Large Municipal Waste Combustors [Amended at 71 FR 27324; 05/10/06]. This action promulgated amendments to the air emission standards for existing and new large Municipal Waste Combustors (MWC) units. For existing MWC units, the goal of this action is to amend the standards to reflect the actual performance levels being achieved by existing MWC units. For new MWC units, the goal of this action is to amend the standard to reflect the performance level achievable by MWC units constructed in the future. Other technical improvements are also being made to the standards for MWC units.

Title 40 CFR 60 Subpart AA - Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and on or Before August 17, 1983 [Amended at 70 FR 8523; 02/22/05]. This action pro-

mulgated amendments to the new source performance standards for electric arc furnaces constructed after October 21, 1974, and on or before August 17, 1983, and the new source performance standards for electric arc furnaces constructed after August 17, 1983. The final amendments added alternative requirements for monitoring emissions from furnace exhausts and made minor editorial corrections.

Title 40 CFR 60 Subpart AAa - Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983 [Amended at 70 FR 8523; 02/22/05]. This action promulgated amendments to the new source performance standards for electric arc furnaces constructed after October 21, 1974, and on or before August 17, 1983, and the new source performance standards for electric arc furnaces constructed after August 17, 1983. The final amendments added alternative requirements for monitoring emissions from furnace exhausts and made minor editorial corrections.

Title 40 CFR 60 Subpart GG - Standards of Performance for Stationary Gas Turbines [Amended at 69 FR 41346; 07/08/04]. This action promulgated amendments to several sections of the standards of performance for stationary gas turbines in 40 CFR Part 60, subpart GG. The amendments codified several alternative testing and monitoring procedures that have routinely been approved by EPA. The amendments also reflect changes in nitrogen oxides (NOX) emission control technologies and turbine design since the standards were promulgated.

[Amended at 71 FR 9453; 02/24/06]. This action promulgates final action to revise certain portions of the standards of performance for stationary gas turbines. Direct final action is being taken to revise the standards to clarify that EPA is not imposing new requirements for turbines constructed after 1977. Owners and operators of existing and new turbines may use monitoring that meets the pre-existing monitoring requirements. In addition, EPA has described a number of acceptable compliance monitoring options that owners and operators may elect to use for these units.

Title 40 CFR 60 Subpart CCCC – Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units [Amended at 70 FR 55568; 09/22/2005]. This action promulgates amendments to the standards of performance for commercial and industrial solid waste incineration units in 40 CFR Part 60, subpart CCCC. The EPA has completed its reconsideration of certain regulatory definitions that determine the type of sources subject to the EPA's new source performance standards (NSPS) and emission guidelines (EG) for commercial and industrial solid waste incineration (CISWI) units under section 129 of the CAA. With this action, EPA is promulgating revised definitions for the terms "solid waste," "commercial or industrial waste," and "commercial and industrial solid waste incineration unit." The final CISWI definitions of these terms promulgated today are consistent with EPA's February 2004 reconsideration proposal in that EPA will continue to identify CISWI units based on whether such units combust waste without energy recovery. However, the revised definitions promulgated today do not include certain regulatory language proposed in February 2004 to include units with only waste heat recovery in the CISWI source category.

Title 40 CFR 60 Appendix A – Update of Continuous Instrumental Test Methods [Amended at 71 FR 28082; 05/15/06]. This document updates five instrumental test methods that are used to measure air pollutant emissions from stationary sources. These amendments are finalized in this document and reflect changes to the proposal to accommodate public comments. This action is made to improve the methods by simplifying, harmonizing, and updating their procedures. A large number of industries are already subject to provisions that require the use of these methods.

NESHAP - 40 CFR PART 61

SUBPARTS ADDED: None

SUBPARTS SIGNIFICANTLY REVISED: None

NESHAP - 40 CFR PART 63

SUBPARTS ADDED:

Title 40 CFR 63 Subpart DDDD - National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products [Added at 69 FR 45944; 07/30/04]. This action promulgated a NESHAP for the plywood and composite wood products (PCWP) source category under the CAA. The EPA has determined that the PCWP source category contains major sources of hazardous air pollutants (HAP), including, but not limited to, acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde. This action will implement section 112(d) of the CAA by requiring all major sources subject to the final rule to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). The final rule will reduce national HAP emissions from the PCWP source category by approximately 5,900 to 9,900 megagrams per year (Mg/yr) (6,600 to 11,000 tons per year (tons/yr)). In addition, the final rule will reduce emissions of volatile organic compounds (VOC) by 13,000 to 25,000 Mg/yr (14,000 to 27,000 tons/yr). The EPA is also amending the effluent limitations, guidelines and standards for the timber products processing point source category (veneer, plywood, dry process hardboard, particleboard manufacturing subcategories).

Title 40 CFR 63 Subpart DDDDD - National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters [Added at 69 FR 55218; 09/13/04]. EPA promulgated NESHAP for industrial, commercial, and institutional boilers and process heaters in this action. The EPA identified industrial, commercial and institutional boilers and process heaters as major sources of HAP emissions. The final rule implements section 112(d) of the CAA by requiring all major sources to meet HAP emissions standards reflecting the

application of MACT. EPA expects the final rule to reduce national HAP emissions by 50,600 to 58,000 tpy. HAPs emitted by facilities in the boiler and process heater source category include arsenic, cadmium, chromium, hydrogen chloride (HCl), hydrogen fluoride, lead, manganese, mercury, nickel, and various organic HAPs. The final rule contains numerous compliance provisions including health-based compliance alternatives for the hydrogen chloride and total selected metals emission limits.

SUBPARTS SIGNIFICANTLY REVISED:

Title 40 CFR 63 Subpart A – National Emission Standards for Hazardous Air Pollutants: General Provisions [Amended at 71 FR 20446; 04/20/06]. This action promulgates amendments to certain aspects of startup, shutdown and malfunction (SSM) requirements affecting sources subject to the NESHAPs in response to a July 29, 2003, petition to reconsider certain aspects of the amendments to the NESHAP General Provisions published on May 30, 2003.

Title 40 CFR 63 Subpart B – National Emission Standards for Hazardous Air Pollutants: Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j) [Amended at 70 FR 39662; 07/11/05]. Table 1 to subpart B of part 63 is amended to reflect the revised deadlines in a recently amended consent decree. The final rule amendment (and amended consent decree) relates to boilers and hydrochloric acid production furnaces that burn hazardous waste.

Title 40 CFR 63 Subpart C - List of Hazardous Air Pollutants, Petitions Process, Lesser Quantity Designations, Source Category List [Amended at 70 FR 75047; 12/19/05]. The compound methyl ethyl ketone (MEK) is being removed from the list of HAPs in response to a petition submitted by the Ketones Panel of the American Chemistry Council on behalf of the MEK producers and consumers. Based on available information, concerning the potential hazards of and projected exposure to MEK, the EPA has determined that there are adequate data on the health and environmental effects of MEK to determine that emissions, ambient concentrations, bioaccumulation, or deposition of the substance may not reasonably be anticipated to cause adverse effects to human health or adverse environmental effects.

Title 40 CFR 63 Subpart L - National Emission Standards for Coke Oven Batteries [Amended at 70 FR 19992; 04/15/05]. On October 27, 1993 (58 FR 57898), pursuant to section 112 of the CAA, the EPA issued technology-based national emission standards to control HAP emitted by coke oven batteries. The April 15, 2005, action, amends the standards to address residual risks under section 112(f) and the eight-year review requirements of section 112(d)(6).

Title 40 CFR 63 Subpart M – National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities [Amended at 70 FR 75320; 12/19/05]. This action is to finalize permanent exemptions from the title V operating permit program for five categories of nonmajor (area) sources that are subject to the NESHAPs. The five source categories are dry cleaners, halogenated solvent degreasers, chrome electroplaters, ethylene oxide (EO) sterilizers and secondary aluminum smelters. A sixth category, area sources subject to NESHAP for secondary lead smelters, did not have a finding of being exempt. See also Subparts N, O, T, RRR, and X.

Title 40 CFR 63 Subpart N - National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks. [Amended at 69 FR 42885; 07/19/04]. On January 25, 1995, the EPA promulgated national emission standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks under section 112 of the CAA. On June 5, 2002, the EPA proposed amendments to the rule. The July 19, 2004, action, promulgated amendments to the emission limits, definitions, compliance provisions and performance test requirements in the standards for chromium emissions from hard and decorative chromium electroplating and anodizing tanks.

[Amended at 70 FR 75320; 12/19/05]. This action is to finalize permanent exemptions from the title V operating permit program for five categories of nonmajor (area) sources that are subject to the NESHAPs. The five source categories are dry cleaners, halogenated solvent degreasers, chrome electroplaters, ethylene oxide (EO) sterilizers and secondary aluminum smelters. A sixth category, area sources subject to NESHAP for secondary lead smelters, was not found to be exempt. See also Subparts M, O, T, RRR, and X.

Title 40 CFR 63 Subpart O – Ethylene Oxide Emissions Standards for Sterilization Facilities [Amended at 70 FR 75320; 12/19/05]. This action is to finalize permanent exemptions from the title V operating permit program for five categories of nonmajor (area) sources that are subject to the NESHAPs. The five source categories are dry cleaners, halogenated solvent degreasers, chrome electroplaters, ethylene oxide (EO) sterilizers and secondary aluminum smelters. A sixth category, area sources subject to NESHAP for secondary lead smelters, was not found to be exempt. See also Subparts M, N, T, RRR, and X.

Title 40 CFR 63 Subpart Q – National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers [Amended at 71 FR 17729; 04/07/06]. On September 8, 1994, the EPA promulgated NESHAPs for industrial process cooling towers. The rule prohibits the use of chromium-based water treatment chemicals that are known or suspected to cause cancer or have a serious health or environmental effect.

Section 112(f)(2) of the CAA directs EPA to assess the risk remaining (residual risk) after the application of NESHAPs and to promulgate more stringent standards, if warranted, to provide ample margin of safety to protect public health or prevent adverse environmental effect. Also, section 112(d)(6) of the CAA requires EPA to review and revise the standards, as necessary at least every eight years, taking into account developments in practices, processes and

control technologies. On October 25, 2005, based on the findings from EPA's residual risk and technology review, EPA proposed no further action to revise the standards and requested public comment. Today's final action amends the applicability section of the rule in response to public comments received on the proposed action. The final amendment provides that sources that are operated with chromium-based water treatment chemicals are subject to this standard; other industrial process cooling towers are not covered.

Title 40 CFR 63 Subpart T – National Emission Standards for Halogenated Solvent Cleaning [Amended at 70 FR 75320; 12/19/05]. This action is to finalize permanent exemptions from the title V operating permit program for five categories of nonmajor (area) sources that are subject to the NESHAPs. The five source categories are dry cleaners, halogenated solvent degreasers, chrome electroplaters, ethylene oxide (EO) sterilizers and secondary aluminum smelters. A sixth category, area sources subject to NESHAP for secondary lead smelters, was not found to be exempt. See also Subparts M, N, O, RRR, and X.

Title 40 CFR 63 Subpart X – National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting [Amended at 70 FR 75320; 12/19/05]. This action is to finalize permanent exemptions from the title V operating permit program for five categories of nonmajor (area) sources that are subject to the NESHAPs. The five source categories are dry cleaners, halogenated solvent degreasers, chrome electroplaters, ethylene oxide (EO) sterilizers and secondary aluminum smelters. A sixth category, area sources subject to NESHAP for secondary lead smelters, was not found to be exempt. See also Subparts M, N, O, T, and RRR.

Title 40 CFR 63 Subpart KK – National Emission Standards for the Printing and Publishing Industry [Amended at 71 FR 29792; 05/24/06]. EPA is taking direct and final action on amendments to the national emission standards for HAPs (NESHAP) for the printing and publishing industry, which were promulgated on May 30, 1996, under the authority of section 112 of the CAA. The direct final rule amendments amend specific provisions in the Printing and Publishing Industry NESHAP to resolve issues and questions raised after promulgation of the final rule and to correct errors in the regulatory text. This action also makes direct final rule amendments to the Paper and Other Web Coating NESHAP and the Printing, Coating, and Dyeing of Fabric and Other Textiles NESHAP to clarify the interaction between these rules and the Printing and Publishing Industry NESHAP. See also Subparts JJJJ and OOOO.

Title 40 CFR 63 Part LL – National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants [Amended at 70 FR 66280; 11/02/05]. The amendments to the national emission standards for HAPs (NESHAP) for primary aluminum reduction plants will revise the emission limit for polycyclic organic matter (POM) applicable to one potline subcategory. The amendments will revise the compliance provisions to clarify the dates by which all plants must meet the NESHAP requirements and to specify the time allowed to demonstrate the initial compliance for a new or reconstructed potline, anode bake furnace or pitch storage tank as well as an existing potline or anode bake furnace that has been shutdown and subsequently restarted. These amendments are being made to reduce compliance uncertainties and improve understanding of the NESHAP requirements.

Title 40 CFR 63 Subpart EEE – National Emission Standards for Hazardous Air Pollutants: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors [Amended at 70 FR 59402; 10/12/05]. This action finalizes national emission standards (NESHAP) for HAPs for hazardous waste combustors (HWCs): hazardous waste burning incinerators, cement kilns, lightweight aggregate kilns, industrial/commercial/institutional boilers and process heaters, and hydrochloric acid production furnaces. EPA has identified HWCs as major sources of HAP emissions. These standards implement section 112(d) of the CAA by requiring hazardous waste combustors to meet HAP emission standards reflecting the performance of the maximum achievable control technology (MACT). This action also presents the decision of the EPA regarding the February 28, 2002, petition for rulemaking submitted by the Cement Kiln Recycling Coalition, relating to EPA's implementation of the so-called omnibus permitting authority under section 3005(c) of the Resource Conservation and Recovery Act (RCRA).

Title 40 CFR 63 Subpart RRR – National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production [Amended at 70 FR 75320; 12/19/05]. This action is to finalize permanent exemptions from the title V operating permit program for five categories of nonmajor (area) sources that are subject to the national emission standards for HAPs (NESHAP). The five source categories are dry cleaners, halogenated solvent degreasers, chrome electroplaters, ethylene oxide (EO) sterilizers and secondary aluminum smelters. A sixth category, area sources subject to NESHAP for secondary lead smelters, was not found to be exempt. See also Subparts M, N, O, T, and X

Title 40 CFR 63 Subpart UUU - National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units [Amended at 70 FR 6930; 02/09/05]. On April 11, 2002, pursuant to section 112 of the CAA, the EPA issued national emission standards to control HAPs emitted from catalytic cracking units, catalytic reforming units, and sulfur recovery units at petroleum refineries. The February 9, 2005, action promulgated amendments to several sections of the existing standards. The amendments changed the affected source designations and add new compliance options for catalytic reforming units that use different types of emission control systems, new monitoring alternatives for catalytic cracking units and catalytic reforming units, and a new procedure for determining the metal or total chloride concentration on catalyst particles. The amendments also defer technical requirements for most continuous parameter monitoring systems, clarify testing and monitoring requirements, and make editorial corrections.

Title 40 CFR 63 Subpart DDDD – National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products; List of Hazardous Air Pollutants, Lesser Quantity Designations, Source Category List [Amended at 71 FR 8342; 02/16/06]. On July 30, 2004, EPA promulgated national emission standards for HAPs (NESHAP) for the plywood and composite wood products (PCWP) source category. The Administrator subsequently received a petition for the reconsideration of certain provisions in the final rule. In addition, following promulgation, stakeholders expressed concern with some of the final rule requirements including definitions, the emissions testing procedures required for facilities demonstrating eligibility for the low-risk subcategory stack height calculations to be used in low-risk subcategory eligibility demonstrations, and permitting and timing issues associated with the low risk subcategory eligibility demonstrations. In two separate Federal Register notices published on July 29, 2005, EPA announced reconsideration of certain aspects of the final rule and proposed amendments to the final rule. This action promulgates amendments to the PCWP NESHAP and provides conclusions following the reconsideration process.

Title 40 CFR 63 Subpart FFFF – National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing [Amended at 70 FR 38554; 07/01/05]. This action amends the NESHAP for miscellaneous organic chemical manufacturing under section 112 of the CAA by clarifying the compliance requirements for flares and the alternative standard, which limits the outlet concentration to 20 parts per million. The NESHAP is amended by extending the vapor balancing alternative to cover transfers from barges to storage tanks, amending the procedures for correcting measured concentrations at the outlet of combustion devices to correct for dilution by supplemental gas and clarifying the signature requirements for the notification of compliance status report. The direct final rule amendments also specify requirements for effluent from control devices, clarify the definition of the term continuous process vent, and correct several reference and drafting errors.

[Amended at 70 FR 51270; 08/30/05]. EPA is withdrawing parts of the direct final rule because adverse comments were received. Adverse comments were received from several commenters regarding requirements for effluent from control devices. Commenters also pointed out erroneous changes made to Table 1 of Subpart FFFF of part 63. Accordingly, the amendments to 40 CFR 63.2485(c)(4) and Table 1 of Subpart FFFF of part 63 are being withdrawn as of August 30, 2005. The provisions for which adverse comments were not received became effective on August 30, 2005.

Title 40 CFR 63 Subpart JJJJ – National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating [Amended at 71 FR 29792; 05/24/06]. EPA is taking direct and final action on amendments to the NESHAPs for the printing and publishing industry that were promulgated on May 30, 1996, under the authority of section 112 of the CAA. The direct final rule amendments amend specific provisions in the Printing and Publishing Industry NESHAP to resolve issues and questions raised after promulgation of the final rule and to correct errors in the regulatory text. This action also makes direct final rule amendments to the Paper and Other Web Coating NESHAP and the Printing, Coating, and Dyeing of Fabric and Other Textiles NESHAP to clarify the interaction between these rules and the Printing and Publishing Industry NESHAP. See also Subparts KK and OOOO.

Title 40 CFR 63 Subpart KKKK – National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans [Amended at 71 FR 1378; 01/06/06]. Direct final action is being taken on amendments to the NESHAPs for surface coating of metal cans, which were promulgated on November 13, 2003, under section 112 of the CAA. The direct final rule amendments correct errors and add clarification to sections of the rule.

Title 40 CFR 63 Subpart OOOO – National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles [Amended at 71 FR 29792; 05/24/06]. EPA is taking direct and final action on amendments to the national emission standards for HAPs (NESHAP) for the printing and publishing industry, which were promulgated on May 30, 1996, under the authority of section 112 of the CAA. The direct final rule amendments amend specific provisions in the Printing and Publishing Industry NESHAP to resolve issues and questions raised after promulgation of the final rule and to correct errors in the regulatory text. This action also makes direct final rule amendments to the Paper and Other Web Coating NESHAP and the Printing, Coating, and Dyeing of Fabric and Other Textiles NESHAP to clarify the interaction between these rules and the Printing and Publishing Industry NESHAP. See also Subparts JJJJ and KK.

Title 40 CFR 63 Subpart UUUU – National Emission Standards for Hazardous Air Pollutants: Cellulose Products Manufacturing [Amended at 70 FR 46684; 08/10/05]. The EPA is taking direct final action on amendments to the NESHAPs for cellulose products manufacturing, which were issued on June 11, 2002, under section 112 of the CAA. The amendments revise the work practice standards, general and initial compliance requirements, definitions, and General Provisions applicability, as well as correct typographical, formatting, and cross-referencing errors in the final rule. The amendments are being issued as a direct final rule because no adverse comments are expected.

Title 40 CFR 63 Subpart WWWW – National Emissions Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production [Amended at 70 FR 50118; 08/25/05]. The EPA is taking direct final action on amendments to the national emissions standards for HAPs (NESHAP) for reinforced plastic composites production which were issued April 12, 2003, under section 112 of the CAA. The direct final amendments revise compliance options for open molding, correct errors, and add clarification to sections of the rule.

Title 40 CFR 63 Subpart DDDDD - National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters [Amended at 70 FR 76918; 12/28/05]. EPA is promulgating amendments to the NESHAPs for industrial, commercial and institutional boilers and process heaters which

EPA promulgated on September 13, 2004. After promulgation of the final rule for boilers and process heaters, the Administrator received petitions for reconsideration of certain provisions in the final rule. On July 27, 2005, EPA published a notice of reconsideration and requested public comment on certain aspects of the health-based compliance alternatives. After evaluating public comment on the notice of reconsideration, EPA is retaining the health-based compliance alternatives in the final rule in substantially the same form. However, EPA is making a limited number of amendments to the final rule to improve and clarify the process for demonstrating eligibility to comply with the health-based compliance alternatives contained in the final rule.

Title 40 CFR 63 Subpart SSSSS – National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing [Amended at 71 FR 7415; 02/13/06]. The EPA is taking direct final action on the amendments to the NESHAPs for new and existing refractory products manufacturing facilities that were promulgated on April 16, 2003, under section 112(d) of the CAA. The amendments clarify testing and monitoring requirements and startup and shutdown requirements for batch processes, make certain technical corrections, and add recent changes to be consistent with the NESHAP General Provisions.

ACID RAIN - 40 CFR PART 72, 74, 75, 76

SUBPARTS ADDED:

Title 40 CFR 75 Subpart I – Mercury (Hg) Mass Emission Provisions [Added at 70 FR 28684; 05/18/05]. Within the document that finalizes the Clean Air Mercury Rule (CAMR), 70 FR 28606, Subpart I is to added part 75 to implement requirements for the applicable state or Federal Hg mass emission reduction program for new and existing coal-fired electric utility steam generating units.

SUBPARTS SIGNIFICANTLY REVISED:

Title 40 CFR 72 and 74 – Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call [Amended at 70 FR 25162; 05/12/05]. Based on state obligations to address interstate transport of pollutants under section 110(a)(2)(D) of the CAA, EPA is specifying statewide emissions reduction requirements for SO_2 and NO_x. The EPA is specifying that the emissions reductions be implemented in two stages. The first phase of NO_x reductions starts in 2009 and the first phase on SO_2 reductions starts in 2010; the second phase of reductions for both starts in 2015.

Today's action also includes model rules for multi-state cap and trade programs for annual SO_2 and NO_x emissions for $PM_{2.5}$ and seasonal NO_x emissions for ozone that states can choose to adopt to meet the required emissions reductions in a flexible and cost-effective manner.

The final Clean Air Interstate Rule, which this revision addresses, covers 28 eastern states and the District of Columbia. Air emissions in these states contribute to unhealthy levels of ground-level ozone, fine particles, or both in downwind states. Arizona does not contribute to down wind nonattainment, and, therefore, is not included in the Clean Air Interstate Rule region or the amendments made to the Clean Air Interstate Rule. However, the regulated community in Arizona must comply with the Acid Rain Program Regulations under Title IV of the CAA.

Today's action also includes revisions to the Acid Rain Program regulations under Title IV of the CAA, particularly the regulatory provisions governing the SO_2 cap and trade program. The revisions are made because they streamline the operation of the Acid Rain SO_2 cap and trade program and/or facilitate the interaction of that cap and trade program with the model SO_2 cap and trade program included in today's action. In addition, today's action provides for the NO_x SIP Call cap and trade program to be replaced by the CAIR ozone-season NO_x trading program.

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

None

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

Not applicable

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

Rule Identification

NSPS/NESHAP/Acid Rain 2006: A.A.C. Title 18, Chapter 2, Articles 2, 3, 9 and 11; Appendix 2, sections R18-2-210, R18-2-333, R18-2-901, R18-2-902, R18-2-1101, R18-2-1102, Appendix 2.

Costs

There are no additional costs to the regulated community when a state agency incorporates an already effective federal standard verbatim. The costs of compliance have already occurred, and were considered when the federal regulation was proposed and adopted. These rules impose no additional costs on the regulated community, small businesses, political subdivisions, or members of the public.

Costs to ADEQ are those that may accrue for implementation and enforcement of the new standards. Although there were some small incremental costs due to this rulemaking, ADEQ does not intend to hire any additional employees to implement or enforce these rules.

Benefits

Benefits accrue to the regulated community when a state agency incorporates a federal regulation in order to become the primary implementer of the regulation, because the state agency is closer to those being regulated and, therefore, is generally easier to contact and to work with to resolve differences, compared with the U.S. EPA, whose regional office for Arizona is in San Francisco. Local implementation also reduces travel and communication costs.

Health benefits accrue to the general public whenever enforcement of environmental laws takes place. Adverse health effects from air pollution result in a number of economic and social consequences, including:

1. Medical costs. These include personal out-of-pocket expenses of the affected individual (or family), plus costs paid by insurance or Medicare, for example.
2. Work loss. This includes lost personal income, plus lost productivity whether the individual is compensated for the time or not. For example, some individuals may perceive no income loss because they receive sick pay, but sick pay is a cost of business and reflects lost productivity.
3. Increased costs for chores and caregiving. These include special caregiving and services that are not reflected in medical costs. These costs may occur because some health effects reduce the affected individual's ability to undertake some or all normal chores, and he or she may require caregiving.
4. Other social and economic costs. These include restrictions on or reduced enjoyment of leisure activities, discomfort or inconvenience, pain and suffering, anxiety about the future, and concern and inconvenience to family members and others.

Conclusion

In conclusion, the incremental costs associated with this rule are generally low, and apply solely to ADEQ, while the air quality benefits are generally high. In addition, there are benefits to industry from being regulated by a geographically nearer government entity. There are no adverse economic impacts on political subdivisions. There are no adverse economic impacts on private businesses, their revenues or expenditures. The fact that no new employment is expected to occur has been discussed above, in the context of the impact on state agencies. There are no adverse economic impacts on small businesses, although some regulatory benefits will accrue to them. There are no economic impacts for consumers; benefits to private persons as members of the general public are discussed above in terms of enforcement. There will be no direct impact on state revenues. There are no other, less costly alternatives for achieving the goals of this rulemaking. The rules are no less stringent and no more stringent than the federal regulations on each subject.

Rule impact reduction on small businesses. A.R.S. § 41-1035 requires ADEQ to reduce the impact of a rule on small businesses by using certain methods when they are legal and feasible in meeting the statutory objectives for the rulemaking. The five listed methods are:

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

The statutory objectives which are the basis of the rulemaking. The general statutory objectives that are the basis of this rulemaking are contained in the statutory authority cited in item 2 of this preamble. The specific objectives are as follows:

1. Implement rules necessary for EPA delegation of Clean Air Act § 111 (NSPS) program to Arizona.
2. Implement rules necessary for EPA § 112(l) program delegation to Arizona (NESHAP).
3. Implement rules necessary for acid rain program delegation to ADEQ.

ADEQ has determined that there is a beneficial impact on small businesses in transferring implementation of these rules to ADEQ. In addition, for all of these objectives, ADEQ is required to adopt the federal rules without reducing stringency. ADEQ, therefore, has found that it is not legal or feasible to adopt any of the five listed methods in ways that reduce the impact of these rules on small businesses. Finally, where federal rules impact small businesses, EPA is required by both the Regulatory Flexibility Act and the Small Business Regulatory Enforcement and Fairness Act to make certain adjustments in its own rulemakings. Information related to such may be found in the individual rules described in item 6 of the preamble.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if appli-

cable):

1) The title of 40 CFR Part 63, Subpart NNNN "National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers" within "subparts significantly revised" in the preamble has been corrected to read 40 CFR Part 63, Subpart Q "National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers."
2) In R18-2-1102(C) the sentence reading "The Director shall not be delegated authority to deal with equivalency determinations that are nontransferable through Section 112(e)(3) of the Act" should be corrected and the citing of the Clean Air Act should read "Section 112(h)(3) of the Act." The citing was incorrectly written into the rule and the Notice of Proposed Rulemaking and does not apply to the General Provisions of Article 11.
3) In Appendix 2, Test Methods and Protocols, the sentence reading "These amendments are on file with the Department, and items 1-10 are also available from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington, D.C. 20402-9328," has had the language "items 1-10" stricken. That language should have been stricken in the Notice of Proposed Rulemaking.
4) Minor technical and grammatical changes in order to improve the rules' clarity, conciseness and understandability.

11. A summary of the comments made regarding the rules and the agency response to them:

Comment 1: One commenter suggested that in the descriptions of "subparts significantly revised" within 40 CFR Part 63, Subpart NNNN "National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers," was mislabeled as Subpart NNNN. The correct Subpart identification is 40 CFR 63 Subpart Q "National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers."

Response: ADEQ agrees with the commenter and is correcting the Subpart title from "NNNN" to "Q" within the description of 40 CFR Part 63 "subparts significantly revised" in the preamble.

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

Not applicable

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

New incorporations by reference (subparts or larger) as of 7/1/06	Location
40 CFR 60, Subparts FFFF and EEEE	R18-2-901
40 CFR 63, Subparts DDDD and DDDDD	R18-2-1101(B)
40 CFR 75, Subpart I	R18-2-333(A)
Incorporations by reference updated to 7/1/06 (may include new Sections)	Location
40 CFR 81.303	18-2-210
40 CFR 72, 74, 75, and 76	R18-2-333(A)
40 CFR 60, listed subparts and accompanying appendices	R18-2-901
40 CFR 61, listed subparts and accompanying appendices	R18-2-1101(A)
40 CFR 63, listed subparts and accompanying appendices	R18-2-1101(B)
40 CFR 50	Appendix 2
40 CFR 50, Appendices A through N	Appendix 2
40 CFR 51, Appendix M, Appendix S, Section IV, and Appendix W	Appendix 2
40 CFR 52, Appendices D and E	Appendix 2
40 CFR 53	Appendix 2
40 CFR 58	Appendix 2
40 CFR 58, all appendices	Appendix 2
40 CFR 60, all appendices	Appendix 2
40 CFR 61, all appendices	Appendix 2
40 CFR 63, all appendices	Appendix 2
40 CFR 75, all appendices	Appendix 2

14. Were these rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL

ARTICLE 2. AMBIENT AIR QUALITY STANDARDS; AREA DESIGNATIONS; CLASSIFICATIONS

Section
R18-2-210. Attainment, Nonattainment, and Unclassifiable Area Designations

ARTICLE 3. PERMITS AND PERMIT REVISIONS

Section
R18-2-333. Acid Rain

ARTICLE 9. NEW SOURCE PERFORMANCE STANDARDS

Section
R18-2-901. Standards of Performance for New Stationary Sources
R18-2-902. General Provisions

ARTICLE 11. FEDERAL HAZARDOUS AIR POLLUTANTS

Section
R18-2-1101. National Emission Standards for Hazardous Air Pollutants (NESHAPs)
R18-2-1102. General Provisions
Appendix 2. Test Methods and Protocols

ARTICLE 2. AMBIENT AIR QUALITY STANDARDS; AREA DESIGNATIONS; CLASSIFICATIONS

R18-2-210. Attainment, Nonattainment, and Unclassifiable Area Designations
40 CFR 81.303 as amended as of July 1, ~~2004~~ 2006 (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, Mail Stop SSOP, Washington, D.C. 20402-9328.

ARTICLE 3. PERMITS AND PERMIT REVISIONS

R18-2-333. Acid Rain

A. 40 CFR 72, 74, 75 and 76 and all accompanying appendices, adopted as of July 1, ~~2004~~ 2006, (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, Mail Stop SSOP, 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 portions of this Title, the regulations incorporated in this Section apply and take precedence.

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 July 1, ~~2004~~ 2006, 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, Mail Stop SSOP, 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 H - Standards of Performance for Sulfuric Acid Plants.
13. Subpart I - Standards of Performance for Hot Mix Asphalt Facilities.
14. Subpart J - Standards of Performance for Petroleum Refineries.
15. 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.
16. 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.
17. 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.
18. Subpart L - Standards of Performance for Secondary Lead Smelters.
19. Subpart M - Standards of Performance for Secondary Brass and Bronze Production Plants.
20. Subpart N - Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.
21. Subpart Na - Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.
22. Subpart O - Standards of Performance for Sewage Treatment Plants.
23. Subpart P - Standards of Performance for Primary Copper Smelters.
24. Subpart Q - Standards of Performance for Primary Zinc Smelters.
25. Subpart R - Standards of Performance for Primary Lead Smelters.
26. Subpart S - Standards of Performance for Primary Aluminum Reduction Plants.
27. Subpart T - Standards of Performance for Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants.
28. Subpart U - Standards of Performance for Phosphate Fertilizer Industry: Superphosphoric Acid Plants.
29. Subpart V - Standards of Performance for Phosphate Fertilizer Industry: Diammonium Phosphate Plants.
30. Subpart W - Standards of Performance for Phosphate Fertilizer Industry: Triple Superphosphate Plants.
31. Subpart X - Standards of Performance for Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.
32. Subpart Y - Standards of Performance for Coal Preparation Plants.
33. Subpart Z - Standards of Performance for Ferroalloy Production Facilities.
34. Subpart AA - Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983.
35. Subpart AAa - Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.
36. Subpart BB - Standards of Performance for Kraft Pulp Mills.
37. Subpart CC - Standards of Performance for Glass Manufacturing Plants.
38. Subpart DD - Standards of Performance for Grain Elevators.
39. Subpart EE - Standards of Performance for Surface Coating of Metal Furniture.
40. Subpart GG - Standards of Performance for Stationary Gas Turbines.
41. Subpart HH - Standards of Performance for Lime Manufacturing Plants.
42. Subpart KK - Standards of Performance for Lead-Acid Battery Manufacturing Plants.
43. Subpart LL - Standards of Performance for Metallic Mineral Processing Plants.
44. Subpart MM - Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations.
45. Subpart NN - Standards of Performance for Phosphate Rock Plants.
46. Subpart PP - Standards of Performance for Ammonium Sulfate Manufacture.
47. Subpart QQ - Standards of Performance for Graphic Arts Industry: Publication Rotogravure Printing.
48. Subpart RR - Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations.
49. Subpart SS - Standards of Performance for Industrial Surface Coating: Large Appliances.
50. Subpart TT - Standards of Performance for Metal Coil Surface Coating.
51. Subpart UU - Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture.
52. Subpart VV - Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.
53. Subpart WW - Standards of Performance for Beverage Can Surface Coating Industry.
54. Subpart XX - Standards of Performance for Bulk Gasoline Terminals.

55. Subpart AAA - Standards of Performance for New Residential Wood Heaters.
56. Subpart BBB - Standards of Performance for Rubber Tire Manufacturing Industry.
57. Subpart DDD - Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry.
58. Subpart FFF - Standards of Performance for Flexible Vinyl and Urethane Coating and Printing.
59. Subpart GGG - Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries.
60. Subpart HHH - Standards of Performance for Synthetic Fiber Production Facilities.
61. Subpart III - Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.
62. Subpart JJJ - Standards of Performance for Petroleum Dry Cleaners.
63. Subpart KKK - Standards of Performance for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants.
64. Subpart LLL - Standards of Performance for Onshore Natural Gas Processing; SO2 Emissions.
65. Subpart NNN - Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.
66. Subpart OOO - Standards of Performance for Nonmetallic Mineral Processing Plants.
67. Subpart PPP - Standards of Performance for Wool Fiberglass Insulation Manufacturing Plants.
68. Subpart QQQ - Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems.
69. Subpart RRR - Standards of Performance for Volatile Organic Compound Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.
70. Subpart SSS - Standards of Performance for Magnetic Tape Coating Facilities.
71. Subpart TTT - Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.
72. Subpart UUU - Standards of Performance for Calciners and Dryers in Mineral Industries.
73. Subpart VVV - Standards of Performance for Polymeric Coating of Supporting Substrates Facilities.
74. Subpart WWW - Standards of Performance for Municipal Solid Waste Landfills.
75. 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.
76. 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.
77. 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.
78. Subpart FFFF - Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced On or Before December 9, 2004.

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, ~~3033 North Central Avenue~~ 1110 West Washington Street, Phoenix, Arizona ~~85012~~ 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.

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 July 1, ~~2004~~ 2006, 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, Mail Stop SSOP, Washington D.C. 20402-9328.
1. Subpart A - General Provisions.
2. Subpart C - Beryllium.
3. Subpart D - Beryllium Rocket Motor Firing.
4. Subpart E - Mercury.

5. Subpart F - Vinyl Chloride.
6. Subpart J - Equipment Leaks (Fugitive Emission Sources) of Benzene.
7. Subpart L - Benzene Emissions from Coke By-Product Recovery Plants.
8. Subpart M - Asbestos.
9. Subpart N - Inorganic Arsenic Emissions from Glass Manufacturing Plants.
10. Subpart O - Inorganic Arsenic Emissions from Primary Copper Smelters.
11. Subpart P - Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production.
12. Subpart V - Equipment Leaks (Fugitive Emission Sources).
13. Subpart Y - Benzene Emissions From Benzene Storage Vessels.
14. Subpart BB - Benzene Emissions from Benzene Transfer Operations.
15. 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 July 1, ~~2004~~ 2006, ~~or the specific date provided below,~~ 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, Mail Stop SSOP, Washington D.C. 20402-9328.

1. Subpart A - General Provisions.
2. Subpart B - Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j).
3. Subpart C - List of Hazardous Air Pollutants, Petitions Process, Lesser Quantity Designations, Source Category List~~, includes amendments adopted as of November 29, 2004~~.
4. Subpart D - Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants.
5. Subpart F - National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.
6. 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.
7. Subpart H - National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.
8. Subpart I - National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.
9. Subpart J - National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production.
10. Subpart L - National Emission Standards for Coke Oven Batteries.
11. Subpart M - National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.
12. Subpart N - National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.
13. Subpart O - Ethylene Oxide Emissions Standards for Sterilization Facilities.
14. Subpart Q - National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.
15. Subpart R - National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).
16. Subpart S - National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry.
17. Subpart T - National Emission Standards for Halogenated Solvent Cleaning.
18. Subpart U - National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.
19. Subpart W - National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production.
20. Subpart X - National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting.
21. Subpart AA - National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants.
22. Subpart BB - National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants.
23. Subpart CC - National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries.
24. Subpart DD - National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.
25. Subpart EE - National Emission Standards for Magnetic Tape Manufacturing Operations.
26. Subpart GG - National Emission Standards for Aerospace Manufacturing and Rework Facilities.
27. Subpart HH - National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities.
28. Subpart JJ - National Emission Standards for Wood Furniture Manufacturing Operations.
29. Subpart KK - National Emission Standards for the Printing and Publishing Industry.
30. Subpart LL - National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants.

31. Subpart MM - National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.
32. Subpart OO - National Emission Standards for Tanks - Level 1.
33. Subpart PP - National Emission Standards for Containers.
34. Subpart QQ - National Emission Standards for Surface Impoundments.
35. Subpart RR - National Emission Standards for Individual Drain Systems.
36. Subpart SS - National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.
37. Subpart TT - National Emission Standards for Equipment Leaks - Control Level 1.
38. Subpart UU - National Emission Standards for Equipment Leaks - Control Level 2 Standards.
39. Subpart VV - National Emission Standards for Oil-Water Separators and Organic-Water Separators.
40. Subpart WW - National Emission Standards for Storage Vessels (Tanks) - Control Level 2.
41. Subpart XX - National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.
42. Subpart YY - National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards.
43. Subpart CCC - National Emission Standards for Hazardous Air Pollutants for Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants.
44. Subpart DDD - National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production.
45. Subpart EEE - National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors.
46. Subpart GGG - National Emission Standards for Pharmaceuticals Production.
47. Subpart HHH - National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities.
48. Subpart III - National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production.
49. Subpart JJJ - National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins.
50. Subpart LLL - National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry.
51. Subpart MMM - National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.
52. Subpart NNN - National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing.
53. Subpart OOO - National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins.
54. Subpart PPP - National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production.
55. Subpart QQQ - National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting.
56. Subpart RRR - National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.
57. Subpart TTT - National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting.
58. Subpart UUU - National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.
59. Subpart VVV - National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works.
60. Subpart XXX - National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese.
61. Subpart AAAA - National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills.
62. Subpart CCCC - National Emission Standards for Hazardous Air Pollutants: Manufacture of Nutritional Yeast.
63. Subpart DDDD - National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products.
~~63.~~64. Subpart EEEE - National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline).
~~64.~~65. Subpart FFFF - National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing.
~~65.~~66. Subpart GGGG - National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production.
~~66.~~67. Subpart HHHH - National Emissions Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production.
~~67.~~68. Subpart IIII - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks.
~~68.~~69. Subpart JJJJ - National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating.
~~69.~~70. Subpart KKKK - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans.
~~70.~~71. Subpart MMMM - National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products.

~~71.~~72. Subpart NNNN - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances.
~~72.~~73. Subpart OOOO - National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles.
~~73.~~74. Subpart PPPP - National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products.
~~74.~~75. Subpart QQQQ - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products.
~~75.~~76. Subpart RRRR - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture.
~~76.~~77. Subpart SSSS - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil.
~~77.~~78. Subpart TTTT - National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations.
~~78.~~79. Subpart UUUU - National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing.
~~79.~~80. Subpart VVVV - National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing.
~~80.~~81. Subpart WWWW - National Emissions Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production.
~~81.~~82. Subpart XXXX - National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing.
~~82.~~83. Subpart YYYY - National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines.
~~83.~~84. Subpart ZZZZ - National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.
~~84.~~85. Subpart AAAAA - National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants.
~~85.~~86. Subpart BBBBB - National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing.
~~86.~~87. Subpart CCCCC - National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks.
88. Subpart DDDDD - National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters.
~~87.~~89. Subpart EEEEE - National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries.
~~88.~~90. Subpart FFFFF - National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing.
~~89.~~91. Subpart GGGGG - National Emission Standards for Hazardous Air Pollutants: Site Remediation.
~~90.~~92. Subpart HHHHH - National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing.
~~91.~~93. Subpart IIIII - National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants.
~~92.~~94. Subpart JJJJJ - National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing.
~~93.~~95. Subpart KKKKK - National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing.
~~94.~~96. Subpart LLLLL - National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing.
~~95.~~97. Subpart MMMMM - National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations.
~~96.~~98. Subpart NNNNN - National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production.
~~97.~~99. Subpart PPPPP - National Emission Standards for Hazardous Air Pollutants: Engine Test Cells/Stands.
~~98.~~100. Subpart QQQQQ - National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities.
~~99.~~101. Subpart RRRRR - National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing.
~~100.~~102. Subpart SSSSS - National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing.
~~101.~~103. Subpart TTTTT - National Emissions Standards for Hazardous Air Pollutants for Primary Magnesium Refining.

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, ~~3033 North Central Avenue~~ 1110 West Washington Street, Phoenix, Arizona ~~85012~~ 85007.

C. The Director shall not be delegated authority to deal with equivalency determinations that are nontransferable through Section ~~112(e)(3)~~ 112(h)(3) of the Act.

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Arizona Administrative REGISTER

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From the Publisher

ABOUT THIS PUBLICATION

The paper copy of the *Administrative Register* (A.A.R.) is the official publication for rules and rulemaking activity in the state of Arizona.

Rulemaking is defined in Arizona Revised Statues known as the Arizona Administrative Procedure Act (APA), A.R.S. Title 41, Chapter 6, Articles 1 through 10.

The Office of the Secretary of State does not interpret or enforce rules published in the *Arizona Administrative Register* or *Code*. Questions should be directed to the state agency responsible for the promulgation of the rule as provided in its published filing.

The *Register* is cited by volume and page number. Volumes are published by calendar year with issues published weekly. Page numbering continues in each weekly issue.

In addition, the *Register* contains the full text of the Governor's Executive Orders and Proclamations of general applicability, summaries of Attorney General opinions, notices of rules terminated by the agency, and the Governor's appointments of state officials and members of state boards and commissions.

ABOUT RULES

Rules can be: made (all new text); amended (rules on file, changing text); repealed (removing text); or renumbered (moving rules to a different Section number). Rules activity published in the *Register* includes: proposed, final, emergency, expedited, and exempt rules as defined in the APA.

Rulemakings initiated under the APA as effective on and after January 1, 1995, include the full text of the rule in the *Register*. New rules in this publication (whether proposed or made) are denoted with underlining; repealed text is stricken.

WHERE IS A "CLEAN" COPY OF THE FINAL OR EXEMPT RULE PUBLISHED IN THE *REGISTER*?

The *Arizona Administrative Code* (A.A.C) contains the codified text of rules. The A.A.C. contains rules promulgated and filed by state agencies that have been approved by the Attorney General or the Governor's Regulatory Review Council. The *Code* also contains rules exempt from the rulemaking process.

The printed *Code* is the official publication of a rule in the A.A.C. is prima facie evidence of the making, amendment, or repeal of that rule as provided by A.R.S. § 41-1012. Paper copies of rules are available by full Chapter or by subscription. The *Code* is posted online for free.

LEGAL CITATIONS AND FILING NUMBERS

On the cover: Each agency is assigned a Chapter in the *Arizona Administrative Code* under a specific Title. Titles represent broad subject areas. The Title number is listed first; with the acronym A.A.C., which stands for the *Arizona Administrative Code*; following the Chapter number and Agency name, then program name. For example, the Secretary of State has rules on rulemaking in Title 1, Chapter 1 of the *Arizona Administrative Code*. The citation for this chapter is 1 A.A.C. 1, Secretary of State, Rules and Rulemaking

Every document filed in the office is assigned a file number. This number, enclosed in brackets, is located at the top right of the published documents in the *Register*. The original filed document is available for 10 cents a copy.

Arizona Administrative REGISTER

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PUBLICATION DEADLINES
Publication dates are published in the back of the *Register*. These dates include file submittal dates with a three-week turnaround from filing to published document.

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The Office of the Secretary of State is an equal opportunity employer.

Participate in the Process

Look for the Agency Notice

Review (inspect) notices published in the *Arizona Administrative Register*. Many agencies maintain stakeholder lists and would be glad to inform you when they proposed changes to rules. Check an agency's website and its newsletters for news about notices and meetings.

Feel like a change should be made to a rule and an agency has not proposed changes? You can petition an agency to make, amend, or repeal a rule. The agency must respond to the petition. (See A.R.S. § 41-1033)

Attend a public hearing/meeting

Attend a public meeting that is being conducted by the agency on a Notice of Proposed Rulemaking. Public meetings may be listed in the Preamble of a Notice of Proposed Rulemaking or they may be published separately in the *Register*. Be prepared to speak, attend the meeting, and make an oral comment.

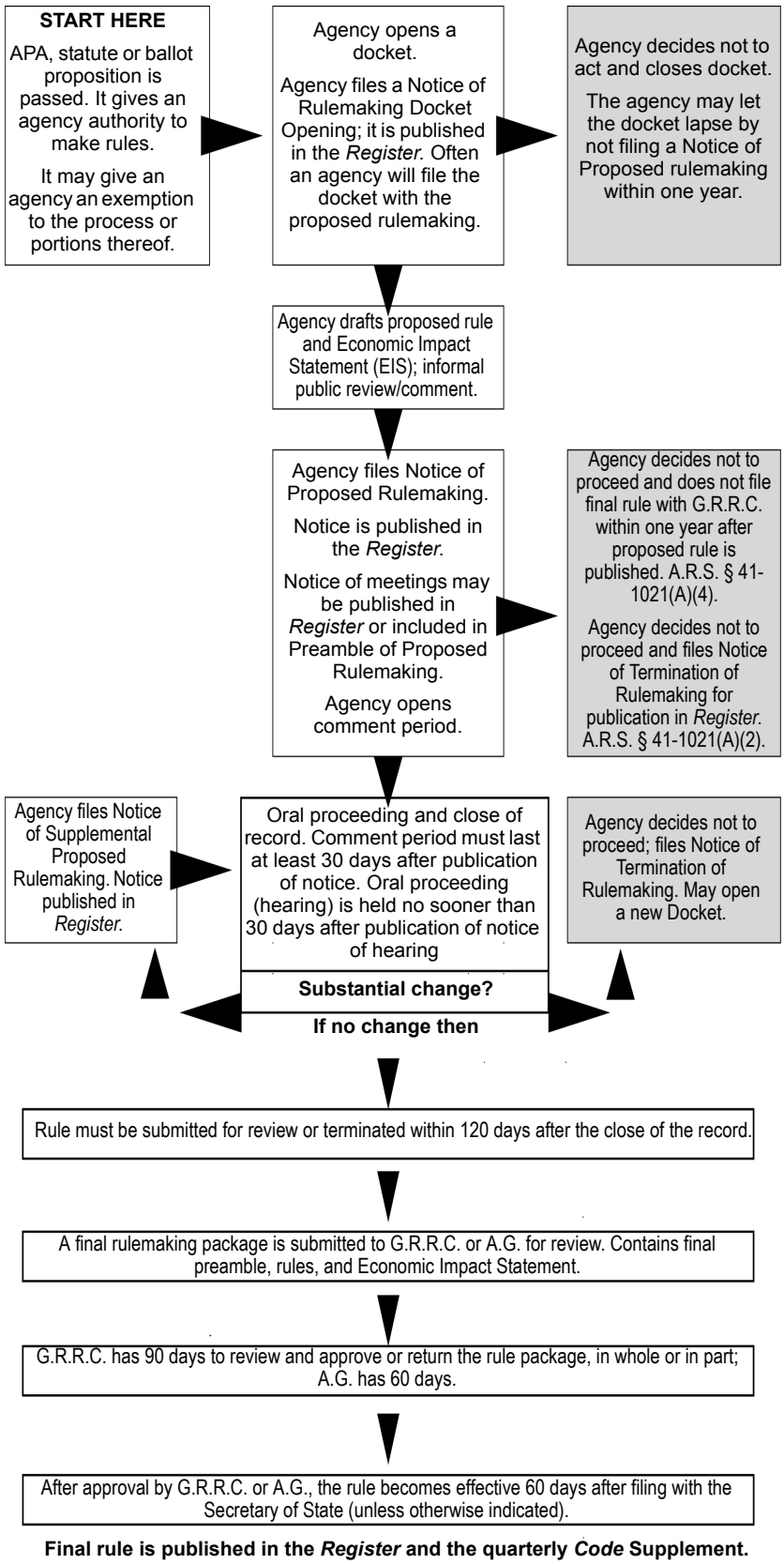
An agency may not have a public meeting scheduled on the Notice of Proposed Rulemaking. If not, you may request that the agency schedule a proceeding. This request must be put in writing within 30 days after the published Notice of Proposed Rulemaking.

Write the agency

Put your comments in writing to the agency. In order for the agency to consider your comments, the agency must receive them by the close of record. The comment must be received within the 30-day comment timeframe following the *Register* publication of the Notice of Proposed Rulemaking.

You can also submit to the Governor's Regulatory Review Council written comments that are relevant to the Council's power to review a given rule (A.R.S. § 41-1052). The Council reviews the rule at the end of the rulemaking process and before the rules are filed with the Secretary of State.

Arizona Regular Rulemaking Process



Definitions

***Arizona Administrative Code* (A.A.C.):** Official rules codified and published by the Secretary of State's Office. Available online at www.azsos.gov.

***Arizona Administrative Register* (A.A.R.)**: The official publication that includes filed documents pertaining to Arizona rulemaking. Available online at www.azsos.gov.

Administrative Procedure Act (APA): A.R.S. Title 41, Chapter 6, Articles 1 through 10. Available online at www.azleg.gov.

Arizona Revised Statutes (A.R.S.): The statutes are made by the Arizona State Legislature during a legislative session. They are complied by Legislative Council, with the official publication codified by Thomson West. Citations to statutes include Titles which represent broad subject areas. The Title number is followed by the Section number. For example, A.R.S. § 41-1001 is the definitions Section of Title 41 of the Arizona Administrative Procedures Act. The "§" symbol simply means "section." Available online at www.azleg.gov.

Chapter: A division in the codification of the *Code* designating a state agency or, for a large agency, a major program.

Close of Record: The close of the public record for a proposed rulemaking is the date an agency chooses as the last date it will accept public comments, either written or oral.

Code of Federal Regulations (CFR): The *Code of Federal Regulations* is a codification of the general and permanent rules published in the *Federal Register* by the executive departments and agencies of the federal government.

Docket: A public file for each rulemaking containing materials related to the proceedings of that rulemaking. The docket file is established and maintained by an agency from the time it begins to consider making a rule until the rulemaking is finished. The agency provides public notice of the docket by filing a Notice of Rulemaking Docket Opening with the Office for publication in the *Register*.

Economic, Small Business, and Consumer Impact Statement (EIS): The EIS identifies the impact of the rule on private and public employment, on small businesses, and on consumers. It includes an analysis of the probable costs and benefits of the rule. An agency includes a brief summary of the EIS in its preamble. The EIS is not published in the *Register* but is available from the agency promulgating the rule. The EIS is also filed with the rulemaking package.

Governor's Regulatory Review (G.R.R.C.): Reviews and approves rules to ensure that they are necessary and to avoid unnecessary duplication and adverse impact on the public. G.R.R.C. also assesses whether the rules are clear, concise, understandable, legal, consistent with legislative intent, and whether the benefits of a rule outweigh the cost.

Incorporated by Reference: An agency may incorporate by reference standards or other publications. These standards are available from the state agency with references on where to order the standard or review it online.

Federal Register (FR): The *Federal Register* is a legal newspaper published every business day by the National Archives and Records Administration (NARA). It contains federal agency regulations; proposed rules and notices; and executive orders, proclamations, and other presidential documents.

Session Laws or "Laws": When an agency references a law that has not yet been codified into the Arizona Revised Statutes, use the word "Laws" is followed by the year the law was passed by the Legislature, followed by the Chapter number using the abbreviation "Ch.", and the specific Section number using the Section symbol (§). For example, Laws 1995, Ch. 6, § 2. Session laws are available at www.azleg.gov.

United States Code (U.S.C.): The Code is a consolidation and codification by subject matter of the general and permanent laws of the United States. The Code does not include regulations issued by executive branch agencies, decisions of the federal courts, treaties, or laws enacted by state or local governments.

Acronyms

A.A.C. – *Arizona Administrative Code*

A.A.R. – *Arizona Administrative Register*

APA – Administrative Procedure Act

A.R.S. – Arizona Revised Statutes

CFR – *Code of Federal Regulations*

EIS – Economic, Small Business, and Consumer Impact Statement

FR – *Federal Register*

G.R.R.C. – Governor's Regulatory Review Council

U.S.C. – *United States Code*

About Preambles

The Preamble is the part of a rulemaking package that contains information about the rulemaking and provides agency justification and regulatory intent.

It includes reference to the specific statutes authorizing the agency to make the rule, an explanation of the rule, reasons for proposing the rule, and the preliminary Economic Impact Statement.

The information in the Preamble differs between rulemaking notices used and the stage of the rulemaking.

NOTICES OF PROPOSED RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Proposed Rulemakings.

A proposed rulemaking is filed by an agency upon completion and submittal of a Notice of Rulemaking Docket Opening. Often these two documents are filed at the same time and published in the same *Register* issue.

When an agency files a Notice of Proposed Rulemaking under the Administrative Procedure Act (APA), the notice is published in the *Register* within three weeks of filing. See the publication schedule in the back of each issue of the *Register* for more information.

Under the APA, an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the proposed rules should be addressed to the agency the promulgated the rules. Refer to item #4 below to contact the person charged with the rulemaking and item #10 for the close of record and information related to public hearings and oral comments.

NOTICE OF PROPOSED RULEMAKING

TITLE 13. PUBLIC SAFETY

CHAPTER 4. ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD

[R15-161]

PREAMBLE

1. Articles, Parts, and Sections Affected (as applicable)	Rulemaking Action
R13-4-101	Amend
R13-4-102	Amend
R13-4-103	Amend
R13-4-104	Amend
R13-4-105	Amend
R13-4-106	Amend
R13-4-107	Amend
R13-4-108	Amend
R13-4-109	Amend
R13-4-109.01	Amend
R13-4-110	Amend
R13-4-111	Amend
R13-4-112	Amend
R13-4-114	Amend
R13-4-116	Amend
R13-4-117	Amend
R13-4-118	Amend
R13-4-201	Amend
R13-4-202	Amend
R13-4-203	Amend
R13-4-204	Amend
R13-4-205	Amend
R13-4-206	Amend
R13-4-208	Amend

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. § 41-1822(A) and (B)

Implementing statute: A.R.S. § 41-1822(A)(3)-(A)(4); (B)(1)-(B)(3); and (C)(1)

3. 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: 21 A.A.R. 2784, November 13, 2015 (*in this issue*).

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

Name: Lyle Mann, Executive Director
Address: 2643 E. University
Phoenix, AZ 85034
Telephone: (602) 774-9350
Fax: (602) 244-0477
E-mail: lmann@azpost.gov
Web site: www.azpost.gov

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

In response to a Five-year Review Report approved by the Council on June 7, 2011, and statutory changes (See Laws 2011, Chapter 303), the Board is updating its rules to make them consistent with statute, agency practice, and current rule-writing standards.

An exemption from Executive Order 2015-01 was provided to the Department by Ted Vogt, Chief of Operations in the Governor's office, in an e-mail dated July 29, 2015.

6. 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:

None

7. 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

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

The Board believes the following changes made in this rulemaking will have minimal economic impact:

- Clarifying the difference between an individual who is appointed to an academy and one who attends an academy as an open enrollee;
- Clarifying that an outside provider of training may provide only continuing training;
- Deleting reference to a limited correctional peace officer;
- Simplifying the medical assessment of whether an individual is able to perform the essential functions of the job of peace officer;
- Adding three grounds for denial, suspension, or revocation of certification;
- Adding that certification as a specialty or limited-authority peace officer requires passing relevant portions of the comprehensive final examination;
- Adding a report regarding criminal convictions or pleas by peace officers; and
- Deleting salary as a reimbursable training expense.

9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:

Name: Lyle Mann, Executive Director
Address: 2643 E. University
Phoenix, AZ 85034
Telephone: (602) 774-9350
Fax: (602) 244-0477
E-mail: lmann@azpost.gov
Web site: www.azpost.gov

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

An oral proceeding regarding the proposed rules will be held as follows:
Date: Tuesday, December 15, 2015
Time: 12:00 p.m.
Location: 2643 E. University
Phoenix, AZ 85034

11. 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. § 41-1823 requires that a rule establishing a minimum qualification for law enforcement officers not be

effective until six months after being filed with the Secretary of State. This provision applies to R13-4-103, R13-4-105, R13-4-107, R13-4-110, and R13-4-111.

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 certifies individuals as qualified to perform the functions of a peace officer. This is a general permit because the activities and practices of peace officers are substantially similar in nature.

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 is directly applicable to the subject of these rules. There are many federal laws that apply to law enforcement agencies and the work done by peace officers. These include general laws such as OSHA, EEOC, and ADA, federal laws regarding crimes, and federal case law regarding law enforcement. The training provided to peace officers is consistent with 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 analysis was submitted.

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

None

13. The full text of the rules follows:

TITLE 13. PUBLIC SAFETY

CHAPTER 4. ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD

ARTICLE 1. GENERAL PROVISIONS

Section
R13-4-101. Definitions
R13-4-102. Internal Organization and Control of the Board
R13-4-103. Certification of Peace Officers
R13-4-104. Peace Officer Category Restrictions
R13-4-105. Minimum Qualifications ~~for Appointment~~
R13-4-106. Background Investigation Requirements
R13-4-107. Medical Requirements
R13-4-108. Agency Records and Reports
R13-4-109. Denial, Revocation, Suspension, or Cancellation of Peace Officer Certified Status
R13-4-109.01. Restriction of Certified Peace Officer Status: Training or Qualification Deficiencies
R13-4-110. Basic Training Requirements
R13-4-111. Certification Retention Requirements
R13-4-112. ~~Time-frames~~ Time Frames
R13-4-114. Minimum Course Requirements
R13-4-116. Academy Requirements
R13-4-117. Training Expense Reimbursements
R13-4-118. Hearings; Rehearings

ARTICLE 2. CORRECTIONAL OFFICERS

Section
R13-4-201. Definitions
R13-4-202. Uniform Minimum Standards
R13-4-203. Background Investigation
R13-4-204. Records and Reports
R13-4-205. Basic Training Requirements
R13-4-206. Field Training and Continuing Training Including Firearms Qualification
R13-4-208. Re-employment of State Correctional Officers

ARTICLE 1. GENERAL PROVISIONS

R13-4-101. Definitions

In this Article, unless the context otherwise requires:

"Academy" means an entity that conducts the Board-prescribed basic training courses for full-authority, specialty, or limited-authority peace officers.

"Agency" means a law enforcement entity empowered by the state of Arizona.

"Appointment" means the selection by an agency of ~~a person~~ an individual to be a peace officer or peace officer trainee.

"Approved training program" means a course of instruction that meets Board-prescribed course requirements.

"Board" means the Arizona Peace Officer Standards and Training Board.

"Board-trained physician" means an occupational medicine specialist or a physician who has attended a Board course on peace officer job functions.

"Cancellation" means the annulment of certified status without prejudice to reapply for certification.

"Certified" means approved by the Board as being in compliance with A.R.S. Title 41, Chapter 12, Article 8 and this Chapter.

"CFE" means the Board-approved Comprehensive Final Examination that measures mastery of the knowledge and skills taught in the 585-hour full-authority peace officer basic training course.

"Denial" means the permanent refusal of the Board to grant certified status.

"Dangerous drug or narcotic" means a substance identified in A.R.S. § 13-3401 as being a dangerous drug or narcotic drug.

"Experimentation" means the illegal possession or use of marijuana or a dangerous drug or narcotic as described in R13-4-105(B) and (C).

"Full-authority peace officer" means a peace officer whose authority to enforce the laws of this state is not limited by this Chapter.

"Illegal" means in violation of federal or state statute, rule, or regulation.

"Lapse" means the expiration of certified status.

"Limited-authority peace officer" means a peace officer who is certified to perform the duties of a peace officer only in the presence and under the supervision of a full-authority peace officer.

~~"Limited correctional peace officer" means a peace officer who has authority to perform the duties of a peace officer only while employed by and on duty with the Arizona Department of Corrections, and only for the purposes of guarding, transporting, or pursuing persons under the jurisdiction of the Arizona Department of Corrections.~~

"Open enrollee" means an individual who is admitted to an academy but is not appointed by an agency.

"Outside provider" means an entity other than the Board or an agency that makes continuing training available to peace officers.

"Peace officer" has the meaning in A.R.S. § 1-215.

"Peace officer trainee" means ~~a person~~ an individual recruited and appointed by an agency to attend an academy.

"Physician" means ~~a person~~ an individual licensed to practice allopathic or osteopathic medicine in this or another state.

"Restriction" means the Board's limitation on duties allowed to be performed by a certified peace officer.

"Revocation" means the permanent withdrawal of certified status.

"Service ammunition" means munitions that perform equivalently in all respects when fired during training or qualification to those carried on duty by a peace officer.

"Service handgun" means the specific handgun or equivalent that a peace officer carries for use on duty.

"Specialty peace officer" means a peace officer whose authority is limited to enforcing specific sections of the Arizona Revised Statutes or Arizona Administrative Code, as specified by the appointing agency's statutory powers and duties.

"Success criteria" means a numerical statement that establishes the performance needed for ~~a person~~ an individual to demonstrate competency in a knowledge, task, or ability required by this Chapter.

"Suspension" means the temporary withdrawal of certified status.

"Termination" means the end of employment or service with an agency as a peace officer through removal, discharge, resignation, retirement, or otherwise.

R13-4-102. Internal Organization and Control of the Board

A. Scheduled meetings. The Chair, in consultation with the Board, shall set regular meeting dates of the Board ~~and shall post notice of each regular meeting according to A.R.S. § 38-431.02~~.

~~**B.** Meeting agenda. Items to be placed on the agenda for Board consideration shall be submitted no later than 20 days before the scheduled meeting.~~

~~**C.**~~**B.** Special meetings. Except in the case of an emergency meeting declared by the Governor or the Chair, the Chair shall give at least five days' written notice of a special meeting to each member of the Board ~~and shall post notice of the special meeting according to A.R.S. § 38-431.02~~.

~~**D.**~~**C.** Subcommittees. The Chair may appoint subcommittees to inquire into any matter of Board interest. Each subcommittee shall report its findings, conclusions, and recommendations to the Board, in a manner directed by the Chair.

R13-4-103. Certification of Peace Officers

A. Certified status mandatory. ~~A person~~ An individual who is not certified by the Board or whose certified status is inactive shall not function as a peace officer or be assigned the duties of a peace officer by an agency, except as provided in subsection (B).

B. Sheriffs who are elected are exempt from the requirement of certified status.

C. ~~A person~~ An individual shall satisfy the minimum qualifications and training requirements to receive certified status.

D. Peace officer categories. The categories for which certified status may be granted are:

1. Full-authority peace officer,

2. Specialty peace officer, and
3. Limited-authority peace officer~~, and~~
~~4. Limited correctional peace officer~~.

E. Application for certification. ~~A person~~ An individual who seeks to be certified as a peace officer shall make application as follows:
1. Submit to an agency an application that contains all documents required by R13-4-105, R13-4-106(A) and (B), and R13-4-107;
2. Obtain an appointment from ~~an~~ the agency; and
3. Obtain either a certificate of graduation from a Board-prescribed Peace Officer Basic Course or a certificate of successful completion of the waiver of training process prescribed by R13-4-110(D).

F. An open enrollee shall obtain an appointment from an agency within one year after graduating from a Board-prescribed Peace Officer Basic Course.
1. If more than one year but less than three years elapse after graduation from a Board-prescribed Peace Officer Basic Course before an open enrollee obtains an appointment from an agency, the open enrollee shall again take the CFE required under R13-4-110 and satisfactorily perform the practical demonstrations of proficiency in physical conditioning, vehicle operations, pursuit operations, and firearms, including firearms qualifications, as required under R13-4-116(E)(1).
2. If more than three years elapse after graduation from a Board-prescribed Peace Officer Basic Course, an open enrollee shall again take the Board-prescribed Peace Officer Basic Course before obtaining an appointment from an agency.

~~F.~~**G.** ~~Establishment~~ Establishing or ~~enforcement of~~ enforcing qualifications, standards, or training requirements. The Board may waive in whole or in part any provision of this Article upon a finding that the best interests of the law enforcement profession are served and the public welfare and safety is not jeopardized by the waiver. The Board may place restrictions or requirements on a peace officer as a condition of certified status.

~~G.~~**H.** This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

R13-4-104. Peace Officer Category Restrictions

A. Limited-authority peace officer.
1. A limited-authority peace officer shall be in the presence and under the supervision of a full-authority peace officer when engaged in patrol or investigative activities performed to detect, prevent, or suppress crime, or to enforce criminal or traffic laws of the state, county, or municipality.
2. A limited-authority peace officer may perform the following duties without supervision of a full-authority peace officer:
   a. Directing traffic~~, or assisting with crowd control~~; ~~or~~
   b. Assisting with crowd control; or
   ~~b.~~c. Maintaining public order in the event of riot, insurrection, or disaster.

B. ~~Limited correctional peace officer. A limited correctional peace officer shall not engage in high-speed vehicular pursuit operations.~~ Specialty peace officer. A specialty peace officer has only the authority specified in R13-4-101.

C. Peace officer category change. A certified peace officer may be appointed to another peace officer category within the same agency without the background investigation~~, fingerprint check,~~ and medical examination required in R13-4-105, R13-4-106, and R13-4-107 when these requirements were previously satisfied for appointment if:
1. No more than 30 days have elapsed since the peace officer's termination, and
2. The change is to a category for which the officer is qualified under R13-4-110(A).

D. Inactive status. Certified status of a peace officer becomes inactive upon termination.

E. Lapse of certified status. ~~Certified status of a peace officer lapses after~~ After three consecutive years on inactive status, the certified status of a peace officer lapses.

F. Reinstatement from inactive status. A peace officer whose certified status is inactive and has not lapsed may have certification reinstated if the requirements of R13-4-105 are met for the new appointment, and if appointed:
1. In the same peace officer category, or;
2. As a specialty peace officer from inactive status as a full-authority peace officer.

G. Active status as a specialty~~,~~ or limited-authority~~, or limited correctional~~ peace officer does not prevent lapse of certified status as a full-authority peace officer.

R13-4-105. Minimum Qualifications ~~for Appointment~~

A. Except as provided in subsection (C) or (D), ~~a person~~ an individual shall meet the following minimum qualifications before being appointed to or attending an academy:
1. Be a United States citizen;
2. Be at least 21 years of age~~; except that a person~~. An individual may attend an academy if the ~~person~~ individual will be 21 years of age before graduating;
3. ~~Be~~ Have a diploma from a high school ~~graduate~~ recognized by the department of education of the jurisdiction in which the diploma is issued, ~~or~~ have successfully completed a General Education Development (G.E.D.) examination, or have a degree from an institution of higher education accredited by an agency recognized by the U.S. Department of Education;

4. Undergo a complete background investigation that meets the standards of R13-4-106. ~~A person~~ An individual may begin an academy before the results of the ~~fingerprint check~~ background investigation are returned. However, the academy shall not graduate the ~~person~~ individual and the Board shall not reimburse the academy for the ~~person's~~ individual's training expenses until a qualifying ~~fingerprint check~~ background investigation report ~~return~~ is obtained;
5. Undergo a medical examination that meets the standards of R13-4-107 within one year before appointment. An agency may make a conditional offer of appointment before the medical examination. If the medical examination is conducted more than 180 days before appointment, the ~~person~~ individual shall submit a written statement indicating that the ~~person's~~ individual's medical condition has not changed since the examination;
6. Not have been convicted of a felony or any offense that would be a felony if committed in Arizona;
7. Not have been dishonorably discharged from the United States Armed Forces;
8. Not have been previously denied certified status, have certified status revoked, or have current certified status suspended, or have voluntarily surrendered certified status in lieu of possible disciplinary action in this or any other state if the reason for denial, revocation, suspension, or possible disciplinary action was or would be a violation of R13-4-109(A) if committed in Arizona;
9. Not have illegally possessed, sold, produced, cultivated, or transported for sale marijuana;
10. Not have illegally possessed or used marijuana for any purpose within the past three years;
11. Not have ever illegally possessed or used marijuana other than for experimentation;
12. Not have ever illegally possessed or used marijuana while employed or appointed as a peace officer;
13. Not have illegally sold, produced, cultivated, or transported for sale a dangerous drug or narcotic;
14. Not have illegally used a dangerous drug or narcotic, other than marijuana, for any purpose within the past seven years;
15. Not have ever illegally used a dangerous drug or narcotic other than for experimentation;
16. Not have ever illegally used a dangerous drug or narcotic while employed or appointed as a peace officer;
17. Not have a pattern of abuse of prescription medication;
18. Undergo a polygraph examination that meets the requirements of R13-4-106, unless prohibited by law;
19. Not have been convicted of or adjudged to have violated traffic regulations governing the movement of vehicles with a frequency within the past three years that indicates a disrespect for traffic laws or a disregard for the safety of other persons on the highway;
20. Read the code of ethics in subsection ~~(F)~~ (E) and affirm by signature the ~~person's~~ individual ~~understanding of~~ understands and ~~agreement~~ agrees to abide by the code.

B. The illegal possession or use of marijuana, or a dangerous drug or narcotic is presumed to be not for experimentation if:
1. The possession or use of marijuana exceeds a total of 20 times or exceeds five times since the age of 21 years; or
2. The use of any dangerous drug or narcotic, other than marijuana, in any combination exceeds a total of five times, or exceeds one time since the age of 21 years.

C. An agency head who wishes to appoint ~~a person~~ an individual whose illegal possession or use of marijuana or a dangerous drug or narcotic is presumed to be not for experimentation under this Section may petition the Board for a determination that, given the unique circumstances of the ~~person's~~ individual's possession or use, the use was for experimentation. The petition shall:
1. Specify the type of drugs illegally possessed or used, the number of uses, the age at the time of each possession or use, the method by which the information regarding illegal possession or use of drugs came to the agency's attention, and any attempt by the agency head to verify the accuracy of the information; and
2. State the factors the agency head wishes the Board to consider in making its determination. These factors may include:
   a. The duration of use,
   b. The motivation for possession or use,
   c. The time elapsed since the last possession or use,
   d. How the drug was obtained,
   e. How the drug was ingested,
   f. Why the ~~person~~ individual stopped possessing or using the drug, and
   g. Any other factor the agency head believes is relevant to the Board's determination.

D. An agency head who wishes to appoint ~~a person~~ an individual whose conduct is grounds to deny certification under R13-4-109 may petition the Board for a determination that the otherwise disqualifying conduct constitutes juvenile indiscretion. The petition shall:
1. Specify the nature of the conduct, the number of times the conduct occurred, the method by which information regarding the conduct came to the agency's attention, and any attempt by the agency head to verify the accuracy of the information; and
2. Include sufficient information for the Board to determine that all of the following are true:
   a. The conduct occurred when the ~~person~~ individual was less than age 18;
   b. The conduct occurred more than 10 years before application for appointment;

c. The ~~person~~ individual has consistently exhibited responsible, law-abiding behavior between the time of the conduct and application for appointment;
d. There is reason to believe that the ~~person's~~ individual's immaturity at the time of the conduct contributed substantially to the conduct;
e. There is evidence that the ~~person's~~ individual's maturity at the time of application makes reoccurrence of the conduct unlikely; and
f. The conduct was not so egregious that public trust in the law enforcement profession would be jeopardized if the ~~person~~ individual is certified.

3. If the Board finds that the information submitted is sufficient for the Board to determine that the factors listed in subsection (D)(2) are true, the Board shall determine that the conduct constituted juvenile indiscretion and grant appointment.

~~E. For a limited correctional peace officer, previous completion of a background investigation conducted under R13-4-203 and a physical examination conducted under R13-4-202(A)(6) satisfies the requirements of this Section when there has been no interruption of employment by the agency, except that:~~

~~1. The limited correctional peace officer shall submit to a polygraph examination as required by subsection (A)(18); and~~

~~2. The agency shall query the National Crime Information Center/Interstate Identification Index (NCIC/III), and the Arizona Criminal Information Center/Arizona Computerized Criminal History (ACIC/ACCH) and review the returns to determine that the person meets the requirements of this Section.~~

~~F.~~**E.** Code of Ethics. Because the people of the state of Arizona confer upon all peace officers the authority and responsibility to safeguard lives and property within constitutional parameters, a peace officer shall commit to the following Code of Ethics and shall affirm the peace officer's commitment by signing the Code.

"I will exercise self-restraint and be constantly mindful of the welfare of others. I will be exemplary in obeying the laws of the land and loyal to the state of Arizona and my agency and its objectives and regulations. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept secure unless revelation is necessary in the performance of my duty.

I will never take selfish advantage of my position and will not allow my personal feelings, animosities, or friendships to influence my actions or decisions. I will exercise the authority of my office to the best of my ability, with courtesy and vigilance, and without favor, malice, ill will, or compromise. I am a servant of the people and I recognize my position as a symbol of public faith. I accept it as a public trust to be held so long as I am true to the law and serve the people of Arizona."

~~G.~~**F.** This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

R13-4-106. Background Investigation Requirements

A. Personal history statement. ~~A person~~ An individual who seeks to be appointed shall complete and submit to the appointing agency a personal history statement on a form prescribed by the Board before the start of a background investigation. The Board shall use the ~~history statement shall contain~~ answers to questions contained in the personal history statement ~~that aid in determining~~ to determine whether the ~~person~~ individual is eligible for certified status as a peace officer. The Board shall ensure that the questions ~~shall~~ concern whether the ~~person~~ individual meets the minimum requirements for appointment, has engaged in conduct or a pattern of conduct that would jeopardize the public trust in the law enforcement profession, and is of good moral character.

B. Investigative requirements for the applicant. To assist with the background investigation, ~~a person~~ an individual who seeks to be appointed shall provide the following:

1. Proof of United States citizenship. A copy of a birth certificate, United States passport, or United States naturalization papers is acceptable proof.
2. Proof of education. A copy of a diploma, certificate, or transcript is acceptable proof.
3. Record of any military discharge. A copy of the Military Service Record (DD Form 214, Member 4) is acceptable proof.
4. Personal references. The names and addresses of at least three people who can provide information as personal references.
5. Previous employers or schools attended. The names and addresses of all employers and schools attended within the previous five years.
6. Residence history. ~~A listing of the~~ The complete address for every location ~~that~~ at which the ~~person~~ individual has lived in the last five years.

C. Investigative requirements for the agency. A complete background investigation includes the following inquiries and a review of the returns to determine that the ~~person~~ individual seeking appointment meets the requirements of R13-4-105, and that the ~~person's~~ individual's personal history statement is accurate and truthful. For each ~~person~~ individual seeking to be appointed, the appointing agency shall:

1. Query all the law enforcement agency records in jurisdictions listed in subsections (B)(5) and (B)(6);
2. Query the motor vehicle division driving record from any state listed in subsections (B)(5) and (B)(6);
3. Complete and submit a Fingerprint Card Inventory Sheet to the Federal Bureau of Investigation and Arizona Department of Public Safety for query;

4. Query the National Crime Information Center/Interstate Identification Index (NCIC/III), and the Arizona Criminal Information Center/Arizona Computerized Criminal History (ACIC/ACCH), or the equivalent for each state listed in subsections (B)(5) and (B)(6);
5. Contact all personal references and employers listed in subsections (B)(4) and (B)(5) and document the answers to inquiries concerning whether the ~~person~~ individual meets the standards of this Section;
6. Administer a polygraph examination, unless prohibited by law. The results shall include a detailed report of the pre-test interview and any post-test interview and shall cover responses to all questions that concern minimum standards for appointment as required by R13-4-105, truthfulness on the personal history statement, and the commission of any crimes; and
7. If the results of the background investigation show that the ~~person~~ individual meets minimum qualifications for appointment, has not engaged in conduct or a pattern of conduct that would jeopardize public trust in the law enforcement profession, and is of good moral character, complete a report that attests to those findings.

R13-4-107. Medical Requirements

A. Medical. ~~Categories. The medical categories for certification are:~~ physical, and mental eligibility for certification.

1. ~~Category I. No medical, physical, or mental circumstance exists that limits the person's ability to effectively perform all the duties of a peace officer or creates a reasonable probability of substantial harm to the person or others;~~ An agency may appoint an individual if the individual meets the minimum qualifications in R13-4-105 and is able to perform all the essential functions of the job of peace officer effectively, with or without reasonable accommodation, without creating a reasonable probability of substantial harm to the individual or others.
2. ~~Category II. A medical, physical, or mental circumstance exists that absent a reasonable accommodation by the appointing agency would limit the person's ability to effectively perform all the duties of a peace officer or create a reasonable probability of substantial harm to the person or others; and~~ If an agency wishes to appoint an individual who is unable to perform all the essential functions of the job of peace officer effectively, the agency may seek a restricted certification for the individual. The Board shall determine whether placing restrictions or requirements on the individual as a condition of certification will enable the individual to perform the essential functions authorized within the restriction without creating a reasonable probability of harm to the individual or others.
3. ~~Category III. A medical, physical, or mental circumstance exists that despite reasonable accommodation by the appointing agency limits the person's ability to effectively perform all the duties of a peace officer or creates a reasonable probability of substantial harm to the person or others.~~

B. ~~Eligibility for certified status~~ Medical examination process.

1. ~~Category I. A person in Category I may be appointed if the person meets all other qualifications.~~ Medical history. An individual applying to be appointed shall provide to the examining, board-trained, physician a written statement of the individual's medical history that includes past and present diseases, illnesses, symptoms, conditions, injuries, functionality, surgeries, procedures, immunizations, medications, and psychological information.
2. ~~Category II. If an agency chooses to make the required accommodation and appoint a person in Category II, and the examination was made by a Board-trained physician, the appointment may be made without further action by the Board. However, if the examining physician has not been trained by the Board, a medical review under subsection (H) by a Board-trained physician is required to determine eligibility for certified status. If the Board-trained physician agrees with the finding of the other physician, the appointment may be made without further action by the Board.~~ Medical examination.
   a. The examining, board-trained, physician shall not delegate any part of the medical examination process to another person;
   b. The examining, board-trained, physician shall review the medical history statement and take an additional verbal history from the applicant;
   c. The examining, board-trained, physician shall conduct a physical examination consistent with the standard of care for occupational medical examinations;
   d. The examining, board-trained, physician shall order tests, obtain medical records, and require specialist or functional examinations and evaluations that the examining physician deems necessary to determine the applicant's ability to perform all the essential functions of the job of peace officer;
   e. The examining, board-trained, physician shall make a report to the agency and provide a:
      i. Summary of the examination;
      ii. Description of any significant medical findings;
      iii. Description of any limitation to the ability to perform the essential functions of the job of a peace officer; and
      iv. Medical opinion about the applicant's ability to perform the essential functions of the job of peace officer, with or without reasonable accommodations; and
   f. The examining, board-trained, physician shall consult with the agency, upon request, about the report and the efficacy of any accommodations the agency deems reasonable.
3. ~~Category III. If an agency wishes to appoint a person in Category III, the agency shall submit a letter to the Board asking for a determination of eligibility for certification. The letter shall include a report from a Board-trained phy-~~

sician identifying the medical limitations and the proposed accommodations. The Board shall determine the person's eligibility for certified status, based upon whether the appointing agency is able to make reasonable accommodations, and whether by placing restrictions or requirements on the person as a condition of certified status under R13-4-103(F), the person is able to perform the duties authorized within the restriction without endangering the person or others.

C. Medical, physical, or mental circumstances in Category II and Category III include:

1. Angina pectoris;
2. Asthma;
3. Cancer - metastatic or leukemia;
4. Cardiac arrhythmias or murmurs;
5. Cerebral vascular accident;
6. Chest pains of unknown origin;
7. Contagious hepatitis;
8. Contagious tuberculosis;
9. Chronic respiratory disease;
10. Diabetes, insulin dependent or ketosis-prone;
11. Fixation of major joint;
12. Hearing not specified in subsection (D);
13. Herniated lumbar disc;
14. Hypertension, uncontrolled;
15. Inguinal hernia;
16. Liver or renal dysfunction;
17. Migraine headache;
18. Myocardial infarction, history of;
19. Paralysis;
20. Pilonidal cyst;
21. Prosthetic device, e.g., limbs, hearing aid, colostomy;
22. Recurrent dislocation of a major joint;
23. Schizophrenia or manic depressive psychosis;
24. Scoliosis greater than 15 degrees;
25. Seizure disorders;
26. Current substance abuse;
27. Valvular heart disease, uncorrected;
28. Vision not specified in subsection (D) or monocular vision;
29. Wasting disease, chronic, such as multiple sclerosis, myasthenia gravis, or amyotrophic lateral sclerosis; and
30. Any other medical, physical, or mental circumstance that the examining physician determines may interfere with the person's ability to function as a peace officer effectively or may create a reasonable probability of substantial harm to the person or others.

D. Vision and hearing. Vision and hearing meeting the following requirements are classified in Category I:

1. Visual acuity of:
   a. 20/20 or better uncorrected;
   b. 20/20 or better, corrected by spectacles or hard contact lenses, if uncorrected acuity is 20/80 or better. The applicant shall demonstrate satisfactory adaptation to the contact lenses; or
   c. 20/20 or better, corrected by soft contact lenses, if the uncorrected acuity is 20/200 or better. The applicant shall demonstrate satisfactory adaptation to the contact lenses;
2. Vision capable of distinguishing basic color groups against a favorable background.
3. Peripheral vision:
   a. That does not reveal scotoma or quadrantonopia; or
   b. In which vision perimeter testing is intact at 170 degrees; and
4. Uncorrected hearing with no loss greater than 25 db in the 500, 1000, 2000, or 3000 hertz frequencies as measured by an audiometer.

E. Medical history. A person who seeks to be appointed shall supply to the examining physician a statement of the person's medical history that includes past and present diseases, injuries, operations, immunization status, and medications taken.

F. Medical examination. The examining physician shall review the person's medical history and examine the person.

G. Examination report. The examining physician shall record the findings of the medical examination on a form prescribed by the Board. The physician shall indicate whether a medical, physical, or mental circumstance in Category II or III exists, describe how the circumstance affects the person's ability to perform the duties of a peace officer, and specify the type and duration of any treatment required. In all Category II or III cases, the physician shall advise the appointing agency in writing of any limitation on the person's ability to function as a peace officer.

H. Category II and Category III reviews. The diagnosis of a person with a circumstance classified in Category II or Category III by an examining physician who is not Board trained shall be reviewed by a Board-trained physician if the

~~agency intends to appoint the person. The Board-trained physician may review prior medical examination reports concerning the person and contact examining physicians to review their findings. If required by the Board-trained physician, an independent medical examination shall be conducted, if the agency wishes to appoint the person, and the person shall be referred to a specialist in the appropriate medical field.~~

~~I. Additional findings. The appointing agency may submit to the Board results of additional examinations or tests, or obtain additional opinions from other licensed physicians.~~

~~J.~~**C.** This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

R13-4-108. Agency Records and Reports

A. Agency reports. On forms prescribed by the Board, an agency shall submit:
1. A report by the agency head attesting that the requirements of R13-4-105 are met for each ~~person~~ individual appointed. The report shall be submitted to the Board before ~~a person~~ an individual attends an academy or performs the duties of a peace officer.
2. A report of the termination of a peace officer. The report shall be submitted to the Board within 15 days of the termination and include:
   a. The nature of the termination and effective date;
   b. A detailed description of any termination for cause; and
   c. A detailed description of, and supporting documentation for, any cause existing for suspension or revocation of certified status.
3. A report that a peace officer was convicted of or pleaded no contest to a misdemeanor or felony in any jurisdiction. The report shall be submitted to the Board within 10 days after the agency knows of the conviction or plea and include court documentation, if available.

B. Agency records. An agency shall make its records available ~~upon the~~ on request ~~of~~ by the Board or staff. The agency shall maintain the following for each ~~person~~ individual for whom certification is sought:
1. An application file that contains all of the information required in R13-4-103(E) and R13-4-106(C) for each ~~person~~ individual appointed for certification as a peace officer;
2. A copy of reports submitted under subsection (A);
3. A signed copy of the affirmation to the Code of Ethics required under R13-4-105;
4. A written report of the results of a completed or partially completed background investigation and all written documentation obtained or recorded under R13-4-106;
5. A completed medical report required under ~~R13-4-105~~ R13-4-107; and
6. A record of all continuing training, proficiency training, and firearms qualifications conducted under R13-4-111.

C. Record retention. An agency shall maintain the records required by this Section as follows:
1. For applicants investigated under R13-4-106 who are not appointed: three years;
2. For applicants who are appointed: five years from the date of termination, except records retained under subsection (B)(6) shall be retained for three years following completion of training~~.~~; and
3. Reports of a polygraph examination given under R13-4-106(C)(6) shall be maintained in accordance with state law.

R13-4-109. Denial, Revocation, Suspension, or Cancellation of Peace Officer Certified Status

A. Causes for denial, suspension, or revocation. The Board may deny certified status or suspend or revoke the certified status of a peace officer for:
1. ~~Failure~~ Failing to satisfy a minimum qualification for appointment listed in R13-4-105;
2. Willfully providing false information in connection with obtaining or reactivating certified status;
3. ~~A~~ Having a medical, physical, or mental disability that substantially limits the ~~person's~~ individual's ability to perform the duties of a peace officer effectively, or that may create a reasonable probability of substantial harm to the ~~person~~ individual or others, for which a reasonable accommodation cannot be made;
4. ~~Violation of~~ Violating a restriction or requirement for certified status imposed under R13-4-109.01, ~~or~~ R13-4-103~~(F)~~ (G), or R13-4-104;
5. ~~The illegal use of~~ Illegally possessing or using marijuana, a dangerous drug, or a narcotic;
6. ~~Unauthorized use of~~ Using or being under the influence of spirituous liquor on duty without authorization;
7. ~~The commission of~~ Committing a felony, an offense that would be a felony if committed in this state, or an offense involving dishonesty, unlawful sexual conduct, or physical violence;
8. ~~Malfeasance~~ Committing malfeasance, misfeasance, or nonfeasance in office;
9. Performing the duties or exercising the authority of a peace officer without having active certified status;
10. Making a false or misleading statement, written or oral, to the Board or its representative;
11. Failing to furnish information in a timely manner to the Board or its representative on request; or

~~9.~~12.~~Any~~ Engaging in any conduct or pattern of conduct that tends to disrupt, diminish, or otherwise jeopardize public trust in the law enforcement profession.

B. Cause for cancellation. The Board shall cancel the certified status of a peace officer if the Board determines that the ~~person~~ individual was not qualified when certified status was granted, and revocation is not warranted under subsection (A).

C. Cause for mandatory revocation. Upon the receipt of a certified copy of a judgment of a felony conviction of a peace officer, the Board shall revoke certified status of the peace officer.

D. Action by the Board. Upon receipt of information that cause exists to deny certification, or to cancel, suspend, or revoke the certified status of a peace officer, the Board shall determine whether ~~action is~~ to ~~be initiated~~ initiate action regarding the retention of certified status. The Board may conduct additional inquiries or investigations to obtain sufficient information to make a fair determination.

E. Notice of action. The Board shall notify the affected ~~person~~ individual of Board action to initiate proceedings regarding certified status for a cause listed under subsection (A) or (B). The notice shall be served as required by A.R. S. § 41-1092.04~~,~~ and specify the cause for the action. Within 30 days ~~of delivery~~ after receiving the notice, the ~~person~~ individual named in the notice shall advise the Board or its staff in writing whether a hearing is requested. Failure to file a written request for hearing at the Board offices within 30 days ~~of service of~~ after receiving the notice constitutes a waiver of the right to a hearing.

F. Effect of agency action. Action by an agency or a decision resulting from an appeal of that action does not preclude action by the Board to deny, cancel, suspend, or revoke the certified status of a peace officer.

R13-4-109.01. Restriction of Certified Peace Officer Status: Training or Qualification Deficiencies

A. Restricted status. The Board shall restrict certified status if a peace officer fails to satisfy the requirements of R13-4-111.

1. The Board shall consider reports of training or qualification deficiencies at a regularly scheduled public meeting and provide a peace officer alleged to have a training or qualification deficiency the opportunity to be heard without referral to an independent hearing officer. ~~The issue at~~ At the public meeting, the Board shall ~~be restricted to~~ determine only whether the peace officer has successfully completed the required training or qualification and can produce documentation to verify it.
2. ~~A~~ The Board shall leave a restriction ~~shall remain~~ in effect until the training or qualification requirement is met and the peace officer files written verification of the training or qualification with the Board.
3. The Board shall provide notice of ~~action and hearing,~~ restriction or reinstatement following a restriction under this Section by regular mail to the peace officer at the employing agency address. The Board shall provide a copy of the restriction or reinstatement notice by regular mail to the agency head.

B. Firearms qualification. If a peace officer fails to satisfy R13-4-111(C), the peace officer shall not carry or use a firearm on duty.

C. Continuing and proficiency training. If a peace officer fails to satisfy R13-4-111(A) or (B), the peace officer shall not engage in enforcement duties, carry a firearm, wear or display a badge, wear a uniform, make arrests, perform patrol functions, or operate a marked police vehicle.

R13-4-110. Basic Training Requirements

A. Required training for certified status. The Board shall not certify and ~~a person~~ an individual shall not perform the duties of a peace officer until the ~~person~~ individual successfully completes basic training as follows:

1. To be certified as a full-authority peace officer, ~~a person~~ an individual shall complete the 585-hour full-authority peace officer basic training course, specified in R13-4-116, at an academy and pass the CFE.
   a. Board staff shall administer the CFE.
   b. The Board shall ensure that the CFE is administered during the final two weeks of the full-authority peace officer basic training course.
   c. ~~A person~~ An individual passes the CFE by achieving a score of at least 70 percent on each of the three blocks of the CFE when each block is scored separately.
   d. ~~A person~~ An individual who fails one or more blocks of the CFE may retake the failed block one time before the ~~person~~ individual is scheduled to graduate from the academy.
   e. ~~A person~~ An individual who fails a retake of a block of the CFE, as described in subsection (A)(1)(d), may retake the failed block once more within 60 days from the original testing date if the ~~person~~ individual remains appointed by the original appointing agency or enrolled in the academy.
   f. ~~A person~~ An individual who fails a second retake of a block of the CFE, as described in subsection (A)(1)(e), may pursue certification only by repeating the 585-hour full-authority peace officer basic training course.
   g. An agency head is not required to continue to appoint ~~a person~~ an individual during the 60 days permitted for a second retake of a failed block of the CFE, as described in subsection (A)(1)(e).
2. To be certified as a specialty peace officer, ~~a person~~ an individual shall complete a Board-prescribed specialty peace officer basic training course or the 585-hour full-authority peace officer basic training course, specified in R13-4-116, at an academy and pass blocks of the CFE prescribed under subsection (A)(1) that are relevant to the duties of a specialty peace officer.
3. To be certified as a limited-authority peace officer, ~~a person~~ an individual shall complete a Board-prescribed limited-authority peace officer basic training course or the 585-hour full-authority peace officer basic training course, specified in R13-4-116, at an academy and pass blocks of the CFE prescribed under subsection (A)(1) that are relevant to the duties of a limited-authority peace officer.
4. ~~To be certified as a limited correctional peace officer, a person shall complete the correctional officer basic training course specified in R13-4-205 and the 48-hour limited correctional peace officer supplement course specified in R13-4-116, at the Arizona correctional officer training academy.~~

B. Exceptions. The training requirement in subsection (A) is waived when an agency uses ~~a person~~ an individual during a:

1. Riot, insurrection, disaster, or other event that exhausts the peace officer resources of the agency and the ~~person~~ individual is attending an academy; or
2. Field training program that is a component of a basic training program at an academy, and the ~~person~~ individual is under the direct supervision and control of a certified peace officer.

C. Firearms training required.

~~1.~~ Unless otherwise specified in this Section, a peace officer shall complete the firearms qualification courses required in R13-4-116(E) before the peace officer carries a firearm in the course of duty.

~~2. Before carrying a firearm in the course of duty, a limited correctional peace officer shall:~~

~~a. Meet the requirements of R13-4-205, and~~

~~b. Complete a night-time firearms qualification shoot based on the course of fire, as described in R13-4-205.~~

D. Waiver of required training. ~~A person~~ An agency, on behalf of an individual, may apply to the Board for a waiver of required training if the ~~person's~~ individual's certified status is lapsed or the ~~person~~ individual has functioned in the capacity of a peace officer in another state or for a federal law enforcement agency. The Board shall grant a complete or partial waiver of required training if the Board determines that the best interests of the law enforcement profession are served, the public welfare and safety are not jeopardized, and:

1. The appointing agency submits to the Board written verification of the ~~person's~~ individual's previous experience and training on a form prescribed by the Board;
2. The ~~person~~ individual meets the minimum qualifications listed in R13-4-105;
3. The ~~person~~ individual complies with the requirements of R13-4-103(E)(1);
4. The appointing agency complies with the requirements of R13-4-106(C);
5. The ~~person~~ individual successfully completes an examination measuring the ~~person's~~ individual's comprehension of the full-authority peace officer basic training course as follows:
   a. If ~~during the last three years,~~ the ~~person~~ individual has at least two years of active-status experience as a peace officer in another state or for a federal law enforcement agency during the last three years, has been on inactive status for no more than one year, and ~~the person~~ submits to the Board basic training and in-service training records that the Board determines demonstrate substantial comparability to Arizona's full-authority peace officer basic training course, the ~~person~~ individual shall pass ~~the portions~~ blocks II and IV of the CFE ~~covering legal and liability issues specific to Arizona~~;
   b. If the ~~person's~~ individual's certification is lapsed, the ~~person~~ individual shall pass all blocks of the CFE; ~~or~~
   c. If the ~~person's~~ individual's out-of-state or federal law enforcement experience does not meet the criterion in subsection (D)(5)(a), but the Board determines that the ~~person's~~ individual's basic training and in-service training records demonstrate substantial comparability to Arizona's full-authority peace officer basic training course, the ~~person~~ individual shall pass all blocks of the CFE; and
   d. The provisions in subsections (A)(1)(c) through (f) apply to this subsection; and
6. In addition to the examination required under subsection (D)(5), the ~~person~~ individual satisfactorily performs the practical demonstrations of proficiency in physical conditioning, vehicle operations, pursuit operations, and firearms, including firearms qualifications, as required under R13-4-116(E)(1).

E. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

R13-4-111. Certification Retention Requirements

A. Continuing training required.

1. The following continuing training standards apply for a peace officer to retain certification:
   a. A full-authority peace officer shall complete eight hours of continuing training each year beginning January 1~~,~~ following the date the officer is certified.
   b. A specialty~~,~~ or limited-authority~~, or limited correctional~~ peace officer shall complete eight hours of continuing training every three years beginning January 1~~,~~ following the date the officer is certified.
2. Continuing training course standards for peace officers. The provider of a continuing training course for peace officers shall ensure that:
   a. The course curriculum consists of advanced or remedial instruction on one or more of the topic areas specified in R13-4-116(E)(1);
   b. The instructor meets the requirements of R13-4-114(A)(2)(a) or (b);
   c. An attendance verification certificate, which includes a statement that the provider believes the course meets the requirements of this Section, is given to each attendee for audit purposes;
   d. If the training provider is an agency, an attendance roster and lesson plan or other information sufficient to determine compliance with this Section is made available upon request by the Board for Board audit;
   e. If the training provider is an outside provider that does not seek confirmation that the course meets the requirements under subsection (A)(3)(c), a copy of the lesson plan or other information sufficient to determine compliance with this Section is given to each attendee; and
   f. If the training provider is an outside provider that seeks and receives confirmation under subsection (A)(3)(c), a copy of the Board's written confirmation is distributed to each attendee.
3. Training providers. Courses of continuing training may be conducted by the Board, an agency, or an outside provider.

a. All Board-provided continuing training courses meet the requirements of this Section.
b. Agency-provided continuing training courses meet the requirements of this Section if all the requirements of subsection (A)(2) are met.
c. Outside-provider continuing training courses meet the requirements of this Section if all the requirements of subsection (A)(2) are met. The Board shall inform an outside provider in writing whether a continuing training course meets these requirements if a course package is submitted to the Board, before the training is conducted, that includes:
   i. A description of the training course that allows the Board to determine whether the course contains advanced or remedial instruction on one or more of the topic areas specified in R13-4-116(E)(1);
   ii. The name of the person, or if applicable, the institution or organization, providing the training with sufficient information to allow the Board to determine whether the requirements of R13-4-114(A)(2)(a) or (b) are met;
   iii. A course schedule listing the number of instructional hours; and
   iv. An attestation that the outside provider shall, upon request by the Board, make the lesson plan or other information sufficient to determine compliance with this Section available for Board audit, and shall ensure that the requirement of subsection (A)(2)(b) is met.
d. The Board's confirmation that a continuing training course conducted by an outside provider meets the requirements of this Section is not an evaluation of the content of the course. Rather, confirmation indicates only that the topic of the course is consistent with R13-4-116(E)(1). Confirmation is effective as long as the information submitted to the Board under subsection (A)(3)(c) is unchanged.
e. The Board shall withdraw confirmation that a continuing training course conducted by an outside provider meets the requirements of this Section if the Board receives information that the course content conflicts with the basic peace officer course content and the Board finds that the conflict creates an issue of public safety, liability, or ethics.

~~4. A limited correctional peace officer satisfies the requirements of this Section by obtaining training that is:~~
~~a. Approved under R13-4-206,~~
~~b. Provided by an instructor who meets the requirements of R13-4-205(C)(5), and~~
~~c. On a topic area listed in R13-4-116(E)(4).~~

~~5.~~4. Required records. A peace officer shall provide to the appointing agency a copy of all documents provided to the peace officer under subsection (A)(2)(c), (A)(2)(e), or (A)(2)(f). The appointing agency shall maintain the documents and make them available, upon request by the Board, for Board audit.

B. Proficiency training required.
1. To retain certification, a peace officer who is not in a supervisory position within the peace officer's appointing agency shall complete eight hours of proficiency training every three years beginning January 1, following the date the peace officer is certified.
2. Proficiency training course standards. The provider of a proficiency training course for peace officers shall ensure that:
   a. The training requires physical demonstration of one or more performance objectives included in the 585-hour full-authority peace officer basic training course under R13-4-116 and demonstration of the use of judgment in the application of the physical act;
   b. The curriculum consists of advanced or remedial instruction on one or more of the following topic areas:
      i. ~~Defensive~~ Arrest and control tactics ~~and impact weapons~~,
      ii. Tactical firearms (not the annual firearms qualification required under this Section),
      iii. Emergency vehicle operations,
      iv. Pursuit operations,
      v. First aid and emergency care,
      vi. Physical conditioning, and
      vii. High-risk stops;
   c. The instructor meets the requirements of R13-4-114(A)(2)(c);
   d. An attendance verification certificate, which includes a statement that the provider believes the course meets the requirements of this Section, is given to each attendee for audit purposes; and
   e. If the training provider is an agency, an attendance roster and lesson plan or other information sufficient to determine compliance with this Section is made available upon request by the Board for Board audit~~;~~
   ~~f. If the training provider is an outside provider that does not seek confirmation under subsection (B)(3)(c) that the course meets the requirements of this Section, a copy of the lesson plan or other information sufficient to determine compliance with this Section is given to each attendee; and~~
   ~~g. If the training provider is an outside provider that seeks and receives confirmation under subsection (B)(3)(c), a copy of the Board's written confirmation is given to each attendee~~.
3. Training providers. ~~Proficiency~~ Courses that qualify for proficiency training ~~courses~~ credit may be conducted by the Board~~,~~ or an agency~~, or an outside provider~~.

a. All Board-provided proficiency training courses meet the requirements of this Section.
b. Agency-provided proficiency training courses meet the requirements of this Section if all the requirements of subsection (B)(2) are met.
~~c. Outside-provider proficiency training courses meet the requirements of this Section if all the requirements of subsection (B)(2) are met. The Board shall inform an outside provider in writing whether a proficiency training course meets these requirements if a course package is submitted to the Board, before the training is conducted, that includes:~~
~~i. A description of the training course that allows the Board to determine whether the course contains advanced or remedial instruction on one or more of the topic areas specified in subsection (B)(2);~~
~~ii. The name of the person, or if applicable, the institution or organization, providing the training with sufficient information to allow the Board to determine whether the requirements of R13-4-114(A)(2)(c) are met;~~
~~iii. A course schedule listing the number of instructional hours; and~~
~~iv. An attestation that the outside provider shall, upon request by the Board, make the lesson plan and other information sufficient to determine compliance with this Section available for Board audit, and shall ensure that the requirement of subsection (B)(2)(d) is met.~~
~~d. The Board's confirmation that a proficiency training course conducted by an outside provider meets the requirements of this Section is effective as long as the information submitted to the Board under subsection (B)(3)(c) is unchanged.~~
~~4. A limited correctional peace officer satisfies the requirements of this Section by obtaining training that is:~~
~~a. Approved under R13-4-206,~~
~~b. Provided by an instructor who meets the requirements of R13-4-205(C), and~~
~~c. On a topic area listed in subsection (B)(2)(b) except (B)(2)(b)(iv).~~
~~5.~~4. Required records. A peace officer shall provide to the appointing agency a copy of ~~all documents~~ the document provided to the peace officer under subsection (B)(2)(d)~~, (B)(2)(f) or (B)(2)(g)~~. The appointing agency shall maintain and make the ~~documents~~ document ~~and make them~~ available, upon request by the Board, for Board audit.

C. Firearms qualification required. A peace officer authorized to carry a firearm shall qualify to continue to be authorized to carry a firearm each year beginning January 1 following certification by completing a Board-prescribed firearms qualification course, using a service handgun and service ammunition, and a Board-prescribed target identification and judgment course.
1. Firearms qualification course standards.
   a. A firearms qualification course is a course:
      i. Prescribed under R13-4-116(E)(1), or
      ii. Determined by the Board to measure firearms competency at least as accurately as courses prescribed under R13-4-116(E)(1).
   b. The provider of a firearms qualification course shall ensure that the course includes:
      i. A timed accuracy component;
      ii. A type and style of target that is equal to, or more difficult than, targets used in a course prescribed under R13-4-116(E)(1); and
      iii. A success criterion that is equal to, or more difficult than, criteria used in a course prescribed under R13-4-116(E)(1).
2. Firearms target identification and judgment course standards.
   a. A firearms target identification and judgment course is a course:
      i. Prescribed under R13-4-116(E)(1), or
      ii. Determined by the Board to measure target identification and judgment competency at least as accurately as courses prescribed under R13-4-116(E)(1).
   b. The provider of a firearms target identification and judgment course shall ensure that the course includes:
      i. A timed accuracy component;
      ii. A type and style of target discrimination test that is equal to, or more difficult than, those used in a course prescribed under R13-4-116(E)(1); and
      iii. A success criterion that is equal to, or more difficult than, criteria used in a course prescribed under R13-4-116(E)(1).
3. The provider of a firearms qualification or firearms target identification and judgment course shall ensure that the course is taught by a firearms instructor who meets the requirements of R13-4-114(A)(2)(c).

D. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

R13-4-112. ~~Time-frames~~ Time Frames

A. For the purposes of A.R.S. § 41-1073, the Board establishes the following ~~time-frames~~ time frames for peace officer certification:
1. Administrative completeness review ~~time-frame~~ time frame: 90 days.
2. Substantive review ~~time-frame~~ time frame: 180 days.

3. Overall ~~time-frame~~ time frame: 270 days.

B. The administrative completeness review ~~time-frame~~ time frame begins on the date the Board receives the report required by R13-4-108(A)(1) from an appointing agency.
1. Within 90 days, the Board shall review the report and issue to the appointing agency a ~~statement~~ notice of administrative completeness or a notice of administrative ~~deficiencies~~ deficiency that lists each document or item of information establishing compliance with R13-4-105 that is missing.
2. If the Board issues a notice of administrative deficiency, the appointing agency shall make the missing documents and information available to the Board within 90 days of the date of the notice. The administrative completeness review ~~time-frame~~ time frame is suspended from the date of the deficiency notice until the date the missing documents and information are made available to the Board.
3. If the appointing agency fails to make available all missing documents and information within the 90 days provided, the Board shall close the applicant's file. An applicant whose file is closed and who wants to be certified shall apply again under R13-4-103.
4. When the file is administratively complete, the Board shall provide written notice of administrative completeness to the appointing agency.

C. The substantive review ~~time-frame~~ time frame begins on the date the Board issues the notice of administrative completeness.
1. During the substantive review ~~time-frame~~ time frame, the Board may make one comprehensive written request for additional information.
2. The appointing agency shall make available to the Board the additional information identified in the request for additional information within 60 days. The ~~time-frame~~ time frame for the Board to finish the substantive review of the application is suspended from the date of the request for additional information until the additional information is made available to the Board.
3. If the appointing agency fails to make available the additional information requested within the 60 days provided, the Board shall close the applicant's file. An applicant whose file is closed and who wants to be certified shall apply again under R13-4-103.
4. When the substantive review is complete, the Board shall grant or deny certification.

R13-4-114. Minimum Course Requirements

A. Instructors. An academy administrator or agency head shall ensure that only an instructor who meets the requirements of this Section facilitates a Board-prescribed course.
1. Instructor classifications.
   a. General instructor. ~~A person~~ An individual qualified to teach topics not requiring a proficiency instructor under subsection (A)(1)(c).
   b. Specialist instructor. ~~A person~~ An individual, other than an Arizona peace officer, qualified to teach a topic in which the instructor has special expertise but who does not qualify for general instructor status.
   c. Proficiency instructor. ~~A person~~ An individual qualified to teach a topic area listed in R13-4-111(B)(2)(b).
2. Instructor qualification standards.
   a. A general instructor shall meet the requirements of subsections (A)(2)(a)(i) and (A)(2)(a)(ii) and either the requirement of subsection (A)(2)(a)(iii) or (A)(2)(a)(iv):
      i. Have two ~~years~~ years' experience as a certified peace officer;
      ii. Maintain instructional competency;
      iii. Successfully complete a Board-sponsored instructor training course or an instructor training course that contains all of the performance objectives and demonstrations of the Board-sponsored instructor course;
      iv. Possess a community college or university teaching certificate.
   b. A specialist instructor shall meet the requirements of subsections (A)(2)(b)(i) and (A)(2)(b)(ii) and either subsection (A)(2)(b)(iii) or subsections (A)(2)(b)(iv) and (A)(2)(b)(v):
      i. Be nominated by an agency head or the administrator of an academy authorized to provide a peace officer basic training course;
      ii. Maintain instructional competency;
      iii. Possess a professional license or certification other than a peace officer certification that relates to the topics to be taught;
      iv. Provide documentation to the agency head or academy administrator for forwarding to the Board that demonstrates the expertise and ability to enhance peace officer training in a special field;
      v. Possess a community college or university teaching certificate.
   c. A proficiency instructor shall meet the requirements of subsections (A)(2)(c)(i) and (A)(2)(c)(ii) and either subsection (A)(2)(c)(iii) or (A)(2)(c)(iv):
      i. Meet the requirements for general instructor;
      ii. Maintain instructional competency;

iii. Successfully complete a proficiency instructor course in a topic area listed in R13-4-111(B)(2)(b) that includes a competency assessment to instruct in that area within the 585-hour full-authority peace officer basic training course listed in R13-4-116(E);
iv. Complete a form prescribed by the Board that documents advanced training and experience in the topic area including a competency assessment to instruct in that area within the 585-hour full-authority peace officer basic training course listed in R13-4-116(E);

d. A proficiency instructor shall meet the requirements of subsection (A)(2)(c) separately for each topic area listed in R13-4-111(B)(2)(b) for which the proficiency instructor seeks qualification.

3. Instructional competency. An academy administrator or an agency head shall immediately notify the Board in writing of any instructor:
a. Who jeopardizes the safety of students or the public,
b. Whose instruction violates acceptable training standards,
c. Who is grossly deficient in performance as an instructor, or
d. Who is a proficiency instructor and fails to complete satisfactorily the competency assessment to instruct in the instructor's topic area within the 585-hour full-authority peace officer basic training course.

4. If the Board determines that an instructor fails to comply with the provisions of this Section, has an instructional deficiency, or fails to maintain proficiency, any course facilitated by the instructor does not meet the requirements of this Section.

B. Curriculum standards. An academy administrator or agency head shall ensure that the curriculum for a Board-prescribed course meets the following standards:

1. Curriculum.
a. Curriculum development employs valid, job-based performance objectives and learning activities, and promotes student, officer, and public safety, as determined by a scientifically conducted validation study of the knowledge, skills, abilities, and aptitudes needed by the affected category of Arizona peace officer.
b. The curriculum meets or exceeds the requirements of subsection (B)(2), unless otherwise provided in this Section.

2. Curriculum format standard. The curriculum consists of the following:
a. A general statement of instructional intent that summarizes the desired learning outcome, is broad in scope, and includes long-term or far-reaching learning goals;
b. Lesson plans containing:
i. Course title,
ii. Hours of instruction,
iii. Materials and aids to be used,
iv. Instructional strategy,
v. Topic areas in outline form,
vi. Performance objectives or learning activities,
vii. Success criteria, and
viii. Reference material;
c. Performance objectives consisting of at least the following components:
i. The student, which is an individual or group that performs a behavior as the result of instruction;
ii. The behavior, which is an observable demonstration by the student at the end of instruction that shows that the objective is achieved and allows evaluation of the student's capabilities to perform the behavior; and
iii. The conditions, which is a description of the important conditions of instruction or evaluation under which the student performs the behavior. Unless specified otherwise within the lesson plan, instruction and evaluation will be in written or oral form;
d. Learning activities. A student is not required to demonstrate mastery of learning activities as a condition for successfully completing the training. Learning activities are subject areas for which performance objectives are not appropriate because either:
i. Reliable and meaningful assessment of mastery of the material would be extremely difficult or impossible, or
ii. Mastery of the material is not likely to bear a direct relationship to the ability to perform entry-level peace officer job duties; and
e. The following decimal numbering system to provide a logical means of organization:
i. Functional area (1.0, 2.0, 3.0),
ii. Topic area (1.1.0, 1.2.0, 1.3.0), and
iii. Performance objective or learning activity (1.1.1, 1.1.2, 1.1.3).

C. The Board shall maintain and provide upon request a copy of curricula that meet the standards of this Section.

R13-4-116. Academy Requirements

A. Unless otherwise provided in this Article, only the basic training provided by an academy that the Board determines meets the standards prescribed in this Section may be used to qualify for certified peace officer status.

B. The academy administrator shall ensure that the academy has the following:
1. A classroom with adequate heating, cooling, ventilation, lighting, and space;
2. Chairs with tables or arms for writing;
3. Visual aid devices for classroom presentation;
4. Equipment in good condition for specialized instruction;
5. A safe driving range for conducting the defensive and pursuit driving course;
6. A firing range with adequate backstop to ensure the safety of all persons on or near the range; and
7. A safe location for practical exercises.

C. Administrative requirements. The academy administrator shall ensure that the academy:
1. Establishes and maintains written policies, procedures, and rules concerning; ~~the operation~~
   a. Operation of the academy, ~~entrance~~
   b. Entrance requirements, ~~and student~~
   c. Student and instructor conduct, and
   d. Administering examinations;
2. Admits only ~~persons~~ individuals who meet the requirements of R13-4-105, as attested to by the appointing agency or, in the case of an open enrollee, by the academy administrator, on a form prescribed by the Board;
3. Administers to each student at the beginning of each academy session a written examination prescribed by the Board measuring competency in reading and writing English;
4. Schedules sufficient time for Board staff to administer the CFE as required by R13-4-110(A); and
5. ~~Employs~~ Uses only instructors who are qualified under R13-4-114(A).

D. Academic requirements. The academy administrator shall ensure that the academy:
1. Establishes a curriculum with performance objectives and learning activities that meet the requirements of subsection (E) and R13-4-114(B);
2. Requires instructors to use lesson plans that cover the course content and list the performance objectives to be achieved and learning activities to be used;
3. Administers written, oral, or practical demonstration examinations that measure the attainment of the performance objectives;
4. Reviews examination results with each student and ensures that the student ~~makes and understands~~ is shown any necessary corrections and signs and dates an acknowledgment that the student participated in the review;
5. Requires a student to complete successfully ~~an~~ oral or written ~~examination in each topic area~~ examinations that cover all topics in all functional areas before graduating.
   a. Successful completion of an examination is a score of 70 percent or greater.;
   b. For a student who scores less than 70 percent, the academy shall:
      i. Provide remedial training, and
      ii. Re-examine the student in the area of deficiency.; and
   c. The academy shall allow a student to retake ~~an~~ each examination ~~in a topic area~~ only once;
6. Requires a student to qualify with firearms as described in R13-4-116(E);
7. Ensures that a student meets the success criteria for police proficiency skills under subsection (E)(1);
8. Provides remedial training for a student who misses a class before allowing the student to graduate; and
9. Refuses to graduate a student who is absent more than 32 hours from the full-authority peace officer basic training course or 16 hours from the specialty or limited-authority peace officer basic training course.

E. Basic course requirements. The academy administrator shall ensure that the academy uses curricula that meet the requirements of R13-4-114 for the following basic courses of instruction.
1. The 585-hour full-authority peace officer basic training course shall include all of the topics listed in each of the following functional areas:
   a. Functional Area I - Introduction to Law Enforcement.
      i. Criminal justice systems,
      ii. History of law enforcement,
      iii. Law enforcement services,
      iv. Supervision and management,
      v. Ethics and professionalism, and
      vi. Stress management.
   b. Functional Area II - Law and Legal Matters.
      i. Introduction to criminal law;
      ii. Laws of arrest;
      iii. Search and seizure;
      iv. Rules of evidence;
      v. Summonses, subpoenas, and warrants;
      vi. Civil process;
      vii. Administration of criminal justice;
      viii. Juvenile law and procedures;

ix. Courtroom demeanor;
x. Constitutional law;
xi. Substantive criminal law, A.R.S. Titles 4, 13, and 36; and
xii. Liability issues.

c. Functional Area III - Patrol Procedures.
i. Patrol and observation (part 1),
ii. Patrol and observation (part 2),
iii. Domestic violence,
iv. Mental illness,
v. Crimes in progress,
vi. Crowd control formations and tactics,
vii. Bomb threats and disaster training,
viii. Intoxication cases,
ix. Communication and police information systems,
x. Hazardous materials,
xi. Bias-motivated crimes,
xii. Fires, and
xiii. Civil Disputes.

d. Functional Area IV - Traffic Control.
i. Impaired driver cases;
ii. Traffic citations;
iii. Traffic collision investigation;
iv. Traffic collision (practical);
v. Traffic direction; and
vi. Substantive Traffic Law, A.R.S. Title 28.

e. Functional Area V - Crime Scene Management.
i. Preliminary investigation and crime scene management,
ii. Crime scene investigation (practical),
iii. Physical evidence procedures,
iv. Interviewing and questioning,
v. Fingerprinting,
vi. Sex crimes investigations,
vii. Death ~~Investigations~~ investigations ~~(~~including ~~training certified by the Department of Health Services on~~ sudden infant death syndrome~~)~~,
viii. Organized crime activity,
ix. Investigation of specific crimes, and
x. Narcotics and dangerous drugs.

f. Functional Area VI - Community and Police Relations.
i. Cultural awareness,
ii. Victimology,
iii. Interpersonal communications,
iv. Crime prevention, and
v. Police and the community.

g. Functional Area VII - Records and Reports. Report writing.

h. Functional Area VIII - Police Proficiency Skills.
i. First aid,
ii. Firearms training (including firearms qualification),
iii. Physical conditioning,
iv. High-risk stops,
v. ~~Defensive~~ Arrest and control tactics,
vi. Vehicle operations, and
vii. Pursuit operations.

i. Functional Area IX - Orientation and Introduction.
i. Examinations and reviews,
ii. Counseling, and
iii. Non-Board specified courses.

2. The specialty peace officer basic training course shall include all of the topics necessary from the 585-hour full-authority peace officer basic training course for the curriculum to meet the requirements of R13-4-114(B).
3. The limited-authority peace officer basic training course shall include all of the topics necessary from the 585-hour full-authority peace officer basic training course for the curriculum to meet the requirements of R13-4-114(B).

4. ~~The 48-hour limited correctional peace officer supplement course shall include all of the topics listed in the following functional areas:~~
   a. ~~Functional Area I - Introduction to Law Enforcement: Management and Supervision.~~
   b. ~~Functional Area II - Law and Legal Matters.~~
      i. ~~Laws of arrest, and~~
      ii. ~~Search and seizure.~~
   c. ~~Functional Area III - Patrol Procedures.~~
      i. ~~Patrol and observation, and~~
      ii. ~~Bias-motivated crimes.~~
   d. ~~Functional Area IV - Crime Scene Management.~~
      i. ~~Preliminary investigation, and~~
      ii. ~~Crime scene management.~~
   e. ~~Functional Area V - Proficiency Skills.~~
      i. ~~First aid, and~~
      ii. ~~Firearms training.~~

~~5.~~4. Administrative functions such as orientation, introductions, examinations and reviews, and counseling are exempt from the requirements of R13-4-114(B).

F. Records required. The academy administrator shall ensure that the following records are maintained and made available for inspection by the Board or staff. The academy administrator shall provide to the Board copies of records upon request.
1. A record of all students attending the academy;
2. A manual containing the policies, procedures, and rules of the academy;
3. A document signed by each student indicating that the student received and read a copy of the academy policies, procedures, and rules;
4. An application for each student, on a form prescribed by the Board, from the appointing agency ~~for each student~~ or, in the case of an open enrollee, from the academy administrator, attesting that the requirements of R13-4-105 are met;
5. A copy of all lesson plans used by instructors;
6. An annually signed and dated acknowledgment that the academy administrator reviewed and approved each lesson plan used at the academy;
7. A copy of all examinations, answer sheets or records of performance, and examination review acknowledgments;
8. An attendance roster for all classes or other record that identifies absent students;
9. A record of classes missed by each student and the remedial training received;
10. A record of disciplinary actions for all students; and
11. A file for each student containing the student's performance history.

G. Reports required. The academy administrator shall submit to the Board:
1. At least 10 working days before the start of each academy session, a complete schedule of classes containing the name of the instructor for each class and the training location;
2. No more than five working days after the start of each academy session, on a form prescribed by the Board, a roster ~~containing the identification of~~ indicating whether a student is an open enrollee or appointed and if appointed, identifying the appointing agency, and the full name and Social Security number of each student;
3. No more than five working days after dismissing a student from the academy, notification of the dismissal and the reason;
4. No later than the tenth day of each month, a report containing:
   a. A summary of training activities and progress of the academy class to date;
   b. Unusual occurrences, accidents, or liability issues; and
   c. Other problems or matters of interest noted in the course of the academy, if not included under subsection (G)(4)(b);
5. No more than 10 working days after the end of each academy session, a complete schedule of classes containing the name of the instructor for each class and the training location;
6. No more than 10 working days after the end of each academy session, on a form prescribed by the Board, a roster ~~containing the identification of~~ indicating whether a student is an open enrollee or appointed and if appointed, identifying the appointing agency, and the full name and Social Security number of each student successfully completing the training.

H. Required inspections. Before an academy provides training to ~~persons~~ individuals seeking certification for any category of peace officer, the Board staff shall conduct an onsite inspection of the academy to determine compliance with this Section and R13-4-114. Board staff shall conduct additional inspections as often as the Board deems necessary.
1. Within 30 days after the inspection, the Board staff shall provide to the academy administrator an inspection report that lists any deficiencies identified and remedial actions the academy is required to take to comply with the standards of this Section and R13-4-114.

2. Within 30 days after receipt of the inspection report, the academy administrator shall submit to the Board a response that indicates the progress made to complete the remedial actions necessary to correct the deficiencies described in the inspection report. The academy administrator shall submit to the Board additional responses every 30 days until all remedial action is complete.
3. Within 30 days after receipt of notice that all remedial action is complete, Board staff shall conduct another inspection.
4. Following each inspection, Board staff shall present an inspection report to the Board describing the academy's compliance in meeting the standards of this Section and R13-4-114.

I. If an academy does not conduct a peace officer basic training course for 12 consecutive months, the academy shall not provide training until Board staff conducts another inspection as required by subsection (H). Otherwise, an academy may continue to provide training unless the Board determines that the academy is not in compliance with the standards of this Section or R13-4-114.

J. If the Board finds that an academy fails to comply with the provisions of this Section or R13-4-114, the academy shall not provide training to ~~persons~~ individuals seeking to be certified as peace officers.

K. An academy administrator shall ensure that an open enrollee is admitted only after the academy administrator complies with every requirement of an agency or agency head imposed by R13-4-105, R13-4-106, R13-4-107, and R13-4-108 except for R13-4-106(C)(4).

R13-4-117. Training Expense Reimbursements

A. Approval of training courses. The Board shall approve or deny training courses for training expense reimbursement based on compliance with this Section and R13-4-111, and availability of funds.

B. Application for reimbursement. Before the beginning of a training program described in R13-4-111, an agency planning to participate in the training and apply for reimbursement, shall notify the Board on prescribed forms.

C. Claim for reimbursement. When ~~a person~~ an individual completes a training course, the appointing agency may submit a claim for reimbursement on a form prescribed by the Board. The ~~claim~~ agency shall ~~be submitted~~ submit the claim within 60 days after ~~completion of~~ the training is completed.

D. Allowable reimbursements. The Board shall allow the following reimbursements subject to the limits on the amount of reimbursement as determined by the Board under subsection (E):
1. The actual cost of lodging and meals while a peace officer ~~attends~~ attended a training course,
~~2. The actual pay a peace officer received while attending a training course,~~
~~3.~~2. Tuition for a training course on a pro-rata basis for the actual hours of training attended, and
~~4.~~3. Other expenses incurred by a peace officer.

E. Limitations on reimbursements. The following limitations apply to applications for reimbursement involving training courses.
1. The Board shall not reimburse an agency if the peace officer has previously completed the same training course within three years~~.~~;
2. The Board shall not reimburse an agency for a peace officer who fails to complete a training course except upon request of the appointing agency. The agency shall present the reasons for the non-completion to the Board with the request for reimbursement~~.~~; and
~~3. The Board may pay salary reimbursement for a training course only for the actual hours of training attended at the percentage rate established by the Board.~~
~~4.~~3. The Board shall not reimburse an agency for ~~payment~~ the cost of insurance, medical, pension, uniform, clothing, equipment, or other benefits or expenses of a peace officer while attending a training course.

F. Academy reimbursement. The Board may reimburse an academy for the actual costs of materials, books, ammunition, registration fees and tuition, necessary for completion of a basic course up to the limits set by the Board. To receive reimbursement, an academy shall furnish paid receipts or invoices or other information as required by the Board to verify costs incurred. The Board shall not reimburse an academy for costs incurred for registration fees, tuition, books, materials, or ammunition for a peace officer, if the Board has made these reimbursements for the peace officer's previous attendance at an academy.

R13-4-118. Hearings; Rehearings

A. If a respondent makes a ~~proper~~ request for hearing under R13-4-109(E), the hearing shall be held in accordance with A.R.S. Title 41, Chapter 6, Article 10.

B. If a respondent fails to comply with the requirements under R13-4-109(E) within 30 days of the notice of action sent under R13-4-109(E), the Board may consider the case based on the information available.

C. If a respondent requests a hearing, but fails to appear at the hearing, the Board or administrative law judge may vacate the hearing. If a hearing is vacated, the Board may deem the acts and violations charged in the notice of action admitted, and impose any of the sanctions provided by A.R.S. § 41-1822(C)(1).

D. The Board shall render a decision in writing. The Board shall serve notice of the decision ~~upon~~ on each party as required by A.R.S. § 41-1092.04.

E. Except as provided in subsection (I), a party is required to file a motion for rehearing or review of a Board decision to exhaust the party's administrative remedies.

~~E.~~F. A party may file a motion for rehearing or ~~reconsideration~~ review of ~~the~~ a decision with the Board not later than 30 days after service of the Board's decision, specifying the particular grounds for the motion.

~~F.~~G. The Board may grant a rehearing or ~~reconsideration~~ review of a decision for any of the following reasons materially

affecting the moving party's rights:

1. Irregularity in the administrative proceedings, or any abuse of discretion that ~~deprives~~ deprived the moving party ~~was deprived~~ of a fair hearing;
2. Misconduct of the Board, the administrative law judge, or the prevailing party;
3. Mistake or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the hearing;
5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing; or
6. The decision was not justified by the evidence or the decision was contrary to law.

~~G.~~**H.** The Board may affirm or modify the decision or grant a rehearing to any or all of the parties, on part or all of the issues, for any of the reasons in subsection ~~(F)~~ (G). An order granting a rehearing shall specify the particular issues in the rehearing and the rehearing shall concern only the matters specified.

I. If the Board makes a specific finding that a particular decision needs to be effective immediately to preserve the public peace, health, or safety and that a review or rehearing of the decision is impracticable, unnecessary, or contrary to the public interest, the Board shall issue the decision as a final decision without an opportunity for rehearing or review.

ARTICLE 2. CORRECTIONAL OFFICERS

R13-4-201. Definitions

~~In~~ The definitions in A.R.S. § 41-1661 apply to this Article~~:~~. Additionally, unless the context otherwise requires:

"Academy" means the Correctional Officer Training Academy (COTA) of the Arizona Department of Corrections in Tucson, Arizona, or a satellite location authorized by the Director.

"Appointment" means the selection of ~~a person~~ an individual as a correctional officer.

"Applicant" means an ~~person~~ individual who applies to be a correctional officer.

~~"Board" is defined in A.R.S. § 41-1661(2).~~

"Cadet" means an ~~applicant who meets the requirements for appointment as~~ individual who is attending the academy and, upon graduation, will become a state correctional officer ~~and is selected to attend the academy~~.

~~"Correctional officer" is defined in A.R.S. § 41-1661(3).~~

"Dangerous drug or narcotic" is defined in R13-4-101.

"Department" means the Arizona Department of Corrections.

~~"Director" is defined in A.R.S. § 41-1661(4).~~

~~"Employing agency" is defined in A.R.S. § 41-1661(5).~~

"Experimentation" means the illegal use of marijuana, a dangerous drug, or narcotic, as described in R13-4-105(B) and (C).

"State correctional officer" means ~~a person~~ an individual employed by the Department in the correctional ~~service officer and correctional program~~ officer series.

R13-4-202. Uniform Minimum Standards

A. To be admitted to the academy for training as a state correctional officer, ~~a person~~ an individual shall:

1. Be a citizen of the United States or ~~be~~ eligible to work in the United States;
2. Be at least 21 years of age by the date of graduation from the academy;
3. Be a high school graduate or have successfully completed a General Education Development (G.E.D.) examination or equivalent as specified in R13-4-203(C)(3);
4. Have a valid Arizona driver's license (Class 2 or higher) by the date of graduation from the academy;
5. Undergo a complete background investigation that meets the standards of R13-4-203;
6. Undergo a physical examination (within 12 months before appointment) as prescribed by the Director by a licensed physician designated by the Director;
7. Not have been dishonorably discharged from the United States Armed Forces;
8. Not have experimented with marijuana within the past 12 months;
9. Not have experimented with a dangerous drug or narcotic within the past five years;
10. Not have ever illegally used marijuana, or a dangerous drug or narcotic other than for experimentation;
11. Not have a pattern of abuse of prescription medication; and
12. Not have committed a felony or a misdemeanor of a nature that the Board determines has a reasonable relationship to the functions of the position, in accordance with A.R.S. § 13-904(E).

B. If the Director wishes to appoint an individual whose conduct is grounds to deny certification under R13-4-109, the Director may petition the Board for a determination that the otherwise disqualifying conduct constitutes juvenile indiscretion by complying with R13-4-105(D).

~~B.~~**C.** Code of Ethics. To enhance the quality of performance and the conduct and the behavior of correctional officers, ~~a person~~ an individual appointed to be a correctional officer shall commit to the following Code of Ethics and shall affirm the commitment by signing the ~~code, on a form designated by the Board~~ Code:

"I shall maintain high standards of honesty, integrity, and impartiality, free from any personal considerations, favoritism, or partisan demands. I shall be courteous, considerate, and prompt when dealing with the public, realizing

that I serve the public. I shall maintain mutual respect and professional cooperation in my relationships with other staff members.

I shall be firm, fair, and consistent in the performance of my duties. I shall treat others with dignity, respect, and compassion, and provide humane custody and care, void of all retribution, harassment, or abuse. I shall uphold the Constitutions of the United States and the state of Arizona, and all federal and state laws. Whether on or off duty, in uniform or not, I shall conduct myself in a manner that will not bring discredit or embarrassment to my agency or the state of Arizona.

I shall report without reservation any corrupt or unethical behavior that could affect either inmates, employees, or the integrity of my agency. I shall not use my official position for personal gain. I shall maintain confidentiality of information that has been entrusted to me and designated as such.

I shall not permit myself to be placed under any kind of personal obligation that could lead any person to expect official favors. I shall not accept or solicit from anyone, either directly or indirectly, anything of economic value such as a gift, gratuity, favor, entertainment, or loan, that is or may appear to be, designed to influence my official conduct. I will not discriminate against any inmate, employee, or any member of the public on the basis of race, gender, creed, or national origin. I will not sexually harass or condone sexual harassment of any person. I shall maintain the highest standards of personal hygiene, grooming, and neatness while on duty or otherwise representing the state of Arizona."

R13-4-203. Background Investigation

A. The Department shall conduct a background investigation before an applicant is admitted to the academy. The Department shall review the personal history statement submitted under subsection (B) and the results of the background investigation required in subsection (C) to determine ~~that~~ whether the ~~person~~ individual meets the requirements of R13-4-202~~,~~ and ~~that~~ the ~~person's~~ individual's personal history statement is accurate and truthful.

B. Personal history. An applicant shall complete and submit to the employing agency a personal history statement on a form prescribed by the Board. The applicant shall complete the personal history statement ~~shall be completed~~ before the start of the background investigation~~. It shall contain~~ and ensure that the personal history statement ~~answers to questions required in~~ provides the information necessary for the Department to conduct the investigation described in subsection (C).

C. Investigative requirements. Before admitting an applicant to the academy, the Department shall collect, verify, and retain documents establishing that ~~an~~ the applicant meets the standards specified in this Article. At a minimum, this documentation shall include:

1. Proof of the applicant's age and United States citizenship or eligibility to work in the United States. A copy of any of the following regarding the applicant is acceptable proof:
   a. ~~The applicant's birth~~ Birth certificate,
   b. United States passport,
   c. Certification of United States Naturalization,
   d. Certificate of Nationality, or
   e. Immigration Form I-151 or I-1551.
2. Proof of the applicant's valid ~~Arizona~~ driver's license. A copy of the applicant's ~~Arizona~~ driver's license~~,~~ ~~along with~~ and written verification of the applicant's driving record from the ~~Arizona~~ applicable state's Department of Transportation, Motor Vehicle Division, is required proof.
3. Proof that the applicant is a high school graduate or its equivalent. The following are acceptable proof:
   a. A copy of a ~~high school~~ diploma~~, or graduation certificate~~ from a high school recognized by the department of education of the jurisdiction in which the diploma is issued;
   b. ~~Successful~~ A copy of a certificate showing successful completion of the ~~Arizona~~ General Education Development (G.E.D.) ~~tests or successful completion of an equivalent~~ test ~~from another state, that meets or exceeds the Arizona Department of Education's requirement for G.E.D. testing~~; or
   c. In the absence of proof of high school graduation or successful completion of the G.E.D. ~~tests~~ test,
      i. A copy of ~~an Associate's Degree~~ a degree or transcript from an accredited college or university showing successful completion of high school or high school equivalency;
      ~~ii. A certificate issued by the United States Armed Forces Institute (U.S.A.F.I.) before December 31, 1974, showing successful completion of high school equivalency;~~
      ~~iii.~~ii. A United States Military Service Record DD Form 214-#4 with the Education block indicating high school completion, or
      ~~iv.~~iii. ~~The applicant may submit other~~ Other evidence of high school education equivalency submitted to the Board for consideration ~~by the Board~~.
4. Record of any military discharge. A copy of the Military Service Record (DD Form 214-#4) is acceptable proof.
5. Results of a psychological fitness assessment approved by the Director and conducted by a psychologist or psychiatrist designated by the Department.
6. Personal ~~reference~~ references: The names and addresses of at least three individuals who can provide information regarding the applicant.

7. ~~and previous employer inquiries~~ Previous employers or schools attended. ~~Information provided by at least three personal references and~~ The names and addresses of all ~~previous~~ employers of and schools attended by the applicant for the past five years ~~shall be documented by the Department~~.
8. Residence history. The complete address for every location at which the applicant has lived in the last five years.
~~7.~~9. Law enforcement agency records. The Department shall request and review law enforcement agency records in jurisdictions where the applicant has lived, worked, or attended school in the past five years. ~~Information~~ The Department shall document the information obtained ~~shall be documented by the Department~~.
~~8.~~10. Criminal history query. ~~Results of the Department's~~ The Department shall query ~~of~~ the National Crime Information Center/Interstate Identification Index (NCIC/III), and the Arizona Criminal Information Center/Arizona Computerized Criminal History (ACIC/ACCH), or the equivalent for each state where the applicant has lived, worked, or attended school in the past five years and review ~~of that~~ the criminal history record for any arrest or conviction to determine compliance with R13-4-202.
~~9.~~11. ~~An applicant~~ Fingerprint card. The Department shall obtain from an applicant and submit a fingerprint card ~~processed~~ for processing by the Arizona Department of Public Safety and the Federal Bureau of Investigation.
   a. The Department shall process ~~an applicant~~ a fingerprint card for ~~all cadets~~ an applicant entering the academy, except as provided in subsections (C)(9)(b) and (C)(9)(c). ~~Fingerprint cards shall be processed by the~~ The Department~~,~~ shall process a fingerprint card for an applicant even if the applicant has a processed applicant fingerprint card from a previous employer.
   b. If ~~an applicant~~ the fingerprint card is not fully processed when the applicant is ready to enter the academy, the Department may allow the applicant to attend the academy if:
      i. A computerized criminal history check has been made and the results are on file with the Department, and
      ii. The applicant meets all other requirements of this Section and R13-4-202.
   c. If the Department has not received a fully processed fingerprint card within 15 weeks of the date of admission to the academy, the ~~person~~ individual does not meet the requirements of this Section and may be terminated from the academy. The Department may extend the deadline for receipt of a processed fingerprint card an additional 15 weeks. An individual terminated from the academy under this subsection ~~Upon receipt of a fully processed card, the person~~ may be re-employed under R13-4-208 when a fully processed fingerprint card is received.

R13-4-204. Records and Reports

A. Reports. The Department shall submit to the Board a report by the Director attesting that each ~~person~~ individual completing the academy meets the requirements of R13-4-202.
B. Records. The Department shall make Department records available to the Board upon request of the Board or its staff. The Department shall keep the records in a central location. The Department shall maintain:
   1. A copy of reports submitted under subsection (A);
   2. All written documentation obtained or recorded under R13-4-202 and R13-4-203; and
   3. A record of all advanced training, specialized training, continuing education, and firearms qualification conducted under R13-4-206 ~~and R13-4-207~~.
C. Record retention. The Department shall maintain the records required by this Section as follows:
   1. For applicants investigated under R13-4-203 who are not appointed: two years; and
   2. For applicants who are appointed: five years from the date of ~~appointment~~ termination, except records retained under subsection (B)(3), shall be retained for three years.

R13-4-205. Basic Training Requirements

A. Required training for state correctional officers. Before appointment as a state correctional officer, ~~a person~~ an individual shall complete a Board-approved basic correctional officer training program. This program shall meet or exceed the requirements of this Section.
B. Curricula or training material approval ~~time-frames~~ time frames.
   1. For the purposes of A.R.S. § 41-1073, the Board establishes the following ~~time-frames~~ time frames for curricula or training material that require Board approval under this Section and R13-4-206.
      a. Administrative completeness ~~time-frame~~ time frame: 60 days.
      b. Substantive review ~~time-frame~~ time frame: 60 days.
      c. Overall ~~time-frame~~ time frame: 120 days.
   2. The administrative completeness review ~~time-frame~~ time frame begins on the date the Board receives the documents required by this Section or R13-4-206.
      a. Within ~~90~~ 60 days, the Board shall review the documents and issue to the Department a statement of administrative completeness or a notice of administrative deficiencies that lists each item required by this Section that is missing.
      b. If the Board issues a notice of administrative deficiency, the Department shall submit the missing documents and information within 90 days of the notice. The administrative completeness ~~time-frame~~ time frame is suspended from the date of the deficiency notice until the date the Board receives the missing documents and information.

c. If the Department fails to provide the missing documents within the 90 days provided, the Board shall deny the approval.
d. When the file is administratively complete, the Board shall provide written notice of administrative completeness to the Department.

3. The substantive review ~~time-frame~~ time frame begins on the date the Board issues the notice of administrative completeness.
   a. During the substantive review ~~time-frame~~ time frame, the Board may make one comprehensive written request for additional information.
   b. The Department shall submit to the Board the additional information identified in the request for additional information within 60 days. The ~~time-frame~~ time frame for the Board to finish the substantive review of the application is suspended from the date of the request for additional information until the Board receives the additional information.
   c. The Board shall deny the approval if the additional information is not supplied within the 60 days provided.
   d. When the substantive review is complete, the Board shall grant or deny approval.

C. Basic course specifications.

1. The Department shall develop the curriculum for the basic correctional officer training program.
   a. The curriculum shall include courses in the following functional areas.
      i. Functional Area I - Ethics and Professionalism;
      ii. Functional Area II - Inmate Management;
      iii. Functional Area III - Legal Issues;
      iv. Functional Area IV - Communication Skills;
      v. Functional Area V - Officer Safety, including firearms;
      vi. Functional Area VI - Applied Skills;
      vii. Functional Area VII - Security, Custody, and Control;
      viii. Functional Area VIII - Conflict and Crisis Management; and
      ix. Functional Area IX - Medical Emergencies, and Physical and Mental Health.
   b. The curriculum shall also contain administrative time for orientation, counseling, testing, and remedial training.
2. ~~Curriculum~~ The Department shall ensure that curriculum submitted to the Board for approval ~~shall contain~~ contains lesson plans that include:
   a. Course title,
   b. Hours of instruction,
   c. Materials and aids to be used,
   d. Instructional strategy,
   e. Topic areas in outline form,
   f. Success criteria, and
   g. The performance objectives or learning activities to be achieved.
3. After initial approval by the Board, the Director or the Director's designee shall: ~~annually~~
   a. Annually review ~~and approve~~ each lesson plan submitted to and approved by the Board under subsection (C)(2); ~~used in the academy.~~ and
   b. If an approved lesson plan has been changed, submit the changed lesson plan to the Board for approval; or
   c. ~~The Director or the Director's designee~~ If an approved lesson plan has not been changed, ~~shall~~ sign and date an acknowledgment of approval for each lesson plan.
4. ~~A~~ The Department shall ensure that the following three components are specified for each performance objective ~~shall consist of three components~~:
   a. The learner, which is an individual or group that performs a behavior as the result of instruction;
   b. The behavior, which is an observable demonstration by the learner at the end of instruction that shows that the objective is achieved and allows evaluation of the learner's capabilities relative to the behavior.
   c. The conditions, which is a description of the important conditions of instruction or evaluation under which the learner will perform the stated behavior. Unless specified otherwise, the instruction and evaluation shall be in written or oral form.
5. ~~Instructors~~ The Department shall ensure that instructors of basic correctional officer training courses ~~shall~~ meet ~~instructor~~ proficiency requirements developed by the Department and approved by the Board. ~~Instructors shall be qualified by~~ The Department shall ensure that proficiency requirements for instructors include education, experience, or a combination of both~~, and~~. The Department shall ~~be affirmed~~ affirm to the Board that each instructor ~~by the Department as having~~ has the necessary qualifications before the instructor ~~delivering~~ delivers any instruction. In addition to these requirements, instructors of courses dealing with the proficiency skills of defensive tactics, physical conditioning, firearms, and medical emergencies shall complete specialized training developed by the Department and approved by the Board. Instructors shall use lesson plans described in subsection (C)(2).

D. Academic requirements.

1. ~~Cadets~~ A cadet shall be given ~~any~~ a combination of written, oral, or practical demonstration examinations capable of measuring ~~their~~ the cadet's attainment of the performance objectives in each approved lesson plan.
2. Academy staff shall review examination results and academic progress with ~~cadets~~ each cadet ~~on a~~ weekly ~~basis~~. Academy staff shall ensure that ~~cadets are aware~~ each cadet is informed of correct responses.
3. ~~Cadets~~ A cadet shall complete all examinations before graduating from the academy. To successfully complete a written or oral examination, a cadet shall ~~have a~~ score ~~of~~ at least 70 percent.
   a. ~~For a student who~~ If a cadet receives a score of less than 70 percent, the academy shall provide the cadet with remedial training in areas of deficiency.
   b. The academy shall not offer a cadet more than one re-examination per lesson plan.
4. ~~Each~~ A cadet shall qualify with firearms as specified in subsection (C). Firearms qualification shall include:
   a. 50-shot daytime or nighttime qualification course with service handgun. The minimum passing score is 210 points out of a possible 250 points;
   b. Seven-shot qualification course with service shotgun; and
   c. Target identification and discrimination course.
5. ~~Each~~ A cadet shall meet success criteria described in the Board-approved curriculum for the proficiency skills of self-defense, physical conditioning, and medical emergencies, as approved under R13-4-205(C).
6. ~~An~~ The academy shall provide ~~cadets~~ a cadet who ~~do~~ does not attend a lesson with remedial training before graduation.
7. ~~An~~ The academy shall not graduate a cadet who attends less than 90 percent of the total hours of basic training ~~shall not graduate from the academy~~.

E. Exceptions. A cadet shall not function as a state correctional officer except:
1. As a part of an exercise within the approved basic training program ~~at the academy~~, if the cadet is under the direct supervision and control of a state correctional officer; or
2. At the discretion of the Director, for the duration of an emergency situation including, but not limited to, riots, insurrections, and natural disasters. A cadet shall not carry a firearm in the course of duty unless the cadet has successfully met the requirement of R13-4-205(D)(4).

F. Waiver of required training. The Board shall grant a complete or partial waiver of the required basic training, at the request of the Director, upon a finding by the Board that the best interests of the corrections profession are served and the public welfare and safety is not jeopardized by the waiver if an applicant:
1. ~~An applicant successfully~~ Successfully completes a basic corrections ~~recruit~~ officer training course comparable to or exceeding, in hours of instruction and subject matter, the Board-approved basic correctional officer training course and has a minimum of one year of experience as a correctional officer. ~~Written~~ The applicant shall include verification of previous experience and training ~~shall accompany~~ with the application for waiver;
2. ~~An applicant meets~~ Meets the minimum qualifications specified in R13-4-202; and
3. ~~An applicant successfully~~ Successfully completes a comprehensive examination measuring comprehension of the basic correctional officer training course. The comprehensive examination shall be prepared by the Department, ~~and~~ approved by the Board. ~~It shall~~, and include a written test and practical demonstrations of proficiency in firearms, physical conditioning, and defensive tactics.

~~**G.** Certificate of completion time-frame. The Board shall provide certificates of completion for each person named in the Director's attestation made under R13-4-204(A) within 30 days of Board receipt. The Board shall mail certificates of completion to the Director for distribution.~~

R13-4-206. Field Training and Continuing Training Including Firearms Qualification

A. Field training requirement. Before graduating from the academy or within two months after graduation, a cadet or state correctional officer shall participate in and successfully complete a Board-approved field training program.

~~A.~~B. Continuing training requirement.
1. A state correctional officer shall receive eight hours of Board-approved continuing training each calendar year beginning January 1, following the date the officer received certified status.
2. ~~A~~ In addition to the training required under subsection (B)(1), a state correctional officer authorized to carry a firearm shall qualify each calendar year after appointment beginning January 1, following the date the officer received certified status. ~~, on a Board-approved course of fire,~~ The firearms qualification training shall meet the standards specified under subsection ~~(E). Firearms qualification~~ (F) and shall not be used to satisfy the requirements of R13-4-206~~(B)~~ (C).

~~B.~~C. Continuing training requirements may be fulfilled by:
1. Advanced training programs, or
2. Specialized training programs.

~~C.~~D. Advanced training programs. The Department shall develop, design, implement, maintain, evaluate, and revise advanced training programs that include courses enhancing a correctional officer's knowledge, skills, or abilities for the job that the correctional officer performs. The courses within ~~this~~ an advanced training program shall ~~be approved by the Board and~~ include advanced or remedial training in any topic listed in R13-4-205(C).

~~D.~~E. Specialized training programs. The Department shall develop, design, implement, maintain, evaluate, and revise specialized training programs that address a particular need of the Department and target a select group of officers. The

courses within ~~this~~ a specialized training program shall ~~be approved by the Board and~~ include topics different from those in the basic corrections training program or any advanced training programs.

~~E.~~**F.** Firearms qualification required. A correctional officer authorized to carry a firearm shall qualify to continue to be authorized to carry a firearm each calendar year beginning the year following the receipt of certified status by completing a Board-prescribed firearms qualification course using a service handgun, service shotgun, and service ammunition, and a Board-prescribed target identification and judgment course.

1. Firearms qualification course standards.
   a. A firearms qualification course is:
      i. A course prescribed under R13-4-205(C); or
      ii. A course determined by the Board to measure firearms competency at least as accurately as the course prescribed under R13-4-205(C).
   b. All firearms qualification courses shall include:
      i. A timed accuracy component;
      ii. A type and style of target that is equal to, or more difficult than, the targets used under R13-4-205(C); and
      iii. Success criteria that are equal to, or more difficult than, the success criteria used under R13-4-205(C).
2. Firearms target identification and judgment course standards.
   a. A firearms target identification and judgment course is:
      i. A course prescribed under R13-4-205(C); or
      ii. A course determined by the Board to measure target identification and judgment competency at least as accurately as those prescribed under R13-4-205(C).
   b. All firearms target identification and judgment courses shall include:
      i. A timed accuracy component;
      ii. A type and style of target discrimination that is equal to, or more difficult than, those used under R13-4-205(C); and
      iii. Success criteria that are equal to, or more difficult than, those used under R13-4-205(C),
3. All courses shall be presented by a firearms instructor ~~meeting~~ who meets the requirements ~~of~~ under R13-4-205(C)(5).

R13-4-208. Re-employment of State Correctional Officers

A. A state correctional officer who terminates employment may be re-employed by the Department within two years from the date of termination if the ~~person~~ former state correctional officer meets the requirements of R13-4-202 and R13-4-203~~,~~ at the time of re-employment.

B. A state correctional officer who terminates employment may be re-employed by the Department if re-employment is sought more than two years but less than three years from the original date of termination, if the ~~person~~ former state correctional officer meets the requirements of R13-4-202 and R13-4-203~~,~~ at the time of re-employment~~,~~ and completes the waiver provisions of R13-4-205(F).

C. A ~~person~~ former state correctional officer who seeks re-employment more than three years from the date of termination shall meet all the requirements of this Article at the time of re-employment.

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

[R15-162]

PREAMBLE

1. Articles, Parts, and Sections Affected (as applicable) — **Rulemaking Action**
R20-5-601 — Amend

2. Citations to agency's statutory rulemaking authority to include the authorizing statute and the implementing statute:
Authorizing statute: A.R.S. § 23-405(4)
Implementing statute: A.R.S. § 23-410

3. 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: 21 A.A.R. 2785, November 13, 2015 (*in this issue*)

4. The agency's contact person who can answer questions about the rulemaking:
Name: Larry Gast, ADOSH Assistant Director
Address: Industrial Commission of Arizona
800 W. Washington St., Suite 203

Phoenix, AZ 85007
Telephone: (602) 542-1695
Fax: (602) 542-1614
E-mail: Larry.Gast@azdosh.gov

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

The Industrial Commission of Arizona is amending the rules relating to safety standards in the construction industry to incorporate by reference recent final federal rules. The Arizona Division of Occupational Safety and Health (ADOSH), part of the Industrial Commission of Arizona, is required to adopt standards that are at least as effective as those adopted by federal OSHA (the U.S. Department of Labor). The amendments apply to updating occupational safety and health standards deadline for employers to ensure that crane operators are certified by three years, until November 10, 2017 and adding a new subpart to provide protections to employees working in confined spaces in construction.

The amendments to the federal standards extending the deadline for employers to ensure that crane operators are certified by three years, until November 10, 2017.as published in the Federal Register at 79 FR 57785-57798 on September 26, 2014. The federal final rule became effective on November 9, 2014. While operator certification offered safety benefits, most current certifications lack the required capacity factor and would therefore not comply with the final cranes standard. Without an extension the construction industry would face a crane operator shortage in the coming years, as there will not be enough time for employers to certify their operators in time for the industry to continue performing work without disruption, OSHA concurred it was crucial for an extension to be granted. OSHA also is extending the enforcement date for crane operator certification for three years from November 10, 2014, to November 10, 2017.

The amendments to the federal standards related to OSHA adding a new subpart to provide protections to employees working in confined spaces in construction as published in the Federal Register at 80 FR 25365-25526. The federal final rule became effective on August 3, 2015. This new subpart replaces OSHA's one training requirement for confined space work with a comprehensive standard that includes a permit program designed to protect employees from exposure to many hazards associated with work in confined spaces, including atmospheric and physical hazards. The final rule is similar in content and organization to the general industry confined spaces standard, but also incorporates several provisions from the proposed rule to address construction-specific hazards, accounts for advancements in technology, and improves enforceability of the requirements.

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

The agency did not review or rely on any study relevant to the rules.

7. 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

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

The Industrial Commission anticipates that the rule change related to incorporating by reference the recent amendments to federal safety standards related to crane operator certification will have little economic impact. According to federal OSHA estimates that this rule will have a cost savings for employers of $21.4 million per year for the three years of the extension, this final rule is not economically significant within the meaning of Executive Order 12866. Delaying the operator certification requirement defers a regulatory requirement and should impose no new costs on employers. There will, however, be continuing employer costs for extending the requirement to assess operators under existing § 1926.1427(k)(2); if OSHA had not extended these requirements, they would have expired in 2014 and employers would not have incurred these costs after 2014. Because federal OSHA estimates the cost of any single assessment to be no higher than $307.48, it believes the economic impact will be minimal on any employer. Most employers will have savings resulting from the three-year extension, particularly employers that planned to pay for operator certification in the year before the original 2014 deadline. The only entities likely to see a net cost will be entities that planned to hire an operator with compliant certification after November 10, 2014. Without the three-year extension, these entities will have no separate assessment duty, but under the three-year extension they will have the expense involved in assessing operator competency. As noted above, however, OSHA estimated the cost for such assessments (for operators with a type and capacity certification) to be $76.87 per certified operator.

In regards to Confined Space in Construction, OSHA estimates that the final rule will result in yearly compliance costs of $60.3 million (using a discount rate of 7 percent), and yearly safety benefits, based on lives saved and injuries prevented, of $93.6 million. Therefore, the benefits of this final standard outweigh the costs of complying with its provisions, yielding net benefits of $33.3 million a year. Compliance with the final standard will result in

approximately $1.55 of benefits for every dollar of costs. Based on the analysis, federal OSHA concludes that this final standard is technologically and economically feasible for all affected industries. OSHA concludes that compliance with the requirements of the final rule is economically feasible in every affected industry sector.

9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Larry Gast, ADOSH Assistant Director
Address: Industrial Commission of Arizona
Division of Occupational Safety and Health
800 W. Washington St., Suite 203
Phoenix, AZ. 85007
Telephone: (602) 542-1695
Fax: (602) 542-1614
E-mail: Larry.Gast@azdosh.gov

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Written comments can be submitted to the address listed in item 9 by the close of the comment period, which is at 5:00 p.m. on December 14, 2015. An oral proceeding is scheduled for December 14, 2015 at 9:00 a.m., at the Industrial Commission of Arizona, 800 W. Washington St., Room 206, Phoenix, AZ, 85007.

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

Not applicable

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

The rules do not require issuance of a regulatory permit or license.

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.

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

29 CFR 1926 The Federal Occupational Safety and Health Standards for Construction with amendments as of August 3, 2015. These incorporation(s) by reference will appear in R20-5-601.

13. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Section
R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926

Each employer shall comply with the standards in the Federal Occupational Safety and Health Standards for Construction, as published in 29 CFR 1926, with amendments as of ~~July 10, 2014~~ August 3, 2015 incorporated by reference. Copies of these referenced materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to construction activity by all employers, both public and private, in the state of Arizona. This incorporation by reference does not include amendments or editions to 29 CFR 1926 published after ~~July 10, 2014~~ August 3, 2015.

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

[R15-163]

PREAMBLE

1. Articles, Parts, and Sections Affected (as applicable) — **Rulemaking Action**

R20-5-1301	New Section
R20-5-1302	New Section
R20-5-1303	New Section
R20-5-1304	New Section
R20-5-1305	New Section
R20-5-1306	New Section
R20-5-1307	New Section
R20-5-1308	New Section
R20-5-1309	New Section
R20-5-1310	New Section
R20-5-1311	New Section
R20-5-1312	New Section

2. Citations to agency's statutory rulemaking authority to include the authorizing statute and the implementing statute:

Authorizing statute: A.R.S. § 23-107(A)(1)

Implementing statute: A.R.S. § 23-1062.03

3. 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: 21 A.A.R. 2475, October 23, 2015.

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

Name: Valli Goss, Assistant Chief Counsel

Address: Industrial Commission of Arizona
800 W. Washington St., Suite 303
Phoenix, AZ 85007

Telephone: (602) 542-5948

Fax: (602) 542-6783

E-mail: valli.goss@azica.gov

5. 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 § 23-1062.03 requires the Industrial Commission of Arizona to develop and implement a process for the use of evidence based medical treatment guidelines to treat injured workers within the context of Arizona's workers' compensation system. The Industrial Commission is making these rules to comply with that legislative directive. These rules, which implement a process for the use of treatment guidelines, are intended to improve the quality and outcomes of medical care, and to improve the efficiency and effectiveness of the process under which that medical care is provided to injured workers.

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

Not applicable

7. 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

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

There will be some costs incurred by the participants in the workers' compensation system. Participants include medical providers, payers (insurance carriers and self-insured employers), attorneys, and the Industrial Commission of Arizona. All participants will use evidence based medical treatment guidelines published by the Work Loss Data Institute and referred to as "ODG." To access the ODG guidelines, participants may purchase an annual sub-

scription. The cost to purchase an annual subscription in 2015 ranges from $249.00 to $499.00, or participants may access the ODG using dedicated computer workstations established at the Industrial Commission at no cost to the user. The 2015 cost to the Commission for each station will be $325.00. The Industrial Commission has not yet determined how many workstations will be made available because the demand for such access cannot be accurately predicted.

The administrative review process may result in a peer review that will be conducted by a third party vendor who must be URAC accredited. The administrative review process and peer review should reduce delays in providing employees with reasonably required medical treatment, improve the processing of their workers' compensation claims, and reduce litigation time and cost. The cost for the peer review will be paid by the payer and the 2015 cost for a peer review ranges from $325.00 to $700.00 per peer review. The precise cost will depend on the complexity of the proposed medical treatment and the number of medical records involved in the peer review.

The Industrial Commission has created a Medical Resource Office (MRO) to administer the Commission's role in the administrative review process. The MRO will require an additional three staff and a program manager for a total number of four new "full time equivalent" positions.

9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Valli Goss, Assistant Chief Counsel
Address: Industrial Commission of Arizona
800 W. Washington St., Suite 303
Phoenix, AZ 85007
Telephone: (602) 542-5948
Fax: (602) 542-6783
E-mail: valli.goss@azica.gov

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Written comments may be submitted to the address listed in item 9 by the close of the comment period, which is at 5:00 p.m. on December 15, 2015. An oral proceeding is scheduled for December 15, 2015 at 9:00 a.m., at the Industrial Commission of Arizona, 800 West Washington Street, first floor auditorium, Phoenix, Arizona, 85007.

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

Not applicable

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

The rules do not require a 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

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

None

13. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. THE INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 13. TREATMENT GUIDELINES

Section
R20-5-1301. Adoption and Applicability of the Article
R20-5-1302. Definitions
R20-5-1303. Provider Request for Pre-Authorization
R20-5-1304. Payer Denial of Request for Pre-Authorization

ARTICLE 13. TREATMENT GUIDELINES

R20-5-1301. Adoption and Applicability of the Article

A. The Industrial Commission of Arizona (Commission) has adopted the Work Loss Data Institutes' *Official Disability Guidelines – Treatment in Workers Compensation* (ODG) as the standard reference for evidence based medicine used in treating injured workers within the context of Arizona's workers' compensation system. By adopting and referencing the most recent edition (at the time of treatment), and continuously updated *Official Disability Guidelines*, the Commission can ensure the latest available medical evidence is used in making medical treatment decisions for injured workers. The adoption of the guidelines is limited to the treatment recommendations published therein. Other information or guidelines published or included in the ODG are not adopted and are not subject to this Article, including disability duration, return-to-work pathways, fitness for duty examinations, disability evaluations and certifications, and causation.

B. Until further action of the Commission, the guidelines shall apply to and are mandatory in the management of chronic pain and the use of opioids for all stages of pain management. For purposes of this process, chronic pain shall be defined by the guidelines.

C. The Commission may modify or change the applicability of the guidelines as described in subsection B if the Commission determines that modification or changing the applicability of the guidelines will 1) improve medical treatment for injured workers, 2) make treatment and claims processing more efficient and cost effective, and 3) the guidelines adequately cover the body parts or conditions. Before taking action to modify or change the applicability of the guidelines, the Commission shall provide an opportunity for public comment and hold a public hearing. A decision of the Commission under this subsection shall be made by a majority vote of a quorum of Commission members present at a public meeting.

D. The action taken by the Commission to modify or change the applicability of the guidelines under subsection C shall be published in the minutes of the Commission meeting when such action was taken. The minutes of this action shall be published on the Commission's website and shall be available from the Commission upon request.

E. The guidelines shall apply prospectively. Recommendations provided in the guidelines shall apply to medical treatment or services occurring on or after the effective date of this Article.

F. This Article applies to all claims filed with the Commission.

G. This Article only applies to medical treatment and services for body parts and conditions that have been accepted as compensable.

H. The guidelines are to be used as a tool to support clinical decision making and quality health care delivery to injured employees. The guidelines set forth care that is generally considered reasonable and are presumed correct if the guidelines provide recommendations related to the requested treatment or service. This is a rebuttable presumption and reasonable medical care may include deviations from the guidelines. To support a request to deviate from the guidelines, the provider must produce documentation and justification that demonstrates by a preponderance of credible medical evidence a medical basis for departing from the guidelines. Credible medical evidence may include clinical expertise and judgment.

I. The Commission shall provide administrative review and oversight of this Article.

R20-5-1302. Definitions

In this Article, unless the context otherwise requires:

"Act" means the Arizona Workers' Compensation Act, A.R.S. Title 23, Ch. 6, Articles 1 through 11.

"Active Practice" means performing patient care for a minimum of 8 hours per week in one of the 5 preceding years.

"Administrative Law Judge" or "ALJ" means a hearing officer appointed under A.R.S. § 23-108.02.

"Administrative Review" means a process that includes a peer review for pre-authorization of a request for medical treatment or services that has been denied or partially denied by a Payer. The administrative review process will be managed by the Medical Resource Office (MRO) at the Industrial Commission of Arizona.

"American Board of Medical Specialties" means the organization that develops a uniform system for specialty boards to administer examinations for certification of physicians within specific medicine specialties.

"American Osteopathic Association" means the organization that develops a uniform system for specialty boards to administer examinations for certification of osteopathic physicians within specific osteopathic medicine specialties.

"Applicability" means the medical conditions that are covered under this Article and authorized by the Commission under A.A.C. R20-5-1301(F).

"Chronic Pain" means any pain that persists beyond the anticipated time of healing.

"Claim" means the workers' compensation claim filed by the injured employee under the Act.

"Contractor" means an independent peer review organization accredited by URAC.

"Fast Track ALJ Dispute Resolution" or "fast track process" means the voluntary dispute resolution process set forth in R20-5-1314(B).

"International Classification of Diseases Code" or "ICD Code" means a set of medical diagnostic codes that creates a universal language for reporting diseases and injury.

"International Classification of Diseases" or "ICD" means an official list of categories of diseases, physical and mental, that is issued and maintained by the World Health Organization.

"IME" means an independent medical examination" scheduled under R20-5-114.

"Injured Employee" means a person defined in A.R.S. § 23-901(6) whose claim has been accepted for worker's compensation benefits.

"Medical File Review Opinions" means a formal examination of patient data and medical records for the purpose of determining the need for medical treatment, services or both.

"Payer" means an insurance carrier defined under A.R.S § 23-901(6), a self-insured employer defined in R-20-5-102, a third party administrator, and the Special Fund of the Industrial Commission of Arizona.

"Peer Review" means an independent medical review conducted by a individual meeting the requirements of R20-5-13.

"Pre-Authorization" means a request from a provider to a payer requesting approval to provide medical treatment or services to an injured employee.

"Provider" means a physician as defined in R20-5-102.

"Reconsideration" means a written request to the payer or identified review organization by an injured employee or medical provider to reconsider a previous payer decision to deny medical treatment or services and that identifies the specific justification to support the request.

"Third Party Administrator" or "TPA" means is an organization that processes insurance claims or certain aspects of employee benefit plans for a separate entity.

"Treatment Guidelines" or "guidelines" means medical treatment guidelines that are used as a tool to support clinical decision making and quality health care delivery to injured employees.

"URAC" refers to URAC, a non-profit organization formerly known as the Utilization Review Accreditation Commission.

R20-5-1303. Provider Request for Pre-Authorization

A. No pre-authorization is required under the Act to ensure payment for reasonably required medical treatment or services. While pre-authorization is not required under the Act, a provider may seek pre-authorization as provided in this subsection.

B. A provider shall submit a request for pre-authorization in writing, which shall include the following information:

1. Patient information (including date of injury, date of birth, and payer claim number);
2. Diagnosis and ICD code;
3. Date of request;
4. Type of request - Initial, Routine, Urgent, or Life Threatening;
5. A statement of the treatment or services requested. Where appropriate, information about quantity, strength, duration and frequency of the treatment or services should be included. Use of the applicable codes should also be included and will facilitate the process; and
6. Documentation, if not already provided, that supports the medical necessity and appropriateness of the treatment or services requested, such as office notes and diagnostic reports.

C. A provider may submit the request by mail, electronically or by fax.

R20-5-1304. Payer Denial of Request for Pre-Authorization

A. A payer shall not deny a request for pre-authorization solely because the guidelines do not address the requested treatment or services.

B. A payer shall not deny a request for pre-authorization that is supported by the guidelines, unless the payer can rebut the presumption of reasonableness and correctness with a medical or psychological opinion establishing by a preponderance of the evidence that there is a contraindication or significant medical or psychological reason not to authorize the requested treatment or services. Upon request by the provider or injured employee, a denial of pre-authorization in this situation shall be processed as an immediate referral to the Commission for administrative review as provided in R20-5-1312 unless the payer obtains an IME in support of its denial. If the payer obtains an IME which serves as the basis for the denial, then review of the payer's decision shall be processed as a request for investigation under A.R.S. § 23-1061(J) if filed by the injured employee.

R20-5-1305. Payer Denial of Payment for Provided Treatment or Services

A. A payer shall not deny payment for provided treatment or services solely because the guidelines do not address the requested treatment or services.

B. A payer shall not deny payment for provided treatment or services supported by the guidelines, unless the payer can rebut the presumption of reasonableness and correctness with a medical or psychological opinion establishing by a preponderance of the evidence that there is a medical contraindication or significant medical reason not to pay for the treatment or services.

C. A dispute related to a payer's failure to pay for provided treatment or services may be processed as a request for investi-

gation under A.R.S. § 23-1061(J) if filed by an injured employee.

R20-5-1306. Payer Reversal of Decision to Deny Treatment or Services

A payer may reverse its decision to deny treatment or services at any time throughout the process described in this Article. In this situation, the payer's subsequent authorization or agreement to pay for the treatment or services at issue shall end this process.

R20-5-1307. Payer Decision, In Whole or In Part

A payer may issue a decision approving or denying a request for pre-authorization in whole, or in part.

R20-5-1308. Failure to Comply with Required Time Limits

A payer's failure to comply with the required time limits of this process may be considered unreasonable delay under R20-5-163.

R20-5-1309. Payer Decision of Request for Pre-Authorization

A. Except as provided in subsection (D), a payer shall communicate to the provider its decision on a request for pre-authorization no later than 10 business days after the request is received. This decision shall comply with the requirements set forth in subsection (H). For purposes of this Section, the 10 business days begins to run the day after the payer receives the request.

B. If a payer fails to communicate to a provider its decision on request for pre-authorization within 10 business days, then the payer's failure to take action is deemed a "no response" and the provider or injured employee may submit a request for administrative review directly to the Commission as provided in R20-5-1312.

C. If a payer receives a request for pre-authorization that fails to meet the requirements of R20-5-1303, the payer may, in its discretion:

1. Act on the incomplete request for pre-authorization; or
2. No later than 10 business days after the request is received, notify the provider that the request for pre-authorization is incomplete.

D. If, no later than 10 business days after a request for pre-authorization has been received, a payer provides notice to the provider that an IME has been requested under R20-5-114, then the payer's decision on a request for pre-authorization shall be issued no later than 10 business days after the final IME report has been received by the payer. The payer shall provide a copy of the final IME report to the provider upon receipt of the IME report.

E. Unless the payer decision was supported by an IME or otherwise falls within subsection R20-5-1304(B), an injured employee or provider may seek reconsideration of a payer decision by submitting a written request to the payer (or review organization identified by the payer) that states the specific reasons and justifications to support the request. If not previously provided, the injured employee or provider shall include supporting medical documentation with their written request.

F. An injured employee may seek review of a payer decision that is supported by an IME by requesting an investigation under A.R.S. § 23-1061(J).

G. Unless the decision was supported by an IME, an injured employee or provider may seek review of a payer decision issued under R20-5-1304(B) by requesting administrative review by the Commission as provided in R20-5-1312.

H. A payer shall include the following information in its written decision to approve or deny the request for pre-authorization to provide treatment or services:

1. The date on which the request for authorization was received;
2. Patient information, including date of injury, date of birth, payer claim number and Commission claim number;
3. The date on which an IME was completed, if applicable;
4. A statement of what has been authorized, including if applicable, a partial authorization;
5. A statement of explanation if the request for pre-authorization is denied in whole, or in part, which should include the medical reason supporting the payer's decision;
6. A statement of the process under which a provider or injured employee may request reconsideration or review of the payer's denial, in whole or in part, of a request for authorization, which shall include the following information;
   a. For a decision that is issued without obtaining an IME that is not subject to R20-5-1304(B):
   "If you wish to request reconsideration of the decision regarding your request for authorization to provide treatment or services, you must send a written request for reconsideration to:

   Name of Payer or Review Organization Identified by Payer
   Address
   Phone
   Fax
   E-mail

   You must include the specific reason and justification to support your request. Please include additional supporting medical documentation if not previously provided."
   b. For a decision that is supported by an IME:
   "If you wish review of the decision regarding your request for authorization to provide treatment or services, then the injured employee is required to file a request for investigation under A.R.S. § 23-1061(J)."
   c. For a decision that is issued without obtaining an IME that is subject to subsection R20-5-1304(B):

"If you disagree with this decision and wish to request review by the Industrial Commission of Arizona, then you may submit a request for administrative review under R20-5-1312 to:

Industrial Commission of Arizona
Attn: Medical Resource Office, Suite 305
Address
Commission Telephone Number.

The provider shall file this request promptly and include the following information: patient information, including name, address, payer claim number, Commission claim number, date of injury; Diagnosis or ICD code; employer, insurance carrier or TPA information; provider information; information pertaining to request for treatment, including the justification for treatment, applicable treatment guideline or guidelines; denial of treatment by payer; copies of relevant medical information or records, and; whether the request for medical treatment or services involves a request for urgent care or a life-threatening condition."

I. A payer shall provide a copy of its written decision to deny treatment or services to the injured employee.

R20-5-1310. Payer Reconsideration of Request for Pre-Authorization

A. Except as provided in subsection (C), a payer shall communicate to the provider its decision on a request for reconsideration no later than 10 business days after the request is received. This decision shall comply with the requirements set forth in subsection (E). For purposes of this subsection, the 10 business days begins to run the day after the payer receives the request for review.

B. If a payer fails to respond to a request for reconsideration within 10 business days, the provider or injured employee may submit a request for administrative review directly to the Commission as provided in R20-5-1312.

C. If, no later than 10 business days after a request for reconsideration has been received, a payer provides notice to the provider that an IME has been requested under R20-5-114, then the payer's decision on a request for reconsideration shall be issued no later than 10 business days after the final IME report has been received by the payer. The payer shall provide a copy of the final IME report to the provider upon receipt of the report.

D. Commission Review of Payer Reconsideration Decision.

1. An injured employee or provider may seek review of a payer reconsideration decision by requesting an administrative review by the Commission as provided in R20-5-1312 unless the payer decision was supported by an IME.
2. An injured employee may seek review of a payer reconsideration decision that is supported by an IME by requesting an investigation under A.R.S. § 23-1061(J).

E. A payer shall include the following information in its written decision to approve or deny, in whole or in part, a request for reconsideration of a denial of pre-authorization:

1. The date on which the request for reconsideration was received;
2. Patient information, including date of injury, date of birth, payer claim number and Commission claim number;
3. The date on which an IME was completed, if applicable;
4. A statement of what has been authorized including, if applicable, a partial authorization;
5. A statement of explanation if the request for treatment is denied, in whole or in part; and
6. A statement of the process under which a provider or injured employee may request Commission review of the payer's denial, in whole or in part, of a request for pre-authorization, which shall include the following information:
   a. For a reconsideration decision that is issued without obtaining an IME:
   "If you disagree with this reconsideration decision and wish to request review by the Commission, then you may submit a request for administrative review under R20-5-1312 to:

   Industrial Commission of Arizona
   Attn: Medical Resource Office
   Address
   Commission Telephone Number.

   The provider shall file this request promptly and include the following information: Patient information, name, address, payer claim number, and Commission claim number, date of injury; Diagnosis, ICD code; employer, insurance carrier or TPA information; provider information; information pertaining to treatment request and justification for treatment, applicable treatment guideline and denial of treatment by payer; copies of relevant medical information or records; copies of relevant documentation related to the payer reconsideration decision, and; whether the request for medical treatment or services involves a request for urgent care or a life-threatening condition."
   b. For reconsideration of a decision that is supported by an IME:
   "If you disagree with this reconsideration decision and wish review by the Commission, then the injured employee is required to file a request for investigation under A.R.S. 23-1061(J)."

B. A payer shall provide a copy of its written reconsideration decision to deny treatment or services to the injured employee.

R20-5-1311. Administrative Review by Commission

A. Until further action of the Commission under R20-5-1301(C), administrative review under this Article is limited to requests for medical treatment or services related to the management of chronic pain or the use of opioids for all stages

of pain management.

B. A request for administrative review shall be in writing and submitted by mail, electronically or by fax. The request shall include the following information:
1. Identifying information of the injured employee and claim, including the injured employee's name, address, commission claim number, and date of injury;
2. Diagnosis and ICD code;
3. Identifying information of the employer, insurance carrier or TPA;
4. Identifying information of the Provider;
5. Information pertaining to request for treatment, such as the justification for treatment, applicable treatment guideline and, if applicable, the payer's denial of treatment;
6. Copies of relevant medical information or records;
7. Copies of documentation related to the payer's decision or non-response; and
8. Whether the request for medical treatment or services involves a request for urgent care or a life-threatening condition.

C. Upon receipt of a request for administrative review, the Commission shall determine whether the administrative review is available under this Article.
1. If administrative review is not available, then no later than three business day after receiving a request for administrative review, the Commission shall send notice to the injured employee and payer that administrative review is not available.
2. If administrative review is available, then no later than three business day after receiving the request, the Commission shall send notice to the payer that a request for administrative review has been received and provide information on how to participate in the process.

D. The administrative review conducted under this Section shall apply the guidelines as described in this Article and include a peer review performed by an individual meeting the requirements of subsection (I). The peer review shall consist of a records review and, when possible as described in subsection (I)(5), a conversation between the provider and individual conducting the peer review.

E. The Commission may enter into an agreement with one of more contractors, who shall be accredited by the Utilization Review Accreditation Commission, to provide the review described in subsection R20-5-1311(D).

F. The payer shall pay for the costs of the peer review conducted by the contractor.

G. To assist in its review, the Commission or its contractor may request or receive additional information and documentation from the provider, injured employee or payer, who shall cooperate and provide the Commission or its contractor with any necessary medical information, including information pertaining to the payer's decision.

H. Before the Commission issues a determination denying the request for treatment or services, a good faith effort shall be made to conduct a peer review with the provider requesting authorization to perform the treatment or services.

I. The individual conducting the peer review shall:
1. Hold an active, unrestricted license or certification to practice medicine or health profession and be involved in the active practice of medicine or health profession during the 5 preceding years. For purposes of this subsection, "active practice" means performing patient care for a minimum of 8 hours per week in one of the five preceding years;
2. Be licensed in Arizona, unless the Commission or its contractor is unable to find such an individual, in which case the peer review may be conducted by an individual who is licensed in another state of the United States and who meets the other requirements of this subsection;
3. For a review of a request from an allopathic or osteopathic physician, nurse practitioner, physician assistant, or other mid-level provider, hold a current certification from the American Board of Medical Specialties or the American Osteopathic Association in the area or areas appropriate to the condition, procedure or treatment under review;
4. Be in the same profession and the same specialty or subspecialty as typically performs or prescribes the medical procedure or treatment requested;
5. Make a good faith effort to contact the provider requesting the pre-authorization. This good faith effort shall include making telephone contact during the provider's normal business hours and offering to schedule the peer review at a time convenient for the provider.

J. A provider may bill the payer for time spent participating in a peer review under this Section.

K. The Commission shall issue a written determination of its review that contains the name and title of the person, whether Commission or contractor that conducted the review and includes the following information:
1. Whether the request for treatment or services is authorized or denied, in whole or in part;
2. The information reviewed;
3. The principle reason for the decision; and
4. The clinical basis and rationale for the decision.

L. An interested party dissatisfied with the administrative review determination may request that the dispute be referred to the Commission's Administrative Law Judge Division for hearing. This request for hearing shall:
1. Be in writing;
2. Filed no later than 10 business days after the administrative review determination is issued; and

3. State whether the party requests to participate in the Fast Track ALJ Dispute Resolution Program by stipulation, or declines to participate in the Fast Track ALJ Dispute Resolution Program.

M. If a timely request for hearing is filed, the administrative review determination is deemed null and void and shall serve no evidentiary purpose.

N. The information provided by the parties under this Section and the determination issued by the Commission shall become a part of the Commission claims file for the injured employee.

R20-5-1312. Hearing Process

A. A referral of a request for hearing under R20-5-1311(L) shall be processed as provided for in the Act unless all parties agree to participate in the fast track process.

B. The following applies only to the Fast Track ALJ Dispute Resolution Program:

1. Parties must agree to participate in the Fast Track Administrative Law Judge Dispute Resolution Program with the understanding that a short form decision will be issued.
2. Review by the presiding ALJ shall be limited to the treatment or service dispute considered at the administrative review under Section 1311.
3. The presiding ALJ shall issue a notice of hearing within 10 business days of the receipt of fully executed agreement to participate and certificate of readiness.
4. The hearing shall be held within 30 calendar days from the day that the notice of hearing is issued to the extent practicable.
5. Discovery is limited to five interrogatories and no depositions are permitted.
6. The presiding judge shall take all lay witness testimony at the time of the scheduled hearing and will not hold any further hearings.
7. The presiding ALJ shall consider medical evidence in the form of written reports only; no live medical testimony shall be taken.
8. Medical file review opinions shall be deemed to constitute substantial evidence to support the requested treatment or service.
9. All documentary evidence shall be submitted no later than 10 business days before the scheduled hearing.
10. The hearing shall be recorded, but not transcribed, unless one or more of the parties files a request for review under A.R.S. § 23-942 and A.R.S. § 23-943.
11. The ALJ shall issue a short form decision within five business days after the matter is deemed submitted.

NOTICES OF FINAL EXPEDITED RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Final Expedited Rulemaking. The Office of the Secretary of State is the filing office and publisher of these rules.

Questions about the interpretation of the proposed expedited rule should be addressed to the agency proposing them. Refer to Item #5 to contact the person charged with the rulemaking.

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL

[R15-164]

PREAMBLE

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

R18-2-333	Amend
R18-2-901	Amend
R18-2-1101	Amend
Appendix 2	Amend

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

Authorizing Statutes: A.R.S. §§ 49-104(A)(10), 49-404(A), and 41-1027 (A)(6)

Implementing Statutes: A.R.S. § 49-425(A), A.R.S. § 41-1027(A)(6)

3. The effective date of the rule:

This rulemaking becomes effective 30 days after publication in the *Register* (A.R.S. § 41-1027(J)).

4. Citations to all related notices published in the Register that pertain to the record of the Notice of Final Expedited Rulemaking:

Notice of Docket Opening: 20 A.A.R 1837, July 18, 2014

Notice of Proposed Expedited Rulemaking: 20 A.A.R. 1798, July 18, 2014

Notice of Supplemental Proposed Expedited Rulemaking: 20 A.A.R. 3339, December 5, 2014

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

Name: Diane L. Arnst
Address: Arizona Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007
Telephone: (602) 771-2375
Fax: (602) 771-2366
E-mail: Arnst.Diane@azdeq.gov
Website: http://azdeq.gov/cgi-bin/vertical.pl (public notice calendar)

6. An agency's explanation why the proposed expedited rule should be made, amended, repealed or renumbered, under A.R.S.§ 41-1027 (A) and why expedited proceedings were justified under A.R.S. § 41-1001(16)(c):

Summary. The Arizona Department of Environmental Quality (ADEQ) is proposing to adopt new and updated incorporations by reference of the following federal regulations in State rules through an expedited rulemaking: New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), Acid Rain, and other parts of Title 40 Code of Federal Regulations (CFR). ADEQ is proposing to update all of the incorporations by reference in order to continue its delegated authority from EPA to implement and enforce NSPS, NESHAP, and acid rain programs in Arizona, except for those specific authorities retained by the Environmental Protection Agency (EPA). ADEQ chose to use the expedited rulemaking process since this rulemaking involved only incorporating by reference federal law without material change, as required by A.R.S. § 41-1027 (A)(6). There are also no new costs imposed on regulated sources since the regulations are already effective.

Descriptions of new federal subparts recently incorporated into Arizona's rules and significantly revised subparts,

summarized from EPA's Notices of Final Rulemakings, appear below, under "Federal Regulations Proposed to be Incorporated." The updates include federal regulations finalized between July 1, 2006, and June 28, 2013.

Acid Rain. Federal Regulations already incorporated by reference from Title 40 CFR Parts 72, 74, 75, and 76, have been updated from July 1, 2006, to June 28, 2013, at R18-2-333. There were no major rulemakings or amendments from July 1, 2006, to July 1, 2007. The Environmental Protection Agency (EPA) promulgated significant revisions amending federal acid rain rules during the July 1, 2007, to June 28, 2013, time period as described below. The EPA made revisions to the Continuous Emissions Monitoring Rule for the Acid Rain Program, NO_X Budget Trading Program, Clean Air Interstate Rule (CAIR), and the Clean Air Mercury Rule (CAMR) [Amended at 73 FR 4312, January 24, 2008]; ADEQ is obligated under state and federal law to incorporate federal acid rain requirements in the permits issued by ADEQ. [See R18-2-306(A)(2) and 40 CFR70.6(a)(1)].

On March 10, 2005, EPA finalized the CAIR. Subsequently, on March 15, 2005, EPA issued the CAMR to permanently cap and reduce mercury emissions from coal-fired power plants for the first time ever. On February 8, 2008, the D.C. Circuit vacated EPA's rule removing power plants from the Clean Air Act list of sources of hazardous air pollutants. At the same time, the Court vacated the Clean Air Mercury Rule. EPA has set new standards for mercury emissions from Coal-fired power plants (40 CFR 63, Subpart UUUUU), which appeared earlier in the Federal Register on February 16, 2012, and are summarized below. 77 FR 9304. On April 24, 2013, The EPA took final action on its reconsideration of certain issues in the final rules titled, "National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial- Institutional Steam Generating Units." As part of this action, the EPA also made certain technical corrections to the MATS NESHAP. 78 FR 24073.

On June 29, 2015, in *Michigan v. EPA*, the U.S. Supreme Court reversed the D.C. Circuit's decision upholding EPA's determination not to consider cost when deciding whether the regulation of hazardous air pollutants (HAP) from electric utility steam generating units in Subpart UUUUU (the Mercury and Air Toxics Standards, or MATS) was "appropriate and necessary" under section 111(n)(1)(A) of the Clean Air Act. The Court, however, did not vacate Subpart UUUUU but instead remanded it to the D.C. Circuit for further consideration. The D.C. Circuit could in turn vacate the rule or remand it to EPA with instructions to redo the necessary and appropriate determination. In the latter case, the rule would remain in effect. We are declining to finalize the incorporation by reference of this subpart at this time because of the uncertainty about the rule's future created by the Supreme Court's decision. This will not affect the state mercury rule in R18-2-734, which includes a separate incorporation by reference of the mercury emission standards in Subpart UUUUU and establishes state backstop emission standards that will go into effect if the MATS is ultimately vacated. (The state mercury rule does not incorporate Subpart UUUUU's standards for HAP other than mercury, such as HF and HCl.)

Our rules define "applicable requirements" to include all current NSPS and NESHAP. R18-2-101(16), (51). The Permit Section is required to include conditions reflecting all applicable requirements into permits. R18-2-306(A)(2). We will therefore continue to have authority to issue permits reflecting, and to enforce, Subpart UUUUU, even if we delay its incorporation by reference into Article 9.

The U.S. Court of Appeals for the D.C. Circuit has ruled on petitions for review of the CAIR and CAIR Federal Implementation Plans (FIPs), including their provisions establishing the CAIR NO_X annual and ozone season and SO_2 trading programs. On July 11, 2008, the Court issued an opinion vacating and remanding these rules; however, parties to the litigation requested rehearing of aspects of the Court's decision, including the vacatur of the rules. On December 23, 2008, the Court granted rehearing only to the extent that it remanded the rules to EPA without vacating them. The December 23, 2008 ruling left CAIR and the CAIR FIP in place until EPA issued a new rule to replace CAIR in accordance with the July 11, 2008 decision. On April 15, 2014, the D.C. Court of Appeals denied the petitions that challenged, and upheld, the Final Rule promulgated at 77 F.R. 9304. *White Stallion Energy Center, LLC, v. EPA*, No. 12-1100 (D.C. C. 2014).

On July 6, 2011, the EPA adopted the Cross-State Air Pollution Rule (CSAPR), which replaces the CAIR rule, and required States to significantly improve air quality by reducing power plant emissions that contribute to ozone and/or fine particle pollution in other states. CSAPR requires a total of 28 states to reduce annual SO_2 emissions, annual NO_X emissions and/or ozone season NO_X emissions to assist in attaining the 1997 ozone and fine particle and 2006 fine particle National Ambient Air Quality Standards (NAAQS). On February 7, 2012 and June 5, 2012, EPA issued two sets of minor adjustments to CSAPR. On August 12, 2012, the United States Court of Appeals for the D.C. Circuit vacated the CSAPR rule. *EME Homer City Generation, L.P. v. EPA*, No. 11-1302 (D.C.C. 2012). On

January 24, 2013, the United States Court of Appeals for the D.C. Circuit denied EPA's petition for rehearing en banc of the Court's August 2012 decision. On June 24, 2013, the U.S. Supreme Court granted the United States' petition asking the Court to review the D.C. Circuit Court's decision on CSAPR. CAIR remained in place while CSAPR is being reviewed. On April 29, 2014, The U.S. Supreme Court reversed and remanded the case back to the D.C. Circuit. *EPA v. EME Homer City Generation, L.P., et al.*, No. 12–1182, (2014). The Supreme Court held that: 1) the Clean Air Act does not command that States be given a second opportunity to file a SIP after the EPA has quantified the State's interstate pollution obligations, and 2) EPA's cost-effective allocation of emission reductions among upwind States is permissible, workable, and equitable interpretation of the Good Neighbor Provision. *Id*. Arizona is not subject to the CAIR or CSAPR rules, but, as described above, is obligated under state and federal law to incorporate federal acid rain requirements in the permits issued by ADEQ.

NSPS and NESHAP Regulations. Federal Regulations already incorporated by reference from Title 40 CFR Parts 60, 61, and 63, have been updated from July 1, 2006, to June 28, 2013, at R18-2-901, R18-2-1101(A), and R18-2-1101(B). As explained further below, this includes new subparts and significantly revised subparts in Title 40 CFR Parts 60, 61, and 63. ADEQ is also adding subparts that were not previously incorporated to 40 CFR Part 61. Those subparts were added at 54 FR 51694, December 15, 1989 and a summary of the original federal register notice is provided, along with subsequent updates.

Miscellaneous Incorporations by Reference in Appendix 2. The provisions in Appendix 2 have been updated from July 1, 2006, to June 28, 2013. These provisions are cited throughout 18 A.A.C. 2, but are incorporated by reference in a single location in Appendix 2, for convenience.

Negative Declarations
ADEQ must submit a Negative Declaration letter to the EPA if ADEQ does not have a source within its jurisdiction that would be subject to specified emissions guidelines, NSPS, or NESHAPS.
ADEQ has submitted Negative Declaration Letters for:
1) 40 CFR 60, Subpart Cb – Emissions Guidelines and Compliance times for Large Municipal Waste Combustors that are Constructed on or Before September 20, 1994. ADEQ submitted the letter on June 7, 1996 (EPA approval at 65 FR 33461, May 24, 2000).
2) 40 CFR 60, Subpart BBBB - Emissions Guidelines and Compliance times for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999. ADEQ submitted the letter on March 15, 2001 (EPA approval at 66 FR 67098, December 28, 2001).
3) 40 CFR 60, Subpart DDDD - Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999. ADEQ submitted the letter on April 25, 2003 (EPA approval at 68 FR 48364, August 18, 2003).
4) 40 CFR 60, Subpart FFFF, Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units for Which Construction is Commenced On or Before December 9, 2004, from R18-2-901 because that Subpart does not apply to Arizona. ADEQ submitted the letter on March 18, 2008.
5) 40 CFR 60, Subpart Ce – Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators (HMIWI). This Subpart is for HMIWIs which construction was commenced on or before June 20, 1996, or for which modification was commenced on or before March 16, 1998. ADEQ submitted the letter on September 28, 2009. ADEQ originally submitted a plan for this Subpart on November 16, 1999. EPA approved the plan on August 21, 2000 (65 FR 38744, June 22, 2000). Updated plans would have been due to the EPA on October 6, 2010, however ADEQ submitted its negative declaration before that date. At this time, EPA has not taken action.
6) 40 CFR 60, Subpart MMMM - Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units. ADEQ submitted the letter on November 26, 2013.
7) 40 CFR 63, Subpart X – National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting, from R18-2-1101 as that Subpart does not apply to Arizona. ADEQ submitted the letter on January 24, 2012.

Federal Regulations Proposed to be Incorporated
NSPS - 40 CFR PART 60
SUBPARTS ADDED:
40 CFR 60, Subpart D, Da, Db, and Dc – Amendments to New Source Performance Standards (NSPS) for Electric Utility Steam Generating Units and Industrial-Commercial-Institutional Steam Generating Units
[Added at 71 FR 32709, June 13, 2007]. EPA amended the new source performance standards (NSPS) for electric utility steam generating units and industrial-commercial-institutional steam generating units. These amendments to the regulations added compliance alternatives for owners and operators of certain affected sources, revised certain recordkeeping and reporting requirements, corrected technical and editorial errors, and updated the grammatical style of the four subparts to be more consistent across all of the subparts.

40 CFR 60, Subpart D, Da, Db, and Dc – Standards of Performance for Fossil-Fuel-Fired Steam Generators; Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units; Final Rule [Added at 74 FR 5071, January 28, 2009]. EPA amended the new source performance standards (NSPS) for electric utility steam generating units and industrial-commercial-institutional steam generating units. These amendments to the regulations added compliance alternatives for owners and operators of certain affected sources, eliminated the opacity standard for facilities with a particulate matter (PM) limit of 0.030 lb/million British thermal units (MMBtu) or less that choose to voluntarily install and use PM continuous emission monitors (CEMS) to demonstrate compliance with that limit, and corrected technical and editorial errors.

40 CFR 60, Subpart Ga--New Source Performance Standards Review for Nitric Acid Plants [Amended at 77 FR 48433, August 14, 2012] The EPA finalized the new source performance standards (NSPS) for nitric acid plants. Nitric acid plants include one or more nitric acid production units (NAPUs). These revisions include a change to the nitrogen oxides (NOX) emission limit, which applies to each NAPU commencing construction, modification, or reconstruction after October 14, 2011. These revisions also include additional testing and monitoring requirements.

40 CFR 60, Subpart Ja – Standards of Performance for Petroleum Refineries; Final Rule [Added at 73 FR 35837, June 24, 2008]. EPA promulgated final amendments to the current Standards of Performance for Petroleum Refineries. This action also promulgates separate standards of performance for new, modified, or reconstructed process units at petroleum refineries. The final standards for new process units include emissions limitations and work practice standards for fluid catalytic cracking units, fluid coking units, delayed coking units, fuel gas combustion devices, and sulfur recovery plants. These final standards reflect demonstrated improvements in emissions control technologies and work practices that have occurred since promulgation of the current standards.

40 CFR 60, Subpart VV, VVa, and GGG – Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry; Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries [Added at 72 FR 64860, November 16, 2007]. EPA promulgated final amendments to the standards of performance for equipment leaks of volatile organic compounds in the synthetic organic chemicals manufacturing industry and to the standards of performance for equipment leaks of volatile organic compounds in petroleum refineries. The amended standards for the synthetic organic chemicals manufacturing industry apply to affected facilities that were constructed, reconstructed, or modified after January 5, 1981, and on or before November 7, 2006. The amended standards for petroleum refineries apply to affected facilities that were constructed, reconstructed, or modified after January 4, 1983, and on or before November 7, 2006. In this action, EPA also finalized new standards of performance for equipment leaks of volatile organic compounds in the synthetic organic chemicals manufacturing industry and for equipment leaks of volatile organic compounds in petroleum refineries which apply to affected facilities that are constructed, reconstructed, or modified after November 7, 2006. The final amendments and new standards are based on the results of EPA's review of the existing regulations as required by section 111(b)(1)(B) of the Clean Air Act.

40 CFR 60, Subpart GGGa – Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry; Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries [Added at 72 FR 64859, November 16, 2007]. EPA promulgated final amendments to the standards of performance for equipment leaks of volatile organic compounds in the synthetic organic chemicals manufacturing industry and to the standards of performance for equipment leaks of volatile organic compounds in petroleum refineries. The amended standards for the synthetic organic chemicals manufacturing industry apply to affected facilities that were constructed, reconstructed, or modified after January 5, 1981, and on or before November 7, 2006. The amended standards for petroleum refineries apply to affected facilities that are constructed, reconstructed, or modified after January 4, 1983, and on or before November 7, 2006. In this action, EPA is also issuing new standards of performance for equipment leaks of volatile organic compounds in the synthetic organic chemicals manufacturing industry and for equipment leaks of volatile organic compounds in petroleum refineries which apply to affected facilities that were constructed, reconstructed, or modified after November 7, 2006. The final amendments and new standards are based on the results of EPA's review of the existing regulations as required by section 111(b)(1)(B) of the Clean Air Act.

40 CFR 60, Subpart OOO – New Source Performance Standards Review for Nonmetallic Mineral Processing Plants; and Amendment to Subpart UUU Applicability [Added at 74 FR 19293, April 28, 2009]. EPA has finalized amendments to the Standards of Performance for Nonmetallic Mineral Processing Plant(s) (NMPP). These final amendments include revisions to the emission limits for NMPP affected facilities which commence construction, modification, or reconstruction on or after April 22, 2008. These final amendments for NMPP also include: Additional testing and monitoring requirements for affected facilities that commence construction, modification, or

reconstruction on or after April 22, 2008; exemption from this final rule of affected facilities that process wet material; changes to simplify the notification requirements for all affected facilities; and changes to definitions and various clarifications. The EPA did not take any final action in this document regarding the amendment to the Standards of Performance for Calciners and Dryers in Mineral Industries discussed in the proposed rule.

40 CFR 60, Subpart IIII – Standards of Performance for Stationary Compression Ignition Internal Combustion Engines [Added at 70 FR 39172, July 11, 2006]. EPA promulgated standards of performance for stationary compression ignition (CI) internal combustion engines (ICE). The standards will implement section 111(b) of the Clean Air Act (CAA) and are based on the Administrator's determination that stationary CI ICE cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health or welfare. The intended effect of the standards is to require all new, modified, and reconstructed stationary CI ICE to use the best demonstrated system of continuous emission reduction, considering costs, non-air quality health, and environmental and energy impacts, not just with add-on controls, but also by eliminating or reducing the formation of these pollutants. The final standards will reduce nitrogen oxides (NO_X) by an estimated 38,000 tons per year (tpy), particulate matter (PM) by an estimated 3,000 tpy, sulfur dioxide (SO_2) by an estimated 9,000 tpy, non-methane hydrocarbons (NMHC) by an estimated 600 tpy, and carbon monoxide (CO) by an estimated 18,000 tpy in the year 2015.

40 CFR 60, Subpart JJJJ – Standards of Performance for Stationary Spark Ignition Internal Combustion Engines and National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines [Added at 73 FR 3567, January 18, 2008] EPA promulgated new source standards of performance for stationary spark ignition internal combustion engines. EPA also promulgated national emission standards for hazardous air pollutants for new and reconstructed stationary reciprocating internal combustion engines that either are located at area sources of hazardous air pollutant emissions or that have a site rating of less than or equal to 500 brake horsepower and are located at major sources of hazardous air pollutant emissions.

40 CFR 60, Subpart KKKK – Standards of Performance for Stationary Combustion Turbines [Added at 70 FR 38481, July 6, 2006]. This action promulgated standards of performance for new stationary combustion turbines in 40 CFR Part 60, Subpart KKKK. The standards reflect changes in nitrogen oxides (NOX) emission control technologies and turbine design since standards for these units were originally promulgated in 40 CFR Part 60, subpart GG. The NOX and sulfur dioxide (SO_2) standards have been established at a level that brings the emissions limits up to date with the performance of current combustion turbines.

40 CFR 60, Subpart LLLL —Standards of Performance for New Stationary Sources: Sewage Sludge Incineration Units [Added at 76 FR 15371, March 21, 2011]. This action promulgates EPA's new source performance standards and emission guidelines for sewage sludge incineration units located at wastewater treatment facilities designed to treat domestic sewage sludge. This final rule sets limits for nine pollutants under section 129 of the Clean Air Act: Cadmium, carbon monoxide, hydrogen chloride, lead, mercury, nitrogen oxides, particulate matter, polychlorinated dibenzo-pdioxins and polychlorinated dibenzofurans, and sulfur dioxide.

40 CFR 60, Subpart OOOO --Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews [Amended at 77 FR 49490, August 16, 2012] This action finalized the review of new source performance standards for the listed oil and natural gas source category. In this action the EPA revised the new source performance standards for volatile organic compounds from leaking components at onshore natural gas processing plants and new source performance standards for sulfur dioxide emissions from natural gas processing plants. The EPA also established standards for certain oil and gas operations not covered by the existing standards. In addition to the operations covered by the existing standards, the newly established standards will regulate volatile organic compound emissions from gas wells, centrifugal compressors, reciprocating compressors, pneumatic controllers and storage vessels. This action also finalized the residual risk and technology review for the Oil and Natural Gas Production source category and the Natural Gas Transmission and Storage source category. This action includes revisions to the existing leak detection and repair requirements. In addition, the EPA has established in this action emission limits reflecting maximum achievable control technology for certain currently uncontrolled emission sources in these source categories. This action also includes modification and addition of testing and monitoring and related notification, recordkeeping and reporting requirements, as well as other minor technical revisions to the national emission standards for hazardous air pollutants. This action finalized revisions to the regulatory provisions related to emissions during periods of startup, shutdown and malfunction.

40 CFR 60, Appendix A-7– Methods for Measurement of Visible Emissions [Added at 71 FR 55119, September 21, 2006] This action finalized Methods 203A, 203B, and 203C for determining visible emissions using data reduction procedures that are more appropriate for State Implementation Plan (SIP) rules than Method 9, the method cur-

rently used. This action was requested by the States and is needed for the special data reduction requirements in their rules. The intended effect was to provide States with an expanded array of data reduction procedures for determining compliance with their SIP opacity regulations. In addition, this action amended various testing provisions in the New Source Performance Standards (NSPS) to correct inadvertent errors and amended a testing provision.

[Added at 73 FR 29691, May 22, 2008] EPA took final action to correct errors in a final rule published May 15, 2006, that updated five continuous instrumental test methods. As published, the rule contained inadvertent errors and provisions that needed to be clarified. EPA published a direct final rule with a parallel proposed rule on September 7, 2007, to correct the errors and to add clarifying language. EPA received an adverse comment on the direct final rule, however, and it was subsequently withdrawn on November 5, 2007. EPA finalized the parallel proposal in 2008. In the final rule, EPA corrected errors, clarified certain provisions, and responded to the adverse comment received on the direct final rule published on September 7, 2007.

40 CFR 60, Appendix A-8– Two Optional Methods for Relative Accuracy Test Audits of Mercury Monitoring Systems Installed on Combustion Flue Gas Streams and Several Amendments to Related Mercury Monitoring Provisions [Added at 72 FR 51493, September 7, 2007] EPA took direct final action on two optional methods for relative accuracy audits of mercury monitoring systems installed on combustion flue gas streams and several amendments to related mercury monitoring provisions. This action approved two optional mercury (Hg) emissions test methods for potential use in conjunction with an existing regulatory requirement for Hg emissions monitoring, as well as several revisions to the mercury monitoring provisions themselves. This action is in regard to the testing and monitoring requirements for mercury specified in the Federal Register on May 18, 2005. Since that publication, EPA received numerous comments concerning the desirability of EPA evaluating and allowing use of the measurement techniques addressed in the two optional methods in lieu of the methods identified in the cited Federal Register publication, as they can produce equally acceptable measures of the relative accuracy achieved by Hg monitoring systems. This action allows use of these two optional methods entirely at the discretion of the owner or operator of an affected emission source in place of the two currently specified methods. This direct final rule also amends Performance Specification 12A by adding Methods 30A and 30B to the list of reference methods acceptable for measuring Hg concentration and the Hg monitoring provisions of May 18, 2005, to reflect technical insights since gained by EPA which will help to facilitate implementation including clarification and increased regulatory flexibility for affected sources.

40 CFR 60, Appendix B – Amendments to New Source Performance Standards (NSPS) for Electric Utility Steam Generating Units and Industrial-Commercial-Institutional Steam Generating Units [Added at 71 FR 32709, June 13, 2007]. EPA amended the new source performance standards (NSPS) for electric utility steam generating units and industrial-commercial-institutional steam generating units. These amendments to the regulations added compliance alternatives for owners and operators of certain affected sources, revise certain recordkeeping and reporting requirements, correct technical and editorial errors, and update the grammatical style of the four subparts to be more consistent across all of the subparts.

[Added at 71 FR 55119, September 21, 2006] The EPA finalized Methods 203A, 203B, and 203C for determining visible emissions using data reduction procedures that are more appropriate for State Implementation Plan (SIP) rules than Method 9, the method currently used. This action was requested by the States and is needed for the special data reduction requirements in their rules. The intended effect is to provide States with an expanded array of data reduction procedures for determining compliance with their SIP opacity regulations. In addition, this action amends various testing provisions in the New Source Performance Standards (NSPS) to correct inadvertent errors and amend a testing provision.

40 CFR 60, Appendices A-7, B, and F – Performance Specification 16 for Predictive Emissions Monitoring Systems and Amendments to Testing and Monitoring Provisions [Added at 74 FR 12575, March 25, 2009]. EPA took final action to promulgate Performance Specification (PS) 16 for predictive emissions monitoring systems (PEMS). Performance Specification 16 provides testing requirements for assessing the acceptability of PEMS when they are initially installed. There were no Federal rules requiring the use of PEMS; however, some sources have obtained Administrator approval to use PEMS as alternatives to continuous emissions monitoring systems (CEMS). Other sources may desire to use PEMS in cases where initial and operational costs are less than CEMS and process optimization for emissions control may be desirable. Performance Specification 16 will apply to any PEMS required in future rules in 40 CFR Parts 60, 61, or 63, and in cases where a source petitions the Administrator and receives approval to use a PEMS in lieu of another emissions monitoring system required under the regulation. The EPA also finalized minor technical amendments.

SUBPARTS SIGNIFICANTLY REVISED:

40 CFR 60, Subpart A – General Provisions [Amended at 75 FR 54970, September 9, 2010] The final amendments to the NSPS add or revise, as applicable, emission limits for PM, opacity, nitrogen oxides (NO_X), and sulfur

dioxide (SO_2) for facilities that commence construction, modification, or reconstruction after June 16, 2008. The final rule also includes additional testing and monitoring requirements for affected sources.

[Amended at 77 FR 2456, January 18, 2012] EPA promulgated a final rule to incorporate the most recent versions of ASTM International (ASTM) standards into EPA regulations that provide flexibility to use alternatives to mercury-containing industrial thermometers. This final rule allows the use of such alternatives in certain field and laboratory applications previously impermissible as part of compliance with EPA regulations. EPA believes the older embedded ASTM standards unnecessarily impede the use of effective, comparable, and available alternatives to mercury-containing industrial thermometers. Due to mercury's high toxicity, EPA sought to reduce potential mercury exposures to humans and the environment by reducing the overall use of mercury-containing products, including mercury-containing industrial thermometers.

[Amended at 77 FR 9304, February 16, 2012] On May 3, 2011, under authority of Clean Air Act (CAA) sections 111 and 112, the EPA proposed both national emission standards for hazardous air pollutants (NESHAP) from coal- and oil-fired electric utility steam generating units (EGUs) and standards of performance for fossil-fuel-fired electric utility, industrial-commercial institutional, and small industrial-commercial-institutional steam generating units (76 FR 24976). After consideration of public comments, the EPA finalized these rules in this action. Pursuant to CAA section 111, the EPA revised standards of performance in response to a voluntary remand of a final rule. Specifically, EPA amended new source performance standards (NSPS) after analysis of the public comments received. EPA also finalized several minor amendments, technical clarifications, and corrections to existing NSPS provisions for fossil fuel-fired EGUs and large and small industrial-commercial-institutional steam generating units. Pursuant to CAA section 112, the EPA established NESHAP that will require coal- and oil-fired EGUs to meet hazardous air pollutant (HAP) standards reflecting the application of the maximum achievable control technology. This rule protects air quality and promotes public health by reducing emissions of the HAP listed in CAA section 112(b)(1).

[Amended at 77 FR 56422, September 12, 2012] On June 24, 2008, the EPA promulgated amendments to the Standards of Performance for Petroleum Refineries and new standards of performance for petroleum refinery process units constructed, reconstructed or modified after May 14, 2007. The EPA subsequently received three petitions for reconsideration of these final rules. On September 26, 2008, the EPA granted reconsideration and issued a stay for the issues raised in the petitions regarding process heaters and flares. On December 22, 2008, the EPA addressed those specific issues by proposing amendments to certain provisions for process heaters and flares and extending the stay of these provisions until further notice. The EPA also proposed technical corrections to the rules for issues that were raised in the petitions for reconsideration. In this action, the EPA finalized those amendments and technical corrections and is lifting the stay of all the provisions granted on September 26, 2008 and extended until further notice on December 22, 2008.

40 CFR 60, Subpart D – Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction Is Commenced After August 17, 1971,
40 CFR 60, Subpart Da – Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978,
40 CFR 60, Subpart Db – Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units,
40 CFR 60, Subpart Dc – Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units [Amended at 76 FR 3517, January 20, 2011].

EPA is taking direct final action to amend the new source performance standards for electric utility steam generating units and industrial-commercial-institutional steam generating units. This action amends the testing requirements for owners/operators of steam generating units that elect to install particulate matter continuous emission monitoring systems. It also amends the opacity monitoring requirements for owners/operators of affected facilities subject to an opacity standard that are exempt from the requirement to install a continuous opacity monitoring system. In addition, this action corrects several editorial errors identified from previous rulemakings.

[Amended at 77 FR 9304, February 16, 2012]. On May 3, 2011, under authority of Clean Air Act (CAA) sections 111 and 112, the EPA proposed both national emission standards for hazardous air pollutants (NESHAP) from coal- and oil-fired electric utility steam generating units (EGUs) and standards of performance for fossil-fuel-fired electric utility, industrial-commercial institutional, and small industrial-commercial-institutional steam generating units (76 FR 24976). After consideration of public comments, the EPA finalized these rules in this action. Pursuant to CAA section 111, the EPA revised standards of performance in response to a voluntary remand of a final rule. Specifically, EPA amended new source performance standards (NSPS) after analysis of the public comments received. EPA also finalized several minor amendments, technical clarifications, and corrections to existing NSPS provisions for fossil fuel-fired EGUs and large and small industrial-commercial-institutional steam generating units. Pursuant to CAA section 112, the EPA established NESHAPs that will require coal- and oil-fired EGUs to meet hazardous air pollutant (HAP) standards reflecting the application of the maximum achievable control technology. This rule protects air quality and promotes public health by reducing emissions of the HAP listed in CAA section 112(b)(1).

40 CFR 60, Subpart Da – Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978, [Amended at 78 FR 24073, April 24, 2013] The EPA took final action on its reconsideration of certain issues in the final rules titled, "National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial- Institutional Steam Generating Units." The National Emission Standards for Hazardous Air Pollutants (NESHAP) rule issued pursuant to Clean Air Act (CAA) section 112 is referred to as the Mercury and Air Toxics Standards (MATS) NESHAP, and the New Source Performance Standards rule issued pursuant to CAA section 111 is referred to as the Utility NSPS. The Administrator received petitions for reconsideration of certain aspects of the MATS NESHAP and the Utility NSPS. On November 30, 2012, the EPA granted reconsideration of, proposed, and requested comment on a limited set of issues. EPA also proposed certain technical corrections to both the MATS NESHAP and the Utility NSPS. The EPA took final action on the revised new source numerical standards in the MATS NESHAP and the definitional and monitoring provisions in the Utility NSPS that were addressed in the proposed reconsideration rule. As part of this action, the EPA also made certain technical corrections to both the MATS NESHAP and the Utility NSPS. The EPA did not take final action on requirements applicable during periods of startup and shutdown in the MATS NESHAP or on startup and shutdown provisions related to the PM standard in the Utility NSPS.

40 CFR 60, Subpart Ec – Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for which Construction is Commenced after June 20, 1996 [Amended at 74 FR 51367 October 6, 2009]. On September 15, 1997, EPA adopted new source performance standards (NSPS) and emissions guidelines (EG) for hospital/medical/ infectious waste incinerators (HMIWI). The NSPS and EG were established under Sections 111 and 129 of the Clean Air Act (CAA or Act). In a response to a suit filed by the Sierra Club and the Natural Resources Defense Council (Sierra Club), the U.S. Court of Appeals for the District of Columbia Circuit (the Court) remanded the HMIWI regulations on March 2, 1999, for further explanation of EPA's reasoning in determining the minimum regulatory" floors" for new and existing HMIWI. The HMIWI regulations were not vacated and were fully implemented by September 2002. On February 6, 2007, EPA published its proposed response to the Court's remand. Following recent court decisions and receipt of public comments regarding the proposal, EPA re-assessed the response to the remand, and on December 1, 2008, EPA published another proposed response and solicited public comments.

[Amended at 76 FR 18407, April 4, 2011]. On October 6, 2009, EPA promulgated its response to the remand of the new source performance standards and emissions guidelines for hospital/medical/infectious waste incinerators by the U.S. Court of Appeals for the District of Columbia Circuit and satisfied the Clean Air Act section 129(a)(5) requirement to conduct a review of the standards every 5 years. This action promulgated amendments to the new source performance standards and emissions guidelines, correcting inadvertent drafting errors in the nitrogen oxides and sulfur dioxide emissions limits for large hospital/medical/infectious waste incinerators in the new source performance standards, which did not correspond to EPA's description of their standard-setting process, correcting erroneous cross-references in the reporting and recordkeeping requirements in the new source performance standards, clarifying that compliance with the emission guidelines must be expeditious if a compliance extension is granted, correcting the inadvertent omission of delegation of authority provisions in the emission guidelines, correcting errors in the units' description for several emissions limits in the emission guidelines and new source performance standards, and removing extraneous text from the hydrogen chloride emissions limit for large hospital/ medical/infectious waste incinerators in the emission guidelines.

40 CFR 60, Subpart F – Standards of Performance for Portland Cement Plants [Amended at 75 FR 54970, September 9, 2010] EPA finalized amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) from the Portland Cement Manufacturing Industry and to the New Source Performance Standards (NSPS) for Portland Cement Plants. The final amendments to the NESHAP add or revise, as applicable, emission limits for mercury, total hydrocarbons (THC), and particulate matter (PM) from new and existing kilns located at major and area sources, and for hydrochloric acid (HCL) from new and existing kilns located at major sources. The standards for new kilns apply to facilities that commence construction, modification, or reconstruction after May 6, 2009.

[Amended at 76 FR 2832, January 18, 2011] The EPA took direct final action on amendments to the National Emissions Standards for Hazardous Air Pollutants (NESHAP) from the Portland Cement Manufacturing Industry and Standards of Performance (NSPS) for Portland Cement Plants. The final rules were published on September 9, 2010. The direct final action amends certain regulatory text to clarify compliance dates and clarifies that the previously issued emission limits that were changed in the September 9, 2010, action remain in effect until sources are required to comply with the revised limits. EPA also corrected two minor typographical errors in the regulatory text to the September 9, 2010 action.

[Denied in part and granted in part petitions to reconsider at 76 FR 28318, May 17, 2011] The EPA denied in part

and granted in part the petitions to reconsider the final revised National Emission Standards for Hazardous Air Pollutants emitted by the Portland Cement Industry and the New Source Performance Standards for Portland Cement Plants issued under sections 112(d) and 111(b) of the Clean Air Act, respectively. The EPA also denied all requests that the EPA issue an administrative stay of the National Emission Standards for Hazardous Air Pollutants and the New Source Performance Standards.

[Amended at 78 FR 10006, February 12, 2013] On July 18, 2012, the EPA proposed amendments to the National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry and the Standards of Performance for Portland Cement Plants. This final action amended the national emission standards for hazardous air pollutants for the Portland cement industry. The EPA also promulgated amendments with respect to issues on which it granted reconsideration on May 17, 2011. In addition, the EPA amended the new source performance standard for particulate matter. These amendments promote flexibility, reduce costs, ease compliance and preserve health benefits. The amendments also addressed the remand of the national emission standards for hazardous air pollutants for the Portland cement industry by the United States Court of Appeals for the District of Columbia Circuit on December 9, 2011. Finally, the EPA set the date for compliance with the existing source national emission standards for hazardous air pollutants to be September 9, 2015.

40 CFR 60, Subpart J,
40 CFR 60, Subpart Ja--Standards of Performance for Petroleum Refineries; Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007 [Amended at 77 FR 56422, September 12, 2012] On June 24, 2008, the EPA promulgated amendments to the Standards of Performance for Petroleum Refineries and new standards of performance for petroleum refinery process units constructed, reconstructed or modified after May 14, 2007. The EPA subsequently received three petitions for reconsideration of these final rules. On September 26, 2008, the EPA granted reconsideration and issued a stay for the issues raised in the petitions regarding process heaters and flares. On December 22, 2008, the EPA addressed those specific issues by proposing amendments to certain provisions for process heaters and flares and extending the stay of these provisions until further notice. The EPA also proposed technical corrections to the rules for issues that were raised in the petitions for reconsideration. In this action, the EPA finalized those amendments and technical corrections and is lifting the stay of all the provisions granted on September 26, 2008 and extended until further notice on December 22, 2008.

40 CFR 60, Subpart Y – Standards of Performance for Coal Preparation and Processing Plants [Amended at 74 FR 51949, October 8, 2009]. EPA promulgated amendments to the new source performance standards for coal preparation and processing plants. These final amendments include revisions to the emission limits for particulate matter and opacity standards for thermal dryers, pneumatic coal cleaning equipment, and coal handling equipment (coal processing and conveying equipment, coal storage systems, and coal transfer and loading systems) located at coal preparation and processing plants. These revised limits apply to affected facilities that commence construction, modification, or reconstruction after April 28, 2008. The amendments also establish a sulfur dioxide (SO_2) emission limit and a combined nitrogen oxide (NO_X) and carbon monoxide (CO) emissions limit for thermal dryers located at coal preparation and processing plants. In addition, the amendments establish work practice standards to control fugitive coal dust emissions from open storage piles located at coal preparation and processing plants. The SO_2 limit, the NO_X /CO limit, and the work practice standards apply to affected facilities that commence construction, modification, or reconstruction of which commences after May 27, 2009. EPA also modified the definition of thermal dryer to include both direct contact and indirect contact thermal dryers drying all coal ranks. EPA modified the definition of pneumatic coal-cleaning equipment to include equipment cleaning all coal ranks. EPA also amended the definition of coal for purposes of subpart Y to include coal refuse. The modified definitions of thermal dryer, pneumatic coal cleaning equipment, and coal will be used to determine whether and how the standards apply to facilities that commence construction, modification, or reconstruction after May 27, 2009.

40 CFR 60, Subpart KKK and LLL --Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews [Amended at 77 FR 49490, August 16, 2012] This action finalized the review of new source performance standards for the listed oil and natural gas source category. In this action the EPA revised the new source performance standards for volatile organic compounds from leaking components at onshore natural gas processing plants and new source performance standards for sulfur dioxide emissions from natural gas processing plants. The EPA also established standards for certain oil and gas operations not covered by the existing standards. In addition to the operations covered by the existing standards, the newly established standards will regulate volatile organic compound emissions from gas wells, centrifugal compressors, reciprocating compressors, pneumatic controllers and storage vessels. This action also finalized the residual risk and technology review for the Oil and Natural Gas Production source category and the Natural Gas Transmission and Storage source category. This action includes revisions to the existing leak detection and repair requirements. In addition, the EPA has established in this action emission limits reflecting maximum achievable

control technology for certain currently uncontrolled emission sources in these source categories. This action also includes modification and addition of testing and monitoring and related notification, recordkeeping and reporting requirements, as well as other minor technical revisions to the national emission standards for hazardous air pollutants. This action finalized revisions to the regulatory provisions related to emissions during periods of startup, shutdown and malfunction.

40 CFR 60, Subpart CCCC—Standards of Performance for Commercial and Industrial Solid Waste Incineration Units (CISWI), [Amended at 76 FR 15703, March 21, 2011] This action promulgated EPA's final response to the 2001 voluntary remand of the December 1, 2000, new source performance standards and emission guidelines for commercial and industrial solid waste incineration units and the vacatur and remand of several definitions by the District of Columbia Circuit Court of Appeals in 2007. In addition, this action included the 5-year technology review of the new source performance standards and emission guidelines required under section 129 of the Clean Air Act. This action also promulgated other amendments that EPA believes are necessary to address air emissions from commercial and industrial solid waste incineration units.

[Delayed at 76 FR 28662, May 18, 2011] The EPA delayed the effective dates for the final rules titled "National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters'" and "Standards of Performance for New Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units" under the authority of the Administrative Procedure Act (APA) until the proceedings for judicial review of these rules is completed or the EPA completes its reconsideration of the rules, whichever is earlier. DATES: The effective dates of the final rules published in the Federal Register on March 21, 2011 (76 FR 15608 and 76 FR 15704), are delayed until such time as judicial review is no longer pending or until the EPA completes its reconsideration of the rules, whichever is earlier. The EPA will publish in the Federal Register announcing the effective dates and the incorporation by reference approvals once delay is no longer necessary. On January 9, 2012, The U.S. District Court for the D.C. Circuit vacated the EPA's May 18, 2011, notice that delayed the effective date of the CISWI rule. Civil Action No. 11-1278 (PLF). On February 7, 2012, the EPA issued a No Action Assurance Letter to establish that EPA would exercise enforcement discretion to not pursue enforcement action for violations of certain notification deadlines in the final CISWI rule. (Available at http://www.epa.gov/ttn/atw/boiler/boiler_ciswi-no_action_2012-02-07.pdf).

[Amended at 78 FR 9112, February 7, 2013] This action set forth the EPA's final decision on the issues for which it granted reconsideration in December 2011, which pertain to certain aspects of the March 21, 2011, final rule titled "Standards of Performance for New Stationary Sources and Emissions Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units" (CISWI rule). This action also included EPA's final decision to deny the requests for reconsideration with respect to all issues raised in the petitions for reconsideration of the final commercial and industrial solid waste incineration rule for which EPA did not grant reconsideration. Among other things, this final action established effective dates for the standards and makes technical corrections to the final rule to clarify definitions, references, and applicability and compliance issues. In addition, the EPA is issued final amendments to the regulations that were codified by the Non-Hazardous Secondary Materials rule (NHSM rule). Originally promulgated on March 21, 2011, the non-hazardous secondary materials rule provided the standards and procedures for identifying whether non-hazardous secondary materials are solid waste under the Resource Conservation and Recovery Act when used as fuels or ingredients in combustion units. The purpose of these amendments was to clarify several provisions in order to implement the non-hazardous secondary materials rule as the agency originally intended.

40 CFR 60, Subpart IIII—Standards of Performance for Stationary Compression Ignition Internal Combustion Engines,
40 CFR 60, Subpart JJJJ—Standards of Performance for Stationary Spark Ignition Internal Combustion Engines [Amended at 76 FR 37953, June 28, 2011] The EPA finalized revisions to the standards of performance for new stationary compression ignition internal combustion engines under section 111(b) of the Clean Air Act. The final rule requires more stringent standards for stationary compression ignition engines with displacement greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder, consistent with recent revisions to standards for similar mobile source marine engines. In addition, the action revises the requirements for engines with displacement at or above 30 liters per cylinder to align more closely with recent standards for similar mobile source marine engines, and for engines in remote portions of Alaska that are not accessible by the Federal Aid Highway System. The action also provides additional flexibility to owners and operators of affected engines, and corrects minor mistakes in the original standards of performance. Finally, the action makes minor revisions to the standards of performance for new stationary spark ignition internal combustion engines to correct minor errors and to mirror certain revisions finalized for compression ignition engines, which provides consistency where appropriate for the regulation of stationary internal combustion engines. The final standards will reduce nitrogen oxides by an estimated 1,100 tons per year, particulate matter by an estimated 38 tons per year, and hydrocarbons by an estimated 18 tons per year in the year 2030.

[Amended at 78 FR 6674, January 30, 2013] The EPA finalized amendments to the national emission standards for hazardous air pollutants for stationary reciprocating internal combustion engines. The final amendments include alternative testing options for certain large spark ignition (generally natural gas-fueled) stationary reciprocating internal combustion engines, management practices for a subset of existing spark ignition stationary reciprocating internal combustion engines in sparsely populated areas and alternative monitoring and compliance options for the same engines in populated areas. The EPA established management practices for existing compression ignition engines on offshore vessels. The EPA also finalized limits on the hours that stationary emergency engines may be used for emergency demand response and establishing fuel and reporting requirements for certain emergency engines used for emergency demand response. The final amendments also correct minor technical or editing errors in the current regulations for stationary reciprocating internal combustion engines.

40 CFR 60, Subpart A, Appendix A–7 to Part 60—Test Methods 19 through 25E [Amended at 77 FR 2456, January 18, 2012]. EPA promulgated a final rule to incorporate the most recent versions of ASTM International (ASTM) standards into EPA regulations that provide flexibility to use alternatives to mercury-containing industrial thermometers. This final rule allows the use of such alternatives in certain field and laboratory applications previously impermissible as part of compliance with EPA regulations. EPA believes the older embedded ASTM standards unnecessarily impede the use of effective, comparable, and available alternatives to mercury-containing industrial thermometers. Due to mercury's high toxicity, EPA sought to reduce potential mercury exposures to humans and the environment by reducing the overall use of mercury-containing products, including mercury-containing industrial thermometers.

40 CFR 60, Appendix A-3, Method 5I—Determination of Low Level Particulate Matter Emissions From Stationary Sources
40 CFR 60, Appendix A–4, Method 6—Determination of Sulfur Dioxide Emissions From Stationary Sources,
40 CFR 60, Appendix A–4, Method 6A—Determination of Sulfur Dioxide, Moisture and Carbon Dioxide Emissions From Fossil Fuel Combustion Sources,
40 CFR 60, Appendix A–4, Method 6C—Determination of Sulfur Dioxide Emissions From Stationary Sources (Instrumental Analyzer Procedure),
40 CFR 60, Appendix A–4, Method 7—Determination of Nitrogen Oxide Emissions From Stationary Sources,
40 CFR 60, Appendix A–4, Method 7A—Determination of Nitrogen Oxide Emissions From Stationary Sources (Ion Chromatographic Method),
40 CFR 60, Appendix A–4, Method 7B—Determination of Nitrogen Oxide Emissions From Stationary Sources (Ultraviolet Spectrophotometric Method),
40 CFR 60, Appendix A–4, Method 7C—Determination of Nitrogen Oxide Emissions From Stationary Sources (Alkaline Permanganate/Colorimetric Method),
40 CFR 60, Appendix A–4, Method 7D—Determination of Nitrogen Oxide Emissions From Stationary Sources—Alkaline-Permanganate/Ion Chromatographic Method,
40 CFR 60, Appendix A–4, Method 8—Determination of Sulfuric Acid and Sulfur Dioxide Emissions From Stationary Sources,
40 CFR 60, Appendix A–5, Method 15A—Determination of Total Reduced Sulfur Emissions From Sulfur Recovery Plants in Petroleum Refineries,
40 CFR 60, Appendix A–6, Method 16A—Determination of Total Reduced Sulfur Emissions From Stationary Sources (Impinger Technique),
40 CFR 60, Appendix A–6, Method 18—Measurement of Gaseous Organic Compound Emissions by Gas Chromatography,
40 CFR 60, Appendix A–7, Method 25—Determination of Total Gaseous Nonmethane Organic Emissions as Carbon,
40 CFR 60, Appendix A–7, Method 25C—Determination of Nonmethane Organic Compounds (NMOC) in Landfill Gases,
40 CFR 60, Appendix A–8, Method 26—Determination of Hydrogen Halide and Halogen Emissions From Stationary Sources Non-Isokinetic Method,
40 CFR 60, Appendix A–8, Method 26A—Determination of Hydrogen Halide and Halogen Emissions From Stationary Sources Isokinetic Method [Amended at 75 FR 55636, September 13, 2010]. EPA promulgated amendments to the General Provisions to allow accredited providers to supply stationary source audit samples and to require sources to obtain and use these samples from the accredited providers instead of from EPA, as is the current practice. All requirements pertaining to the audit samples have been moved to the General Provisions and have been removed from the test methods because the current language in the test methods regarding audit samples is inconsistent from method to method. Therefore, deleting all references to audit samples in the test methods eliminates any possible confusion and inconsistencies. Under this final rule, the requirement to use an audit sample

during a compliance test will apply to all test methods for which a commercially available audit exists.

40 CFR 60, Appendix B, Performance Specification 12A— Specifications and Test Procedures for Total Vapor Phase Mercury Continuous Emission Monitoring Systems in Stationary Sources,
40 CFR 60, Appendix B, Performance Specification 12B—Specifications and Test Procedures for Monitoring Total Vapor Phase Mercury Emissions From Stationary Sources Using a Sorbent Trap Monitoring System,
40 CFR 60, Appendix F, Procedure 5. Quality Assurance Requirements for Vapor Phase Mercury Continuous Emissions Monitoring Systems and Sorbent Trap Monitoring Systems Used for Compliance Determination at Stationary Sources [Amended at 75 FR 54970, September 9, 2010]. The final amendments to the NSPS add or revise, as applicable, emission limits for PM, opacity, nitrogen oxides (NO_X), and sulfur dioxide (SO_2) for facilities that commence construction, modification, or reconstruction after June 16, 2008. The final rule also includes additional testing and monitoring requirements for affected sources.

NESHAP - 40 CFR PART 61
SUBPARTS ADDED:
The following Subparts were added at 54 FR 51694, December 15, 1989, and amended as listed below in "Subparts Significantly Revised":
40 CFR 61, Subpart B - National Emission Standards for Radon Emissions from Underground Uranium Mines,
40 CFR 61, Subpart H -National Emission Standards for Emissions of Radionuclides Other Than Radon from Department of Energy Facilities,
40 CFR 61, Subpart I -National Emission Standards for Radionuclide Emissions from Federal Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H,
40 CFR 61, Subpart K - National Emission Standards for Radionuclide Emissions From Elemental Phosphorus Plants,
40 CFR 61, Subpart Q - National Emission Standard for Radon Emissions from Department of Energy Facilities,
40 CFR 61, Subpart T - National Emission Standards for Radon Emissions from the Disposal of Uranium Mill Tailings,
40 CFR 61, Subpart W - National Emission Standards for Radon Emissions from Operating Mill Tailings
[added at 54 FR 51694, December 15, 1989] This final rule announced the Administrator's final decisions on National Emission Standards for Hazardous Air Pollutants (NEHSAPs) under section 112 of the Clean Air Act for emissions of radionuclides from the following source categories: DOE Facilities, Licensees for Nuclear Regulatory Commission and Non-DOE Federal Facilities, Uranium Fuel Cycle Facilities, Elemental Phosphorus Plants, Coal-Fired Boilers, High-level Nuclear Waste Disposal Facilities, Phosphogypsum Stacks, Underground and Surface Uranium Mines, and operation and disposal of Uranium Mill Tailings Piles. The final rule also responded to the major public comments on March 7, 1989 proposed decisions for these categories (54 FR 9612). EPA conducted this rulemaking pursuant to voluntary remand and a schedule issued by the U.S. Court of Appeals for the D.C. Circuit which required final action by October 31, 1989. In addition, EPA granted a reconsideration of the standards of 40 CFR Part 61, subpart I concerning emissions from facilities licensed by the Nuclear Regulatory Commission, with respect to the issues of duplicative regulation and possible effects on medical treatment.

40 CFR 61, Subpart R - National Emission Standard for Radon Emissions from Phosphogypsum Stacks,
[added at 57 FR 23317, June 3, 1992] This final rule announced the Administrator's final decision on reconsideration of 40 CFR part 61, subpart R, National Emission Standards for Radon Emissions from Phosphogypsum Stacks. EPA previously announced it would reconsider that portion of subpart R that required that all phosphogypsum be disposed in stacks or mines (55 FR 13480, April 10, 1990). The disposal requirement precluded the distribution and use of phosphogypsum for agriculture, construction, and research and development activities. The form of the final rule adopted by the EPA is a combination of the options proposed for public comment on April 10, 1990 (55 FR 13482) and is based on the various risks presented by the radionuclides contained in the phosphogypsum. First, distribution of phosphogypsum for use in agriculture will be permitted provided that the certified average concentration of radium-226 in the phosphogypsum does not exceed 10 pCi/g. This limit is intended to assure that the risks from indoor radon and direct gamma radiation exposure in residences constructed on land previously treated with phosphogypsum do not exceed an acceptable level. Second, distribution of phosphogypsum for use in research and development (R&D) will be permitted so long as affected facilities do not use more than 700 pounds of phosphogypsum for a particular R&D activity and warning labels are placed on containers used to store phosphogypsum for R&D purposes. Third, other uses of phosphogypsum will be permitted on a case-by-case basis with prior EPA approval. EPA approval will be granted only if EPA finds that the proposed use of the phosphogypsum will be at least as protective of public health, in the short term and the long term, as disposal in a stack or mine.

SUBPARTS SIGNIFICANTLY REVISED:

40 CFR 61, Subpart H -National Emission Standards for Emissions of Radionuclides Other Than Radon from Department of Energy Facilities, [amended at 67 FR 57166, September 9, 2002] This action amended the National Emission Standards for Hazardous Air Pollutants (NESHAPs), which regulated the air emissions of radionuclides other than radon-222 and radon-220 from facilities owned or operated by the Department of Energy (DOE) (Subpart H) and from Federal Facilities other than Nuclear Regulatory Commission (NRC) licensees and not covered by Subpart H (Subpart I). The regulations require that emissions of radionuclides to the ambient air shall not exceed those amounts that would cause any member of the public to receive in any year an effective dose equivalent of 10 millirem per year (mrem/yr). Also, for non-DOE federal facilities, emissions of iodine shall not exceed those amounts that would cause any member of the public to receive in any year an effective dose equivalent of 3 mrem/yr. Regulated facilities demonstrate compliance with the standard by sampling and monitoring radionuclide emissions from all applicable point sources. Radionuclide emissions from point sources were measured in accordance with the American National Standards Institutes's (ANSI) "Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities," ANSI N13.1-1969. In 1999, the American National Standards Institute substantively revised ANSI N13.1-1969 and renamed it "Sampling and Monitoring Releases of Airborne Radioactive Substances from the Stacks and Ducts of Nuclear Facilities," ANSI/HPS N13.1-1999. This action amended 40 CFR Part 61, subparts H and I to require the use of ANSI/HPS N13.1-1999 for all applicable newly constructed or modified facilities. This action also imposed additional inspection requirements on existing facilities subject to subparts H and I of 40 CFR Part 61.

40 CFR 61, Subpart I -National Emission Standards for Radionuclide Emissions from Federal Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H, [amended at 61 FR 46212, September 5, 1995] EPA is rescinding subpart I of 40 CFR part 61 as it applies to nuclear power reactors, pursuant to section 112(d)(9) of the Clean Air Act Amendments of 1990. This section allows EPA to decline to regulate Nuclear Regulatory Commission (NRC) licensees if the Administrator determines by rule, and in consultation with the NRC, that the regulatory program established by the NRC pursuant to the Atomic Energy Act provides an ample margin of safety to protect the public health. A proposed rule to rescind subpart I as it applies to nuclear power reactors was published on August 5, 1991. Based upon the record compiled in the subsequent rulemaking, EPA has concluded that the NRC regulatory program controlling air emissions of radionuclides from nuclear power reactors will assure that the resultant doses will consistently and predictably be below the levels which EPA has determined are necessary to provide an ample margin of safety to protect the public health.

[amended at 61 FR 68981, December 30, 1996] EPA is rescinding 40 CFR part 61, subpart I (subpart I) as it applies to Nuclear Regulatory Commission (NRC) or NRC Agreement State licensed facilities other than commercial nuclear power reactors. Subpart I is a National Emission Standard for Hazardous Air Pollutants (NESHAPs) which was published on December 15, 1989 and which limits radionuclide emissions to the ambient air from NRC-licensed facilities. As required by section 112(d)(9) of the Clean Air Act as amended in 1990, EPA has determined that the NRC regulatory program for licensed facilities other than commercial nuclear power reactors protects public health with an ample margin of safety, the same level of protection that would be afforded by continued implementation of subpart I.

[amended at 67 FR 57167, September 9, 2002] This action amended the National Emission Standards for Hazardous Air Pollutants (NESHAPs), which regulate the air emissions of radionuclides other than radon-222 and radon-220 from facilities owned or operated by the Department of Energy (DOE) (Subpart H) and from Federal Facilities other than Nuclear Regulatory Commission (NRC) licensees and not covered by Subpart H (Subpart I). The regulations require that emissions of radionuclides to the ambient air shall not exceed those amounts that would cause any member of the public to receive in any year an effective dose equivalent of 10 millirem per year (mrem/yr). Also, for non-DOE federal facilities, emissions of iodine shall not exceed those amounts that would cause any member of the public to receive in any year an effective dose equivalent of 3 mrem/yr. Regulated facilities demonstrate compliance with the standard by sampling and monitoring radionuclide emissions from all applicable point sources. Radionuclide emissions from point sources are measured in accordance with the American National Standards Institutes's (ANSI) "Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities," ANSI N13.1-1969. In 1999, the American National Standards Institute substantively revised ANSI N13.1-1969 and renamed it "Sampling and Monitoring Releases of Airborne Radioactive Substances from the Stacks and Ducts of Nuclear Facilities," ANSI/HPS N13.1-1999. This action amended 40 CFR Part 61, subparts H and I to require the use of ANSI/HPS N13.1-1999 for all applicable newly constructed or modified facilities. This action also imposed additional inspection requirements on existing facilities subject to subparts H and I of 40 CFR Part 61.

40 CFR 61, Subpart K - National Emission Standards for Radionuclide Emissions From Elemental Phosphorus Plants, [amended at 56 FR 65943, December 19, 1991] This final rule announced the Administrator's decision modifying 40 CFR part 61, subpart K, the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for Radionuclide Emissions from Elemental Phosphorus Plants (54 FR 51699 December 15, 1989). In this final

rule, subpart K is amended to permit elemental phosphorus plants an alternative means of demonstrating compliance with the standard. Under the previous standard, an elemental phosphorus plant has to ensure that total emissions of polonium-210 from that facility did not exceed 2 curies per year. Under this amendment, an elemental phosphorus plant would be in compliance if it limits polonium-210 emissions to 2 curies per year. However, in the alternative, the plant may demonstrate compliance by: (1) Installing a Hydro-Sonic (registered) Tandem Nozzle Fixed Throat Free-Jet Scrubber System n1 including four scrubber units, (2) operating all four scrubber units continuously with a minimum average over any 6-hour period of 40 inches (water column) of pressure drop across each scrubber during calcining of phosphate shale, (3) scrubbing emissions from all calciners and/or nodulizing kilns at the plant, and (4) limiting total emissions of polonium-210 from the plant to no more than 4.5 curies per year. EPA proposed this modified standard for elemental phosphorus plants as a result of settlement discussions between EPA and the FMC Corporation ("FMC") in FMC Corporation v. U.S. Environmental Protection Agency, Docket No. 90-1057 in the D.C. Circuit Court of Appeals, a judicial action by FMC challenging subpart K as it was originally promulgated.

40 CFR 61, Subpart R - National Emission Standard for Radon Emissions from Phosphogypsum Stacks, [amended at 64 FR 5579, February 3, 1999] The EPA promulgated revisions to the National Emission Standard for Hazardous Air Pollutants (NESHAP) that set limits on radon emissions from phosphogypsum stacks, codified as subpart R of 40 CFR part 61. The action was in response to a petition for reconsideration from The Fertilizer Institute (TFI), which critiqued the risk assessment EPA performed in support of the version of subpart R promulgated in 1992. This action raised the limit on the quantity of phosphogypsum that may be used for indoor research and development from 700 to 7,000 pounds, eliminated current sampling requirements for phosphogypsum used in indoor research and development, and clarified sampling procedures for phosphogypsum removed from stacks for other purposes.

40 CFR 61, Subpart T - National Emission Standards for Radon Emissions from the Disposal of Uranium Mill Tailings, [amended at 59 FR 36301, July 15, 1994] EPA rescinded 40 CFR part 61, subpart T (subpart T) as it applies to owners and operators of uranium mill tailings disposal sites licensed by the Nuclear Regulatory Commission (NRC) or an affected Agreement State (Agreement States). As required by section 112(d)(9) of the Clean Air Act as amended, EPA determined that the NRC regulatory program protects public health with an ample margin of safety to the same level as would implementation of subpart T. Subpart T is a National Emission Standard for Hazardous Air Pollutants (NESHAPs) which was published on December 15, 1989 and which regulates emissions of radon-222 into the ambient air from uranium mill tailings disposal sites. Subpart T continues to apply to unlicensed uranium mill tailings disposal sites currently regulated under subpart T that are under the control of the Department of Energy (DOE).

40 CFR 61, Subpart B - National Emission Standards for Radon Emissions from Underground Uranium Mines,
40 CFR 61, Subpart H -National Emission Standards for Emissions of Radionuclides Other Than Radon from Department of Energy Facilities,
40 CFR 61, Subpart I -National Emission Standards for Radionuclide Emissions from Federal Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H,
40 CFR 61, Subpart K - National Emission Standards for Radionuclide Emissions From Elemental Phosphorus Plants,
40 CFR 61, Subpart Q - National Emission Standard for Radon Emissions from Department of Energy Facilities,
40 CFR 61, Subpart R - National Emission Standard for Radon Emissions from Phosphogypsum Stacks,
40 CFR 61, Subpart T - National Emission Standards for Radon Emissions from the Disposal of Uranium Mill Tailings,
40 CFR 61, Subpart W - National Emission Standards for Radon Emissions from Operating Mill Tailings, [amended at 65 FR 61744, October 17, 2000] In this rule, EPA made final minor amendments to the stationary source testing and monitoring rules. These amendments included miscellaneous editorial changes and technical corrections. EPA also promulgated Performance Specification 15, which contains the criteria for certifying continuous emission monitoring systems (CEMS) that use fourier transform infrared spectroscopy (FTIR). In addition, EPA changed the outline of the test methods and CEMS performance specifications already listed in Parts 60, 61, and 63 to fit a new format recommended by the Environmental Monitoring Management Council (EMMC). The editorial changes and technical corrections update the rules and help maintain their original intent. Performance Specification 15 provided the needed acceptance criteria for FTIR CEMS as they emerge as a new technology. EPA reformatted the test methods and performance specifications to make them more uniform in content and interchangeable with other Agency methods. The amendments applied to a large number of industries that are already subject to the current provisions of Parts 60, 61, and 63. Therefore, EPA did not list specific affected industries or

their Standard Industrial Classification codes.

40 CFR 61, Appendix B, Method 104—Determination of Beryllium Emissions From Stationary Sources,
40 CFR 61, Appendix B, Method 106—Determination of Vinyl Chloride Emissions From Stationary Sources,
40 CFR 61, Appendix B, Method 108—Determination of Particulate and Gaseous Arsenic Emissions,
40 CFR 61, Appendix B, Method 108A—Determination of Arsenic Content in Ore Samples From Nonferrous Smelters,
40 CFR 61, Appendix B, Method 108B—Determination of Arsenic Content in Ore Samples From Nonferrous Smelters,
40 CFR 61, Appendix B, Method 108C—Determination of Arsenic Content in Ore Samples From Nonferrous Smelters (Molybdenum Blue Photometric Procedure),
40 CFR 61, Appendix B, Method 111—Determination of Polonium—210 Emissions From Stationary Sources [Amended at 75 FR 55636, September 13, 2010] EPA promulgated amendments to the General Provisions to allow accredited providers to supply stationary source audit samples and to require sources to obtain and use these samples from the accredited providers instead of from EPA, as is the current practice. All requirements pertaining to the audit samples have been moved to the General Provisions and have been removed from the test methods because the current language in the test methods regarding audit samples is inconsistent from method to method. Therefore, deleting all references to audit samples in the test methods eliminates any possible confusion and inconsistencies. Under this final rule, the requirement to use an audit sample during a compliance test will apply to all test methods for which a commercially available audit exists.

40 CFR 63, Subpart WWWWW – National Emission Standards for Hospital Ethylene Oxide Sterilizers [Added at 72 FR 73611, December 28, 2007]. EPA issued NESHAPS for new and existing hospital sterilizers that emit hazardous air pollutants and are area sources within the meaning of Clean Air Act section 112(a)(2). The final rule is based on EPA's determination as to what constitutes the generally available control technology or management practices for the hospital sterilizer area source category. This action was finalized as part of EPA's obligation to regulate area sources listed for regulation pursuant to Clean Air Act section 112(c)(3).

40 CFR 63, Subpart YYYYY – National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities [Added at 72 FR 74087, December 28, 2007]. EPA issued NESHAPS for electric arc furnace steel-making facilities that are area sources of hazardous air pollutants. The final rule established requirements for the control of mercury emissions that are based on the maximum achievable control technology and requirements for the control of other hazardous air pollutants that are based on generally available control technology or management practices.

40 CFR 63, Subpart ZZZZZ – National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources [Added at 73 FR 225, January 2, 2008]. EPA issued NESHAPS for two area source categories (iron foundries and steel foundries). The requirements for the two area source categories are combined in one subpart. The final rule established different requirements for foundries based on size. Small area source foundries are required to comply with pollution prevention management practices for metallic scrap, the removal of mercury switches, and binder formulations. Large area source foundries are required to comply with the same pollution prevention management practices as small foundries, in addition to emissions standards for melting furnaces and foundry operations. The final standards reflect the generally achievable control technology and/or management practices for each subcategory.

40 CFR 63, Subparts BBBBBB and CCCCCC – National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities [Added at 73 FR 1915, January 10, 2008]. The EPA promulgated NESHAPS for the facilities in the gasoline distribution (Stage I) area source category. EPA promulgated these emission standards for hazardous air pollutants pursuant to Clean Air Act section 112(c)(3) and 112(d)(5). EPA added two regulations that address the facilities contained in this area source category. The first includes requirements for bulk distribution facilities, i.e., gasoline distribution bulk terminals, bulk plants, and pipeline facilities. The second includes requirements for loading of storage tanks at gasoline dispensing facilities. EPA also incorporated by reference four test methods. This action also finalized EPA's decision not to regulate the above noted facilities under Clean Air Act section 112(c)(6).

40 CFR 63, Subparts DDDDDD, EEEEEE, FFFFFF, and GGGGGG – National Emission Standards for Hazardous Air Pollutants for Area Sources: Polyvinyl Chloride and Copolymers Production, Primary Copper Smelting, Secondary Copper Smelting, and Primary Nonferrous Metals: Zinc, Cadmium, and Beryllium [Added at 72 FR 2930, January 23, 2007]. EPA issued NESHAPS for four area source categories. These final

NESHAPS include emissions limits and/or work practice standards that reflect the generally available control technologies (GACT) and/or management practices in each of these area source categories.

40 CFR 63, Subpart HHHHHH – National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources [Added at 73 FR 1737, January 9, 2008]. This action promulgated NESHAPS for area sources engaged in paint stripping, surface coating of motor vehicles and mobile equipment, and miscellaneous surface coating operations. EPA has listed "Paint Stripping," "Plastic Parts and Products (Surface Coating)," and "Autobody Refinishing Paint Shops" as area sources of hazardous air pollutants (HAP) that contribute to the risk to public health in urban areas under the Integrated Urban Air Toxics Strategy. This final rule includes emissions standards that reflect the generally available control technology or management practices in each of these area source categories. "Plastic Parts and Products (Surface Coating)" has been renamed "Miscellaneous Surface Coating," and "Autobody Refinishing Paint Shops" has been renamed "Motor Vehicle and Mobile Equipment Surface Coating" to more accurately reflect the scope of these source categories.

40 CFR 63, Subpart JJJJJJ—National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers [Added at 76 FR 15554, March 21, 2011] EPA promulgated national emission standards for control of hazardous air pollutants from two area source categories: Industrial boilers and commercial and institutional boilers. The final emission standards for control of mercury and polycyclic organic matter emissions from coal-fired area source boilers are based on the maximum achievable control technology. The final emission standards for control of hazardous air pollutants emissions from biomass-fired and oil-fired area source boilers are based on EPA's determination as to what constitutes the generally available control technology or management practices.

[Effective dates delayed at 76 FR 28662, May 18, 2011] The EPA delayed the effective dates for the final rules titled "National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters'" and "Standards of Performance for New Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units" under the authority of the Administrative Procedure Act (APA) until the proceedings for judicial review of these rules is completed or the EPA completes its reconsideration of the rules, whichever is earlier. DATES: The effective dates of the final rules published in the Federal Register on March 21, 2011 (76 FR 15608 and 76 FR 15704), are delayed until such time as judicial review is no longer pending or until the EPA completes its reconsideration of the rules, whichever is earlier. The EPA will publish in the Federal Register announcing the effective dates and the incorporation by reference approvals once delay is no longer necessary.

[Amended at 78 FR 7488, February 1, 2013] In this action, the EPA took final action on reconsideration of certain issues related to the emission standards to control hazardous air pollutants from new and existing industrial, commercial and institutional boilers at area sources which were issued under section 112 of the Clean Air Act. As part of this action, the EPA amended certain compliance dates for the standard and making technical corrections to the final rule to clarify definitions, references, applicability and compliance issues raised by petitioners and other stakeholders affected by the rule. The EPA took final action on the proposed reconsideration.

40 CFR 63, Subparts LLLLLL, MMMMMM, NNNNNN, OOOOOO, PPPPPP, and QQQQQQ – National Emission Standards for Hazardous Air Pollutants for Area Sources: Acrylic and Modacrylic Fibers Production, Carbon Black Production, Chemical Manufacturing: Chromium Compounds, Flexible Polyurethane Foam Production and Fabrication, Lead Acid Battery Manufacturing, and Wood Preserving [Added at 72 FR 38863, July 15, 2007]. EPA issued six NESHAPS for seven area source categories. The final emissions standards and associated requirements for two area source categories (Flexible Polyurethane Foam Production and Flexible Polyurethane Foam Fabrication) are combined in one subpart. These final rules include emission standards that reflect the generally available control technologies or management practices in each of these area source categories.

40 CFR 63, Subparts RRRRRR, SSSSSS, and TTTTTT – National Emission Standards for Hazardous Air Pollutants for Area Sources: Clay Ceramics Manufacturing, Glass Manufacturing, and Secondary Nonferrous Metals Processing [Added at 72 FR 73179, December 26, 2007]. EPA finalized NESHAPS for the Clay Ceramics Manufacturing, Glass Manufacturing, and Secondary Nonferrous Metals Processing area source categories. Each of these three final emissions standards reflects the generally available control technology or management practices used by sources within the respective area source category.

40 CFR 63, Subpart VVVVVV – National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources [Added at 74 FR 56008, October 29, 2009] EPA issued national emission standards for the control of hazardous air pollutants for nine area source categories in the chemical manufacturing sector: Agricultural Chemicals and Pesticides Manufacturing, Cyclic Crude and Intermediate Production, Industrial Inorganic Chemical Manufacturing, Industrial Organic Chemical Manufacturing, Inorganic Pigments Manufacturing,

Miscellaneous Organic Chemical Manufacturing, Plastic Materials and Resins Manufacturing, Pharmaceutical Production, and Synthetic Rubber Manufacturing. The standards and associated requirements for the nine area source categories are combined in one subpart. This final rule establishes emission standards in the form of management practices for each chemical manufacturing process unit as well as emission limits for certain subcategories of process vents and storage tanks. The rule also establishes management practices and other emission reduction requirements for subcategories of wastewater systems and heat exchange systems.

40 CFR 63, Subpart WWWWWW – National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations; Final Rule [Added at 73 FR 37727, July 1, 2008] EPA issued national emission standards for control of hazardous air pollutants (HAP) for the plating and polishing area source category. This final rule established emission standards in the form of management practices for new and existing tanks, thermal spraying equipment, and mechanical polishing equipment in certain plating and polishing processes. The final emission standards reflect EPA's determination regarding the generally achievable control technology (GACT) and/or management practices for the area source category.

40 CFR 63, Subpart XXXXXX – National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Nine Metal Fabrication and Finishing Source Categories; Final Rule [Added at 73 FR 42977, July 23, 2008] EPA issued national emission standards for control of hazardous air pollutants for nine metal fabrication and finishing area source categories (identified in section I.A. below). This final rule established emission standards in the form of management practices and equipment standards for new and existing operations of dry abrasive blasting, machining, dry grinding and dry polishing with machines, spray painting and other spray coating, and welding operations. These standards reflect EPA's determination regarding the generally achievable control technology and/or management practices for the nine area source categories.

40 CFR 63, Subpart YYYYYY – Revision of Source Category List for Standards Under Section 112(k) of the Clean Air Act; and National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities [Added at 73 FR 78637, December 23, 2008] EPA revised the area source category list by changing the name of the ferroalloys production category to clarify that it includes all types of ferroalloys. EPA also added two additional products (calcium carbide and silicon metal) to the source category. EPA issued final national emissions standards for control of hazardous air pollutants (HAP) for area source ferroalloys production facilities. The final emissions standards for new and existing sources reflect EPA's determination regarding the generally available control technology (GACT) or management practices for the source category.

40 CFR 63, Subpart ZZZZZZ – Revision of Source Category List for Standards Under Section 112(k) of the Clean Air Act; National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries [Added at 74 FR 30365, June 25, 2009] EPA revised the area source category list by changing the name of the "Secondary Aluminum Production" category to "Aluminum Foundries" and the "Nonferrous Foundries, not elsewhere classified (nec)" category to "Other Nonferrous Foundries." At the same time, EPA issued final national emission standards for the Aluminum Foundries, Copper Foundries, and Other Nonferrous Foundries area source categories. These final emission standards for new and existing sources reflect EPA's determination regarding the generally available control technologies or management practices (GACT) for each of the three area source categories.

40 CFR 63, Subpart AAAAAAA – National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing [Added at 74 FR 63236, December 2, 2009] EPA promulgated national emissions standards for the control of emissions of hazardous air pollutants (HAP) from the asphalt processing and asphalt roofing manufacturing area source category. These final emissions standards for new and existing sources are based upon EPA's final determination as to what constitutes the generally available control technology or management practices (GACT) for the source category.

40 CFR 63, Subpart BBBBBBB – National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry [Added at 74 FR 69194, December 30, 2009] EPA promulgated national emissions standards for control of hazardous air pollutants (HAP) from the chemical preparations area source category. These final emissions standards for new and existing sources reflect EPA's final determination regarding the generally available control technology or management practices (GACT) for the source category.

40 CFR 63, Subpart CCCCCCC – National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing [Added at 74 FR 63503, December 3, 2009]. EPA issued national emission standards for control of hazardous air pollutants (HAP) for the Paints and Allied Products Manufacturing area source category. The final rule establishes emission standards in the form of management practices

for volatile HAP, and emission standards in the form of equipment standards for particulate HAP. The emissions standards for new and existing sources are based on EPA's determination as to what constitutes the generally available control technology or management practices (GACT) for the area source category.

40 CFR 63, Subpart DDDDDDD – National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing [Added at 75 FR 522, January 5, 2010] EPA issued national emission standards for control of hazardous air pollutants (HAP) for the Prepared Feeds Manufacturing area source category. The emissions standards for new and existing sources are based on EPA's determination as to what constitutes the generally available control technology or management practices for the area source category.

40 CFR 63, Subpart EEEEEEE—National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category [Added at 76 FR 9449, February 17, 2011] EPA added the gold mine ore processing and production area source category to the list of source categories to be regulated under Section 112(c)(6) of the Clean Air Act due to its mercury emissions. EPA also promulgated national emission standards for hazardous air pollutants to regulate mercury emissions from this source category.

40 CFR 63, Subpart HHHHHHH—National Emission Standards for Hazardous Air Pollutant Emissions for Polyvinyl Chloride and Copolymers Production [Added at 77 FR 22848, April 17, 2012] The EPA promulgated National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production. The final rules establish emission standards that apply at all times, including periods of startup, shutdown and malfunction, for hazardous air pollutants from polyvinyl chloride and copolymers production located at major and area sources. The final rules include requirements to demonstrate initial and continuous compliance with the emission standards, including monitoring provisions and recordkeeping and reporting requirements.

SUBPARTS SIGNIFICANTLY REVISED:

40 CFR 63, Subpart A – General Provisions [Amended at 75 FR 54970, September 9, 2010]

The final amendments to the NSPS add or revise, as applicable, emission limits for PM, opacity, nitrogen oxides (NO_X), and sulfur dioxide (SO_2) for facilities that commence construction, modification, or reconstruction after June 16, 2008. The final rule also includes additional testing and monitoring requirements for affected sources. EPA finalized amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) from the Portland Cement Manufacturing Industry and to the New Source Performance Standards (NSPS) for Portland Cement Plants. The final amendments to the NESHAP add or revise, as applicable, emission limits for mercury, total hydrocarbons (THC), and particulate matter (PM) from new and existing kilns located at major and area sources, and for hydrochloric acid (HCL) from new and existing kilns located at major sources. The standards for new kilns apply to facilities that commence construction, modification, or reconstruction after May 6, 2009.

[Amended at 76 FR 9449, February 17, 2011] EPA added the gold mine ore processing and production area source category to the list of source categories to be regulated under Section 112(c)(6) of the Clean Air Act due to its mercury emissions. EPA also promulgated national emission standards for hazardous air pollutants to regulate mercury emissions from this source category. (Subpart EEEEEEE added, discussed above.)

[Amended at 77 FR 9304, February 16, 2012] On May 3, 2011, under authority of Clean Air Act (CAA) sections 111 and 112, the EPA proposed both national emission standards for hazardous air pollutants (NESHAP) from coal- and oil-fired electric utility steam generating units (EGUs) and standards of performance for fossil-fuel-fired electric utility, industrial-commercial institutional, and small industrial-commercial-institutional steam generating units (76 FR 24976). After consideration of public comments, the EPA finalized these rules in this action. Pursuant to CAA section 111, the EPA revised standards of performance in response to a voluntary remand of a final rule. Specifically, EPA amended new source performance standards (NSPS) after analysis of the public comments received. EPA also finalized several minor amendments, technical clarifications, and corrections to existing NSPS provisions for fossil fuel-fired EGUs and large and small industrial-commercial-institutional steam generating units. Pursuant to CAA section 112, the EPA established NESHAP that will require coal- and oil-fired EGUs to meet hazardous air pollutant (HAP) standards reflecting the application of the maximum achievable control technology. This rule protects air quality and promotes public health by reducing emissions of the HAP listed in CAA section 112(b)(1).

[Amended at 77 FR 22848, April 17, 2012] The EPA promulgated National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production. The final rules establish emission standards that apply at all times, including periods of startup, shutdown and malfunction, for hazardous air pollutants from polyvinyl chloride and copolymers production located at major and area sources. The final rules include requirements to demonstrate initial and continuous compliance with the emission standards, including monitoring provisions and recordkeeping and reporting requirements.

40 CFR 63, Subpart A, G, H, I, R, S, U, Y, CC, DD, EE, GG, HH, OO, PP, QQ, SS, TT, UU, VV, YY, GGG, HHH, III, JJJ, MMM, OOO, VVV, and GGGGG – Alternative Work Practice To Detect Leaks From Equip-

ment [Amended at 73 FR 78199, December 22, 2008] Numerous EPA air emissions standards require specific work practices for equipment leak detection and repair. On April 6, 2006, EPA proposed a voluntary alternative work practice for leak detection and repair using a newly developed technology, optical gas imaging. The alternative work practice is an alternative to the current leak detection and repair work practice, which is not being revised. The proposed alternative has been amended in this final rule to add a requirement to perform monitoring once per year using the current Method 21 leak detection instrument. This action revised the General Provisions to incorporate the final alternative work practice.

40 CFR 63, Subparts F, G, H, and I – National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry [Amended at 71 FR 76603, December 21, 2006]. In 1994, EPA promulgated NESHAPS for the synthetic organic chemical manufacturing industry. This rule is commonly known as the hazardous organic NESHAP (HON) and established maximum achievable control technology standards to regulate the emissions of hazardous air pollutants from production processes that are located at major sources. The Clean Air Act directs EPA to assess the risk remaining (residual risk) after the application of the maximum achievable control technology standards and to promulgate additional standards if required to provide an ample margin of safety to protect public health or prevent an adverse environmental effect. The Clean Air Act also requires EPA to review and revise maximum achievable control technology standards, as necessary, every 8 years, taking into account developments in practices, processes, and control technologies that have occurred during that time. On June 14, 2006, EPA proposed two options regarding whether to amend the current emission standards for synthetic organic chemical manufacturing industry units. This action finalized one of those options, and reflects EPA's decision not to impose further controls and not to revise the existing standards based on the residual risk and technology review. It also amended the existing regulations in certain aspects.

40 CFR 63, Subpart M – National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities [Amended at 71 FR 42723, July 27, 2006]. EPA promulgated revised NESHAPS to limit emissions of perchloroethylene (PCE) from existing and new dry cleaning facilities. On September 22, 1993, EPA promulgated technology-based emission standards to control emissions of PCE from dry cleaning facilities. EPA has reviewed these standards and is promulgating revisions to take into account new developments in production practices, processes, and control technologies. In addition, EPA has evaluated the remaining risk to public health and the environment following implementation of the technology-based rule and is promulgating more stringent standards for major sources in order to protect public health with an ample margin of safety. The final standards are expected to provide further reductions of PCE beyond the 1993 NESHAPS, based on application of equipment and work practice standards and, in certain situations, disallowing the use of PCE at dry cleaning facilities. In addition, EPA made some technical corrections to the 1993 Dry Cleaning NESHAPS.

40 CFR 63, Subpart N,
40 CFR 63, Subpart CCC--National Emission Standards for Hazardous Air Pollutant Emissions: Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; and Steel Pickling— HCl Process Facilities and Hydrochloric Acid Regeneration Plants [Amended at 78 FR 58220, September 19, 2012] This action finalized the residual risk and technology review conducted for the following source categories regulated under two national emission standards for hazardous air pollutants (NESHAP): hard and decorative chromium electroplating and chromium anodizing tanks, and steel pickling—HCl process facilities and hydrochloric acid regeneration plants. On October 21, 2010, EPA proposed amendments to these NESHAP under section 112(d)(6) and (f)(2) of the Clean Air Act. On February 8, 2012, EPA published a supplemental proposal with new analyses and results. For hard and decorative chromium electroplating and chromium anodizing tanks these final amendments addressing Clean Air Act (CAA) sections 112(d)(6) and (f)(2) include revisions to the emissions limits for total chromium; addition of housekeeping requirements to minimize fugitive emissions; and a requirement to phase-out the use of perfluorooctane sulfonic acid (PFOS) based fume suppressants. These requirements will provide greater protection for public health and the environment by reducing emissions of hexavalent chromium (a known human carcinogen). In addition, as part of the October 2010 proposal, EPA proposed certain actions pursuant to CAA section 112(d)(2) and (3) for hard and decorative chromium electroplating and chromium anodizing tanks. For these sources, EPA modified and added testing and monitoring, recordkeeping, and reporting requirements; and revisions to the regulatory provisions related to emissions during periods of malfunction. For steel pickling hydrochloric acid regeneration plants, EPA finalized the proposal to remove the alternative compliance method because EPA believes it is inconsistent with the requirements of CAA section 112(d)(2) and (3). This amendment will achieve reductions in chlorine emissions. Additionally, EPA added provisions to the Steel Pickling Facilities NESHAP requiring that the emission limits of the rule apply at all times, including during periods of startup, shutdown and malfunction.

40 CFR 63, Subpart A,
40 CFR 63, Subpart S--National Emission Standards for Hazardous Air Pollutants From the Pulp and Paper

Industry [Amended at 78 FR 55698, September 11, 2012] This action finalized the residual risk and technology review conducted for the pulp and paper industry source category regulated under national emission standards for hazardous air pollutants. The EPA is required to conduct residual risk and technology reviews under the Clean Air Act. This action finalized amendments to the national emission standards for hazardous air pollutants that include a requirement for 5-year repeat emissions testing for selected process equipment; revisions to provisions addressing periods of startup, shutdown and malfunction; a requirement for electronic reporting; additional test methods for measuring methanol emissions; and technical and editorial changes. The amendments are expected to ensure that control systems are properly maintained over time, ensure continuous compliance with standards and improve data accessibility; EPA estimates facilities nationwide will spend $2.1 million per year to comply.

40 CFR 63, Subpart U—National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins,
40 CFR 63, Subpart Y - National Emission Standards for Marine Tank Vessel Loading Operations,
40 CFR 63, Subpart KK—National Emission Standards for the Printing and Publishing Industry,
40 CFR 63, Subpart GGG—National Emission Standards for Pharmaceuticals Production, [Amended at 76 FR 22566, April 21, 2011] EPA took final action for four national emission standards for hazardous air pollutants (NESHAP) that regulate 12 industrial source categories evaluated in our risk and technology review. The four NESHAP include: National Emissions Standards for Group I Polymers and Resins (Butyl Rubber Production, Epichlorohydrin Elastomers Production, Ethylene Propylene Rubber Production, Hypalon\TM\ Production, Neoprene Production, Nitrile Butadiene Rubber Production, Polybutadiene Rubber Production, Polysulfide Rubber Production, and Styrene Butadiene Rubber and Latex Production); Marine Tank Vessel Loading Operations; Pharmaceuticals Production; and The Printing and Publishing Industry. For some source categories, EPA finalized our decisions concerning the residual risk and technology reviews. For the Marine Tank Vessel Loading Operations NESHAP and the Group I Polymers and Resins NESHAP, EPA finalized emission standards to address certain emission sources not previously regulated under the NESHAP. EPA also finalized changes to the Pharmaceuticals Production NESHAP to correct an editorial error. For each of the four NESHAP, EPA finalized revisions to the regulatory provisions related to emissions during periods of startup, shutdown, and malfunction and promulgating provisions addressing electronic submission of emission test results.

40 CFR 63, Subpart A – General Provisions,
40 CFR 63, Subpart CC – National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries [Amended at 74 FR 55669, October 28, 2009] This action amends the national emission standards for petroleum refineries to add maximum achievable control technology standards for heat exchange systems. This action also amends the general provisions cross-reference table and corrects section references.
[Partial withdrawal at 76 FR 42052, July 18, 2011] On October 28, 2009, the EPA proposed to withdraw the residual risk and technology review portions of the final rule amending the National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries. EPA provided final notice of the partial withdrawal in this action.
[Amended at 78 FR 37133, June 20, 2013] This action amended the national emission standards for hazardous air pollutants for heat exchange systems at petroleum refineries. The amendments address issues raised in a petition for reconsideration of the EPA's final rule setting maximum achievable control technology rules for these systems and also provides additional clarity and regulatory flexibility with regard to that rule. This action does not change the level of environmental protection provided under those standards. The final amendments do not add any new cost burdens to the refining industry and may result in cost savings by establishing an additional monitoring option that sources may use in lieu of the monitoring provided in the original standard.

40 CFR 63, Subpart HH – National Emission Standards for Hazardous Air Pollutants for Source Categories From Oil and Natural Gas Production Facilities [Amended at 72 FR 26, January 3, 2007]. This action promulgated NESHAPS to regulate hazardous air pollutant emissions from oil and natural gas production facilities that are area sources. The final NESHAPS for major sources was promulgated on June 17, 1999, but final action with respect to area sources was deferred. Oil and natural gas production is identified in the Urban Air Toxics Strategy as an area source category for regulation under section 112(c)(3) of the Clean Air Act because of benzene emissions from triethylene glycol dehydration units located at such facilities. This final rule also amended a general provision in the regulation to allow the use of an ASTM standard as an alternative test method to EPA Method 18 in the National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities.

40 CFR 63, Subpart HH,
40 CFR 63, Subpart HHH--Oil and Natural Gas Sector: National Emission Standards for Hazardous Air Pollutants Reviews [Amended at 77 FR 49490, August 16, 2012] This action finalized the review of new source performance standards for the listed oil and natural gas source category. In this action the EPA revised the new source performance standards for volatile organic compounds from leaking components at onshore natural gas pro-

cessing plants and new source performance standards for sulfur dioxide emissions from natural gas processing plants. The EPA also established standards for certain oil and gas operations not covered by the existing standards. In addition to the operations covered by the existing standards, the newly established standards will regulate volatile organic compound emissions from gas wells, centrifugal compressors, reciprocating compressors, pneumatic controllers and storage vessels. This action also finalized the residual risk and technology review for the Oil and Natural Gas Production source category and the Natural Gas Transmission and Storage source category. This action includes revisions to the existing leak detection and repair requirements. In addition, the EPA established emission limits reflecting maximum achievable control technology for certain currently uncontrolled emission sources in these source categories. This action also includes modification and addition of testing and monitoring and related notification, recordkeeping and reporting requirements, as well as other minor technical revisions to the national emission standards for hazardous air pollutants. This action finalized revisions to the regulatory provisions related to emissions during periods of startup, shutdown and malfunction.

40 CFR 63, Subpart JJ—National Emission Standards for Wood Furniture Manufacturing Operations [Amended at 76 FR 72050, November 21, 2011] This action finalized the residual risk and technology review conducted for two industrial source categories regulated by separate national emission standards for hazardous air pollutants. The two national emission standards for hazardous air pollutants are: National Emissions Standards for Shipbuilding and Ship Repair (Surface Coating) and National Emissions Standards for Wood Furniture Manufacturing Operations. This action also finalizes revisions to the regulatory provisions related to emissions during periods of startup, shutdown and malfunction.

40 CFR 63, Subpart EEE – National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Waste Combustors [Amended at 71 FR 62388, October 25, 2006]. The EPA amended the effective date of the standard for particulate matter for new cement kilns that burn hazardous waste. EPA promulgated this standard as part of the national emission standards for hazardous air pollutants (NESHAP) for hazardous waste combustors that were issued on October 12, 2005, under section 112 of the Clean Air Act. EPA agreed to reconsider the standard and proposed to change it on March 23, 2006 (71 FR 14665). This amendment suspended the obligation of new cement kilns to comply with the particulate matter standard until EPA takes final action on this proposal. This amendment does not affect other standards applicable to new or existing hazardous waste burning cement kilns.

40 CFR 63, Subpart EEE – National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Waste Combustors; Amendments [Amended at 73 FR 18970, April 8, 2008]. EPA finalized amendments to the NESHAPS for hazardous waste combustors, which EPA promulgated on October 12, 2005. The amendments to the October 2005 final rule clarified several compliance and monitoring provisions, and also corrected several omissions and typographical errors in the final rule. EPA finalized the amendments to facilitate compliance and improve understanding of the final rule requirements. This rule did not address issues for which petitioners sought reconsideration, nor did it address issues raised in EPA's comment solicitation of September 27, 2007.

[Amended at 73 FR 64067, October 28, 2008] On October 12, 2005, EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for new and existing sources at hazardous waste combustion facilities (the final rule). Subsequently, the Administrator received four petitions for reconsideration of the final rule. On March 23, 2006 and September 6, 2006, EPA granted reconsideration with respect to eight issues raised by the petitions. After evaluating public comments submitted in response to these reconsideration notices, EPA took final action regarding the eight issues raised in the petitions for reconsideration. EPA also re-opened the rule to consider comments relating to a post-promulgation decision of the United States Court of Appeals for the District of Columbia Circuit, and responded in this proceeding to the comments received on that notice, published on September 27, 2007. As a result of this reconsideration process, EPA revised the new source standard for particulate matter for cement kilns and for incinerators that burn hazardous waste. EPA also made amendments to the particulate matter detection system provisions and revisions to the health-based compliance alternative for total chlorine of the final rule. Finally, EPA issued several corrections and clarifications to the rule.

40 CFR 63, Subpart LLL – National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry [Amended at 71 FR 76517, December 20, 2006]. On June 14, 1999, under the authority of section 112 of the Clean Air Act (CAA), EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for new and existing sources in the Portland cement manufacturing industry. On December 15, 2000, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded parts of the NESHAP for the Portland cement manufacturing industry to EPA to consider, among other things, setting standards based on the performance of the maximum achievable control technology (MACT) floor standards for hydrogen chloride (HCl), mercury, and total hydrocarbons (THC), and metal hazardous air pollutants (HAP). EPA published a proposed response to the court's remand on December 2, 2005, and received over 1700 comments on the proposed response. This action promulgated EPA's final rule amendments in response to the court's remand and

the comments received on the proposed amendments.

[Amended at 75 FR 54970, September 9, 2010] The final amendments to the NSPS add or revise, as applicable, emission limits for PM, opacity, nitrogen oxides (NO_X), and sulfur dioxide (SO_2) for facilities that commence construction, modification, or reconstruction after June 16, 2008. The final rule also includes additional testing and monitoring requirements for affected sources. EPA finalized amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) from the Portland Cement Manufacturing Industry and to the New Source Performance Standards (NSPS) for Portland Cement Plants. The final amendments to the NESHAP add or revise, as applicable, emission limits for mercury, total hydrocarbons (THC), and particulate matter (PM) from new and existing kilns located at major and area sources, and for hydrochloric acid (HCL) from new and existing kilns located at major sources. The standards for new kilns apply to facilities that commence construction, modification, or reconstruction after May 6, 2009.

[Amended at 76 FR 2832, January 18, 2011] The EPA took direct final action on amendments to the National Emissions Standards for Hazardous Air Pollutants (NESHAP) from the Portland Cement Manufacturing Industry and Standards of Performance (NSPS) for Portland Cement Plants. The final rules were published on September 9, 2010. The direct final action amends certain regulatory text to clarify compliance dates and clarifies that the previously issued emission limits that were changed in the September 9, 2010, action remain in effect until sources are required to comply with the revised limits. EPA Also corrected two minor typographical errors in the regulatory text to the September 9, 2010 action.

[Denied in part and granted in part of petitions to reconsider at 76 FR 28318, May 17, 2011] The EPA denied in part and granted in part the petitions to reconsider the final revised National Emission Standards for Hazardous Air Pollutants emitted by the Portland Cement Industry and the New Source Performance Standards for Portland Cement Plants issued under sections 112(d) and 111(b) of the Clean Air Act, respectively. The EPA also denied all requests that the EPA issue an administrative stay of the National Emission Standards for Hazardous Air Pollutants and the New Source Performance Standards.

[Amended at 78 FR 10006, February 12, 2013] On July 18, 2012, the EPA proposed amendments to the National Emission Standards for Hazardous Air Pollutants for the Portland Cement Manufacturing Industry and the Standards of Performance for Portland Cement Plants. This final action amends the national emission standards for hazardous air pollutants for the Portland cement industry. The EPA also promulgated amendments with respect to issues on which it granted reconsideration on May 17, 2011. In addition, the EPA amended the new source performance standard for particulate matter. These amendments promote flexibility, reduce costs, ease compliance and preserve health benefits. The amendments also addressed the remand of the national emission standards for hazardous air pollutants for the Portland cement industry by the United States Court of Appeals for the District of Columbia Circuit on December 9, 2011. Finally, the EPA set the date for compliance with the existing source national emission standards for hazardous air pollutants to be September 9, 2015.

40 CFR 63, Subpart TTT—National Emission Standards for Hazardous Air Pollutants for Primary Lead Processing [Amended at 76 FR 70834, November 15, 2011] This action finalized the residual risk and technology review conducted for the Primary Lead Processing source category regulated under national emission standards for hazardous air pollutants (NESHAP). This action finalized amendments to the NESHAP that include revision of the rule's title and applicability provision, revisions to the stack emission limits for lead, work practice standards to minimize fugitive dust emissions, and the modification and addition of testing and monitoring and related notification, recordkeeping, and reporting requirements. It also finalized revisions to the regulatory provisions related to emissions during periods of startup, shutdown, and malfunction and makes minor non-substantive changes to the rule.

40 CFR 63, Subpart EEEE – National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline) [Amended at 71 FR 42897, July 28, 2006]. EPA promulgated amendments to the national emission standards for hazardous air pollutants for organic liquids distribution (non-gasoline) (Prior NESHAP), which EPA had promulgated on February 3, 2004. After promulgation of the final Prior NESHAP, the Administrator received petitions for administrative reconsideration of the promulgated rule, and several petitions for judicial review of the final rule were filed in the United States Court of Appeals for the District of Columbia Circuit. On November 14, 2005, pursuant to a settlement agreement between some of the parties to the litigation, EPA published a notice of proposed amendments to address some of the concerns raised in the petitions and requested comments on the proposed amendments. In this action, EPA promulgated those amendments, adding additional vapor balancing options, and making technical corrections to the final rule.

40 CFR 63, Subpart ZZZZ – Standards of Performance for Stationary Spark Ignition Internal Combustion Engines and National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines [Amended at 73 FR 3567, January 18, 2008]. EPA promulgated new source standards of performance for stationary spark ignition internal combustion engines in Part 60. EPA also promulgated NESHAPS for new and

reconstructed stationary reciprocating internal combustion engines that either are located at area sources of hazardous air pollutant emissions or that have a site rating of less than or equal to 500 brake horsepower and are located at major sources of hazardous air pollutant emissions.

[Amended at 75 FR 9647, March 3, 2010] EPA promulgated national emission standards for hazardous air pollutants for existing stationary compression ignition reciprocating internal combustion engines that either are located at area sources of hazardous air pollutant emissions or that have a site rating of less than or equal to 500 brake horsepower and are located at major sources of hazardous air pollutant emissions. In addition, EPA promulgated national emission standards for hazardous air pollutants for existing non-emergency stationary compression ignition engines greater than 500 brake horsepower that are located at major sources of hazardous air pollutant emissions. Finally, EPA revised the provisions related to startup, shutdown, and malfunction for the engines that were regulated previously by these national emission standards for hazardous air pollutants.

[Amended at 78 FR 6673, January 30, 2013] The EPA finalized amendments to the national emission standards for hazardous air pollutants for stationary reciprocating internal combustion engines. The final amendments included alternative testing options for certain large spark ignition (generally natural gas-fueled) stationary reciprocating internal combustion engines, management practices for a subset of existing spark ignition stationary reciprocating internal combustion engines in sparsely populated areas and alternative monitoring and compliance options for the same engines in populated areas. The EPA established management practices for existing compression ignition engines on offshore vessels. The EPA also finalized limits on the hours that stationary emergency engines may be used for emergency demand response and establishing fuel and reporting requirements for certain emergency engines used for emergency demand response. The final amendments also corrected minor technical or editing errors in the current regulations for stationary reciprocating internal combustion engines.

40 CFR 63, Subpart ZZZZ—National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines

40 CFR 63, Appendix A, Test Method 323—Measurement of Formaldehyde Emissions From Natural Gas-Fired Stationary Sources—Acetyl Acetone Derivitization Method [Amended at 75 FR 51570, August 20, 2010] EPA promulgated national emission standards for hazardous air pollutants for existing stationary spark ignition reciprocating internal combustion engines that either are located at area sources of hazardous air pollutant emissions or that have a site rating of less than or equal to 500 brake horsepower and are located at major sources of hazardous air pollutant emissions.

[Amended at 76 FR 12863, March 9, 2011] EPA took direct final action to promulgate amendments to a final rule that provided national emission standards for hazardous air pollutants for existing stationary spark ignition reciprocating internal combustion engines. The final rule was published on August 20, 2010. This direct final action amends certain regulatory text to clarify compliance requirements related to continuous parameter monitoring systems. EPA also corrected minor typographical errors in the regulatory text to the August 20, 2010, action.

[Amended at 78 FR 6674, January 30, 2013] The EPA finalized amendments to the national emission standards for hazardous air pollutants for stationary reciprocating internal combustion engines. The final amendments include alternative testing options for certain large spark ignition (generally natural gas-fueled) stationary reciprocating internal combustion engines, management practices for a subset of existing spark ignition stationary reciprocating internal combustion engines in sparsely populated areas and alternative monitoring and compliance options for the same engines in populated areas. The EPA established management practices for existing compression ignition engines on offshore vessels. The EPA also finalized limits on the hours that stationary emergency engines may be used for emergency demand response and establishing fuel and reporting requirements for certain emergency engines used for emergency demand response. The final amendments also correct minor technical or editing errors in the current regulations for stationary reciprocating internal combustion engines.

40 CFR 63, Subpart DDDDD – National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters: Reconsideration of Emissions Averaging Provision and Technical Corrections [Amended at 71 FR 70651, December 6, 2006]. EPA promulgated amendments to the NESHAPS for Industrial, Commercial, and Institutional Boilers and Process Heaters. After promulgation of this final rule, the Administrator received petitions for reconsideration of certain provisions in the final rule. Subsequently, EPA published a notice of the reconsideration and requested public comment on proposed amendments to the NESHAPS. After evaluating public comments, EPA adopted each of the amendments that were proposed.

[Amended at 76 FR 15607, March 21, 2011] On September 13, 2004, under authority of section 112 of the Clean Air Act, EPA promulgated national emission standards for hazardous air pollutants for new and existing industrial/commercial/institutional boilers and process heaters. On June 19, 2007, the United States Court of Appeals for the District of Columbia Circuit vacated and remanded the standards. In response to the Court's vacatur and remand, EPA, in this action, established emission standards that will require industrial/commercial/institutional boilers and process heaters located at major sources to meet hazardous air pollutants standards reflecting the application of the maximum achievable control technology. This rule protects air quality and promotes public health by reducing

emissions of the hazardous air pollutants listed in section 112(b)(1) of the Clean Air Act.

[Delayed at 76 FR 28662, May 18, 2011] The EPA delayed the effective dates for the final rules titled "National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters'" and "Standards of Performance for New Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units" under the authority of the Administrative Procedure Act (APA) until the proceedings for judicial review of these rules is completed or the EPA completes its reconsideration of the rules, whichever is earlier.

[Amended at 78 FR 7138, January 31, 2013] In this action the EPA took final action on its reconsideration of certain issues in the emission standards for the control of hazardous air pollutants from new and existing industrial, commercial, and institutional boilers and process heaters at major sources of hazardous air pollutants, which were issued under section 112 of the Clean Air Act. As part of this action, the EPA made technical corrections to the final rule to clarify definitions, references, applicability and compliance issues raised by petitioners and other stakeholders affected by this rule. On March 21, 2011, the EPA promulgated national emission standards for this source category. On that same day, the EPA also published a notice announcing its intent to reconsider certain provisions of the final rule. Following these actions, the Administrator received several petitions for reconsideration. After consideration of the petitions received, on December 23, 2011, the EPA proposed revisions to certain provisions of the March 21, 2011, final rule, and requested public comment on several provisions of the final rule. The EPA now took final action on the proposed reconsideration. DATES: The May 18, 2011 (76 FR28661), delay of the effective date revising subpart DDDDD at 76 FR 15451 (March 21, 2011) is lifted January 31, 2013. The amendments in this rule to 40 CFR part 63, subpart DDDDD are effective as of April 1, 2013.

40 CFR 63, Subpart EEEEE – National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries [Amended at 73 FR 7210, February 7, 2008]. EPA finalized amendments to the NESHAPS for iron and steel foundries. These final amendments added alternative compliance options for cupolas at existing foundries and clarified several provisions to increase operational flexibility and improve understanding of the final rule requirements.

40 CFR 63, Subpart FFFFF – National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities [Amended at 71 FR 39579, July 13, 2006]. This action amended the NESHAPS for integrated iron and steel manufacturing facilities. The final amendments added a new compliance option, revised emission limitations, reduced the frequency of repeat performance tests for certain emission units, added corrective action requirements, and clarified monitoring, recordkeeping, and reporting requirements.

40 CFR 63, Subpart GGGGG – National Emission Standards for Hazardous Air Pollutants: Site Remediation [Amended at 71 FR 69011, November 29, 2006]. This action amended NESHAPS for site remediation activities. This final rule revised specific provisions in the rule to resolve issues and questions subsequent to promulgation; corrected technical omissions; and corrected typographical, cross-reference, and grammatical errors.

40 CFR 63, Subpart HHHHH – National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing [Amended at 71 FR 58499, October 4, 2006]. This action promulgated amendments to the NESHAPS for miscellaneous coating manufacturing. The amendments clarified that coating manufacturing means the production of coatings using operations such as mixing and blending, not reaction or separation processes used in chemical manufacturing. The amendments extended the compliance date for certain coating manufacturing equipment that is also part of a chemical manufacturing process unit. The amendments also clarified that operations by end users that modify a purchased coating prior to application at the purchasing facility are exempt. These changes clarified applicability of the rule and minimize the compliance burden.

40 CFR 63, Subpart DDDDDD - National Emission Standards For Hazardous Air Pollutants For Polyvinyl Chloride And Copolymers Production Area Sources [Amended at 77 FR 22848, April 17, 2012] The EPA promulgated National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production. The final rules establish emission standards that apply at all times, including periods of startup, shutdown and malfunction, for hazardous air pollutants from polyvinyl chloride and copolymers production located at major and area sources. The final rules include requirements to demonstrate initial and continuous compliance with the emission standards, including monitoring provisions and recordkeeping and reporting requirements.

40 CFR 63, Subpart BBBBBB—National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities,
40 CFR 63, Subpart CCCCCC—National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities [Amended at 76 FR4155, January 24, 2011] This action promulgates amendments to the National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Dis-

tribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities, which EPA promulgated on January 10, 2008, and amended on March 7, 2008. In this action, EPA is finalizing amendments and clarifications to certain definitions and applicability provisions of the final rules in response to some of the issues raised in the petitions for reconsideration. In addition, several other compliance-related questions posed by various individual stakeholders and State and local agency representatives are addressed in this action. EPA also denied reconsideration on one issue raised in a petition for reconsideration received by the Agency on the final rules.

40 CFR 63, Subpart VVVVVV—National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources [Stay issued for permit applications at 75 FR 77760, December 14, 2010, and at 76 FR 13514, March 14, 2011] EPA issued this final rule to stay the requirement for certain affected sources to comply with the title V permit program during the pendency of the reconsideration process. On June 15, 2010, EPA notified Petitioners that the Agency intended to initiate the reconsideration process in response to their request for reconsideration of certain provisions in the National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources. Among the provisions EPA reconsidered, is a requirement that certain affected sources obtain a permit. On December 14, 2010, EPA issued a 90-day stay of the requirement for certain affected sources to comply with the title V permit program because they believed that the reconsideration process would not be completed within 90 days, EPA concurrently proposed to stay the provision requiring certain sources to obtain a permit until the final reconsideration rule is published in the Federal Register. After considering the comments received, EPA promulgated the stay of compliance through this final rule.

[Amended at 77 FR 65135, October, 25, 2012] On January 30, 2012, the EPA published in the Federal Register a proposed rule reconsidering certain provisions in the final National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources (CMAS) that was promulgated on October 29, 2009. The compliance date for the final CMAS rule is October 29, 2012. However, the EPA is still in the process of finalizing the reconsideration action. For this reason, a short stay of the final CMAS rule pending completion of the reconsideration action is warranted. Pursuant to the Clean Air Act, the EPA is staying until December 24, 2012 the final CMAS rule.

[Final rule; lifted stay of final rule at 77 FR 246, December 21, 2012] On January 30, 2012, the EPA proposed revisions to several provisions of the final National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources. The proposed revisions were made, in part, in response to a petition for reconsideration received by the Administrator following the promulgation of the October 29, 2009, final rule ("2009 final rule"). In this action, the EPA finalized those amendments, lifting the stay of the title V permit requirement issued on March 14, 2011, and lifting the stay of the final rule issued on October 25, 2012. In addition, this final action includes revisions to the EPA's approach for addressing malfunctions and standards applicable during startup and shutdown periods. This final action also includes amendments and technical corrections to the final rule to clarify applicability and compliance issues raised by stakeholders subject to the 2009 final rule. The revisions to the final rule do not reduce the level of environmental protection or emissions control on sources regulated by this rule but provide flexibility and clarity to improve implementation. This action also extends the compliance date for existing sources and the EPA's final response to all issues raised in the petition for reconsideration.

40 CFR 63, Subpart WWWWWW—National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations [Amended at 76 FR 35744, June 20, 2011] On June 12, 2008, EPA issued national emission standards for control of hazardous air pollutants (HAP) for the plating and polishing area source category under section 112 of the Clean Air Act (CAA). ON June 20, 2011 EPA took direct final action to amend the national emission standards for HAP (NESHAP) for the plating and polishing area source category. These final amendments clarify that the emission control requirements of the plating and polishing area source NESHAP do not apply to any bench-scale activities. Also, several technical corrections and clarifications that do not make significant changes in the rule's requirements have been made to the rule text. EPA made these amendments by direct final rule, without prior proposal, because EPA viewed these revisions as noncontroversial and anticipated no adverse comments. Consistent with Executive Order 13563, "Improving Regulation and Regulatory Review," issued on January 18, 2011, this amended rule will increase flexibility and freedom of choice for the public, and make the rule more clear and intelligible which, as a result, will reduce the burden.

[Amended at 76 FR 57913, September 19, 2011] On June 12, 2008, the EPA issued national emission standards for hazardous air pollutants (NESHAP) for the plating and polishing area source category under section 112 of the Clean Air Act (CAA). On June 20, 2011, the EPA proposed amendments to clarify that the emission control requirements of the plating and polishing area source NESHAP did not apply to any bench-scale activities. The amendments also made several technical corrections and clarifications that are not significant changes in the rule's requirements. In addition, on June 20, 2011, the EPA issued a direct final rule amending the area source standards for plating and polishing area sources. Since EPA received an adverse comment, EPA withdrew the direct final rule today simultaneously with this final rule.

40 CFR 63, Subpart ZZZZZZ – National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries [Amended at 74 FR 46493, September 10, 2009] This action makes technical corrections to regulatory text of the "Revision of Source Category List for Standards Under Section 112(k) of the Clean Air Act; National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries," which was issued as a final rule on June 25, 2009. These technical corrections will not change the standards established by the rule or the level of health protection provided.

40 CFR 63, Subpart DDDDDDD—National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing [Amended at 76 FR 80261, December 23, 2011] The EPA took direct final action to revise certain provisions of the area source national emission standards for hazardous air pollutants (NESHAP) for prepared feeds manufacturing published on January 5, 2010 (final rule). These revisions clarified the regulatory requirements for this source category and ensure that those requirements are consistent with the record. The revisions address the generally available control technology (GACT) requirements for pelleting processes at large, existing prepared feeds manufacturing facilities, specifically removal of the cyclone 95-percent design efficiency requirement, as well as associated requirements for compliance demonstration, monitoring, reporting, and recordkeeping; clarification of the requirement that doors be kept closed in areas where materials containing chromium and manganese are stored, used, or handled; and clarification of the requirement to install a device at the point of bulk loadout to minimize emissions. These amendments are not expected to result in increased emissions or in the imposition of costs beyond those described in the January 5, 2010, final rule.

40 CFR 63, Appendix A [Amended at 75 FR 55636, September 13, 2010] EPA promulgated amendments to the General Provisions to allow accredited providers to supply stationary source audit samples and to require sources to obtain and use these samples from the accredited providers instead of from EPA, as is the current practice. All requirements pertaining to the audit samples have been moved to the General Provisions and have been removed from the test methods because the current language in the test methods regarding audit samples is inconsistent from method to method. Therefore, deleting all references to audit samples in the test methods eliminates any possible confusion and inconsistencies. Under this final rule, the requirement to use an audit sample during a compliance test will apply to all test methods for which a commercially available audit exists.

40 CFR 63, Appendix A, Method 301—Field Validation of Pollutant Measurement Methods From Various Waste Media [Amended at 76 FR 28664, May 18, 2011]. This action amended EPA's Method 301, Field Validation of Pollutant Measurement Methods from Various Waste Media. EPA revised the procedures in Method 301 based on experience in applying the method and to correct errors that were brought to EPA's attention. The revised Method 301 is more flexible, less expensive, and easier to use. This action finalizes amendments to Method 301 after considering comments received on the proposed rule published in the Federal Register on December 22, 2004.

40 CFR 63, Appendix A, Test Method 321—Measurement of Gaseous Hydrogen Chloride Emissions at Portland Cement Kilns by Fourier Transform Infrared (FTIR) Spectroscopy [Amended at 75 FR 54970, September 9, 2010] The final amendments to the NSPS add or revise, as applicable, emission limits for PM, opacity, nitrogen oxides (NO_X), and sulfur dioxide (SO_2) for facilities that commence construction, modification, or reconstruction after June 16, 2008. The final rule also includes additional testing and monitoring requirements for affected sources. EPA finalized amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) from the Portland Cement Manufacturing Industry and to the New Source Performance Standards (NSPS) for Portland Cement Plants. The final amendments to the NESHAP add or revise, as applicable, emission limits for mercury, total hydrocarbons (THC), and particulate matter (PM) from new and existing kilns located at major and area sources, and for hydrochloric acid (HCL) from new and existing kilns located at major sources. The standards for new kilns apply to facilities that commence construction, modification, or reconstruction after May 6, 2009.

ACID RAIN - 40 CFR PART 72, 74, 75, 76
SUBPARTS ADDED: None.

SUBPARTS SIGNIFICANTLY REVISED:
40 CFR 72—Subpart A: Acid Rain Program General Provisions,
40 CFR 75, Appendix D—Optional SO_2 Emissions Data Protocol for Gas-Fired and Oil-Fired Peaking Units,
[Amended at 76 FR 48208, August 8, 2011] In this action, EPA limited the interstate transport of emissions of nitrogen oxides (NO_X) and sulfur dioxide (SO_2) that contribute to harmful levels of fine particle matter ($PM_{2.5}$) and ozone in downwind states. EPA identified emissions within 27 states in the eastern United States that significantly

affect the ability of downwind states to attain and maintain compliance with the 1997 and 2006 fine particulate matter national ambient air quality standards (NAAQS) and the 1997 ozone NAAQS. Also, EPA limited these emissions through Federal Implementation Plans (FIPs) that regulate electric generating units (EGUs) in the 27 states. This action substantially reduces adverse air quality impacts in downwind states from emissions transported across state lines. In conjunction with other federal and state actions, it will help assure that all but a handful of areas in the eastern part of the country achieve compliance with the current ozone and $PM_{2.5}$ NAAQS by the deadlines established in the Clean Air Act (CAA or Act). The FIPs may not fully eliminate the prohibited emissions from certain states with respect to the 1997 ozone NAAQS for two remaining downwind areas and EPA is committed to identifying any additional required upwind emission reductions and taking any necessary action in a future rulemaking. In this action, EPA also modified its prior approvals of certain State Implementation Plan (SIP) submissions to rescind any statements that the submissions in question satisfy the interstate transport requirements of the CAA or that EPA's approval of the SIPs affects our authority to issue interstate transport FIPs with respect to the 1997 fine particulate and 1997 ozone standards for 22 states. EPA also issued a supplemental proposal to request comment on its conclusion that six additional states significantly affect downwind states' ability to attain and maintain compliance with the 1997 ozone NAAQS.

40 CFR 72 – Permit Regulation,
40 CFR 75 – Continuous Emission Monitoring,
40 CFR 75, Appendix A—Specifications and Procedures,
40 CFR 75, Appendix B—Quality Assurance and Quality Control Procedures,
40 CFR 75, Appendix D—Optional SO_2 Emissions Data Protocol for Gas-Fired and Oil-Fired Peaking Units,
40 CFR 75, Appendix E—Optional NO_X Emissions Estimation Protocol for Gas-Fired Peaking Units and Oil-Fired Peaking Units,
40 CFR 75, Appendix F—Conversion Procedures [Amended at 76 FR 17288, March 28, 2011] EPA finalized rule revisions that modify existing requirements for sources affected by the federally administered emission trading programs including the NO_X Budget Trading Program, the Acid Rain Program, and the Clean Air Interstate Rule. EPA is amending its Protocol Gas Verification Program (PGVP) and the minimum competency requirements for air emission testing (formerly air emission testing body requirements) to improve the accuracy of emissions data. EPA also amended other sections of the Acid Rain Program continuous emission monitoring system regulations by adding and clarifying certain recordkeeping and reporting requirements, removing the provisions pertaining to mercury monitoring and reporting, removing certain requirements associated with a class-approved alternative monitoring system, disallowing the use of a particular quality assurance option in EPA Reference Method 7E, adding two incorporations by reference that were inadvertently left out of the January 24, 2008 final rule, adding two new definitions, revising certain compliance dates, and clarifying the language and applicability of certain provisions.

40 CFR 75, Appendix K [Removed at 76 FR 17288, March 28, 2011] (see above description).

40 CFR 75, Appendix A—Specifications and Test Procedures,
40 CFR 75, Appendix F to Part 75—Conversion Procedures,
40 CFR 75—Continuous Emission Monitoring, Subpart A,
40 CFR 75, Appendix D—Optional SO2 Emissions Data Protocol for Gas-Fired and Oil-Fired Peaking Units [Amended at 76 FR 2456, January 18, 2012] EPA promulgated a final rule to incorporate the most recent versions of ASTM International (ASTM) standards into EPA regulations that provide flexibility to use alternatives to mercury-containing industrial thermometers. This final rule will allow the use of such alternatives in certain field and laboratory applications previously impermissible as part of compliance with EPA regulations. EPA believes the older embedded ASTM standards unnecessarily impede the use of effective, comparable, and available alternatives to mercury-containing industrial thermometers. Due to mercury's high toxicity, EPA sought to reduce potential mercury exposures to humans and the environment by reducing the overall use of mercury-containing products, including mercury-containing industrial thermometers.

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:

None

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

This proposed expedited rulemaking does not diminish a previous grant of authority of a political subdivision of this state.

9. The agency is exempt from the requirements under A.R.S. § 41-1055(G) to prepare and file an economic, small business, and consumer impact statement under A.R.S. § 41-1055(D)(2).

The NSPS/NESHAPs/Acid Rain standards are "applicable requirements" for purposes of the Title V Operating Permit Program and are standards are already effective and must be followed by the regulated community as of the date they are promulgated by the EPA. Because the regulations are already effective, this rulemaking would impose no new costs on regulated sources. If ADEQ does not incorporate the regulations by reference, only EPA has the authority to enforce the regulations outside of those voluntarily included in a facility's permit.

10. A description of any changes between the proposed expedited rulemaking and the final expedited rulemaking:

1) Due to the comment received from Maricopa County (below), ADEQ removed 40 CFR 63, Subpart B, C, and D from R18-2-1101(B), as these are not delegable to a State to local authority (authority is retained by EPA).

2) Changes to R18-2-210 were removed as part of this rulemaking since those changes were already made in another Department rulemaking at 21 A.A.R. 1156 (July 24, 2015).

3) Changes to Appendix 2 were reconciled with changes made by the rulemaking at 21 A.A.R. 1156 (July 24, 2015), to show the updated version of Appendix 2 with changes made by this rulemaking.

4) Subpart B to 40 CFR part 60 was removed from R18-2-901. This Subpart does not exist and was placed in this section by mistake. Subpart B, "National Emission Standards for Radon Emissions from Underground Uranium Mines," is the correct Subpart and it is in R18-2-1101.

5) Subpart Ga to 40 CFR part 60 was mistakenly put into the "Significantly Revised" section of number 6 of the preamble, and not in the "Subparts Added" section. It has been moved to the "New" section and added to R18-2-901 as number (12). Since this was added, the numbering was changed for the rest of R18-2-901.

6) Subpart VVa to 40 CFR part 60 was mistakenly left out of R18-2-901. It was added to R18-2-901 as number (55). Since this was added, the numbering was changed for the rest of R18-2-901.

7) Subpart OOOO to 40 CFR part 60 was mistakenly put into the "Significantly Revised" section of number 6 of the preamble, and not in the "Subparts Added" section. It has been moved to the "New" section and added to R18-2-901 as number (86).

8) We are taking no action to finalize the incorporation by reference of Subpart UUUUU to 40 CFR part 63 at this time because of the uncertainty about the rule's future created by the Supreme Court's decision in *Michigan v. Environmental Protection Agency* decided June 29, 2015.

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

Comment from Cheri Dale, Planner, Maricopa County Air Quality:

ADEQ's Notice of Proposed Expedited Rulemaking notice, July 18, 2014, in Section 11 (20 A.A.R. 1824), 40 CFR 63 Subpart B is listed as one of the subparts being revised. In Section 12 of the notice (20 A.A.R. 1828), 40 CFR 63, Subparts B, C and D are listed as incorporated by reference. The EPA does not delegate these subparts to state or local agencies. No states have been delegated authority for the following 40 CFR 63 subparts:

B - Requirements for Control Technology Determinations for Major Sources in Accordance with CAA Sections 112(g) and 112(j)

C - List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List

D - Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants

E - Approval of State Programs and Delegation of Federal Authorities

ADEQ's Response to Comment:

ADEQ appreciates Maricopa County's comment and has removed from R18-2-1101(B), 40 CFR 63, Subparts B, C, and D as part of this final rule making. Subpart E was never incorporated by ADEQ. ADEQ believes that these Subparts were mistakenly added many years ago. ADEQ did not receive any comments during the second public comment period (ending January 6, 2015).

12. 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:

The Department provided the notice and hearing required for rules under A.R.S. § 49-425(B).

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 require issuance of regulatory permits pursuant to Title IV and Title V of the Clean Air Act. As such, they fall within an exception to A.R.S. § 41-1037 for such permits." A.R.S. § 41-1037(A)(6).

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 rules are not more stringent than federal law. The rules incorporate federal standards by reference. Regulated sources within ADEQ's jurisdiction are already subject to the regulations; however incorporating them by reference provides the State, instead of EPA, the authority to enforce the regulations outside of those voluntarily included in a facility's permit.

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 rules:

New and revised incorporations by reference (subparts or larger as of 6/28/13)	Location
40 CFR 60, Subparts A, B, F, D, Da, Db, Dc, Ec, Ga, J, Ja, Y, VV, VVa, GGG, GGGa, KKK, LLL, OOO, UUU, CCCC, IIII, KKKK, JJJJ, LLLL, OOOO	R18-2-901
40 CFR 61, Subparts B, H, I, K, Q, R, T, W	R18-2-1101(A)
40 CFR 63, Subparts A, F, G, H, I, M, N, R, S, U, Y, CC, DD, EE, GG, HH, KK, JJ, OO, PP, QQ, SS, TT, UU, VV, YY, CCC, EEE, GGG, HHH, III, JJJ, LLL, MMM, OOO, TTT, VVV, EEEE, ZZZZ, DDDDD, EEEEE, FFFFF, GGGGG, HHHHH, WWWWW, YYYYY, ZZZZZ, BBBBBB, CCCCCC, DDDDDD, EEEEEE, FFFFFF, GGGGGG, HHHHHH, JJJJJJ, LLLLLL, MMMMMM, NNNNNN, OOOOOO, PPPPPP, QQQQQQ, RRRRRR, SSSSSS, TTTTTT, VVVVVV, WWWWWW, XXXXXX, YYYYYY, ZZZZZZ, AAAAAAA, BBBBBBB, CCCCCCC, DDDDDDD, EEEEEEE, HHHHHHH	R18-2-1101(B)

Incorporations by reference updated to 6/28/13 (may include new sections)	Location
40 CFR 72, 74, 75, and 76	R18-2-333(A)
40 CFR 60, listed subparts and accompanying appendices	R18-2-901
40 CFR 61, listed subparts and accompanying appendices	R18-2-1101(A)
40 CFR 63, listed subparts and accompanying appendices	R18-2-1101(B)
40 CFR 50	Appendix 2
40 CFR 50, all appendices	Appendix 2
40 CFR Part 51, Appendix M, Section IV of Appendix S, Appendix W	Appendix 2
40 CFR 52, Appendices D and E	Appendix 2
40 CFR 53	Appendix 2
40 CFR 58	Appendix 2
40 CFR 58, all appendices	Appendix 2
40 CFR Part 60, all appendices	Appendix 2
40 CFR Part 61, all appendices	Appendix 2
40 CFR Part 63, all appendices	Appendix 2
40 CFR Part 75, all appendices	Appendix 2

14. The full text of the rule follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY AIR POLLUTION CONTROL

ARTICLE 3. PERMITS AND PERMIT REVISIONS

Section
R18-2-333. Acid Rain

ARTICLE 9. NEW SOURCE PERFORMANCE STANDARDS

Section
R18-2-901. Standards of Performance for New Stationary Sources

ARTICLE 11. FEDERAL HAZARDOUS AIR POLLUTANTS

Section
R18-2-1101. National Emission Standards for Hazardous Air Pollutants (NESHAPs)

APPENDIX 2. TEST METHODS AND PROTOCOLS

ARTICLE 3. PERMITS AND PERMIT REVISIONS

R18-2-333. Acid Rain

A. 40 CFR 72, 74, 75 and 76 and all accompanying appendices, adopted as of ~~July 1, 2006~~ 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 portions of this Title, the regulations incorporated in this Section apply and take precedence.

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 ~~July 1, 2006~~ June 28, 2013, 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.

~~12.~~13.Subpart H - Standards of Performance for Sulfuric Acid Plants.

~~13.~~14.Subpart I - Standards of Performance for Hot Mix Asphalt Facilities.

~~14.~~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.

~~15.~~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.

~~16.~~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.

~~17.~~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.

~~18.~~20.Subpart L - Standards of Performance for Secondary Lead Smelters.

~~19.~~21.Subpart M - Standards of Performance for Secondary Brass and Bronze Production Plants.

~~20.~~22.Subpart N - Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.

~~21.~~23.Subpart Na - Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.

~~22.~~24.Subpart O - Standards of Performance for Sewage Treatment Plants.

~~23.~~25.Subpart P - Standards of Performance for Primary Copper Smelters.

~~24.~~26.Subpart Q - Standards of Performance for Primary Zinc Smelters.

~~25.~~27.Subpart R - Standards of Performance for Primary Lead Smelters.

~~26.~~28.Subpart S - Standards of Performance for Primary Aluminum Reduction Plants.

~~27.~~29.Subpart T - Standards of Performance for Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants.
~~28.~~30.Subpart U - Standards of Performance for Phosphate Fertilizer Industry: Superphosphoric Acid Plants.
~~29.~~31.Subpart V - Standards of Performance for Phosphate Fertilizer Industry: Diammonium Phosphate Plants.
~~30.~~32.Subpart W - Standards of Performance for Phosphate Fertilizer Industry: Triple Superphosphate Plants.
~~31.~~33.Subpart X - Standards of Performance for Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.
~~32.~~34.Subpart Y - Standards of Performance for Coal Preparation Plants.
~~33.~~35.Subpart Z - Standards of Performance for Ferroalloy Production Facilities.
~~34.~~36.Subpart AA - Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983.
~~35.~~37.Subpart AAa - Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.
~~36.~~38.Subpart BB - Standards of Performance for Kraft Pulp Mills.
~~37.~~39.Subpart CC - Standards of Performance for Glass Manufacturing Plants.
~~38.~~40.Subpart DD - Standards of Performance for Grain Elevators.
~~39.~~41.Subpart EE - Standards of Performance for Surface Coating of Metal Furniture.
~~40.~~42.Subpart GG - Standards of Performance for Stationary Gas Turbines.
~~41.~~43.Subpart HH - Standards of Performance for Lime Manufacturing Plants.
~~42.~~44.Subpart KK - Standards of Performance for Lead-Acid Battery Manufacturing Plants.
~~43.~~45.Subpart LL - Standards of Performance for Metallic Mineral Processing Plants.
~~44.~~46.Subpart MM - Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations.
~~45.~~47.Subpart NN - Standards of Performance for Phosphate Rock Plants.
~~46.~~48.Subpart PP - Standards of Performance for Ammonium Sulfate Manufacture.
~~47.~~49.Subpart QQ - Standards of Performance for Graphic Arts Industry: Publication Rotogravure Printing.
~~48.~~50.Subpart RR - Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations.
~~49.~~51.Subpart SS - Standards of Performance for Industrial Surface Coating: Large Appliances.
~~50.~~52.Subpart TT - Standards of Performance for Metal Coil Surface Coating.
~~51.~~53.Subpart UU - Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture.
~~52.~~54.Subpart VV - Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.
55. 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.
~~53.~~56.Subpart WW - Standards of Performance for Beverage Can Surface Coating Industry.
~~54.~~57.Subpart XX - Standards of Performance for Bulk Gasoline Terminals.
~~55.~~58.Subpart AAA - Standards of Performance for New Residential Wood Heaters.
~~56.~~59.Subpart BBB - Standards of Performance for Rubber Tire Manufacturing Industry.
~~57.~~60.Subpart DDD - Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry.
~~58.~~61.Subpart FFF - Standards of Performance for Flexible Vinyl and Urethane Coating and Printing.
~~59.~~62.Subpart GGG - Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries.
63. Subpart GGGa - Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.
~~60.~~64.Subpart HHH - Standards of Performance for Synthetic Fiber Production Facilities.
~~61.~~65.Subpart III - Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.
~~62.~~66.Subpart JJJ - Standards of Performance for Petroleum Dry Cleaners.
~~63.~~67.Subpart KKK - Standards of Performance for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants.
~~64.~~68.Subpart LLL - Standards of Performance for Onshore Natural Gas Processing; SO2 Emissions.
~~65.~~69.Subpart NNN - Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.
~~66.~~70.Subpart OOO - Standards of Performance for Nonmetallic Mineral Processing Plants.
~~67.~~71.Subpart PPP - Standards of Performance for Wool Fiberglass Insulation Manufacturing Plants.
~~68.~~72.Subpart QQQ - Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems.
~~69.~~73.Subpart RRR - Standards of Performance for Volatile Organic Compound Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.
~~70.~~74.Subpart SSS - Standards of Performance for Magnetic Tape Coating Facilities.
~~71.~~75.Subpart TTT - Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.
~~72.~~76.Subpart UUU - Standards of Performance for Calciners and Dryers in Mineral Industries.

~~73.~~77. Subpart VVV - Standards of Performance for Polymeric Coating of Supporting Substrates Facilities.
~~74.~~78. Subpart WWW - Standards of Performance for Municipal Solid Waste Landfills.
~~75.~~79. 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.
~~76.~~80. 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.
~~77.~~81. 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.
~~78. Subpart FFFF - Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced On or Before December 9, 2004.~~
82. Subpart IIII - Standards of Performance for Stationary Compression Ignition Combustion Engines.
83. Subpart JJJJ - Standards of Performance for Stationary Spark Ignition Internal Combustion Engines.
84. Subpart KKKK - Standards of Performance for Stationary Combustion Turbines.
85. Subpart LLLL – Standards of Performance for New Sewage Sludge Incineration Units.
86. Subpart OOOO – Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution.

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 ~~July 1, 2006~~ June 28, 2013, 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.
~~2.~~3. Subpart C - Beryllium.
~~3.~~4. Subpart D - Beryllium Rocket Motor Firing.
~~4.~~5. Subpart E - Mercury.
~~5.~~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.
~~6.~~9. Subpart J - Equipment Leaks (Fugitive Emission Sources) of Benzene.
10. Subpart K - Radionuclide Emissions From Elemental Phosphorus Plants.
~~7.~~11. Subpart L - Benzene Emissions from Coke By-Product Recovery Plants.
~~8.~~12. Subpart M - Asbestos.
~~9.~~13. Subpart N - Inorganic Arsenic Emissions from Glass Manufacturing Plants.
~~10.~~14. Subpart O - Inorganic Arsenic Emissions from Primary Copper Smelters.
~~11.~~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.
~~12.~~19. Subpart V - Equipment Leaks (Fugitive Emission Sources).
20. Subpart W – Radon Emissions from Operating Mill Tailings.
~~13.~~21. Subpart Y - Benzene Emissions From Benzene Storage Vessels.
~~14.~~22. Subpart BB - Benzene Emissions from Benzene Transfer Operations.
~~15.~~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 ~~July 1, 2006~~ June 28, 2013, 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 - Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j).~~

~~3. Subpart C - List of Hazardous Air Pollutants, Petitions Process, Lesser Quantity Designations, Source Category List.~~
~~4. Subpart D - Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants.~~
~~5~~2. Subpart F - National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.
~~6~~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.
~~7~~4. Subpart H - National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.
~~8~~5. Subpart I - National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.
~~9~~6. Subpart J - National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production.
~~10~~7. Subpart L - National Emission Standards for Coke Oven Batteries.
~~11~~8. Subpart M - National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.
~~12~~9. Subpart N - National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.
~~13~~10. Subpart O - Ethylene Oxide Emissions Standards for Sterilization Facilities.
~~14~~11. Subpart Q - National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.
~~15~~12. Subpart R - National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).
~~16~~13. Subpart S - National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry.
~~17~~14. Subpart T - National Emission Standards for Halogenated Solvent Cleaning.
~~18~~15. Subpart U - National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.
~~19~~16. Subpart W - National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production.
~~20. Subpart X - National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting~~.
17. Subpart Y -National Emission Standards for Marine Tank Vessel Loading Operations.
~~21~~18. Subpart AA - National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants.
~~22~~19. Subpart BB - National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants.
~~23~~20. Subpart CC - National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries.
~~24~~21. Subpart DD - National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.
~~25~~22. Subpart EE - National Emission Standards for Magnetic Tape Manufacturing Operations.
~~26~~23. Subpart GG - National Emission Standards for Aerospace Manufacturing and Rework Facilities.
~~27~~24. Subpart HH - National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities.
~~28~~25. Subpart JJ - National Emission Standards for Wood Furniture Manufacturing Operations.
~~29~~26. Subpart KK - National Emission Standards for the Printing and Publishing Industry.
~~30~~27. Subpart LL - National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants.
~~31~~28. Subpart MM - National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.
~~32~~29. Subpart OO - National Emission Standards for Tanks - Level 1.
~~33~~30. Subpart PP - National Emission Standards for Containers.
~~34~~31. Subpart QQ - National Emission Standards for Surface Impoundments.
~~35~~32. Subpart RR - National Emission Standards for Individual Drain Systems.
~~36~~33. Subpart SS - National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.
~~37~~34. Subpart TT - National Emission Standards for Equipment Leaks - Control Level 1.
~~38~~35. Subpart UU - National Emission Standards for Equipment Leaks - Control Level 2 Standards.
~~39~~36. Subpart VV - National Emission Standards for Oil-Water Separators and Organic-Water Separators.
~~40~~37. Subpart WW - National Emission Standards for Storage Vessels (Tanks) - Control Level 2.
~~41~~38. Subpart XX - National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.
~~42~~39. Subpart YY - National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards.
~~43~~40. Subpart CCC - National Emission Standards for Hazardous Air Pollutants for Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants.
~~44~~41. Subpart DDD - National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production.

~~45~~42.Subpart EEE - National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors.
~~46~~43.Subpart GGG - National Emission Standards for Pharmaceuticals Production.
~~47~~44.Subpart HHH - National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities.
~~48~~45.Subpart III - National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production.
~~49~~46.Subpart JJJ - National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins.
~~50~~47.Subpart LLL - National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry.
~~51~~48.Subpart MMM - National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.
~~52~~49.Subpart NNN - National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing.
~~53~~50.Subpart OOO - National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins.
~~54~~51.Subpart PPP - National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production.
~~55~~52.Subpart QQQ - National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting.
~~56~~53.Subpart RRR - National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.
~~57~~54.Subpart TTT - National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting.
~~58~~55.Subpart UUU - National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.
~~59~~56.Subpart VVV - National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works.
~~60~~57.Subpart XXX - National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese.
~~61~~58.Subpart AAAA - National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills.
~~62~~59.Subpart CCCC - National Emission Standards for Hazardous Air Pollutants: Manufacture of Nutritional Yeast.
~~63~~60.Subpart DDDD - National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products.
~~64~~61.Subpart EEEE - National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline).
~~65~~62.Subpart FFFF - National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing.
~~66~~63.Subpart GGGG - National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production.
~~67~~64.Subpart HHHH - National Emissions Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production.
~~68~~65.Subpart IIII - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks.
~~69~~66.Subpart JJJJ - National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating.
~~70~~67.Subpart KKKK - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans.
~~71~~68.Subpart MMMM - National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products.
~~72~~69.Subpart NNNN - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances.
~~73~~70.Subpart OOOO - National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles.
~~74~~71.Subpart PPPP - National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products.
~~75~~72.Subpart QQQQ - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products.
~~76~~73.Subpart RRRR - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture.
~~77~~74.Subpart SSSS - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil.
~~78~~75.Subpart TTTT - National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations.
~~79~~76.Subpart UUUU - National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing.
~~80~~77.Subpart VVVV - National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing.
~~81~~78.Subpart WWWW - National Emissions Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production.
~~82~~79.Subpart XXXX - National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing.

~~83~~80. Subpart YYYY - National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines.
~~84~~81. Subpart ZZZZ - National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.
~~85~~82. Subpart AAAAA - National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants.
~~86~~83. Subpart BBBBB - National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing.
~~87~~84. Subpart CCCCC - National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks.
~~88~~85. Subpart DDDDD - National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters.
~~89~~86. Subpart EEEEE - National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries.
~~90~~87. Subpart FFFFF - National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing.
~~91~~88. Subpart GGGGG - National Emission Standards for Hazardous Air Pollutants: Site Remediation.
~~92~~89. Subpart HHHHH - National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing.
~~93~~90. Subpart IIIII - National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants.
~~94~~91. Subpart JJJJJ - National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing.
~~95~~92. Subpart KKKKK - National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing.
~~96~~93. Subpart LLLLL - National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing.
~~97~~94. Subpart MMMMM - National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations.
~~98~~95. Subpart NNNNN - National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production.
~~99~~96. Subpart PPPPP - National Emission Standards for Hazardous Air Pollutants: Engine Test Cells/Stands.
~~100~~97. Subpart QQQQQ - National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities.
~~101~~98. Subpart RRRRR - National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing.
~~102~~99. Subpart SSSSS - National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing.
~~103~~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 EEEEEE – 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 AAAAAAA – National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing.
127. Subpart BBBBBBB – National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry.
128. Subpart CCCCCCC – National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing.
129. Subpart DDDDDDD – National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing.
130. Subpart EEEEEEE – National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category.
131. Subpart HHHHHHH – National Emission Standards for Hazardous Air Pollutant Emissions for Polyvinyl Chloride and Copolymers Production.

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 ~~July 1, 2006~~ June 28, 2013, 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, ~~Appendices A through N~~ 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 one 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.
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.
   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.
5. 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.)
6. 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.
7. 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.
8. 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 3 samples collected, average your results together.
9. Step 9: Examine Results. If the average silt loading is less than 0.33 oz/ft&sup2, the surface is STABLE. If the average silt loading is greater than or equal to 0.33 oz/ft&sup2, 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 3 additional samples from the source according to Step 1 and take them to an independent laboratory for silt content analysis.
10. 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.

NOTICES OF RULEMAKING DOCKET OPENING

This section of the *Arizona Administrative Register* contains Notices of Rulemaking Docket Opening.

A docket opening is the first part of the administrative rulemaking process. It is an "announcement" that the agency intends to work on its rules.

When an agency opens a rulemaking docket to consider rulemaking, the Administrative Procedure Act (APA) requires the publication of the Notice of Rulemaking Docket Opening.

Under the APA effective January 1, 1995, agencies must submit a Notice of Rulemaking Docket Opening before beginning the formal rulemaking process. Many times an agency may file the Notice of Rulemaking Docket Opening with the Notice of Proposed Rulemaking.

The Office of the Secretary of State is the filing office and publisher of these notices. Questions about the interpretation of this information should be directed to the agency contact person listed in item #4 of this notice.

NOTICE OF RULEMAKING DOCKET OPENING

ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD

[R15-165]

1. Title and its heading: 13, Public Safety

Chapter and its heading: 4, Arizona Peace Officer Standards and Training Board

Article and its heading: 1, General Provisions
2, Correctional Officers

Section numbers: R13-4-101 through R13-4-112, R13-4-114, R13-4-116 through R13-4-118, R13-4-201 through R13-4-206, and R13-4-208

2. The subject matter of the proposed rule:

In response to a five-year-review report approved by the Council on June 7, 2011, and statutory changes (See Laws 2011, Chapter 303), the Board is updating its rules to make them consistent with statute, agency practice, and current rule-writing standards.

An exemption from Executive Order 2015-01 was provided to the Department by Ted Vogt, Chief of Operations in the Governor's office, in an e-mail dated July 29, 2015.

3. A citation to all published notices relating to the proceeding:

Notice of Proposed Rulemaking: 21 A.A.R. 2711, November 13, 2015 (*in this issue*).

4. Name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Lyle Mann, Executive Director
Address: 2643 E. University
Phoenix, AZ 85034
Telephone: (602) 774-9350
Fax: (602) 244-0477
E-mail: mann@azpost.gov
Web site: www.azpost.gov

5. The time during which the agency will accept written comments and the time and place where oral comments may be made:

The Board will accept comments during business hours at the address listed in item 4. Information regarding an oral proceeding will be included in the Notice of Proposed Rulemaking.

6. A timetable for agency decisions or other action on the proceeding, if known:

To be determined

NOTICE OF RULEMAKING DOCKET OPENING

INDUSTRIAL COMMISSION OF ARIZONA

[R15-166]

1. Title and its heading: 20, Commerce, Financial Institutions, and Insurance

Chapter and its heading: 5, Industrial Commission of Arizona

Article and its heading: 6, Occupational Safety and Health

Section numbers: R20-5-601

2. The subject matter of the proposed rule:

The Arizona Division of Occupational Safety and Health (ADOSH), part of the Industrial Commission of Arizona, is amending A.A.C. R20-5-601 to incorporate by reference amendments from 29 CFR 1926, as published in the *Federal Register*.

The amendments apply to extending the deadline for employers to ensure that crane operators are certified by three years, until November 10, 2017 as published in the *Federal Register* 79 FR 57785-57798 on September 26, 2014, and OSHA is adding a new subpart to provide protections to employees working in confined spaces in construction as published in the *Federal Register* at 80 FR 25365-25526.

3. A citation to all published notices relating to the proceeding:

Notice of Proposed Rulemaking: 21 A.A.R. 2736, October 30, 2015 *(in this issue)*.

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

Name: Larry Gast, Assistant Director

Address: Division of Occupational Safety and Health
Industrial Commission of Arizona
800 W. Washington St., Suite 203
Phoenix, AZ 85007

Phone: (602) 542-1695

Fax: (602) 542-1614

E-mail: Larry.Gast@azdosh.gov

5. The time during which the agency will accept written comments and the time and place where oral comments may be made:

The Industrial Commission will accept written comments during the public comment period (see item #10 of the Notice of Proposed Rulemaking in this issue). Information regarding an oral proceeding is also included in the Notice of Proposed Rulemaking.

6. A timetable for agency decisions or other action on the proceeding, if known:

See the Notice of Proposed Rulemaking on page 2736 of this issue.

NOTICE OF AGENCY GUIDANCE DOCUMENTS

The Administrative Procedure Act requires the publication of guidance documents and substantive policy statements issued by agencies (A.R.S. § 41-1013(B)(14)).

Substantive policy statements and guidance documents are written expressions which inform the general public of an agency's current approach to rule or regulation practice.

Substantive policy statements and agency guidance documents do not include internal procedural documents which may only affect the internal procedures of the agency and do not impose additional requirements or penalties on regulated parties in accordance with A.R.S. Title 41.

NOTICE OF AGENCY GUIDANCE DOCUMENT

DEPARTMENT OF HEALTH SERVICES

[M15-276]

1. Title of the guidance document and the guidance document number by which the document is referenced:

GD-112-PHS-EMS: Curriculum for Law Enforcement/EMT Administration of Naloxone in the Pre-Hospital Setting

2. Date of the publication of the guidance document and the effective date of the document if different from the publication:

Date of publication: November 13, 2015

Effective date: October 19, 2015

3. Summary of the contents of the guidance document:

This guidance document provides instruction in a procedure for the administration of Naloxone by law enforcement officers and EMT providers.

4. Statement as to whether the guidance document is a new document or a revision:

The guidance document is a new document.

5. The agency contact person who can answer questions and comments about the agency guidance document:

Name:	Terry Mullins, Bureau Chief
Address:	Department of Health Services Bureau of Emergency Medical Services and Trauma System 150 N. 18th Ave., Suite 540 Phoenix, AZ 85007-3248
Telephone:	(602) 364-3150
Fax:	(602) 364-3568
E-mail:	Terry.Mullins@azdhs.gov
or	
Name:	Robert Lane, Interim Manager
Address:	Department of Health Services Office of Administrative Counsel and Rules 1740 W. Adams, Suite 203 Phoenix, AZ 85007
Telephone:	(602) 542-1020
Fax:	(602) 364-1150
E-mail:	Robert.Lane@azdhs.gov

6. Information about where a person may obtain a copy of the guidance document and the costs for obtaining the guidance document:

A copy of the guidance document is available, free of charge, from the Arizona Department of Health Services, Office of Administrative Counsel and Rules at the following web address: http://www.azdhs.gov/ops/oacr/rules/guidance/index.php. A copy of the guidance document may also be obtained from the Arizona Department of Health Services, Bureau of Emergency Medical Services and Trauma System, 150 N. 18th Avenue, Suite 540, Phoenix, AZ 85007, for 25 cents per page. Payment is accepted in cash or money order made payable to the Arizona Department of Health Services.

NOTICES OF PROPOSED DELEGATION AGREEMENT

This section of the *Arizona Administrative Register* contains Notices of Proposed Delegation Agreements.

The Administrative Procedure Act requires the publication of notices of proposed delegation agreements in the Register. A delegation agreement is an agreement between an agency and a political subdivision that authorizes the political subdivision to exercise functions, powers, or duties conferred on the delegating agency by a provision of law.

Delegation agreements are not intergovernmental agreements pursuant to A.R.S. Title 11, Chapter 7, Article 3. For at least 30 days after publication of the Notice of Proposed Delegation Agreement in the Register, the agency shall provide persons the opportunity to submit in writing statements, arguments, data, and views on the proposed delegation agreement and shall provide an opportunity for a public hearing if there is sufficient interest. The delegating agency shall follow the procedures for delegation agreements specified in A.R.S. Title 41, Chapter 6, Article 8.

NOTICE OF PROPOSED DELEGATION AGREEMENTS

[M15-287]

1. Name of the agency proposing the delegation agreement:

Arizona Department of Environmental Quality

2. The name of the political subdivision to which functions, powers and duties of the agency are proposed to be delegated:

Maricopa County

3. The name, address, and telephone number of agency personnel to whom persons may direct questions or comments:

Name: Pamela Nicola, Manager
Inspections & Compliance Section Waste Programs Division

Address: Arizona Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007

Phone: (602) 771-4849

E-mail: pn2@azdeq.gov

4. A summary of the delegation agreement and the subjects and issues involved:

Under A.R.S. § 49-107, the Arizona Department of Environmental Quality proposes to amend the delegation agreement with Maricopa County, the Local Agency (LA). The proposed delegation agreement makes the following change to Appendix B, Waste Program Management:

- Limits delegation of "6. Investigation of and enforcement to eliminate used oil disposal to land" to disposal of nominal amounts up to 50 gallons of used oil at any one non-generator location.

All other delegated program elements remain the same as the current delegation agreement.

5. Copies of the proposed delegation agreement may be obtained from the agency as follows:

An electronic copy of the existing Agreement may be downloaded from the following web site address:
http://azdeq.gov/function/permits/delegated.html

Or contact: Sherri Zendri, Administrative Counsel
Arizona Department of Environmental Quality
Office of Administrative Counsel
1110 W. Washington
Phoenix, AZ 85007
Telephone: (602) 771-2242
E-mail: slz@azdeq.gov

6. The schedule of public hearings on the proposed delegation agreement:

Where there is sufficient public interest, ADEQ will hold a public hearing to receive public comments, in accordance with A.R.S. § 41-1081. The time, place, and location of the hearings will be provided in the corresponding Notice of Public Hearing pursuant to A.A.C. R18-1-401 and R18-1-402.

ADEQ accepts written statements, arguments, data, and views on the proposed delegation agreement that are received within 30 days after the date of the publication of this notice in the *Register* by 5:00 p.m. or postmarked not later than that date.

After the conclusion of the public comment period and hearing, if any, the agency shall prepare a written summary responding to the comments received, whether oral or written. The agency shall consider the comments received from the public in determining whether to enter into the proposed delegation agreement. The agency shall give written notice to those persons who submitted comments of the agency's decision on whether to enter into the proposed delegation agreement.

NOTICES OF PUBLIC INFORMATION

Notices of Public Information contain corrections that agencies wish to make to their notices of rulemaking; miscellaneous rulemaking information that does not fit into any other category of notice; and other types of information required by statute to be published in the Register.

Because of the variety of Notices of Public Information, the Office of the Secretary of State has not established a specific publishing format for these notices. We do however require agencies to use a numbered list of questions and answers and follow our filing requirements by presenting receipts with electronic and paper copies.

NOTICE OF PUBLIC INFORMATION

[M15-288]

1. Name of the Agency: Arizona Health Care Cost Containment System (AHCCCS)

2. The topic of the public information notice: Final changes to the AHCCCS Section 1115 Demonstration Waiver Project regarding Disproportionate Share Hospital (DSH) payments.

3. The public information relating to the topic:

The State Fiscal Year 2016 budget made a number of changes to Arizona law regarding supplemental payments made by AHCCCS to hospitals that service a disproportionate number of low income patients with special needs. Specifically, Arizona Laws 2015, Chapter 8, section 13, and Chapter 14, sections 6 and 10, made changes effecting State Fiscal Years (SFYs) 2015 and 2016 including:

- Increasing the maximum amount of that can be claimed for costs incurred by the Maricopa Integrated Health Care System (MIHS) in SFY 2015 from $89,877,700 to $105,945,500. With the exception of $4,202,300 which will be paid to MIHS, amounts otherwise claimed up to $68,328,000 will be transferred to the State General Fund.
- Increasing the maximum amount that can be claimed for costs incurred by MIHS in SFY 2016 to $113,818,500. With the exception of $4,202,300 which will be paid to MIHS, amounts otherwise claimed up to $74,241,400 will be transferred to the State General Fund.
- Expenditure authority allowing for approximately $18 million for supplemental payments to qualifying hospitals in SFY 2016 if the non-federal share of those payments is voluntarily provided by political subdivisions, tribal governments, or universities under A.R.S. §36-2903.01(P) ("Pool 5").
- Providing a priority to qualifying hospitals outside of the Phoenix Metropolitan and Tucson Metropolitan Statistical Areas (outside of Maricopa, Pima, and Pinal Counties) to claim funds from Pool 5 to the extent federal allocation remains for such payments after other supplemental payments for 2015 and 2016.
- Authorizing MIHS to obtain additional supplemental payments through Pool 5 under A.R.S. §36-2903.01(P) for the SFY's 2015 and 2016.
- Reducing the state appropriation for supplemental payments to private hospitals from $9,284,800 to $884,800 for SFY 2016.

The complete language of the law may be viewed through the Arizona Legislature's website at www.azleg.gov by selecting the pull-down menu for "Bills," then choosing "Session Laws," and selecting Chapters 0008 and/or 0014.

The Centers for Medicare and Medicaid Services (CMS) approved Arizona's Waiver amendment request which contains the following changes to the DSH methodology, effective September 30, 2015:

- Removes duplicative language.
- Clarifies items to be consistent with current protocol.
- Allows adjustments to historical data (used in DSH calculation) to reflect AHCCCS population growth and the expiration of certain supplemental payments.
- Gives hospitals outside of the Phoenix Metropolitan and Tucson Metropolitan Statistical Areas (outside of Maricopa, Pima, and Pinal Counties) priority to obtain "Pool 5" monies.
- Allows public hospitals to access "Pool 5" payments.

Although the proposed amendment made changes to the definition of a "rural" hospital, the approved waiver retains the original definition which is defined in accordance with Section 1923(d)(2)(B) of the Social Security Act.

Amounts allocated to the different DSH pools are made annually through technical changes to the 1115 waiver.

GOVERNOR EXECUTIVE ORDERS

The Administrative Procedure Act (APA) requires the full-text publication of Governor Executive Orders.

With the exception of egregious errors, content (including spelling, grammar, and punctuation) of these orders has been reproduced as submitted.

In addition, the *Register* shall include each statement filed by the Governor in granting a commutation, pardon or reprieve, or stay or suspension of execution where a sentence of death is imposed.

EXECUTIVE ORDER 2015-01

Internal Review of Administrative Rules; Moratorium to Promote Job Creation and Customer-Service-Oriented Agencies

Editor's Note: This Executive Order is being reproduced in each issue of the Administrative Register until its expiration on December 31, 2015, as a notice to the public regarding state agencies' rulemaking activities.

[M15-02]

WHEREAS, Arizona has lost more jobs per capita than any other state and has yet to recover all of those jobs;

WHEREAS, burdensome regulations inhibit job growth and economic development;

WHEREAS, each agency of the State of Arizona should promote customer-service-oriented principles for the people that it serves;

WHEREAS, each State agency should undertake a critical and comprehensive review of its administrative rules and take action to reduce the regulatory burden, administrative delay, and legal uncertainty associated with government regulation;

WHEREAS, overly burdensome, antiquated, contradictory, redundant, and nonessential regulations should be repealed;

WHEREAS, Article 5, Section 4 of the Arizona Constitution and Title 41, Chapter 1, Article 1 of the Arizona Revised Statutes vests the executive power of the State of Arizona in the Governor;

NOW, THEREFORE, I, Douglas A. Ducey, by virtue of the authority vested in me by the Constitution and laws of the State of Arizona hereby declare the following:

1. A State agency, subject to this Order, shall not conduct any rulemaking except as permitted by this Order.
2. A State agency, subject to this Order, shall not conduct any rulemaking, whether informal or formal, without the prior written approval of the Office of the Governor. In seeking approval, a State agency shall address one or more of the following as justification for the rulemaking:
   a. To fulfill an objective related to job creation, economic development, or economic expansion in this State.
   b. To reduce or ameliorate a regulatory burden while achieving the same regulatory objective.
   c. To prevent a significant threat to the public health, peace or safety.
   d. To avoid violating a court order or federal law that would result in sanctions by a court or the federal government against an agency for failure to conduct the rulemaking action.
   e. To comply with a federal statutory or regulatory requirement if such compliance is related to a condition for the receipt of federal funds or participation in any federal program.
   f. To fulfill an obligation related to fees or any other action necessary to implement the State budget that is certified by the Governor's Office of Strategic Planning and Budgeting.
   g. To promulgate a rule or other item that is exempt from Title 41, Chapter 6, Arizona Revised Statues, pursuant to section 41-1005, Arizona Revised Statutes.
   h. To address matters pertaining to the control, mitigation or eradication of waste, fraud, or abuse within an agency or wasteful, fraudulent, or abusive activities perpetrated against an agency.
3. Paragraphs 1 and 2 apply to all State agencies, except for: (a) any State agency that is headed by a single elected State official, (b) the Corporation Commission, or (c) any State agency whose agency head is not appointed by the Governor. Those State agencies to which Paragraphs 1 and 2 do not apply are strongly encouraged to voluntarily comply with this Order in the context of their own rulemaking processes.
4. Pursuant to Article 5, Section 4 of the Arizona Constitution and Arizona Revised Statutes Section 41-101(A)(1), the State agencies identified in Paragraph 3 must provide the Office of the Governor with a written report for each proposed rule 30 days prior to engaging in any rulemaking proceeding and must also provide the Office of the

Governor with a written report within 15 days of any rulemaking. The reports required by this Paragraph shall explain, in detail, how the rulemaking advances the priorities and principles set forth in this Order.

5. No later than September 1, 2015, each State agency shall provide to the Office of the Governor an evaluation of their rules, with recommendations for which rules could be amended or repealed consistent with the priorities and principles set forth in this Order. The evaluation shall also include a summary of licensing time frames and describe how those time frames compare to real processing time, and whether or not they can be reduced. Additionally, each agency shall identify any existing licenses or permits in which a general permit could be used in lieu of an individual permit, pursuant to Arizona Revised Statutes Section 41-1037.
6. No later than July 1, 2015, each State agency shall provide to the Office of the Governor an update on divisions where electronic reporting and payment are not implemented and a suggested plan for how to implement this customer-service-oriented service.
7. This Order does not confer any legal rights upon any persons and shall not be used as a basis for legal challenges to rules, approvals, permits, licenses or other actions or to any inaction of a State agency. For the purposes of this Order, "person," "rule" and "rulemaking" have the same meanings prescribed in Arizona Revised Statutes Section 41-1001.
8. This Executive Order expires on December 31, 2015.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.

Douglas A. Ducey
G O V E R N O R

DONE at the Capitol in Phoenix on this fifth day of January in the year Two Thousand and Fifteen and of the Independence of the United States of America the Two Hundred and Thirty-ninth.

ATTEST:
Michele Reagan
Secretary of State

GOVERNOR PROCLAMATIONS

The Administrative Procedure Act (APA) requires the publication of Governor proclamations of general applicability, and ceremonial dedications issued by the Governor.

STEVE NASH DAY

[M15-295]

WHEREAS, Steve Nash was the heart and soul of the Phoenix Suns during an era that revolutionized the NBA; and

WHEREAS, Steve Nash led the club to its best record in franchise history in 2004 – 2005 and earned back-to-back NBA Most Valuable Player awards in 2005 & 2006; and

WHEREAS, Steve Nash is an eight-time All-Star, including six such distinctions as a member of the Phoenix Suns; and

WHEREAS, Steve Nash finished his career as the Phoenix Suns' all-time leader in assists, 3-point field goals made, and free-throw percentage; and

WHEREAS, Steve Nash was originally drafted by the Phoenix Suns with the 15th overall pick in the First Round of the 1996 NBA Draft; and

WHEREAS, Steve Nash played a total of 10 seasons in the Valley of the Sun (1996 – 1998, 2004 - 2012), and ranks third on the Phoenix Suns all-time games played list; and

WHEREAS, Steve Nash has an unmatched record of community service and charitable participation in Arizona; and

WHEREAS, Steve Nash has maintained a sterling reputation and remains a favorite of basketball fans at home and abroad; and

WHEREAS, Steve Nash is the 14th inductee into the Phoenix Suns Ring of Honor.

NOW, THEREFORE, I, Douglas A. Ducey, Governor of the State of Arizona, do hereby proclaim October 30, 2015,

STEVE NASH DAY

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona

Douglas A. Ducey
GOVERNOR

DONE at the Capitol in Phoenix on this twenty-eighth day of September in the year Two Thousand and Fifteen and of the Independence of the United States of America the Two Hundred and Fortieth.

ATTEST:
Michele Reagan
SECRETARY OF STATE

REGISTER INDEXES

The *Register* is published by volume in a calendar year (See "Information" in the front of each issue for a more detailed explanation).

Abbreviations for rulemaking activity in this Index include:

PROPOSED RULEMAKING
PN = Proposed new Section
PM = Proposed amended Section
PR = Proposed repealed Section
P# = Proposed renumbered Section

SUPPLEMENTAL PROPOSED RULEMAKING
SPN = Supplemental proposed new Section
SPM = Supplemental proposed amended Section
SPR = Supplemental proposed repealed Section
SP# = Supplemental proposed renumbered Section

FINAL RULEMAKING
FN = Final new Section
FM = Final amended Section
FR = Final repealed Section
F# = Final renumbered Section

SUMMARY RULEMAKING
PROPOSED SUMMARY
PSMN = Proposed Summary new Section
PSMM = Proposed Summary amended Section
PSMR = Proposed Summary repealed Section
PSM# = Proposed Summary renumbered Section
FINAL SUMMARY
FSMN = Final Summary new Section
FSMM = Final Summary amended Section
FSMR = Final Summary repealed Section
FSM# = Final Summary renumbered Section

EXPEDITED RULEMAKING
PROPOSED EXPEDITED
PEN = Proposed Expedited new Section
PEM = Proposed Expedited amended Section
PER = Proposed Expedited repealed Section
PE# = Proposed Expedited renumbered Section
SUPPLEMENTAL EXPEDITED
SPEN = Supplemental Proposed Expedited new Section
SPEM = Supplemental Proposed Expedited amended Section
SPER = Supplemental Proposed Expedited repealed Section
SPE# = Supplemental Proposed Expedited renumbered Section
FINAL EXPEDITED
FEN = Final Expedited new Section
FEM = Final Expedited amended Section
FER = Final Expedited repealed Section
FE# = Final Expedited renumbered Section

EXEMPT RULEMAKING
EXEMPT PROPOSED
PXN = Proposed Exempt new Section
PXM = Proposed Exempt amended Section
PXR = Proposed Exempt repealed Section
PX# = Proposed Exempt renumbered Section
EXEMPT SUPPLEMENTAL PROPOSED
SPXN = Supplemental Proposed Exempt new Section
SPXR = Supplemental Proposed Exempt repealed Section
SPXM = Supplemental Proposed Exempt amended Section
SPX# = Supplemental Proposed Exempt renumbered Section
FINAL EXEMPT RULMAKING
FXN = Final Exempt new Section
FXM = Final Exempt amended Section
FXR = Final Exempt repealed Section
FX# = Final Exempt renumbered Section

EMERGENCY RULEMAKING
EN = Emergency new Section
EM = Emergency amended Section
ER = Emergency repealed Section
E# = Emergency renumbered Section
EEXP = Emergency expired

RECODIFICATION OF RULES
RC = Recodified

REJECTION OF RULES
RJ = Rejected by the Attorney General

TERMINATION OF RULES
TN = Terminated proposed new Sections
TM = Terminated proposed amended Section
TR = Terminated proposed repealed Section
T# = Terminated proposed renumbered Section

RULE EXPIRATIONS
EXP = Rules have expired
See also "emergency expired" under emergency rulemaking

CORRECTIONS
C = Corrections to Published Rules

2015 *Arizona Administrative Register*
Volume 21 Page Guide

RULEMAKING ACTIVITY INDEX

Rulemakings are listed in the Index by Chapter, Section number, rulemaking activity abbreviation and by volume page number. Use the page guide above to determine the *Register* issue number to review the rule. Headings for the Subchapters, Articles, Parts, and Sections are not indexed.

THIS INDEX INCLUDES RULEMAKING ACTIVITY THROUGH ISSUE 45 OF VOLUME 21.

Editor's Note: The terminated rulemaking action (TM) notated in the above sections is in reference to the Notice of Proposed Rulemaking published at 20 A.A.R. 3590, December 26, 2014.

OTHER NOTICES AND PUBLIC RECORDS INDEX

Other notices related to rulemakings are listed in the Index by notice type, agency/county and by volume page number. Agency policy statements and proposed delegation agreements are included in this section of the Index by volume page number.

Public records, such as Governor Office executive orders, proclamations, declarations and terminations of emergencies, summaries of Attorney General Opinions, and county notices are also listed in this section of the Index as published by volume page number.

THIS INDEX INCLUDES OTHER NOTICE ACTIVITY THROUGH ISSUE 45 OF VOLUME 21.

RULE EFFECTIVE DATES CALENDAR

A.R.S. § 41-1032(A), as amended by Laws 2002, Ch. 334, § 8 (effective August 22, 2002), states that a rule generally becomes effective 60 days after the day it is filed with the Secretary of State's Office. The following table lists filing dates and effective dates for rules that follow this provision. Please also check the rulemaking Preamble for effective dates.

January		February		March		April		May		June	
Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date
1/1	3/2	2/1	4/2	3/1	4/30	4/1	5/31	5/1	6/30	6/1	7/31
1/2	3/3	2/2	4/3	3/2	5/1	4/2	6/1	5/2	7/1	6/2	8/1
1/3	3/4	2/3	4/4	3/3	5/2	4/3	6/2	5/3	7/2	6/3	8/2
1/4	3/5	2/4	4/5	3/4	5/3	4/4	6/3	5/4	7/3	6/4	8/3
1/5	3/6	2/5	4/6	3/5	5/4	4/5	6/4	5/5	7/4	6/5	8/4
1/6	3/7	2/6	4/7	3/6	5/5	4/6	6/5	5/6	7/5	6/6	8/5
1/7	3/8	2/7	4/8	3/7	5/6	4/7	6/6	5/7	7/6	6/7	8/6
1/8	3/9	2/8	4/9	3/8	5/7	4/8	6/7	5/8	7/7	6/8	8/7
1/9	3/10	2/9	4/10	3/9	5/8	4/9	6/8	5/9	7/8	6/9	8/8
1/10	3/11	2/10	4/11	3/10	5/9	4/10	6/9	5/10	7/9	6/10	8/9
1/11	3/12	2/11	4/12	3/11	5/10	4/11	6/10	5/11	7/10	6/11	8/10
1/12	3/13	2/12	4/13	3/12	5/11	4/12	6/11	5/12	7/11	6/12	8/11
1/13	3/14	2/13	4/14	3/13	5/12	4/13	6/12	5/13	7/12	6/13	8/12
1/14	3/15	2/14	4/15	3/14	5/13	4/14	6/13	5/14	7/13	6/14	8/13
1/15	3/16	2/15	4/16	3/15	5/14	4/15	6/14	5/15	7/14	6/15	8/14
1/16	3/17	2/16	4/17	3/16	5/15	4/16	6/15	5/16	7/15	6/16	8/15
1/17	3/18	2/17	4/18	3/17	5/16	4/17	6/16	5/17	7/16	6/17	8/16
1/18	3/19	2/18	4/19	3/18	5/17	4/18	6/17	5/18	7/17	6/18	8/17
1/19	3/20	2/19	4/20	3/19	5/18	4/19	6/18	5/19	7/18	6/19	8/18
1/20	3/21	2/20	4/21	3/20	5/19	4/20	6/19	5/20	7/19	6/20	8/19
1/21	3/22	2/21	4/22	3/21	5/20	4/21	6/20	5/21	7/20	6/21	8/20
1/22	3/23	2/22	4/23	3/22	5/21	4/22	6/21	5/22	7/21	6/22	8/21
1/23	3/24	2/23	4/24	3/23	5/22	4/23	6/22	5/23	7/22	6/23	8/22
1/24	3/25	2/24	4/25	3/24	5/23	4/24	6/23	5/24	7/23	6/24	8/23
1/25	3/26	2/25	4/26	3/25	5/24	4/25	6/24	5/25	7/24	6/25	8/24
1/26	3/27	2/26	4/27	3/26	5/25	4/26	6/25	5/26	7/25	6/26	8/25
1/27	3/28	2/27	4/28	3/27	5/26	4/27	6/26	5/27	7/26	6/27	8/26
1/28	3/29	2/28	4/29	3/28	5/27	4/28	6/27	5/28	7/27	6/28	8/27
1/29	3/30			3/29	5/28	4/29	6/28	5/29	7/28	6/29	8/28
1/30	3/31			3/30	5/29	4/30	6/29	5/30	7/29	6/30	8/29
1/31	4/1			3/31	5/30			5/31	7/30		

July		August		September		October		November		December	
Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date
7/1	8/30	8/1	9/30	9/1	10/31	10/1	11/30	11/1	12/31	12/1	1/30
7/2	8/31	8/2	10/1	9/2	11/1	10/2	12/1	11/2	1/1	12/2	1/31
7/3	9/1	8/3	10/2	9/3	11/2	10/3	12/2	11/3	1/2	12/3	2/1
7/4	9/2	8/4	10/3	9/4	11/3	10/4	12/3	11/4	1/3	12/4	2/2
7/5	9/3	8/5	10/4	9/5	11/4	10/5	12/4	11/5	1/4	12/5	2/3
7/6	9/4	8/6	10/5	9/6	11/5	10/6	12/5	11/6	1/5	12/6	2/4
7/7	9/5	8/7	10/6	9/7	11/6	10/7	12/6	11/7	1/6	12/7	2/5
7/8	9/6	8/8	10/7	9/8	11/7	10/8	12/7	11/8	1/7	12/8	2/6
7/9	9/7	8/9	10/8	9/9	11/8	10/9	12/8	11/9	1/8	12/9	2/7
7/10	9/8	8/10	10/9	9/10	11/9	10/10	12/9	11/10	1/9	12/10	2/8
7/11	9/9	8/11	10/10	9/11	11/10	10/11	12/10	11/11	1/10	12/11	2/9
7/12	9/10	8/12	10/11	9/12	11/11	10/12	12/11	11/12	1/11	12/12	2/10
7/13	9/11	8/13	10/12	9/13	11/12	10/13	12/12	11/13	1/12	12/13	2/11
7/14	9/12	8/14	10/13	9/14	11/13	10/14	12/13	11/14	1/13	12/14	2/12
7/15	9/13	8/15	10/14	9/15	11/14	10/15	12/14	11/15	1/14	12/15	2/13
7/16	9/14	8/16	10/15	9/16	11/15	10/16	12/15	11/16	1/15	12/16	2/14
7/17	9/15	8/17	10/16	9/17	11/16	10/17	12/16	11/17	1/16	12/17	2/15
7/18	9/16	8/18	10/17	9/18	11/17	10/18	12/17	11/18	1/17	12/18	2/16
7/19	9/17	8/19	10/18	9/19	11/18	10/19	12/18	11/19	1/18	12/19	2/17
7/20	9/18	8/20	10/19	9/20	11/19	10/20	12/19	11/20	1/19	12/20	2/18
7/21	9/19	8/21	10/20	9/21	11/20	10/21	12/20	11/21	1/20	12/21	2/19
7/22	9/20	8/22	10/21	9/22	11/21	10/22	12/21	11/22	1/21	12/22	2/20
7/23	9/21	8/23	10/22	9/23	11/22	10/23	12/22	11/23	1/22	12/23	2/21
7/24	9/22	8/24	10/23	9/24	11/23	10/24	12/23	11/24	1/23	12/24	2/22
7/25	9/23	8/25	10/24	9/25	11/24	10/25	12/24	11/25	1/24	12/25	2/23
7/26	9/24	8/26	10/25	9/26	11/25	10/26	12/25	11/26	1/25	12/26	2/24
7/27	9/25	8/27	10/26	9/27	11/26	10/27	12/26	11/27	1/26	12/27	2/25
7/28	9/26	8/28	10/27	9/28	11/27	10/28	12/27	11/28	1/27	12/28	2/26
7/29	9/27	8/29	10/28	9/29	11/28	10/29	12/28	11/29	1/28	12/29	2/27
7/30	9/28	8/30	10/29	9/30	11/29	10/30	12/29	11/30	1/29	12/30	2/28
7/31	9/29	8/31	10/30			10/31	12/30			12/31	3/1

REGISTER PUBLISHING DEADLINES

The Secretary of State's Office publishes the Register weekly. There is a three-week turnaround period between a deadline date and the publication date of the Register. The weekly deadline dates and issue dates are shown below. Council meetings and Register deadlines do not correlate. Also listed are the earliest dates on which an oral proceeding can be held on proposed rulemakings or proposed delegation agreements following publication of the notice in the Register.

Deadline Date (paper only) Friday, 5:00 p.m.	***Register* Publication Date**	**Oral Proceeding may be scheduled on or after**
September 4, 2015	September 25, 2015	October 26, 2015
September 11, 2015	October 2, 2015	November 2, 2015
September 18, 2015	October 9, 2015	November 9, 2015
September 25, 2015	October 16, 2015	November 16, 2015
October 2, 2015	October 23, 2015	November 23, 2015
October 9, 2015	October 30, 2015	November 30, 2015
October 16, 2015	November 6, 2015	December 7, 2015
October 23, 2015	November 13, 2015	December 14, 2015
October 30, 2015	November 20, 2015	December 21, 2015
November 6, 2015	November 27, 2015	December 28, 2015
November 13, 2015	December 4, 2015	January 4, 2016
November 20, 2015	December 25, 2015	January 25, 2016
November 27, 2015	December 18, 2015	January 18, 2016
December 4, 2015	December 25, 2015	January 25, 2016
December 11, 2015	January 1, 2016	February 1, 2016
December 18, 2015	January 8, 2016	February 8, 2016
December 25, 2015	January 15, 2016	February 15, 2016
January 1, 2016	January 22, 2016	February 22, 2016
January 8, 2016	January 29, 2016	February 29, 2016
January 15, 2016	February 5, 2016	March 7, 2016
January 22, 2016	February 12, 2016	March 14, 2016
January 29, 2016	February 19, 2016	March 21, 2016
February 5, 2016	February 26, 2016	March 28, 2016
February 12, 2016	March 4, 2016	April 4, 2016
February 19, 2016	March 11, 2016	April 11, 2016
February 26, 2016	March 18, 2016	April 18, 2016
March 4, 2016	March 25, 2016	April 25, 2016
March 11, 2016	April 1, 2016	May 2, 2016
March 18, 2016	April 8, 2016	May 9, 2016

GOVERNOR'S REGULATORY REVIEW COUNCIL DEADLINES

The following deadlines apply to all Five-Year-Review Reports and any adopted rule submitted to the Governor's Regulatory Review Council. Council meetings and *Register* deadlines do not correlate. We publish these deadlines as a courtesy.

All rules and Five-Year Review Reports are due in the Council office by 5:00 p.m. of the deadline date. The Council's office is located at 100 N. 15th Ave., Suite 402, Phoenix, AZ 85007. For more information, call (602) 542-2058 or visit www.grrc.state.az.us.

DEADLINE TO BE PLACED ON COUNCIL AGENDA	FINAL MATERIALS DUE FROM AGENCIES	DATE OF COUNCIL STUDY SESSION	DATE OF COUNCIL MEETING
November 17, 2014	December 17, 2014	December 30, 2014	January 6, 2015
December 15, 2014	January 14, 2015	January 27, 2015	February 3, 2015
January 20, 2015	February 11, 2015	February 24, 2015	March 3, 2015
February 17, 2015	March 18, 2015	March 31, 2015	April 7, 2015
March 16, 2015	April 15, 2015	April 28, 2015	May 5, 2015
April 20, 2015	May 13, 2015	May 28, 2015	June 2, 2015
May 18, 2015	June 17, 2015	June 30, 2015	July 7, 2015
June 15, 2015	July 15, 2015	July 28, 2015	August 4, 2015
July 20, 2015	August 12, 2015	August 25, 2015	September 1, 2015
August 17, 2015	September 16, 2015	September 29, 2015	October 6, 2015
September 21, 2015	October 14, 2015	October 27, 2015	November 3, 2015
October 19, 2015	November 12, 2015	November 24, 2015	December 1, 2015
November 16, 2015	December 16, 2015	December 29, 2015	January 5, 2016

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Scott Cancelosi

PUBLISHER
Secretary of State
MICHELE REAGAN

RULES MANAGING EDITOR
Arizona Administrative Register
Rhonda Paschal

From the Publisher

ABOUT THIS PUBLICATION

The paper copy of the *Administrative Register* (A.A.R.) is the official publication for rules and rulemaking activity in the state of Arizona.

Rulemaking is defined in Arizona Revised Statues known as the Arizona Administrative Procedure Act (APA), A.R.S. Title 41, Chapter 6, Articles 1 through 10.

The Office of the Secretary of State does not interpret or enforce rules published in the *Arizona Administrative Register* or *Code*. Questions should be directed to the state agency responsible for the promulgation of the rule as provided in its published filing.

The *Register* is cited by volume and page number. Volumes are published by calendar year with issues published weekly. Page numbering continues in each weekly issue.

In addition, the *Register* contains the full text of the Governor's Executive Orders and Proclamations of general applicability, summaries of Attorney General opinions, notices of rules terminated by the agency, and the Governor's appointments of state officials and members of state boards and commissions.

ABOUT RULES

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Vol. 22 Issue 42

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Michele Reagan

PUBLIC SERVICES STAFF
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Scott Cancelosi

RULES MANAGING EDITOR
Rhonda Paschal

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Office of the Secretary of State
1700 W. Washington Street, Fl. 7
Phoenix, AZ 85007
(602) 364-3223

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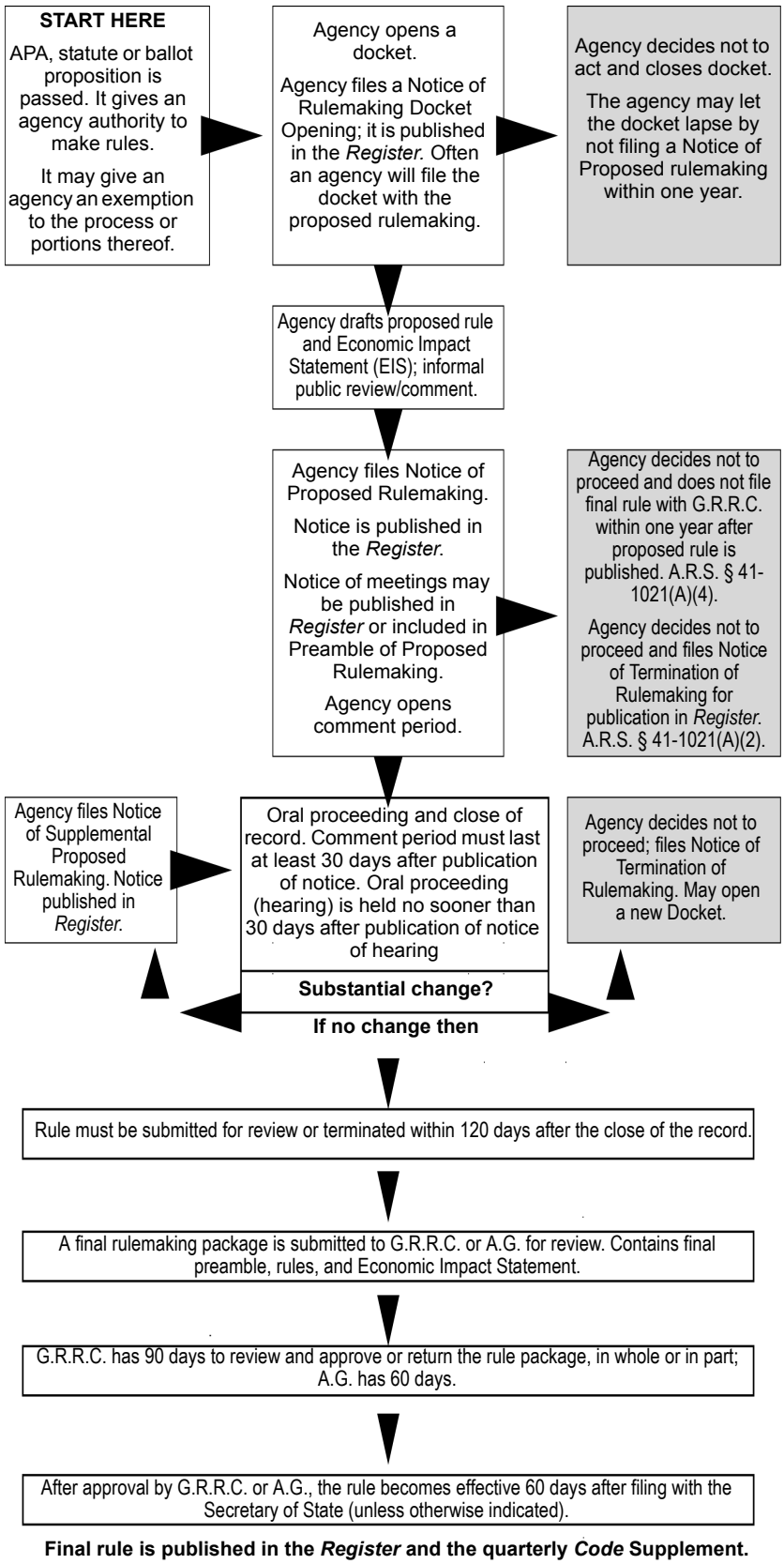

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NOTICES OF EXPIRATION OF RULES UNDER A.R.S. § 41-1056(E)

This section of the *Arizona Administrative Register* contains Notices of Expiration of Rules. Under A.R.S. § 41-1056(E), if an agency does not file a five-year rule review report with the Governor's Regulatory Review Council (including a revised report); or if an agency does not file an extension before the due date of the report; or if an agency files an extension but does not submit a report within the extension period; the rules scheduled for review expire.

The Council is required to notify the Secretary of State that the rules have expired and are no longer enforceable. The notice is published in the *Register*, and the rules are removed from the *Code*.

GOVERNOR'S REGULATORY REVIEW COUNCIL
NOTICE OF RULE EXPIRATION

[R16-200]

1. **Agency name:** State Retirement System Board
2. **Title and its heading:** 2, Administration
3. **Chapter and its heading:** 8, State Retirement System Board
4. **Articles and their headings:** 7, Contributions Not Withheld
5. **As required by A.R.S. § 41-1056(J), the Council provides notice that the agency expired the following rule as of September 15, 2016:**

R2-8-708. Dispute of an ASRS Determination Regarding Contributions Not Withheld

6. **Signature is of Nicole A. Ong**
/s/
Nicole A. Ong
G.R.R.C. Chair

Date of Signing
Sept. 19, 2016

GOVERNOR'S REGULATORY REVIEW COUNCIL
NOTICE OF RULE EXPIRATION

[R16-201]

1. **Agency name:** Department of Environmental Quality
2. **Title and its heading:** 18, Environmental Quality
3. **Chapter and its heading:** 2, Department of Environmental Quality - Air Pollution Control
4. **Articles and their headings:** 3, Permits and Permit Revisions
5. **As required by A.R.S. § 41-1056(J), the Council provides notice that the agency expired the following rule as of September 15, 2016:**

R18-2-306.02. Establishment of an Emissions Cap

6. **Signature is of Nicole A. Ong**
/s/
Nicole A. Ong
G.R.R.C. Chair

Date of Signing
Sept. 19, 2016

www.azsos.gov

Arizona Administrative REGISTER

Published by the Department of State ~ Office of the Secretary of State

Vol. 23, Issue 6 **~ Administrative Register Contents ~** **February 10, 2017**

From the Publisher

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Rulemaking is defined in Arizona Revised Statues known as the Arizona Administrative Procedure Act (APA), A.R.S. Title 41, Chapter 6, Articles 1 through 10.

The Office of the Secretary of State does not interpret or enforce rules published in the *Arizona Administrative Register* or *Code*. Questions should be directed to the state agency responsible for the promulgation of the rule as provided in its published filing.

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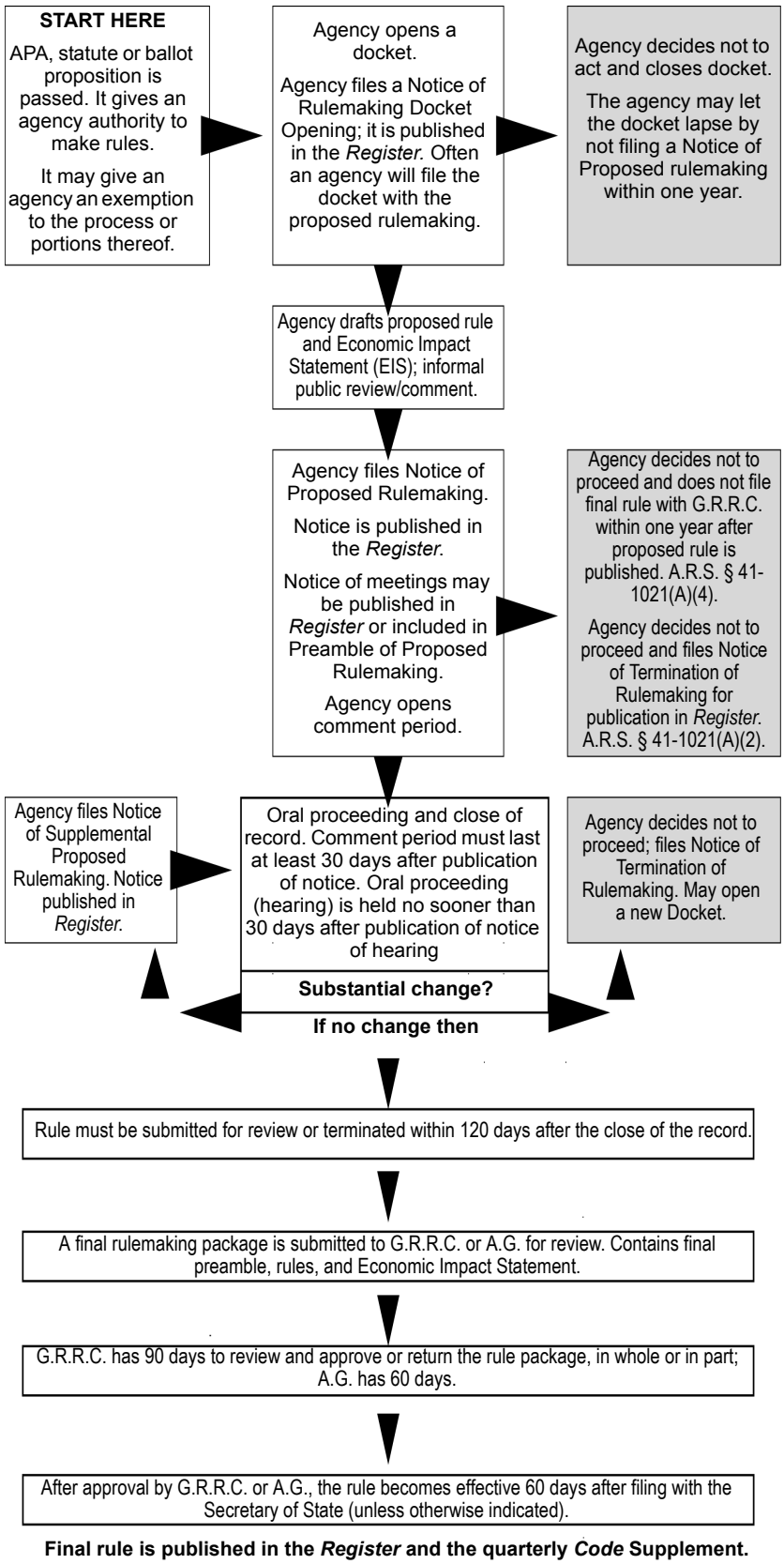

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The final published notice includes a preamble and text of the rules as filed by the agency. Economic Impact Statements are not published.

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the final rules should be addressed to the agency that promulgated them. Refer to Item #5 to contact the person charged with the rulemaking. The codified version of these rules will be published in the Arizona Administrative Code.

NOTICE OF FINAL RULEMAKING
TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL

[R17-10]

PREAMBLE

1. Article, Part, or Section Affected (as applicable)	Rulemaking Action
R18-2-101	Amend
R18-2-102	Amend
R18-2-201	Amend
R18-2-203	Amend
R18-2-217	Amend
R18-2-218	Amend
R18-2-301	Amend
R18-2-302	Amend
R18-2-302.01	Amend
R18-2-303	Amend
R18-2-304	Amend
R18-2-306	Amend
R18-2-306.01	Amend
R18-2-307	Amend
R18-2-311	Amend
R18-2-312	Amend
R18-2-319	Amend
R18-2-320	Amend
R18-2-324	Amend
R18-2-326	Amend
R18-2-327	Amend
R18-2-330	Amend
R18-2-332	Amend
R18-2-334	Amend
R18-2-401	Amend
R18-2-402	Amend
R18-2-403	Amend
R18-2-404	Amend
R18-2-405	Amend
R18-2-406	Amend
R18-2-407	Amend
R18-2-408	Amend
R18-2-410	Amend
R18-2-411	New Section
R18-2-412	Amend
R18-2-502	Amend
R18-2-503	Amend
R18-2-504	Amend
R18-2-507	Repeal
R18-2-508	Repeal
R18-2-512	Amend
R18-2-513	Amend
R18-2-514	New Section
R18-2-515	New Section

R18-2-1205	Amend
Appendix 1	Repeal

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. §§ 49-104(A)(1) and (A)(10); 49-425(A)

Implementing statutes: A.R.S. § 49-426

3. The effective date of the rules:

March 21, 2017

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 rule:

Notice of Rulemaking Docket Opening: 21 A.A.R. 3173, December 11, 2015

Notice of Proposed Rulemaking: 22 A.A.R. 2431, September 9, 2016

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

Name: Steve Burr
Address: Arizona Department of Environmental Quality
1110 W. Washington Ave.
Phoenix, AZ 85007
Telephone: (602) 771-4251 (This number may be reached in-state by dialing 1-800-234-5677 and entering the seven digit number.)
Fax: (602) 771-2366
E-mail: burr.steve@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 remedy deficiencies identified by the Environmental Protection Agency (EPA) in Arizona's new source review (NSR) rules. This rulemaking action is required to secure approval of Arizona's NSR rules into the state implementation plan (SIP) and avoid sanctions and imposition of a federal implementation plan (FIP) under the federal Clean Air Act (CAA).

On November 2, 2015 the EPA Region 9 Administrator published a notice of final rulemaking issuing limited approval/limited disapproval (LA/LD) of the October 29, 2012 Arizona SIP revision designed to update the rules included in the SIP and to bring the state's NSR program into full compliance with federal requirements. The final LA/LD triggered a statutory deadline under the CAA to submit and obtain full approval of the state's NSR program. The Arizona Department of Environmental Quality (ADEQ) has eighteen months to remedy the deficiencies relating to NSR for nonattainment areas to obtain full approval or face sanctions. If ADEQ fails to remedy all of the deficiencies within 24 months, EPA will be obligated to impose a FIP addressing any remaining deficiencies.

ADEQ is revising Arizona's NSR rules to address the deficiencies and create a program that complies with federal requirements and protect the national ambient air quality standards (NAAQS).

Background.

Clean Air Act New Source Review Requirements

Under section 110(a)(1) of the Clean Air Act (Act or CAA) each state is obligated to submit a "plan which provides for implementation, maintenance and enforcement of" the NAAQS. The Act goes on to require SIPs to:

> Include a program to provide for the . . . regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of [Title I of the CAA].

State and federal regulations adopted under this section are commonly referred to as "new source review" programs because they apply to newly constructed and modified, as opposed to existing, sources. The CAA divides NSR requirements into those that apply to attainment areas (Part C requirements) and those that apply to nonattainment areas (Part D requirements).

Part C of Title I of the CAA establishes the NSR requirements for major sources that are constructed or modified in areas that have attained the NAAQS for one or more criteria pollutants (ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, PM_{10}, $PM_{2.5}$, and lead). Sources that belong to the list of categories set forth in section 169(1) of the CAA (referred to as "categorical sources" in the ADEQ rules) are major if they emit or have the potential to emit 100 tons per year (tpy) or more of a regulated air pollutant. All other sources are major if they have the potential to emit 250 tpy or more of a regulated air pollutant.

The NSR program under Part C is known as "Prevention of Significant Deterioration" (PSD), because its purpose is to prevent air quality in attainment areas from deteriorating to the levels of the NAAQS. See CAA § 160. PSD establishes, or requires EPA to establish, maximum allowable increases, known as "increments," over existing concentrations of criteria pollutants and requires permit applicants subject to PSD to demonstrate that a new source or modification's emissions will not result in a violation of the increments or the NAAQS. In addition, PSD requires the installation of the best available control technology (BACT) when constructing or modifying a source.

Part D of Title I establishes NSR requirements for major sources and modifications in nonattainment areas and is known as "Nonattainment New Source Review" (NNSR). Under Subpart 1 of Part D, a major source is defined as any source that emits, or has the potential to emit, 100 tpy or more of a pollutant for which the area has been designated nonattainment. Subpart 2 of Part D estab-

lishes lower major source thresholds for certain ozone, carbon monoxide, PM_{10}, and $PM_{2.5}$ nonattainment areas.

Permit applicants subject to NNSR requirements under Part D must demonstrate that a major source or modification will comply with the lowest achievable emission rate (LAER) and that reductions in emissions from the same source or other sources will offset any emissions increases from the new or modified source.

In addition to requiring compliance with the specific major NSR requirement of Parts C and D, section 110(a)(2)(C) requires "regulation of the modification and construction of *any* stationary source within the areas covered by the plan *as necessary to assure that national ambient air quality standards are achieved*." (Emphasis added.) EPA refers to 110(a)(2)(C) programs that apply to non-major sources and to minor modifications as "minor NSR." 76 FR 38748, 38752 (July 1, 2011).

EPA NSR Regulations

EPA has promulgated regulations establishing the elements a state program must contain to satisfy section 110(a)(2)(C) at 40 CFR 51, Subpart I, Sections 51.160-51.166. NNSR requirements are found in section 51.165 and PSD requirements are found in section 51.166. These rules are highly detailed and prescriptive. States seeking approval of major NSR programs (both NNSR and PSD) must either strictly conform to the requirements in the federal rules or demonstrate that any deviations are at least as stringent.

Both sections 51.165 and 51.166 limit the applicability of major NSR to the construction of new major source or a "major modification" of a major source. A major modification is defined as physical or operational change that will result in both a significant increase and a significant *net* increase in the emissions of a regulated NSR pollutant.

For criteria pollutants and their precursors, "significant" is defined as:

Carbon monoxide	100 tpy
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Ozone	40 tpy of volatile organic compounds or nitrogen oxides
Lead	0.6 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 oxides emissions; 40 tpy of volatile organic compound emissions in ozone nonattainment areas.

The Act and the implementing regulations at 40 CFR 51.160 through 51.164 provide states broad discretion to develop minor NSR programs designed to assure the NAAQS are achieved. EPA has noted that the "Federal regulations for minor source programs are considerably less detailed than the requirements for major sources." 71 FR 48696, 48700 (August 21, 2006). Under the minor NSR regulations, a state program must contain "legally enforceable procedures" to prevent the construction or modification of a minor source if it will "result in a violation of applicable portions of the control strategy" for compliance with the NAAQS or "interfere with the attainment or maintenance of a [NAAQS]." 40 CFR 51.160.

A minor NSR program need not apply to all new and modified sources, but it must "identify types and sizes of facilities, buildings, structures, or installations which will be subject to" minor NSR and "discuss the basis for determining which facilities will be subject to review." 40 CFR 51.161(e). As EPA has noted:

> Applicability thresholds are proper in [a minor NSR program] provided that the sources and modifications with emissions below the thresholds are inconsequential to attainment and maintenance of the NAAQS.

71 FR at 48701.

A minor NSR program must allow a minimum 30-day period to comment on the applicant's application and the agency's proposed decision. 40 CFR 51.161.

Arizona's Previous NSR Rulemaking and SIP Revision

On July 6, 2012, ADEQ adopted comprehensive amendments (the "2012 NSR Amendments") to its preconstruction review and permitting programs for stationary sources. On October 29, 2012, ADEQ submitted these amendments, existing rules not yet approved into the SIP and supporting materials as a SIP revision to EPA. The revision was intended to bring Arizona's SIP into full compliance with PSD major NSR, major NNSR and minor NSR requirements.

On June 29, 2015, the Regional Administrator for EPA Region 9 signed a limited approval/limited disapproval (LA/LD) of the 2012 SIP Revision. EPA determined that the revisions generally strengthened the state's NSR program by clarifying and enhancing requirements for major and minor stationary sources. However, EPA ultimately determined that the submittal did not satisfy all applicable CAA and NSR regulatory requirements. Shortly after signature of the LA/LD, ADEQ began working with EPA and stakeholders on amendments to the NSR rules that would remedy the identified deficiencies and create an approvable program.

The LA/LD was published in the Federal Register on November 2, 2015 with an effective date of December 2, 2015. Supporting materials for the LA/LD, including EPA's March 2015 Technical Support Document (LA/LD TSD) providing a detailed analysis of Arizona's submittal, can be found in the docket for the rulemaking at regulations.gov under docket number EPA-R09-OAR-2015-0187.

CAA Sanctions

Under the CAA and federal regulations, if EPA disapproves any element of a plan submitted under Title I, Part D of the CAA relating to nonattainment areas, and the plan deficiencies are not corrected within 18 months after the effective date of the disapproval,

major sources subject to NNSR will have to offset emissions increases at a ratio of 2 to 1. 42 USC §7509(a)(b)(2); 40 CFR § 52.31(d)(1). If the deficiencies remain uncorrected for an additional six months, the state loses federal highway funds. 42 USC § 7509(a), (b)(1); 40 CFR § 52.31(d)(1). If imposed, the sanctions will apply to nonattainment areas under ADEQ's jurisdiction and the pollutants covered by the plan and will remain in effect until EPA finds that a revised plan corrects the deficiencies. 40 CFR § 52.31(b)(3,(d)(2), (5).

NNSR is a required element of a Part D plan. The LA/LD identified some deficiencies in ADEQ's NNSR program. Thus, ADEQ must submit a revised plan and secure an EPA finding that the submission corrects the NNSR deficiencies by June 2, 2017 (18 months after December 2, 2015) in order to avoid sanctions.

In addition, EPA is required to adopt a federal implementation plan (FIP) within twenty-four months following the disapproval of *any* SIP if the deficiencies are not corrected and approved by the EPA. 42 U.S.C. § 7410(c). ADEQ therefore must correct *all* deficiencies identified in the LA/LD in order to avoid a FIP.

Changes to Address NSR Deficiencies

The primary purpose of this rulemaking is to cure the deficiencies identified in the LA/LD and otherwise ensure Arizona's NSR program conforms to federal requirements and qualifies for full approval by EPA. The following is a description of the most significant changes designed to accomplish those purposes:

New NAAQS and NAAQS Implementation Requirements

This rulemaking makes a number of changes related to the NAAQS and NAAQS implementation to conform to recent federal updates and existing federal requirements.

First, on January 15, 2013, EPA revised the $PM_{2.5}$ NAAQS to reduce the annual primary standard from 15 $\mu g/m^3$ to 12 $\mu g/m^3$. Because this revision occurred after adoption of the 2012 NSR Amendments, it was not included in ADEQ's rules, and EPA identified the failure to incorporate the latest version of the NAAQS as a deficiency. ADEQ is therefore amending R18-2-201(B) to reflect the latest standard.

Second, on October 1, 2015, EPA reduced the 8-hour ozone standard from 75 to 70 parts per billion. Because this change occurred after the LA/LD was signed, the LA/LD did not identify the failure to incorporate the new standard as a deficiency. Nevertheless, in order to avoid the identification of a new deficiency in ADEQ's next NSR submittal, ADEQ is amending R18-2-203 to incorporate the new ozone standard.

Third, at the time of adoption of the 2012 NSR Amendments, EPA's rules did not require regulation of volatile organic compounds (VOCs) or ammonia as precursors of $PM_{2.5}$ in NNSR programs for $PM_{2.5}$ nonattainment areas. Consistent with EPA's regulations, Arizona's current NSR rules do not include VOCs or ammonia in the definition of $PM_{2.5}$ precursors. *See* R18-2-101(121)(b). In 2013, however, the United States Court of Appeals for the D.C. Circuit held that Title I, Part D, Subpart 4, which imposes specific requirements for PM_{10} nonattainment areas, applies to $PM_{2.5}$ as well as PM_{10} nonattainment areas. NRDC v. EPA, 706 F.3d 428 (D.C. Cir. 2013). In particular, the court noted that under section 189(e) of Part D, Subpart 4, control requirements must apply to major sources of *all* identified precursors of $PM_{2.5}$ (sulfur dioxide, nitrogen oxides, volatile organic compounds and ammonia), *unless* EPA has determined that the sources of a precursor do not contribute to levels exceeding the NAAQS in a particular nonattainment area.

In the LA/LD TSD, EPA noted that Arizona's NSR SIP did not include VOCs or ammonia as precursors but failed to demonstrate that those pollutants do not contribute to levels exceeding the NAAQS in $PM_{2.5}$ nonattainment areas, as required by section 189(e). At that time, EPA declined to identify the omission of $PM_{2.5}$ precursors as a deficiency. On June 22, 2016, however, EPA published a final "limited disapproval of the ADEQ NSR SIP submittal for the Nogales and West Central Pinal $PM_{2.5}$ nonattainment areas under section 189(e) of the Act related to $PM_{2.5}$ precursors." 81 FR 40525, 40526. ADEQ is therefore adding VOCs and ammonia to the list of precursors of $PM_{2.5}$ in $PM_{2.5}$ nonattainment areas.

Fourth, as noted in the LA/LD, Arizona's existing minor NSR and PSD programs do not clearly require review for protection of the NAAQS in neighboring areas outside of the state's jurisdiction. ADEQ is adding this requirement to R18-2-302.01, R18-2-334 and R18-2-406.

Amendments Clarifying NSR Definitions and Applicability

EPA's NNSR and PSD rules are in separate sections of the CFR, 40 CFR 51.165 and 51.166, each of which has its own definitions. In some cases, these sections have different definitions for the same term. A particularly important example is the definition of "regulated NSR pollutant," which establishes the list of pollutants potentially subject to major NSR. In the NNSR rule, the term encompasses only criteria pollutants and their precursors, 40 CFR 51.165(a)(1)(xxxvii), while in the PSD rule, the term includes criteria pollutants, precursors, plus any other pollutants, other than hazardous air pollutants, subject to regulation under the CAA. 40 CFR 51.166(b)(49).

Arizona's major NSR requirements, on the other hand, are set forth in a single Article—Article 4 of Title 18, Chapter 2. A single set of definitions in R18-2-101 and R18-2-401 applies to both programs. As a result, the current version of the state NSR rules employs identical definitions in both programs. In the case of "regulated NSR pollutant," for example, the Arizona rules use the PSD definition for both PSD and NNSR.

The LA/LD identified as deficiencies instances where the use of the wrong definition made Arizona's program less stringent than the federal rules. ADEQ has identified a number of other instances where the discrepancies between the federal and state rules made the state rules more stringent. Because state rules can be no more stringent than their federal counterparts, *see* A.R.S. § 49-104(A)(17), ADEQ must eliminate both types of discrepancies.

ADEQ could attempt to do so by following the federal model and dividing the PSD and NNSR rules into separate parts or subparts

with separate definition sections. This approach, however, would involve a substantial reorganization of both Article 4 and the chapter-wide definitions in R18-2-101. Instead, ADEQ where necessary has modified each definition to reflect the differences between the PSD and NNSR programs. Specifically, ADEQ is adopting amendments to the definitions in (after renumbering) R18-2-101(74), (88), (124), and (131) and R18-2-401(13) with corresponding amendments to the substantive provisions where these definitions are employed.

The LA/LD also identified a number instances where ADEQ's NSR rules did not use consistent terminology when referring to key requirements of the NSR program, such as the NAAQS, increments, new source performance standards and national emission standards for hazardous air pollutants. ADEQ is adopting amendments to assure that the rules employ consistent, defined terminology for these requirements.

Finally, the LA/LD identified a few ADEQ definitions that did not match the corresponding federal definitions in 40 CFR 51.165(a)(1) and 51.166(b). ADEQ is amending those definitions to conform. See, for example, R18-2-101(2), (13) and (36).

Missing Federal Exemptions

The LA/LD pointed out that state rules did not include a number of exemptions from the federal PSD program. Although EPA did not identify these omissions as deficiencies, ADEQ is adding the missing exemptions to the state PSD requirements in R18-2-406 in order to comply with A.R.S. § 49-104(A)(17).

Public Participation

Under the existing rules, a source subject to minor NSR is eligible to apply for a minor permit revision, and thus avoid public notice and comment, if one of two conditions are met: (1) all emissions units subject to reasonably available control technology (RACT) qualify for the RACT safe harbor provision in R18-2-334(D)(2) or (2) expected ambient concentrations resulting from the source's emissions as predicted by a screening model are less than 75 percent of the NAAQS. The LA/LD concluded that this exception to the public participation requirements is inconsistent with 40 CFR 51.161(a). ADEQ is therefore removing the exception.

The LA/LD identified a number of other technical deficiencies with the Arizona NSR rules' public participation requirements, and ADEQ is adopting amendments to address these as well.

Registration Contents

EPA expressed concern that the state's source registration program isn't adequate to ensure that construction of a source would not result in a violation of applicable portions of the control strategy. This rulemaking addresses the issue in R18-2-302.01 by specifically requiring enforceable emission limitations and standards that ensure compliance with all applicable SIP requirements at the time of a registration's issuance.

Technical Changes

In addition to the issues identified above, the LA/LD identified a number of technical issues that ADEQ had to address in order to secure full approval of the NSR program. These issues are discussed in detail in EPA's "Technical Support Document for Revisions to Air Plan; Arizona; Stationary Sources; New Source Review" and "Evaluation of Arizona NSR Rules and 40 CFR 51.160-166 – Excel Spreadsheet," both of which are available in the electronic docket for the LA/LD at http://www.regulations.gov/#!documentDetail;D=EPA-R09-OAR-2015-0187-0004.

Emissions Bank Offset Deduction

In a change related to NSR but not raised in the LA/LD, ADEQ is amending R18-2-1205 of the emission banking regulation to remove the requirement that credits deposited in the bank be reduced by 10 percent and permanently retired.

The primary purpose of the emissions bank is to provide a method for making offsets readily available in nonattainment areas in order to allow compliance with NNSR. The 10 percent reduction requirement is inconsistent with this purpose. Depositing credits for emissions reductions in the bank is not required in order to establish valid offsets under state or federal NNSR rules. *See, generally,* R18-2-404. Thus, the reduction requirement creates a significant disincentive to use the bank for its intended purpose. In addition, the reduction requirement is not authorized by the emissions bank statute, R18-2-410, nor is it required by federal NNSR rules.

Revisions to General Permit Rules

Under A.R.S. § 49-426(H), ADEQ is authorized to issue a general permit for "a defined class of facilities if the class contains a large number of facilities that are substantially similar in nature and that have substantially similar emissions." The issuance of a general permit is subject to the same public participation requirements as permits for individual sources. Once a general permit is issued, any source that is a member of the class of facilities covered by the permit may apply for and receive authority to operate without going through a separate public notice and comment process.

ADEQ is adopting two types of NSR-related amendments to Article 5.

First, ADEQ is amending Article 5 to clarify how minor NSR applies to the issuance of general permits. Since before the adoption of R18-2-334, ADEQ's practice has been to establish general permit conditions and application procedures which assure that a covered source's emissions will not endanger the NAAQS. Thus, general permits previously issued by ADEQ assure that the purpose of minor NSR, preventing the construction of sources or modification that could interfere with attainment of the NAAQS. Section R18-2-515 codifies this practice and also allows for the imposition of RACT in general permits.

Second, ADEQ has established web portal known as "MyDEQ," which, among other things, allows certain facilities covered by general permits to conduct all general-permit related transactions, including applying for and obtaining coverage, online. The MyDEQ procedures are consistent with existing Article 5 requirements, but ADEQ is adopting amendments to reflect the availability of the portal. Among other things, the portal allows online processing of applications for facilities subject to, or potentially subject to, minor NSR. As noted above, existing general permits assure compliance with minor NSR requirements, and new R18-

2-515 assures that future general permits will continue to do so.

Revisions to Streamline Permitting

This rulemaking includes three revisions that improve and streamline the permitting process for both new and modified sources subject to NSR and existing sources.

The first streamlining action repeals Appendix 1, which contains the standard permit application form and filing instructions that were developed nearly two decades ago. The form was unnecessarily complex, redundant, and failed to reflect the scope of information ADEQ currently uses in the permitting process. This rulemaking amends R18-2-304(B) (Permit Application Processing Procedures) to require applicants to complete forms provided by the Director when applying for a permit. The rule identifies certain minimum elements that each application form developed by the Director must include to ensure the appropriate information is included and all permits conform to federal requirements. Repealing Appendix 1 and amending the rule is necessary to allow ADEQ to periodically update and revise the permit forms when appropriate without the burden of rulemaking.

The second permit streamlining amendment tailors deviation reporting obligations for permittees to avoid duplicative and unnecessary reporting. Sources subject to those requirements previously encountered issues when interpreting the language of R18-2-306(A)(5)(b) because the key term "prompt" was undefined but dictated when reporting should occur. This action revises the rule to more clearly define the timeframe for satisfying deviation reporting requirements.

The third permit streamlining revision extends the deadline for performance testing when events occur that are beyond a source's control. EPA's new source performance standards and national emissions standards for hazardous air pollutants program both allow sources to request an extension of a performance test under such circumstances. ADEQ has added a similar provision to R18-2-312 to afford similar relief in certain circumstances.

Section by Section Explanation of Amended Rules:

R18-2-101	Add and amend definitions used in major and minor NSR programs, as well as definitions used in related permit rules. Add definitions identifying federal terms and programs referenced in the rules.
R18-2-102	Add information on the publication and location of the Code of Federal Regulations.
R18-2-201	Amend to reflect 2012 $PM_{2.5}$ NAAQS.
R18-2-203	Amend to reflect 2015 Ozone NAAQS.
R18-2-217	Amend the language to conform to federal requirements for designating and classifying attainment areas.
R18-2-218	Amend language to include baseline date and area information to conform to federal requirements. Add $PM_{2.5}$ consideration when determining concentrations of particulate matter for purposes of maximum allowable increases.
R18-2-301	Add and amend definitions to provide greater clarify for terms used in registration and permit rules.
R18-2-302	Amend by removing reference to unenforceable state hazardous air pollutant program, correct cross references, and update language.
R18-2-302.01	Add new notice requirements for minor NSR registration, as well as general update to language and cross references. Amend elective limits to address EPA's concern with enforceability.
R18-2-303	Update applicability to include only new sources or modifications that occur after the effective date of EPA's 2015 limited approval limited disapproval.
R18-2-304	Amend to streamline the permit application process by requiring applicants to complete a standard application form and detailing the minimum information ADEQ must include in those forms. Amend to address EPA objection to the exclusion of insignificant activities from determinations of NSR applicability.
R18-2-306	Amend to streamline permit contents by providing a more definitive timeframe for deviation reporting.
R18-2-306.01	Update cross reference.
R18-2-306.02	Amend language to conform to defined terms and remove unnecessary cross reference.
R18-2-307	Amend to update cross references.
R18-2-311	Amend to allow use of approved alternative methods to determine opacity.
R18-2-312	Amended to allow extension of deadline to conduct performance tests on occurrence of force majeure events.
R18-2-319	Amend to require public notice for all minor NSR modifications by removing the exception that those subject to R18-2-334(G) could comply under the minor permit revision procedures.
R18-2-320	Amend to remove public notice exemption for any significant permit revision as required by the EPA and replace ambiguous language with defined terms.
R18-2-324	Repeal requirement for lessors of portable equipment to obtain a permit.
R18-2-326	Update cross reference and replace cross reference with explanatory language.
R18-2-327	Update cross reference.
R18-2-330	Amend public notice rules to comply with federal requirements and update cross reference.
R18-2-332	Reorganize for better rule formatting and update cross references.
R18-2-334	Update language to comply with federal requirements and removed portion disapproved by the EPA.

R18-2-401	Amend and add definitions to comply with federal requirements
R18-2-402	Amend permit issuing procedures to reflect federal requirements and address EPA objections. Update cross references.
R18-2-403	Amend to comply with federal requirements providing for EPA oversight in permitting activities.
R18-2-404	Amend to comply with federal requirements and allow for the emissions of NOx and VOC to offset Ozone.
R18-2-405	Amend to comply with the federal requirements.
R18-2-406	Amend to comply with federal requirements. Reorganize to better distinguish the differences in NSR requirements for attainment and nonattainment areas.
R18-2-407	Amend to comply with federal requirements.
R18-2-408	Amend to comply with federal requirements and update references.
R18-2-410	Amend to comply with federal requirements. Reorganize where and relocate all visibility requirements previously in other locations to this section.
R18-2-411	Add new section with federal requirements addressing sources located in an attainment area's impact on NAAQS violations in another area.
R18-2-412	Amend to comply with federal requirements.
R18-2-502	Amend to eliminate outdated minor NSR provision.
R18-2-503	Amend to reflect MyDEQ procedures.
R18-2-504	Amend to add minor NSR public participation requirements.
R18-2-507	Repeal to reflect unenforceability of referenced Article 17.
R18-2-508	Repeal outdated permit shield provision.
R18-2-512	Amend to reflect MyDEQ procedures.
R18-2-513	Amend to reflect MyDEQ procedures.
R18-2-514	Added to reflect MyDEQ procedures.
R18-2-515	Added to clarify minor NSR procedures for general permits.
R18-2-1205	Amend to remove deduction of ten percent of emissions reductions deposited in emissions bank.

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:

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 (ESBCIS) under A.R.S. § 41-1055.

An identification of the rule making.

The rulemaking addressed by this ESBCIS is the adoption of amendments designed to bring ADEQ's new source review (NSR) rules into conformance with federal requirements. This rulemaking will remedy the deficiencies identified by EPA in the LA/LD and generally bring Arizona's NSR program into conformity with federal requirements. The changes are described in greater detail in section 5 of the preamble.

There are two updates to the national ambient air quality standards that EPA has adopted since ADEQ last amended Article 2 that are included in this rulemaking and may need to be addressed in NSR applications and permitting decisions. The first is the $PM_{2.5}$ primary ambient air quality standard, which was amended by EPA in 2012 and appears at R18-2-201. The second is the ozone eight-hour average primary and secondary ambient air quality standard and the removal of the ozone one-hour standard, which was amended by EPA in 2015 and appears at R18-2-203. These changes may result in increased compliance cost for sources and increased administrative costs for ADEQ.

The remainder of the changes are procedural or technical in nature and should have at most a trivial economic impact on the agency, businesses or consumers.

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

The persons that will be directly affected by and bear the costs of the rulemaking will be businesses that construct or modify stationary sources that are subject to major or minor NSR.

The types of Arizona business operations subject to major NSR typically include Portland cement plants, iron and steel mills, primary copper smelters, hard-rock mining operations, petroleum refineries, lime plants, fiberglass production facilities, wood furniture manufacturers, paper mills and fossil-fuel power plants. Major sources tend to be large facilities operated by publicly owned corporations and employing hundreds or thousands of employees.

Major sources may also be subject to minor NSR. Minor NSR may apply to smaller business operations or operations that, although substantial in scale, tend to have emissions below the major source thresholds. These include rock quarrying and crushing operations, concrete batch plants, asphalt plants, semiconductor manufacturers, aircraft engine and parts manufacturers, landfills and petroleum bulk stations and terminals.

The above list is not exhaustive. Any business that engages in pollutant emitting activities is potentially subject to NSR. Typically pollutant-emitting activities include fuel combustion to produce energy or as part of a process, the use of solvents, the application of surface coatings (such as paints and varnishes), the storage of fuels and other organic liquids and the handling of materials likely to give rise to airborne dust. Tailpipe emissions from mobile sources are not considered in determining NSR applicability.

A cost benefit analysis of the following:

(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the rule making.

ADEQ's cost of implementing the amended NSR requirements will likely be minimal. One component of the major NSR amendments that could potentially impact ADEQ's cost of administering the air quality permit program is the inclusion of the new national ambient air quality standards: the 2012 $PM_{2.5}$ standard and the 2015 eight-hour primary and secondary ozone standard. However, the standards constitute an increase in the stringency of existing standards and likely will not result in any modeling or review time beyond that which is already required.

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

The costs to political subdivisions subject to permitting under ADEQ's rules from these proposed amendments should be minimal. In general, the types of sources operated by political subdivisions are very unlikely to be subject to major NSR. The costs of the procedural and technical changes to minor NSR and the registration program proposed in this rulemaking are likely to be minimal.

ADEQ considers any impacts to sources in counties with their own pollution control programs to be indirect.

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

As discussed in section 5 of the Preamble, the amendments to ADEQ's major NSR rules are necessary to comply with federal requirements for the program. If ADEQ failed to adopt these amendments, they would ultimately apply to sources in Arizona either through the adoption of a federal implementation plan (FIP) or the application of 40 CFR Part 51, Appendix S (in the case of nonattainment NSR). In addition, Title I, Part D of the Clean Air Act imposes a limited time from for ADEQ to adopt the major NSR amendments. Failure to meet the statutory timeframe will result in sanctions by the federal government, as described above.

Thus, failure to adopt these amendments would not in the long run result in the avoidance of any costs of compliance, but would result in a substantial negative impact on the state's economy.

In any case, the only substantial cost to businesses that could result from this rulemaking would be the cost to new or modified major sources of complying with the updated ozone and $PM_{2.5}$ NAAQS. As noted in the 2012 rulemaking, these costs are impossible to quantify but unlikely to be incurred:

> [W]hen modeling demonstrates an ambient impact resulting in non-compliance with an ambient standard (NAAQS or increments), mitigation beyond the level of control technology already required by major NSR is necessary. The cost of mitigation can be substantial but is highly dependent on the nature of the particular project and cannot be reliably estimated for purposes of the ESBCIS. Moreover, because major NSR automatically requires a very stringent level of control (BACT or LAER), mitigation is rarely necessary. Mitigation necessary to address non-compliance with any of the new standards imposed in the major NSR amendments will be an even rarer occurrence. Thus, the major NSR amendments are unlikely to result in additional mitigation costs.

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

ADEQ does not believe that the additional costs to businesses subject to the amended NSR requirements, as described above, will be substantial enough to deter the construction of expansion of business operations. Accordingly, there should be no impact on private employment or on the employment of any political subdivision subject to NSR.

A statement of the probable impact of the rule making on small businesses.

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

Under A.R.S. § 41-1001(21):

"Small business" means a concern, including its affiliates, which is [1] *independently owned and operated*, which is [2] *not dominant in its field* and which [3] *employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year.* (Emphasis added.)

Most registration sources will likely qualify as small businesses, as will many sources subject to minor NSR. It is unlikely that any major sources would qualify.

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

ADEQ anticipates that small businesses will incur little to no additional costs as a result of the procedural and technical changes to minor NSR and the registration program proposed in these amendments.

(c) A description of the methods that the agency may use to reduce the impact on small businesses.

(i) Establishing less costly compliance requirements in the rule making for small businesses.

Not applicable.

(ii) Establishing less costly schedules or less stringent deadlines for compliance in the rule making.

Not applicable.

(iii) Exempting small businesses from any or all requirements of the rule making.

Not applicable.

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

Some businesses may pass some of the additional costs estimated on to consumers. ADEQ anticipates the impact will be negligible because the amendments will not substantially increase existing air quality compliance costs.

A statement of the probable effect on state revenues.

Since the costs of the amendments will be recoverable through air quality permit fees, there will be no net effect on state revenues.

A description of any less intrusive or less costly alternative methods of achieving the purpose of the rule making.

As discussed above in section 5, ADEQ is adopting amendments that the Department believes to be the minimum necessary to comply with federal NSR requirements. No less intrusive or costly alternatives are available.

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

ADEQ is making only minor clarifying changes to the proposal, as described in detail in the responses to comments 1-4, 8, 10, 12 and 17.

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

Comment 1: R18-2-101.131: For purposes of clarification, the reference to "under R18-2-302(B)(2)" (applicability provisions for Class II permits based on "significant" emission rates) might be better placed after "in reference to a significant increase" rather than after "a stationary source's maximum to emit with elective limits." (Arizona Mining Association [AMA])

Response: ADEQ appreciates the suggestion, but "under R18-2-302(B)(2)" does not modify "significant emissions increase." The definition in R18-2-101(131) is intended to specify the four different contexts to which the significance thresholds in the definition apply: (1) determining whether an emissions increase is significant for purposes major NSR, (2) determining whether a net emissions increase is significant for purposes of major NSR, (3) determining whether a stationary source's potential to emit a particular pollutant is significant for purposes of determining major NSR applicability to the pollutant, and (4) determining whether a stationary source's maximum capacity to emit with elective limits is significant for purposes of determining Class II permit applicability. The phrase "under R18-2-302(B)(2)" can only apply to the last item. In an attempt to make this definition clearer, however, ADEQ is substituting "as defined in R18-2-301(13)" for "under R18-2-302(B)(2)."

Comment 2: R18-2-301.13: Because "maximum capacity to emit with elective limits" as it is used in revised applicability provisions could be construed as applicable only to the situation where elective limits were included in a source's registration under R18-2-302.01(F), there could be confusion in evaluating applicability (e.g., a source subject to a Class II permit that never had a registration or a source that previously had a registration, but it did not contained elective limits). Although clarification can be found in the term's definition, perhaps some of the potential confusion could be avoided by replacing "maximum capacity to emit with elective limits" with "maximum capacity to emit with any elective limits." This change would help clarify that applicability is based on maximum capacity to emit, including elective limits if they were established. Of course, such references would then need to be revised throughout the revised rules. (AMA)

Response: ADEQ agrees with this comment and has made this change in the final rule.

Comment 3: R18-2-302.01(A)(6): This provision requires identification of the method used to determine "maximum capacity to emit" specified under R18-2-302(B)(3)(a) or (d) or subsection (G)(1)(a) of this Section, but Subsection (G)(1)(a) refers to "maximum capacity to emit with elective limits." The AMA recommends inserting "maximum capacity to emit with elective limits specified under" before "subsection (G)(1)(a) of this Section." (AMA)

Response: ADEQ agrees with this comment and has made this change together with some additional revisions to improve the clarity of this provision.

Comment 4: R18-2-302.01(B)(4): Because this is a registration provision, it appears that "permit or permit revision" should be replaced with "registration or registration revision." (AMA)

Response: ADEQ agrees with this comment and has made this change in the final rule.

Comment 5: R18-2-302.01(C)(4): As explained in more detail below, the "performance of the screening model pursuant to subsection (C)(3)" should not be the sole basis for the Director's determination resulting in denial of an application. The federal requirements for minor NSR programs at 40 C.F.R. § 51.160 do not expressly require modeling or mandate that it be the sole criteria for determining whether a source would "interfere with attainment or maintenance" of a NAAQS. Furthermore, a conservative screening model does not necessarily demonstrate that a source's emissions will interfere with attainment or maintenance of a NAAQS. The AMA therefore requests removal of "based on performance of the screening model pursuant to subsection (C)(3)." (AMA)

Response: Under R18-2-302.01(C)(4), the screening model run is not used to "demonstrate" that a source will interfere with attainment or maintenance of a NAAQS. Rather, it is used to determine whether a source will be required to obtain a Class II permit rather than a registration. ADEQ believes this is appropriate. If screening model results indicate that a source's emissions will interfere, the source will have two alternatives: First, the source can implement additional control measures to reduce its projected impact, in which case enforceable emission limits reflecting those controls will need to be imposed. See R18-2-334(C)(2)(c). Second, the source can perform a more refined modeling analysis to demonstrate that the interference projected by the screening

model will not in fact occur. See R18-2-334(C)(2)(b).In either case, the process for approving the source's construction will have reached a level of complexity inappropriate for the registration program. See also response to Comment 14.

Comment 6: R18-2-302.01(E): The AMA understands that the proposed revisions to R18-2-302.01(E) are intended to address an EPA comment taking the position that the prior language was not adequate to ensure that construction of a source will not result in violation of applicable portions of a control strategy. Given that the federal minor NSR program provisions at 40 C.F.R. § 51.160 require that ADEQ's program have enforceable procedures that enable ADEQ to determine whether the construction or modification of a source would violate applicable portions of the control strategy (including a means by which ADEQ will prevent such construction or modification), the basis for EPA's comment and ADEQ's proposed response is unclear. That is, requiring a registration to include enforceable emission limitations and restrictions (as ADEQ's proposed revisions would require) does not appear related to the minor NSR program requirement for enforceable procedures that enable ADEQ to identify and prevent the construction or modification of a source that would violate applicable portions of the control strategy.

In any event, the AMA is concerned that the proposed revisions are contrary to intent of the streamlined registration portion of ADEQ's minor NSR program to reduce regulatory burdens on small sources. By requiring registrations to include "[e]nforceable emission limitations and standards, including operational requirements and emission 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," a registration would be nearly indistinguishable from a Class II permit. The AMA does not believe that EPA's comment must be addressed in this manner. Under 40 C.F.R. § 51.160(d), minor NSR program "procedures must provide that approval of any construction or modification must not affect the responsibility of the owner or operator to comply with applicable portions of the control strategy." A source's responsibility to comply with any applicable portions of a control strategy is set forth in ADEQ's rules that make up that control strategy. Including those already applicable requirements in a registration (or permit) is not necessary to make those requirements enforceable. The AMA therefore requests that ADEQ replace the proposed revisions with a registration content requirement for identification of applicable requirements (as R18-2-302.01(E)(1) previously provided) and a statement that approval of the source's construction or modification via the registration does not affect the responsibility of the owner or operator to comply with applicable portions of the control strategy. (AMA)

Response: A number of former Class II permitted sources have taken advantage of the rule provisions allowing them to transition to the registration program. The conditions sections of the registrations for these sources have been at least 50 percent shorter than the conditions sections of their former permits and often much shorter than that. For the reasons given below, ADEQ anticipates that this will continue to be the case after the amendment to R18-2-302.01(E) takes effect.

EPA's basis for concluding that R18-2-302.01 is not adequate to assure that sources subject to minor NSR will comply with applicable provisions of the control strategy is provided in the Technical Support Document (TSD) for EPA's proposed LA/LD (available at https://www.regulations.gov/document?D=EPA-R09-OAR-2015-0187-0004) at page 20:

> For sources subject to ADEQ's registration program at R18-2-302.01, ADEQ has not demonstrated that its NSR program meets the requirement to ensure that sources subject to NSR review comply with the applicable portions of the control strategy as required by 40 CFR 51.160(b)(1). This requirement is nearly met by R18-2-302.01(E), except that the provision lacks sufficient language to "ensure compliance" with applicable requirements, *similar to language in R18-2-306(A)(2)*.To obtain full approval ADEQ must ensure that sources subject to R18-2-302.01 will comply with the applicable portions of the control strategy.

(Emphasis added.) Thus, EPA specifically identified language similar to R18-2-306(A)(2), which is applicable to Class I and II permits, as being sufficient to cure this deficiency. Section R18-2-306(A)(2) establishes the requirement that Class I and II permits contain emission limitations reflecting *all applicable requirements* and that those limitations be enforceable. ADEQ has not proposed to adopt identical language for R18-2-306.01 but instead adapted that language in two ways to minimize the imposition on registered sources.

First, the enforceable emission limitation requirement applies solely to "applicable SIP requirements," rather than "all applicable requirements. Since the "control strategy" consists of SIP requirements, the inclusion of the SIP requirements applicable to a particular source is sufficient to insure it will not violate the control strategy. For the most part, applicable SIP requirements consist of existing source performance standard in Article 7 of Title 18, Chapter 2. Enforceable emission limitations reflecting these requirements in Class I and II permits tend to be short and straightforward and impose minimal monitoring and reporting obligations. The more complicated conditions in Class I and II permits tend to be those reflecting NSPS and NESHAPS, which are not "applicable SIP requirements," and therefore will not need to be included in registrations.

Second, R18-2-302.01 is only being amended to include the basic enforceability requirement. The additional requirements in R18-2-306(A)(2)(a)-(d) are not included. Nor are any of the other rules designed to enhance the enforceability of Class I and II permits, such as R18-2-306(A)(3)-(5) and (8) and R18-2-309.

Comment 7: R18-2-302.01(F)(2)(b): Maintaining a log or business records of production rate "through the preceding operating day" and updates "once per operating day" may not be feasible for certain small businesses where production rate may not be reasonably ascertainable on a daily basis (e.g., production based on inventory). The information necessary to demonstrate compliance with the annual production limit contemplated here is the total production for each rolling 12-month period. To determine total production for each rolling 12-month period, a source would need to ascertain and record production levels for each month. Ascertaining and maintaining records of monthly production does not inherently require that values be measured and recorded daily. However, as R18-2-302.01(F)(2) is currently drafted, a registration source may be precluded from obtaining an elective limit unless the source can implement a daily production monitoring and recordkeeping approach. Such an approach may be costly, burdensome, or otherwise infeasible for small businesses and appears unnecessary to provide a reasonable assurance of compliance with a 12-month rolling limit. Accordingly, because ADEQ's registration program was intended to streamline and reduce the regulatory burdens of small sources, the AMA requests that ADEQ remove these prescriptive provisions and allow recordkeeping determinations to be made on a case-by-case basis, considering the circumstances and what provides a reasonable assurance of

compliance with the requested limit.

Response: On the basis of EPA guidance, the LA/LD specified that at least daily recordkeeping was required for enforceable limits designed, as the elective limits are, to allow a source to avoid minor NSR. TSD at 29. Although this guidance is not binding, it represents EPA's interpretation of its own rules and thus would be afforded considerable deference in any court challenge. ADEQ therefore believes the proposed changes are necessary to address this deficiency and secure full approval of the minor NSR program.

Moreover, a number of registrations issued so far have included elective limits on production that included daily recordkeeping requirements, and this has not proved to be a problem for registrants.

It is possible that some small businesses will not be able to adopt elective limits as result of this requirement. Fortunately, because of the role that elective limits play in the registration and permitting programs, the impact on any such sources will be minimal.

There are two categories of sources that would have a reason to adopt elective limits.

First, sources can adopt elective limits in order to keep their "maximum capacity to emit with any elective limits" below the significance threshold in order to avoid Class II permitting requirements. These are sources that would have required a Class II permit before the registration program went into effect. It is unlikely that these sources would have difficulty complying with a daily recordkeeping requirement. Even if they do, and therefore cannot assume elective limits, the only consequence is that they remain subject to the requirement to obtain a Class II permit.

Second, sources can adopt elective limits in order to keep their "maximum capacity to emit with any elective limits" below the permitting exemption thresholds. If they are unable to do so, the only consequences are that registration issuance will require public notice, R18-2-302.01(B)(3), and that they will be subject to mandatory, rather than discretionary, screening for possible interference with the NAAQS, R18-2-302.01(C), (D).

Comment 8: R18-2-302.01(F)(4)(a): The "pounds per month" requirement may be overly stringent for some registration sources and is ambiguous in how compliance is demonstrated. The AMA requests that the limit be expressed as a 12-month rolling period similar to R18-2-302.01(F)(1) and (2). (AMA)

Response: ADEQ agrees and is making this change to the proposed rule language.

Comment 9: R18-2-302.01(F)(4)(b): Similar to the comments above, updating material usage spreadsheet or database "at least once per operating day" may not be feasible for certain small businesses where material usage may not be reasonably ascertainable on a daily basis (e.g., material usage based on inventory). During prior stakeholder meetings, representatives from the Maricopa County Air Quality Department (MCAQD) articulated similar concerns based on their experience. The AMA requests that ADEQ remove this prescriptive provision and allow recordkeeping requirement determinations to be made on a case-by-case basis, considering the circumstances and what provides a reasonable assurance of compliance with the requested limit. (AMA)

Response: See response to Comment 7.

Comment 10: R18-2-304: The AMA supports the revisions to R18-2-304 to help streamline applications. However, the reference to "RIS-2-306.02" in R18-2-304(B)(7) should be "R18-2-306.02."

Response: ADEQ appreciates the expression of support and is adopting these proposed amendments in the final rule. ADEQ has corrected the typographical error identified in the comment.

Comment 11: R18-2-306(A)(5): The AMA supports the revisions to R18-2-306.A.5 to help streamline reporting requirements. (AMA)

Response: ADEQ appreciates the expression of support and is adopting these proposed amendments in the final rule.

Comment 12: R18-2-312: The AMA supports the revisions to R18-2-312 to allow the extension of performance testing deadlines due to events beyond a source's control (consistent with federal rules). However, the reference to "subsection (I)" in the first sentence of R18-2-312(A) should be "subsection (J)." (AMA)

Response: ADEQ appreciates the expression of support and is adopting these proposed amendments in the final rule. ADEQ has corrected the erroneous cross-reference identified in the comment.

Comment 13: R18-2-334(C)(2)(b): The AMA supports the replacement of the "cause or exacerbate" language (that previously was undefined and inconsistent with the federal requirements for a minor NSR program under 40 C.F.R. § 51.160) with the "interfere with attainment or maintenance" language. (AMA)

Response: ADEQ appreciates the expression of support and is adopting these proposed amendments in the final rule.

Comment 14: R18-2-334(C)(2): As drafted, the air quality assessment to determine that a new source or minor NSR modification will not interfere with attainment or maintenance of a NAAQS could be interpreted as allowing only source-specific modeling to make this determination. While source-specific modeling is arguably the preferred and most common approach, the federal requirements for minor NSR programs at 40 C.F.R. § 51.160 do not expressly mandate source-specific modeling. The AMA requests that the provision be revised to clarify that an acceptable alternative could also be used to make this determination (possibly regional scale modeling, risk-based monitoring, etc.). The AMA agrees that source-specific modeling demonstrating either of the items in R18-2-334(C)(2)(b) should be allowed to provide a "bright-line" basis for determining that a new source or minor NSR modification will not interfere with attainment or maintenance of the NAAQS. However, a source-specific modeling analysis that is unable to make either of the R18-2-334(C)(2)(b) demonstrations (e.g., due to high background concentrations and ambient impacts above significance levels), does not necessarily mean that the new source or minor NSR modification will interfere with attainment or maintenance of the NAAQS. This distinction is important because R18-2-334(F) (as currently drafted) requires that the Director deny an application if an assessment conducted pursuant to subsection (C)(2) demonstrates that the source or modification will interfere with the NAAQS. Accordingly, clarification that source-specific modeling is not the only means to determine whether a source or minor NSR modification will not interfere with attainment or maintenance of the NAAQS is necessary to

avoid the untenable situation where applications must be denied solely because source-specific modeling is unable to make either of the R18-2-334(C)(2)(b) demonstrations. (AMA)

Response: In the final LA/LD, EPA made it clear that authority to deny a minor NSR application for modeled interference with the NAAQS is a mandatory component of a minor NSR program. Removing this authority from R18-2-334 would result in full disapproval of the state's minor NSR program.

Comment 15: R18-2-334(F): See comments above regarding the denial of applications based solely on the inability of a source-specific modeling analysis to make either of the R18-2-334(C)(2)(b) demonstrations. While the R18-2-334(C)(2)(b) demonstrations should support the determination that a source or minor NSR modification will not interfere with attainment or maintenance of the NAAQS, the inability to make the R18-2-334(C)(2)(b) demonstrations does not conclusively require a determination that a source or minor NSR modification will interfere with attainment or maintenance of the NAAQS. (AMA)

Response: See response to Comment 14.

Comment 16: R18-2-503(E), R18-2-513(C)(3), R18-2-514(B): While the AMA supports ADEQ's development of web tools such as MyDEQ, the revisions inappropriately mandate the filing of applications and conducting all transactions through a web portal when available and upon notice by the Director. ADEQ should recommend using the web portal as it helps educate the regulated community, but still allow sources (especially small sources typically subject to general permits) to obtain permits and conduct transactions as is traditionally done. (AMA)

Response: In developing MyDEQ, ADEQ has evaluated whether use of the portal will pose a problem for the sources potentially subject to it and has concluded that for all of these sources use of the portal will be substantially easier and faster than the traditional method of processing general permit transactions.

Comment 17: For simplicity, I propose the following as the clarification to the text in R18-2-311 page 106.

> Except as otherwise provided in this subsection (the) opacity of visible emissions shall be determined by EPA Alternative Method 082 or EPA Reference Method 9 of the Arizona Testing Manual. A permit may specify an alternate method, for determining the opacity of emissions from a particular emissions unit, if the method has been approved by the Administrator.

This language would make it clearer that EPA Alternative Method 082 is used in AZ. Further, the county rules reference the AAC, so the request from them is to make the AAC directly reference EPA ALT 082, so they do not have to change their rules. For instance, the Kinder Morgan permit in Pima county says visible emissions are to be measured using the methods specified in AAC 18-2-311 and the AZ Testing Manual. The AZ Testing manual only allows Method 9 or 40CFR60 Appendix A methods. So the decision was facilities in Pima county cannot use EPA Alternative Method 082. As worded in this modification package, one could argue that only via a specifically requested and approved permit change could EPA ALT 082 be used. This permit change is what the counties do not want, e.g. a lot of work they are not staffed to perform. The proposed clarification would make EPA ALT 082 part of AAC 18-2-311, thus all exiting permits in Pima county would not need to be changed as they currently reference AAC 18-2-311 as the governing document. When I commented on Maricopa county permits to include EPA ALT 082 I was told by that group to get AzDEQ to change AAC 18-2-311 to directly include EPA ALT 082 like it does Method 9, because too much work to include specific methods in each permit, too easy to make a mistake and leave it out.

Please accept this as a request for clarification in the final promulgation, objective is to clarifying the use of the EPA Alternative Method 082 is allowed. Do not want to mandate its use, or mandate a change to exiting process, or including a method that is more stringent. EPA ALT 082 is the same as Method 9, stated can be used "in Lieu of Method 9" in the CFR.

I attached the EPA's documents on this topic and you can see why its not as clear on that end as we would like it ether. But I am told by Jason and all of his bosses that the only way 40CFR60 Appendix A is going to be updated is if the courts require the EPA to update it. The methodology is letter approval, (site specific), to CFR publication (broadly applicable), to incorporation into rules (Ferro Alloy NESHAP), is the way OAQPS plans to bring all new technology/methods into use. Jason Dewees, OAQPS, (919) 541-9724.

Response: ADEQ agrees and has made this change.

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 statute applicable specifically to ADEQ or this specific rulemaking.

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 rule requires permits as described in section 5 above. A general permit may be used to satisfy minor NSR requirements established by this rule. Federal law does not allow the enforcement of major NSR requirements through the issuance of general permits, because major NSR requires a case-by-case, facility-specific determination.

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 federal Clean Air Act and implementing regulations adopted by EPA apply to the subject of this rule, as described in section 5 above. This rulemaking is no more stringent than 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:

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 rules:

There are no incorporations by reference added to the rules in this action.

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

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY AIR POLLUTION CONTROL

ARTICLE 1. GENERAL

Section

R18-2-101. Definitions

R18-2-102. Incorporated Materials

ARTICLE 2. AMBIENT AIR QUALITY STANDARDS; AREA DESIGNATIONS; CLASSIFICATIONS

Section

R18-2-201. Particulate Matter: PM_{10} and $PM_{2.5}$

R18-2-203. Ozone~~: One-hour Standard and Eight-hour Average Standard~~

R18-2-217. Designation and Classification of Attainment Areas

R18-2-218. Limitation of Pollutants in Classified Attainment Areas

ARTICLE 3. PERMITS AND PERMIT REVISIONS

Section

R18-2-301. Definitions

R18-2-302. Applicability; Registration; Classes of Permits

R18-2-302.01. Source Registration Requirements

R18-2-303. Transition from Installation and Operating Permit Program to Unitary Permit Program; Registration Transition; Minor NSR Transition

R18-2-304. Permit Application Processing Procedures

R18-2-306. Permit Contents

R18-2-306.01. Permits Containing Voluntarily Accepted Emission Limitations and Standards

R18-2-307. Permit Review by the EPA and Affected States

R18-2-311. Test Methods and Procedures

R18-2-312. Performance Tests

R18-2-319. Minor Permit Revisions

R18-2-320. Significant Permit Revisions

R18-2-324. Portable Sources

R18-2-326. Fees Related to Individual Permits

R18-2-327. Annual Emissions Inventory Questionnaire

R18-2-330. Public Participation

R18-2-332. Stack Height Limitation

R18-2-334. Minor New Source Review

ARTICLE 4. PERMIT REQUIREMENTS FOR NEW MAJOR SOURCES AND MAJOR MODIFICATIONS TO EXISTING MAJOR SOURCES

Section

R18-2-401. Definitions

R18-2-402. General

R18-2-403. Permits for Sources Located in Nonattainment Areas

R18-2-404. Offset Standards

R18-2-405. Special Rule for Major Sources of VOC or Nitrogen Oxides in Ozone Nonattainment Areas Classified as Serious or Severe

R18-2-406. Permit Requirements for Sources Located in Attainment and Unclassifiable Areas

R18-2-407. Air Quality Impact Analysis and Monitoring Requirements

R18-2-408. Innovative Control Technology

R18-2-410. Visibility and Air Quality Related Value Protection

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.

R18-2-412. PALs

ARTICLE 5. GENERAL PERMITS

Section
R18-2-502. General Permit Development
R18-2-503. Application for Coverage under General Permit
R18-2-504. Public Notice
R18-2-507. ~~General Permit Variances~~ Repealed
R18-2-508. ~~General Permit Shield~~ Repealed
R18-2-512. Changes to Facilities Granted Coverage under General Permits
R18-2-513. Portable Sources Covered under a General Permit
R18-2-514. General Permit Compliance Certification
R18-2-515. Minor NSR in General Permits

ARTICLE 12. EMISSIONS BANK

Section
R18-2-1205. Credit Certification

APPENDIX 1. ~~STANDARD PERMIT APPLICATION FORM AND FILING INSTRUCTIONS~~ REPEALED

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 ~~source that~~ 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 ~~source that~~ 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 ~~or~~ 63;
    b. The applicable ~~existing source performance standard, as approved for the SIP and contained in Article 7 of this Chapter~~ emissions limitations approved into the state implementation plan, including those with a future compliance date; or,
    c. The emissions rate specified ~~in any federally promulgated rule or~~ as a federally enforceable permit ~~conditions applicable to the stationary source~~ 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.
    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 ~~in the state~~ 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 ~~air~~ 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 250 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 ~~pre~~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.
    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 ~~actual~~ 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 ~~to~~ 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, O_2 or CO_2 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 demonstrated 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 ~~increment~~ 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 contained in Articles 9 and 11 of this Chapter~~ 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~~, other than those designated as enforceable only by the state,~~ 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.
        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 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 - 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. 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.~~
~~vi. 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.~~
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 per-

mit 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(17)~~ 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.

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. A physical or operational change does not include routine maintenance, repair or replacement.

b. 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.

c. 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.

~~86~~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.

~~87~~88."Net emissions increase" means:

a. The amount by which the sum of subsections ~~(87)(a)(i)~~ (88)(a)(i) and (ii) exceeds zero:
   i. 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
   ii. 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.
   iii. For purposes of calculating increases and decreases in actual emissions under subsection ~~(87)(a)(ii)~~ (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 ~~subsections R18-2-401(a)(iii)~~ R18-2-401(2)(a)(iii) and (b)(iv) shall not apply.

b. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

i. The date five years before a complete application for a permit or permit revision authorizing the particular change is submitted or actual construction ~~on~~ of the particular change ~~commences~~ begins, whichever occurs earlier, and

ii. The date that the increase from the particular change occurs.

c. For purposes of determining the applicability of R18-2-403 through R18-2-405 or R18-2-411, an ~~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.

d. An increase or decrease in actual emissions of sulfur dioxide, nitrogen oxides, ~~or~~ PM_{10}, or $PM_{2.5}$ which occurs before the applicable minor source baseline date, as ~~described~~ 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.

e. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

f. A decrease in actual emissions is creditable only to the extent that it satisfies all of the following conditions:
   i. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions.
   ii. It is enforceable as a practical matter at and after the time that actual construction on the particular change begins.
   iii. It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.
   iv. The emissions unit was actually operated and emitted the specific pollutant.
   v. For ~~a source located in an area designated as nonattainment for the regulated NSR pollutant~~ 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.

g. 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 ~~emissions~~ replacement unit, as defined in R18-2-401(24), ~~that replaces an existing emissions unit and~~ that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

h. Subsection (2)(a) shall not apply for determining creditable increases and decreases.

~~88~~89. "New source" means any stationary source of air pollution which is subject to ~~an applicable~~ a new source performance standard ~~under Article 9 of this Chapter~~.

90. "New source performance standards" or "NSPS" means standards adopted by the Administrator under section 111(b) of the Act.

~~89~~91. "Nitric acid plant" means any facility producing nitric acid 30% to 70% in strength by either the pressure or atmospheric pressure process.

~~90~~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.

~~91~~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.

~~92~~94. "Nonpoint source" means a source of air contaminants which lacks an identifiable plume or emission point.

~~93~~95. "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

~~94~~96. "Operation" means any physical or chemical action resulting in the change in location, form, physical properties, or chemical character of a material.

~~95~~97. "Owner or operator" means any person who owns, leases, operates, controls, or supervises an affected facility or a stationary source.

~~96~~98. "Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

~~97~~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.

~~98~~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).

~~99~~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

~~100~~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.

~~101~~103. *"Planning agency" means an organization designated by the governor pursuant to 42 U.S.C. 7504.* A.R.S. § 49-401.01(29).

~~102. "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 and other information, and calculate and record the mass emissions rate on a continuous basis.~~

~~103~~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.

~~104~~105."PM_{10}" 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.

~~105~~106."PM_{10} 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.

~~106~~107."Plume" means visible effluent.

~~107~~108."Pollutant" means an air contaminant the emission or ambient concentration of which is regulated pursuant to this Chapter.

~~108~~109."Portable source" means any ~~building, structure, facility, or installation subject to regulation pursuant to A.R.S. § 49-426 which emits or may emit any air pollutant and~~ stationary source that is capable of being operated at more than one location.

~~109~~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.

~~110~~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.

~~111~~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.

~~112~~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.

~~113~~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).

~~114. "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).~~

~~115~~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:

a. Has not been in operation for the two-year period before enactment of the Clean Air Act Amendments 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.

~~116~~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.

~~117~~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.

~~118~~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.

~~119~~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.

~~120~~122. "Regulated air pollutant" means any of the following:

a. Any conventional air pollutant.
b. Nitrogen oxides and volatile organic compounds.
c. Any ~~air contaminant that is subject to a standard contained in Article 9 of this Chapter~~ pollutant that is subject to a new source performance standard.
d. Any ~~hazardous air pollutant as defined in Article 17 of this Chapter~~ 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 ~~listed in section 602~~ subject to a standard promulgated under title VI of the Act.

~~121~~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 $PM_{2.5}$.

~~122~~124. "Regulated NSR pollutant" ~~means any of the following~~ is defined as follows:

a. ~~Any~~ 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 ~~standard promulgated under Article 9 of this Chapter~~ new source performance standard except greenhouse gases as defined in 40 CFR 86.1818-12(a).
   ~~e~~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.
   ~~d~~iii. ~~[Reserved.]~~ Any pollutant that is otherwise subject to regulation under the Act, except greenhouse gases as defined in 40 CFR 86.1818-12(a).
~~e~~c. Notwithstanding subsections ~~(122)(a)~~ (124)(a) ~~through (d)~~ and (b), the term regulated NSR pollutant shall not include any or all hazardous air pollutants either listed ~~under R18-2-1101~~ 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 ~~as of July 1, 2010~~.
~~f~~d. ~~Particulate matter emissions,~~ $PM_{2.5}$ emissions~~,~~ and PM_{10} 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 ~~particulate matter,~~ $PM_{2.5}$ and PM_{10} in permits issued under Article 4.

~~123~~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 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.

~~124~~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.

~~125. "SCREEN model" means the AERSCREEN air dispersion model published by the Administrator in April 2011 and available on the Support Center for Regulatory Atmospheric Modeling web site: http://www.epa.gov/ttn/scram.~~

~~126~~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.

~~127~~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.

~~128~~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.

~~129~~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.

~~130~~131."Significant" means, in reference to a significant emissions increase, a net emissions increase~~.~~ ~~or~~ 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 ~~rates~~:

Pollutant	**Emissions Rate**
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
~~Particulate matter~~	~~25 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.
~~VOC~~ 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_2S)	10 tpy
Total reduced sulfur (including H_2S)	10 tpy
Reduced sulfur compounds (including H_2S)	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).	Any emission rate

~~b~~c. In ozone nonattainment areas classified as serious or severe, ~~significant emissions of~~ the emission rate for nitrogen oxides ~~and~~ or VOC ~~shall be~~ determined under R18-2-405.

~~c~~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, 40 tons per year of VOC as a precursor of $PM_{2.5}$.

~~d. For a regulated NSR pollutant that is not listed in subsection (130)(a), any emission rate.~~

~~e~~f. Notwithstanding the emission rates listed in subsection ~~(130)(a),~~ (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 ~~mg/m3~~ µg/m3 (24-hour average).

~~131~~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.

~~132~~133. "Smoke" means particulate matter resulting from incomplete combustion.

~~133~~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).

~~134~~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.

~~135~~136. "Stack in existence" means that the owner or operator had either:

a. Begun, or caused to begin, a continuous program of physical onsite construction of the stack;

b. 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.

~~136~~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.

~~137~~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.

~~138~~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.

~~139~~140. "Stationary source" means any building, structure, facility or installation ~~subject to regulation pursuant to A.R.S. § 49-426(A)~~ 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.

~~140~~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.

~~141~~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.

~~142~~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.

~~143~~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.

~~144~~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:

a. Low-Emitting Combustion
   i. Combustion emissions from propulsion of mobile sources;
   ii. Emergency or backup electrical generators at residential locations;
   iii. 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;

b. Low- Or Non-Emitting Industrial Activities
   i. Blacksmith forges;
   ii. 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;
   iii. 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;
   iv. Drop hammers or hydraulic presses for forging or metalworking;
   v. Air compressors and pneumatically operated equipment, including hand tools;
   vi. Batteries and battery charging stations, except at battery manufacturing plants;
   vii. Drop hammers or hydraulic presses for forging or metalworking;
   viii. 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;
   ix. Hand-held applicator equipment for hot melt adhesives with no VOC in the adhesive formulation;
   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 ~~(144)(c)~~ (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;
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.

~~145~~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.

~~146~~148."Uncombined water" means condensed water containing analytical trace amounts of other chemical elements or compounds.

~~147~~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.

~~148~~150."Vacant lot" means a subdivided residential or commercial lot which contains no buildings or structures of a temporary or permanent nature.

~~149~~151."Vapor" means the gaseous form of a substance normally occurring in a liquid or solid state.

~~150~~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.

~~151~~153. "Visible emissions" means any emissions which are visually detectable without the aid of instruments and which contain particulate matter.

~~152~~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 ($C_4F_9OCH_3$);
oo. 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$);
pp. 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$);
qq. 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OC_2H_5$;
rr. Methyl acetate; and
ss. 1,1,1,2,2,3,3-heptafluoro-3-methoxypropane (n-C_3F7OCH_3, 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.

~~aaa~~iii. The following compound is VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but ~~are~~ is not VOC for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate.

~~153~~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.

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 depositary libraries in the state (see http://catalog.gpo.gov/fdlpdir/FDLPdir.jsp?st_12=AZ&flag=searchp). It is also available online at http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR.

ARTICLE 2. AMBIENT AIR QUALITY STANDARDS; AREA DESIGNATIONS; CLASSIFICATIONS

R18-2-201. Particulate Matter: PM_{10} and $PM_{2.5}$

A. PM_{10} Standards
1. The level of the primary and secondary ambient air quality standards for PM_{10} is 150 micrograms per cubic meter of PM_{10} – 24-hour average concentration.
2. To determine attainment of the primary and secondary standards, a person shall measure PM_{10} 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 PM_{10} 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. ~~15~~ 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.
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 ~~and secondary~~ annual ambient air quality ~~standards~~ standard for $PM_{2.5}$ ~~are~~ is met when the annual arithmetic mean concentration, determined according to 40 CFR 50, Appendix N, is less than or equal to ~~15~~ 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.
~~5~~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.

R18-2-203. Ozone~~: One-hour Standard and Eight-hour Average Standard~~

~~**A.** One-hour standard. Until June 15, 2005:~~
~~1. The one-hour ambient air quality standard for ozone is 0.12 ppm (235 micrograms per cubic meter).~~
~~2. The one-hour secondary ambient air quality standard for ozone is 0.12 ppm (235 micrograms per cubic meter).~~
~~3. The one-hour standards are attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 ppm (235 micrograms per cubic meter) is less than or equal to 1, determined by 40 CFR 50, Appendix H.~~

~~**B.** Eight-hour averaged standard.~~

~~1~~**A.** The eight-hour average primary ambient air quality standard for ozone is ~~0.075~~ 0.070 ppm.

~~2~~**B.** The eight-hour average secondary ambient air quality standard for ozone is ~~0.075~~ 0.070 ppm.

~~3~~**C.** To determine attainment of the primary and secondary standards, a person shall measure ozone in the ambient air by:
~~a~~1. A reference method based on 40 CFR 50, Appendix D, and designated according to 40 CFR 53; or
~~b~~2. An equivalent method designated according to 40 CFR 53.

~~4~~**D.** ~~Eight-hour~~ The eight-hour average primary ~~and secondary~~ ambient air quality ~~standards~~ standard for ozone ~~are~~ 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 ~~0.075~~ 0.070 ppm, determined according to 40 CFR 50, Appendix ~~P~~ U.

R18-2-217. Designation and Classification of Attainment Areas

A. All ~~attainment and unclassified~~ areas ~~or parts thereof~~ 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~~, including any boundary changes to those areas which occurred subsequent to the date of enactment of the Clean Air Act Amendments of 1977 and before March 12, 1993,~~ 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.

~~C~~**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.

~~D. All other areas shall be Class II areas unless redesignated under subsections (E) or (F).~~

~~E~~**F.** Except as otherwise provided in subsections (B) to (E), the ~~The~~ Governor ~~or the Governor's designee~~ 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.

~~F~~**G.** Except as otherwise provided in subsections (B) to (E), the~~The~~ Governor ~~or the Governor's designee~~ 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 ~~(E)~~(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 national ambient air quality standard or any maximum ~~allowable~~ increase ~~or maximum allowable concentration permitted under the classification of any area~~ 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 ~~or related~~ and materials submitted as part of the application shall be ~~made~~ available for public inspection prior to ~~a~~ 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.

~~G~~**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.

~~H~~**I.** Lands within the exterior boundaries of Indian reservations may be redesignated only by the appropriate Indian governing body.

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: PM_{10}	
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

CLASS II	
Particulate matter: $PM_{2.5}$	
Annual arithmetic mean	4
24-hr maximum	9
Particulate matter: PM_{10}	
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

CLASS III	
Particulate matter: $PM_{2.5}$	
Annual arithmetic mean	8
24-hr maximum	18
Particulate matter: PM_{10}	
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

B. The baseline concentration ~~shall be~~ 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 PM_{10}.
   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:
      ~~a~~i. August 7, 1977, for PM_{10} and sulfur dioxide.
      ~~b~~ii. February 8, 1988, for nitrogen dioxide.
      ~~c~~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.
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 PM_{10}; or greater than or equal to 0.3 microgram per cubic meter (annual average) for $PM_{2.5}$.
1. Area redesignations under ~~R18-2-217~~ 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:
   ~~1~~a. Establishes a minor source baseline date, or
   ~~2~~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 PM–10 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 ~~contained in this Article~~.

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 PM_{10} 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 PM_{10} from major sources as defined in R18-2-401 when the following conditions are met:
   a. The ~~operating permit~~ permits issued to such sources ~~specifies~~ specify the time period during which the temporary emissions increase of sulfur dioxide, nitrogen oxides, $PM_{2.5}$ or PM_{10} would occur. Such time period shall not be renewable and shall not exceed two years ~~unless a longer period is specifically approved by the Director~~.
   b. ~~No emissions increase shall be approved which would either~~ The temporary emissions increase will not:
      i. Impact any ~~portion of any~~ Class I area or any ~~portion of any other~~ area where ~~an applicable incremental ambient standard~~ a maximum increase allowed by subsection (A) is known to be violated ~~in that portion~~; or
      ii. Cause or contribute to the violation of a ~~state~~ 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 ~~increment consumption under subsections (F)(1) and (2)~~ 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.

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.
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).

~~12~~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 subsection (12)(a) or (b) of this Section 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 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.

~~13~~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.

~~14~~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.

~~15~~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.

~~16~~18."Registration" means a registration under R18-2-302.01.

~~17~~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.

~~18~~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 prohibitions 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.

~~19~~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.

~~20~~23."Startup" means the setting in operation of a source for any purpose.

~~21~~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.

~~22. "Uncontrolled potential to emit" 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 only if the limitation or the effect it would have on emissions is subject to an elective limit under R18-2-302.01(F).~~

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 ~~uncontrolled potential to emit, significant quantities of regulated NSR pollutants;~~ 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 ~~uncontrolled potential to emit significant quantities of regulated NSR pollutants~~ maximum capacity to emit with any elective limits, any regulated NSR pollutant in an amount greater than or equal to the significant level.
   ~~c. A person to begin actual construction of a source subject to Article 17 of this Chapter.~~
   ~~d. A person to make a modification subject to Article 17 of this Chapter to a source for which a permit has not been issued under this Article.~~
   ~~e~~c. A person to begin actual construction of or modify a stationary source that otherwise would be subject to registration but that the Director has determined requires a permit under ~~R18-2-302.01(B)(3)(b)~~ R18-2-302.01(C)(4) or (D).
3. ~~Until the effective date of the Administrator's approval of the registration program in R18-2-302.01 into the state implementation plan, unless a Class I permit is required, a Class II permit shall be required for any of the activities that would require a registration under subsections (B)(4)(b) and (c).~~
4. ~~After the effective date of the Administrator's approval of R18-2-302.01 into the state implementation plan, unless~~ Unless a Class I or II permit is required, registration 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 ~~under its physical and operational design, without taking any limitations on operations or air pollution controls into account,~~ any regulated minor NSR pollutant in an amount greater than or equal to a permitting exemption threshold.
b. A person to begin actual construction of or operate any stationary source subject to a standard under section 111 of the Act, except that a stationary source is not required to register solely because it is subject to any of the following standards:
   i. 40 CFR 60, Subpart AAA (Residential Wood Heaters).
   ii. 40 CFR 60, Subpart IIII (Stationary Compression Ignition Internal Combustion Engines).
   iii. 40 CFR 60, Subpart JJJJ (Stationary Spark Ignition Internal Combustion Engines).
   iv. 40 CFR 60, Subpart QQQQ (Residential Hydronic Heaters and Forced-Air Furnaces).
c. A person to begin actual construction of or operate any stationary source, including an area source, subject to a standard under section 112 of the Act, except that a stationary source is not required to register solely because it is subject to any of the following standards:
   i. 40 CFR 61.145.
   ii. 40 CFR 63, Subpart ZZZZ (Reciprocating Internal Combustion Engines).
   iii. 40 CFR 63, Subpart WWWWW (Ethylene Oxide Sterilizers).
   iv. 40 CFR 63, Subpart CCCCCC (Gasoline Distribution).
   v. 40 CFR 63, Subpart HHHHHH (Paint Stripping and Miscellaneous Surface Coating Operations).
   vi. 40 CFR 63, Subpart JJJJJJ (Industrial, Commercial, and Institutional Boilers Area Sources), published at 76 FR 15554 (March 21, 2011).
   vii. A regulation or requirement under section 112(r) of the Act.
d. A physical or operational change to a source that would cause the source to emit or have the maximum capacity to emit ~~under its physical and operational design, without taking any limitations on operations or air pollution control into account,~~ any regulated minor NSR pollutant ~~in excess of a~~ in an amount greater than or equal to the permitting exemption threshold.

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 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)(a)~~ 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 subsection (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 subsection (B)(2)(a) or (b) or a registration under subsection ~~(B)(4)(a) or (c)~~ (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) of this Section, 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.

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 ~~uncontrolled potential to emit~~ maximum capacity to emit with any elective limits each regulated minor NSR pollutant ~~calculated in accordance with R18-2-327(C)~~.
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 ~~potential to emit~~ 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 ~~potential to emit or change in potential to emit specified under R18-2-302(B)(4)(a) or (d) or~~ 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) of this Section.
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. ~~Public Participation.~~
   ~~a.~~ Except as provided in subsection ~~(B)(3)(b)~~ (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)(11)~~ 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, I.

~~b~~5. A registration for construction of a source shall not be subject to ~~the public notice and participation requirements of R18-2-330~~ subsection (B)(3) or (4), if the source's ~~uncontrolled potential to emit~~ maximum capacity to emit with any elective limits each regulated minor NSR pollutant is less than the applicable permitting exemption threshold.

C. Review for ~~NAAQS~~ 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 ~~uncontrolled potential to emit~~ 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 ~~standard imposed in Article 2 of this Chapter~~ national ambient air quality standard in Arizona or any affected state or Indian reservation. In making the determination required by this subsection, the Director shall take into account the following factors:
   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 ~~uncontrolled potential to emit~~ 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 subsection (C)(1) or (C)(2) that a source's emissions may interfere with attainment or maintenance of a ~~standard imposed in Article 2 of this Chapter~~ national ambient air quality standard, the Director shall perform a ~~SCREEN~~ 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 ~~SCREEN~~ 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 ~~standard imposed in Article 2 of this Chapter~~ national ambient air quality standard, the Director shall deny the application for registration. Notwithstanding ~~R18-2-302(B)(4)~~ 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)(4)(b)~~ 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. ~~Identification of each emission unit subject to an applicable requirement and all applicable requirements that apply to the unit, including~~ 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 ~~concentration~~ 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 ~~concentration~~ in each VOC or hazardous air pollutant containing material used at the source ~~subject to such a limitation and the amounts of each material used during the current calendar year~~. 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 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 ~~uncontrolled potential to emit~~ maximum capacity to emit with any elective limits exceeding any of the following amounts:
      i. 2.5 tons per year for NO_x, SO_2, PM_{10}, $PM_{2.5}$, 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. ~~Delayed Effective Date. This Section shall take effect on the effective date of the Administrator's action approving it as part of the state implementation plan.~~ 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.

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. ~~Applications to register the construction or modification of a source must be submitted, and the registration must be issued, before the applicant begins actual construction of the source or modification.~~

E. Sources in existence on ~~the date R18-2-334 becomes effective under R18-2-334(I)~~ 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 ~~the date R18-2-334 takes effect under R18-2-334(I)~~ December 2, 2015.

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 ~~any~~ a permit ~~in~~ required by this Chapter, applicants shall complete the applicable ~~"Standard Permit Application Form"~~ standard application form provided by the Director and supply all information required by the ~~"Filing Instructions" as shown in Appendix 1.~~ 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 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) of this section 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) of this section 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 noncompliance 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.

d. A schedule for submission of certified progress reports no less frequently than every 6 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.

~~C~~**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.

~~D~~**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.

~~E~~**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 (H) (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. ~~An application for a new permit or a permit revision shall contain an assessment of the applicability of the requirements established under Article 17 of this Chapter. If the applicant determines that the proposed new source permit or permit revision is subject to the requirements of Article 17 of this Chapter, the application shall comply with all applicable requirements of that Article.~~
5. 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.
6. 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.
7. 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 subsection (J), 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.
8. The completeness determination shall not apply to revisions processed through the minor permit revision process.
9. 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 subsection (E)(2) or (3), the ~~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 subsection (E)(2) or (3), the Director shall notify the applicant in writing and specify additional information required.
10. 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.
11. The Director is not in disagreement with a notice of confidentiality submitted with the application pursuant to A.R.S. § 49-432.

~~F~~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.

~~G~~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.

~~H~~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.

~~I~~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 (E).
   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.

~~J~~**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.

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(D)~~ 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 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 ~~at least every six months~~. 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(H)~~ 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. ~~Notice that complies with subsection (E)(3)(d) shall be considered prompt for the purposes of this subsection (A)(5)(b).~~ 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 classified 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 emergency. 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.

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(D)~~ R18-2-330(C)(3).

D. The Director shall send a copy of each final permit issued pursuant to this Section to the Administrator.

R18-2-307. Permit Review by the EPA and Affected States

A. Except as provided in ~~R18-2-304(F)~~ 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(E)~~ 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.

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.

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.

R18-2-312. Performance Tests

A. ~~Within~~ 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 meteorological 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 paragraphs (1), (2), and (3) of this subsection, 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.

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 ~~a visibility or increment~~ 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~~, except that minor NSR modifications subject to R18-2-334(G) may be processed as minor permit revisions~~; 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~~, except that minor NSR modifications subject to R18-2-334(G) may be processed as minor permit revisions~~;
   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.

D. An application for minor permit revision shall be on the standard application form ~~contained in Appendix 1~~ 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.

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~~, except for a minor modification subject to R18-2-334(G)~~;
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 ~~a visibility or increment~~ 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 subsection (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).

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.

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 ~~(D)~~(C).

~~C.~~ ~~An owner of portable source equipment which requires a permit under this Chapter shall obtain the permit prior to renting or leasing said equipment. This permit shall be provided by the owner to the renter or lessee, and the renter or lessee shall be bound by the permit provisions. In the event a copy of the permit is not provided to the renter or lessee, both the owner and the lessee or renter shall be responsible for the operation of this equipment in compliance with the permit conditions and any violations thereof.~~

~~D~~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 ~~by certified mail at least 10 working days before~~ 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 ~~to which the equipment is to be transferred, including the availability of all utilities, such as water and electricity, necessary for the proper operation of all control equipment~~;
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.

~~E~~**D.** Any permit for a portable source shall contain conditions that will assure compliance with all applicable requirements at all authorized locations.

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 ~~for which either R18-2-302(B)(2)(a)(i) or (ii) applies~~ 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 ~~for which neither R18-2-302(B)(2)(a)(i) nor (ii) applies~~ 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;
      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 PM_{10};
      iii. Emissions from insignificant activities listed in the permit application for the source under ~~R18-2-304(E)(8)~~ R18-2-304(F)(8);
      iv. Fugitive emissions of PM_{10} 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:
1. 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.
2. 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.
3. 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:

1. 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:
   a. 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.
   b. 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.
2. 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.
3. 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 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 subsection (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.

~~M~~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.

R18-2-327. Annual Emissions Inventory Questionnaire

A. Every source subject to permit requirements under this Chapter shall complete and submit to the Director an annual emissions inventory questionnaire. The questionnaire is due by March 31 or 90 days after the Director makes the inventory form available, whichever occurs later, and shall include emission information for the previous calendar year. These requirements apply whether or not a permit has been issued and whether or not a permit application has been filed.

B. The questionnaire shall be on a form provided by the Director and shall include the following information:

1. 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.
2. Process information for the source, including design capacity, operations schedule, and emissions control devices, their description and efficiencies.
3. 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:
   a. 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(130)(a)~~ R18-2-101(131)(a) or (b), whichever is less.
   b. Any combination of regulated air pollutants in a quantity greater than 2 1/2 tons.

C. Actual quantities of emissions shall be determined using the following emission factors or data:

1. 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.
2. When sufficient data pursuant to subsection (C)(1) is not available, emissions estimates shall be calculated from data from source performance tests conducted pursuant to R18-2-312 in the calendar year being reported or, when not available, conducted in the most recent calendar year representing the operating conditions of the year being reported.

3. When sufficient data pursuant to subsection (C)(1) or (2) 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 web site for the EPA Clearinghouse for Emission Inventories and Emission Factors.
4. When sufficient data pursuant to subsections (C)(1) through (C)(3) is not available, emissions estimates shall be calculated from material balance using engineering knowledge of process.
5. When sufficient data pursuant to subsections (C)(1) through (4) 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) through (4).

D. 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.

E. An amendment to an annual emission inventory questionnaire, containing the documentation required by subsection (B)(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 questionnaire. 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 original submittal of incorrect or insufficient information was due to reasonable cause and not willful neglect.

F. 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.

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. ~~A permit issuance or renewal of a permit~~ The issuance or denial of a permit or permit renewal,
2. The issuance or denial of a ~~A~~ significant permit revision,
3. ~~Revocation~~ The revocation and reissuance or reopening of a permit,
4. The grant of any ~~Any~~ conditional orders pursuant to R18-2-328,
5. ~~Granting a variance from a general permit under R18-2-507 and R18-2-1705.~~ 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. ~~D~~. The notice ~~required by subsection (C)~~ shall include the following:
   ~~1~~a. Identification of the affected facility;
   ~~2~~b. Name and address of the permittee or applicant;
   ~~3~~c. Name and address of the permitting authority processing the permit action;
   ~~4~~d. The activity or activities involved in the permit action;
   ~~5~~e. The emissions change involved in any permit revisions;
   ~~6~~f. The air contaminants to be emitted;
   ~~7~~g. If applicable, that a notice of confidentiality has been filed under R18-2-305;
   ~~8~~h. If applicable, that the source has submitted a risk management analysis under R18-2-1708;
   ~~9~~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;
   ~~10~~j. The name, address, and telephone number of a person from the Department from whom additional information may be obtained;
   ~~11~~k. Locations where ~~copies of the permit or permit revision application, the proposed permit, and all other materials available to the Director that are relevant to the permit decision~~ the materials identified in subsection (D) may be reviewed~~, including the closest Department office,~~ and the times at which they shall be available for public inspection.
   ~~12~~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 ~~(D)~~ (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.

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.

~~**A**~~**B.** ~~The limitations set forth herein~~ Subsection (A) shall not apply to: ~~stacks or dispersion techniques used by the owner or operator prior to December 31, 1970, for which the owner or operator had~~:

1. ~~Begun, or caused to begin, a continuous program of physical on-site construction of the stack;~~
2. ~~Entered into building 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~~ 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

~~3~~2. Coal-fired steam electric generating units, subject to the provisions of Section 118 of the Act which commenced operation before July 1, ~~1975~~ 1957, with stacks constructed under a construction contract awarded before February 8, 1974.

~~**B**~~**C.** ~~GEP~~ Good engineering practice stack height is ~~calculated as~~ the greater of the following ~~four numbers in subsections (1) through (4)~~ heights:

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 ~~Parts~~ 51 and 52 ~~and R18-2-403~~, Hg = 2.5H, provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation; or
   ~~3~~b. For all other stacks, Hg = H + 1.5L, ~~where~~
   ~~Hg = good engineering practice stack height, measured from the ground-level elevation at the base of the stack;~~
   ~~H = height of nearby structure measured from the ground-level elevation at the base of the stack;~~
   ~~L = lesser dimension (height or projected width) of nearby structure;~~
   provided that ~~the~~ EPA, the Director, or local control agency may require the use of a field study or fluid model to verify ~~GEP~~ good engineering practice stack height for the source; ~~or~~
4. 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 ~~obstacles~~ features.~~;~~

D. As used in this Section:

~~5~~1. For a specific structure or terrain feature, "nearby" ~~shall be~~ means:
   a. For purposes of applying the formulae in ~~subsections (B)(2) and (3)~~ 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 ~~(B)(4)~~ (C)(3), ~~means~~ 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 ~~(H+)~~ (Ht) of the feature, not to exceed 2 miles if such feature achieved a height ~~(H+)~~ (Ht) 0.8 km from the stack~~. The height shall be~~ that is at least 40% of the ~~GEP~~ good engineering practice stack height determined by the formula provided in subsection ~~(B)(3)~~ (C)(2)(b), or 85 feet (26 meters), whichever is greater, as measured from the ground-level elevation at the base of the stack.

~~6~~2. "Excessive concentrations" means~~, for the purpose of determining good engineering practice stack height under subsection (B)(4)~~:
   a. For sources seeking credit for stack height exceeding that established under ~~subsections (B)(2) and (3)~~ 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 ~~an ambient air quality standard~~ a national ambient air quality standard. For sources subject to ~~the requirements for permits or permit revisions under Article 4 of this Chapter~~ 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, 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 ~~(B)(4)~~ (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 ~~subsections (B)(2) and (3)~~ 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 ~~(B)(6)(a)~~ (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 ~~subsections (B)(2) and (3)~~ subsection (C)(2), where the Director requires the use of a field study or fluid model to verify ~~GEP~~ 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 ~~subsections (B)(2) and (3)~~ 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.

~~**C.** The degree of emission limitation required of any source after the respective date given in subsection (A) above for control of any pollutant shall not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique.~~

~~**D.** The good engineering practice (GEP) stack height for any source seeking credit because of plume impaction which results in concentrations in violation of national ambient air quality standards or applicable maximum allowable increases under R18-2-218 can be adjusted by determining the stack height necessary to predict the same maximum air pollutant concentration on any elevated terrain feature as the maximum concentration associated with the emission limit which results from modelling the source using the GEP stack height as determined herein and assuming the elevated terrain features to be equal in elevation to the GEP stack height. If this adjusted GEP stack height is greater than stack height the source proposes to use, the source's emission limitation and air quality impact shall be determined using the proposed stack height and the actual terrain heights.~~

E. Before the Director issues a permit or permit revision under ~~this Article~~ R18-2-334 or Article 4 to a source based on a good engineering practice stack height that exceeds the height allowed by subsection ~~(B)~~ (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 ~~R18-1-402~~ R18-2-330.

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.
   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 ~~standard imposed in Article 2 of this Chapter~~ national ambient air quality standard in Arizona or any affected state.

a. An owner or operator may elect to have the Director perform a ~~SCREEN~~ screening model of its emissions. If the results of the ~~SCREEN~~ screening model indicate that the source or minor NSR modification will interfere with attainment or maintenance of a ~~standard imposed in Article 2 of this Chapter~~ 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 ~~SCREEN~~ screening or more refined ~~modeling~~ 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 ~~cause or exacerbate the violation of a standard imposed in Article 2 of this Chapter~~ 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 ~~standard imposed in Article 2 of this Chapter~~ 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 ~~standard imposed in Article 2 of this Chapter~~ national ambient air quality standard.

~~**G.** An application for a permit or permit revision subject to this Section may be processed as a minor permit revision if one of the following conditions is satisfied for each pollutant subject to subsection (C):~~
~~1. A RACT standard is imposed under subsection (D)(2) on each emissions unit that requires such a standard under subsection (C)(1).~~
~~2. The results of the SCREEN model for a regulated minor NSR pollutant show expected concentrations, including background concentrations, that are less than 75% of the applicable standard imposed in Article 2 of this Chapter.~~

~~**H.**~~**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 ~~this subpart~~ 40 CFR 51, I.

~~**I.**~~**H.** All modeling required pursuant to this Section shall be conducted in accordance with 40 CFR 51, Appendix W.

~~**J.**~~**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.

~~**K.**~~**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.

~~**L.** Delayed Effective Date. This Section shall take effect on the effective date of the Administrator's action approving it as part of the state implementation plan.~~

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 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 ~~(c)~~ (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) ~~submitted to the Administrator pursuant to section 110(a)(1) of the Act~~.
      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.
   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 ~~18~~ 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.
~~7~~8. "High terrain" means any area having an elevation of 900 feet or more above the base of the stack of a source.
~~8~~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.
~~9~~10. "Low terrain" means any area other than high terrain.
~~10~~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 ~~standards of performance in Articles 9 and 11 of this Chapter~~ new source performance standards.
12. "Major emissions unit" means:
   a. 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
   b. 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.

~~11~~13."Major source" ~~means~~ is defined as follows:

a. For purposes of determining the applicability of R18-2-403 through R18-2-405 or R18-2-411, major source means any ~~Any~~ stationary source ~~located in a nonattainment area~~ 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

b. For purposes of determining the applicability of R18-2-406 through R18-2-408 or R18-2-410, major source means any ~~Any~~ stationary source ~~located in an attainment or unclassifiable area~~ 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~~ categorical source, or 250 tons per year or more of any regulated NSR pollutant if the source is not classified as a ~~Categorical Source~~ categorical source;

~~c. Any stationary source that emits, or has the potential to emit, five or more tons of lead per year;~~

c. 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.

d. A major source that is major for VOC or nitrogen oxides shall be considered major for ozone~~; or~~.

e. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this ~~Section~~ Article whether it is a major ~~stationary~~ 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).

~~12~~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.

~~13~~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.

~~14~~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.

~~15~~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.

~~16~~19."PAL effective period" means the period beginning with the PAL effective date and ending 10 years later.

~~17~~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.

~~18~~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.

~~19~~22."PAL pollutant" means the pollutant for which a PAL is established at a major source.

~~20~~23."Projected actual emissions" means:

a. 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.

b. In determining the projected actual emissions before beginning actual construction, the owner or operator of the major source:

i. 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

ii. Shall include fugitive emissions to the extent quantifiable;

iii. Shall include emissions associated with startups~~, and~~ shutdowns, and malfunctions ~~except emissions from a shutdown associated with a malfunction~~; and

iv. Shall exclude, only for calculating any increase in emissions that results from the particular 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 ~~(20)(b)(i)~~ 23(b)(i) through (iv), the owner or operator may elect to use the emissions unit's potential to emit, in tons per year.

~~21. "Reconstruction" of sources located in nonattainment areas shall be presumed to have taken place if the fixed capital cost of the new components exceeds 50% of the fixed capital cost of a comparable entirely new stationary source, as determined in accordance with the provisions of 40 CFR 60.15(f)(1) through (3).~~

~~22~~24."Replacement unit" means an emissions unit for which all the criteria listed in subsections ~~(22)(a)~~ (24)(a) through (d) are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

a. 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.

b. The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

c. The replacement does not alter the basic design parameters of the process unit.

d. 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.

~~23~~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.

~~24~~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.

~~25~~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 ~~Arizona ambient air quality standards~~ the national ambient air quality standards for the pollutant are not violated, the significance level does not apply.

~~26~~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.

R18-2-402. General

A. 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.

B. The requirements of R18-2-403 through R18-2-410 apply to the construction of ~~a~~ any new major source or ~~a~~ any major modification of any existing ~~stationary~~ major source, except as this Article otherwise provides.

C. 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.

D. The requirements of this Article apply to projects at major sources in accordance with the following principles.

1. 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.
2. 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.
3. 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 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 ~~subsection~~ 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) ~~of this Section~~, 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(20)(b)(i)~~ 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(20)(b)(iii)~~ 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, fugi-

tive 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)(a)~~ (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(20)(b)(iv)~~ 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 ~~in Article 9 of this Chapter~~ or the existing source performance standards in Article 7 of this Chapter are applied to the 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. ~~A stationary source that will emit five or more tons of lead per year will not violate the ambient air quality standards for lead contained in R18-2-206;~~
9. 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. ~~Unless the requirement has been satisfied pursuant to Article 3 of this Chapter, the~~ 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 ~~an~~ the application ~~for a permit or permit revision subject to this Article~~, or any addition to ~~such~~ the application, the Director shall advise the applicant of any deficiency. The date of receipt of ~~the~~ a complete application shall be, for the purpose of this Section, the date on which the Director ~~received~~ 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).

~~2~~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.

~~3. The Director shall take final action on the application within one year of the proper filing of the completed application. The Director shall notify the applicant in writing of his approval or denial.~~

4**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.

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.

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 ~~each~~ the pollutant ~~for which the area has been designated as nonattainment and for which the source or modification is classified as major~~. Offsets shall be for the same regulated NSR Pollutant, except that emissions of the ozone precursors NOx and VOC may be offset by reductions in emissions of either of those pollutants, provided that all other applicable requirements of this Section and R18-2-405 are satisfied. Except as provided in R18-2-405~~, emissions increases shall be offset by decreases at a ratio of~~ 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 subsection (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 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.

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, ~~for the purposes of a major modification of any major stationary source of VOC or nitrogen oxides, or for determining whether an otherwise minor source is major under the definition of major source in R18-2-401, any physical change or change in the method of operations that results in net increases in emissions of either pollutant by more than 25 tons when aggregated with all other creditable increases and decreases in emissions from the source over the previous five consecutive calendar years, including the calendar year in which the increase is proposed~~ 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.

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.

R18-2-406. Permit Requirements for Sources Located in Attainment and Unclassifiable Areas

A. Except as provided in subsections (B) through ~~(G)~~(J) below 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:

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 ~~under Articles 9 and 11 of this Chapter~~ 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 ~~such~~ 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, ~~for all pollutants listed in R18-2-218(A), and including minor and mobile source emissions of nitrogen oxides and PM_{10}~~:
   ~~a.~~ ~~Would~~ would not cause or contribute to concentrations of conventional air pollutants in violation of:
   a. ~~any~~ Any national ambient air quality standard ~~in Article 2 of this Chapter~~ in any air quality control region; or
   b. ~~any~~ Any applicable maximum ~~allowable~~ increase allowed under R18-2-218 over the baseline concentration ~~for~~ in any ~~attainment or unclassified~~ area~~; or~~.
   ~~b. Would not contribute to an increase in ambient concentrations for a pollutant by an amount in excess of the significance level for such pollutant in any adjacent area in which Arizona primary or secondary ambient air quality standards for that pollutant are being violated. A new major source of volatile organic compounds or nitrogen oxides, or a major modification to a major source of volatile organic compounds or nitrogen oxides shall be presumed to contribute to violations of the Arizona ambient air quality standards for ozone if it will be located within 50 kilometers of a nonattainment area for ozone. The presumption may be rebutted for a new major source or major modification if it can be satisfactorily demonstrated to the Director that emissions of volatile organic compounds or nitrogen oxides from the new major source or major modification will not contribute to violations of the Arizona ambient air quality standards for ozone in adjacent nonattainment areas for ozone. Such a demonstration shall include a showing that topographical, meteorological, or other physical factors in the vicinity of the new major source or major modification are such that transport of volatile organic compounds emitted from the source are not expected to contribute to violations of the ozone standards in the adjacent nonattainment areas.~~
6. Air quality models:
   a. All estimates of ambient concentrations required under this Section shall be based on the applicable air quality models, ~~data basis~~ databases, and other requirements specified in 40 CFR 51, Appendix W, "Guideline On Air Quality Models," as of ~~July 1, 2011~~ July 1, 2015 (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 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. ~~The requirements of this~~ 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. ~~The requirements of this~~ 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 ~~such~~ 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 ~~1980~~ does not belong to a section 302(j) category.

D. ~~The requirements of this~~ 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 ~~such~~ the source is a nonprofit health or educational institution.

E. ~~The requirements of this~~ 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. ~~such~~ The portable source proposes to relocate and will operate for no more than 24 months at its new location~~,~~.
2. The source is ~~under~~ subject to a permit or permit revision issued under this ~~Article,~~ Section or 40 CFR 52.21.
3. The source is in compliance with the conditions of that permit or permit revision ~~under this Article,~~ .
4. ~~the emissions~~ Emissions from the source will not impact a federal Class I area ~~nor~~ or an area where an applicable ~~increment~~ maximum increase allowed under R18-2-218 is known to be violated~~, and~~.
5. ~~reasonable~~ 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~~. Such notice shall be given to the Director not less than~~ 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 PM_{10} 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 PM_{10} 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) of this section 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.

~~**F.** Special rules applicable to Federal Land Managers:~~

~~1. Notwithstanding any other provision of this Section, a Federal Land Manager may present to the Director a demonstration that the emissions attributed to such new major source or major modification to a source would have an adverse impact on visibility or other specifically defined air quality related values of any Federal Mandatory Class I area designated in R18-2-217(B) regardless of the fact that the change in air quality resulting from emissions attributable to such new major source or major modification to a source in existence will not cause or contribute to concentrations which exceed the maximum allowable increases for the area in R18-2-218. If the Director concurs with such demonstrations, the permit or permit revision under this Article shall be denied.~~

~~2. If the owner or operator of a proposed new major source or a source for which major modification is proposed demonstrates to the Federal Land Manager that the emissions attributable to such major source or major modification will have no significant adverse impact on the visibility or other specifically defined air quality related values of such areas and the Federal Land Manager so certifies to the Director, the Director may issue a permit or permit revision under this Article, notwithstanding the fact that the change in air quality resulting from emissions attributable to such new major source or major modification will cause or contribute to concentrations which exceed the maximum allowable increases for a Class I area. Such a permit or permit revision under this Article shall require that such new major source or major modification comply with such emission limitations as may be necessary to assure that emissions will not cause increases in ambient concentrations greater than the following maximum allowable increases over baseline concentrations for such pollutants:~~

~~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.**~~**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.

~~**H.**~~**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 apply to the source or modification as though construction had not yet commenced on the source or modification.

R18-2-407. Air Quality Impact Analysis and Monitoring Requirements

A. Any application for a permit or permit revision under ~~this Article~~ 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 ~~Arizona~~ 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 $\mu g/m^3$, eight-hour average;
   b. Nitrogen dioxide - 14 $\mu g/m^3$, annual average;
   c. $PM_{2.5}$ – 04 $\mu g/m^3$, 24-hour average;
   d. PM_{10} - 10 $\mu g/m^3$, 24-hour average;
   e. Sulfur dioxide - 13 $\mu g/m^3$, 24-hour average;
   f. Lead - 0.1 $\mu g/m^3$, ~~24-hour average~~ 3-month average;
   g. Fluorides - 0.25 $\mu g/m^3$, 24-hour average;
   h. Total reduced sulfur - 10 $\mu g/m^3$, one-hour average;
   i. Hydrogen sulfide - 0.04 $\mu g/m^3$, one-hour average;
   j. Reduced sulfur compounds - 10 $\mu g/m^3$, one-hour average;
   k. Ozone - ~~increased emissions~~ net emissions increases of less than 100 tons per year of volatile organic compounds or oxides of nitrogen; ~~or~~
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) ~~above.~~; or
3. The pollutant is not listed in subsection (H)(1).

~~**I.** Any application for permit or permit revision under this Article to construct a new major source or major modification to a source 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.~~

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)(2)~~ 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.
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 ~~state~~ national ambient air quality standard; or
   b. Impact any area where an applicable ~~increment~~ 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 ~~limits on pollutants contained in R18-2-218~~ 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.

R18-2-410. Visibility and Air Quality Related Value Protection

~~**A.** For any new major source or major modification subject to the provisions of this Chapter, no permit or permit revision under this Article shall be issued to a person proposing to construct or modify the source unless the applicant has provided:~~
~~1. An analysis of the anticipated impacts of the proposed source on visibility in any Class I areas which may be affected by the emissions from that source; and~~
~~2. Results of monitoring of visibility in any area near the proposed source for such purposes and by such means as the Director determines is necessary and appropriate.~~

~~**B.** A determination of an adverse impact on visibility shall be made based on consideration of all of the following factors:~~
~~1. The times of visitor use of the area;~~
~~2. The frequency and timing of natural conditions in the area that reduce visibility;~~
~~3. All of the following visibility impairment characteristics:~~
   ~~a. Geographic extent,~~
   ~~b. Intensity,~~
   ~~c. Duration,~~
   ~~d. Frequency,~~
   ~~e. Time of day;~~
~~4. The correlation between the characteristics listed in subsection (B)(3) and the factors described in subsections (B)(1) and (2).~~

~~**C.** The Director shall not issue a permit or permit revision pursuant to this Article or Article 3 of this Chapter for any new major source or major modification subject to this Chapter unless the following requirements have been met:~~
~~1. The Director shall notify the individuals identified in subsection (C)(2) within 30 days of receipt of any advance notification of any such permit or permit revision under this Article.~~
~~2. Within 30 days of receipt of an application for a permit or permit revision under this Article for a source whose emissions may affect a Class I area, the Director shall provide written notification of the application to the Federal Land Manager and the federal official charged with direct responsibility for management of any lands within any such area. The notice shall:~~
   ~~a. Include a copy of all information relevant to the permit or permit revision under this Article,~~
   ~~b. Include an analysis of the anticipated impacts of the proposed source on visibility in any area which may be affected by emissions from the source, and~~
   ~~c. Provide for no less than a 30-day period within which written comments may be submitted.~~
~~3. The Director shall consider any analysis provided by the Federal Land Manager that is received within the comment period provided in subsection (C)(2).~~
   ~~a. Where the Director finds that the analysis provided by the Federal Land Manager does not demonstrate to the satisfaction of the Director that an adverse impact on visibility will result in the area, the Director shall, within the public notice required under R18-2-330, either explain the decision or specify where the explanation can be obtained.~~
   ~~b. When the Director finds that the analysis provided by the Federal Land Manager demonstrates to the satisfaction of the Director that an adverse impact on visibility will result in the area, the Director shall not issue a permit or permit revision under this Article for the proposed major new source or major modification.~~
~~4. When the proposed permit decision is made, pursuant to R18-2-304(J), and available for public review, the Director shall provide the individuals identified in subsection (C)(2) with a copy of the proposed permit decision and shall make available to them any materials used in making that determination.~~

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 unclassifiable.
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 pro-

vided 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;
   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 federal 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, $PM_{2.5}$, PM_{10}, 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 subsection (G)(1) or (G)(2) the source or modification shall comply with emission limitations necessary to assure that emissions 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.

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 subsection (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 nonattainment pursuant to section 107 of the Act.

R18-2-412. PALs

A. Applicability.
1. The Director may approve the use of a PAL for any existing major source if the PAL meets the requirements of this Section.
2. 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:
   a. Is not a major modification for the PAL pollutant,
   b. Does not have to be approved ~~through the PSD program~~ under R18-2-403 or R18-2-406, and
   c. Is not subject to the provisions in R18-2-403(C) or ~~R18-2-406(H)~~ R18-2-406(M).
3. 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:
1. 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.
2. 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.
3. 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.
1. The Director is allowed to establish a PAL at a major source, provided that at a minimum, the following requirements are met:
   a. 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.
   b. The PAL shall be established in a PAL permit that meets the requirements in subsection (D).
   c. The PAL permit shall contain all the requirements of subsection (F).
   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 ~~NAAQS or PSD increment~~ 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~~ 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.
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 applicability criteria set forth at subsection (C)~~ 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). ~~Emission limitations that were eliminated by the PAL in accordance with subsection (A)(2)(c) shall not be reinstated.~~

I. Renewal of a PAL.
1. The Director shall follow the procedures specified in subsection ~~(F)~~ (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.

4. PAL adjustment. In determining whether and how to adjust the PAL, the Director shall consider the options outlined in subsections (I)(4)(a) and (b). However, in no case may any such adjustment fail to comply with subsection (I)(4)(c).
a. If the emissions level calculated in accordance with subsection ~~(F)~~(E) is equal to or greater than 80% of the PAL level, the Director may renew the PAL at the same level without considering the factors set forth in subsection (I)(4)(b); or
b. The Director may set the PAL at a level that the Director determines to be more representative of the source's baseline actual emissions, or that the Director determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Director in the Director's written rationale.
c. Notwithstanding subsections (I)(4)(a) and (b):
i. If the potential to emit of the major source is less than the PAL, the Director shall adjust the PAL to a level no greater than the potential to emit of the source; and
ii. The Director shall not approve a renewed PAL level higher than the current PAL, unless the PAL has been increased in accordance with subsection (J).

5. If the compliance date for an applicable requirement that applies to the PAL source occurs during the PAL effective period, and if the Director has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or renewal of the source's Class I permit, whichever occurs first.

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 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.
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(H)~~ 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(H)~~ 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.

ARTICLE 5. GENERAL PERMITS

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 permit 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 ~~contained in~~ 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~~developed by the Director shall require sources that are covered under the general permit to install and operate reasonably available control technology for any regulated Minor NSR pollutants allowed under the general permit at an amount equal to or greater than the permitting exemption threshold. This requirement shall not apply to any pollutants subject to an emissions standard established or revised by the Administrator under section 111 or 112 of the Act after November 15, 1990~~.

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 ~~none has~~ a specific form has not been adopted, the standard application form ~~contained in Appendix 1 to this Chapter~~ 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 ~~R18-2-309~~ 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.

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. ~~For general permits under which operation may be authorized in lieu of Class I permits, the Director shall give notice of the proposed general permit to each affected state at the same time that the proposed general permit goes out for public notice.~~ 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 ~~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.

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.

~~E~~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.

~~F~~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.

R18-2-507. ~~General Permit Variances~~ Repealed

~~A.~~ ~~Where MACT (maximum achievable control technology) or HAPRACT (hazardous air pollutant reasonably available control technology) has been established in a general permit for a source category designated under R18-2-1702, the owner or operator of a source within that source category may apply for a variance from the standard by demonstrating compliance with R18-2-1708 at the time the source applies for coverage under the general permit.~~

~~B.~~ ~~If the owner or operator makes the showing required by R18-2-1708 and otherwise qualifies for the general permit, the Director shall, in accordance with the procedures established pursuant to this Article, approve the application and authorize operation under a variance from the standard of the general permit.~~

~~C.~~ ~~Except as modified by the variance, the source shall comply with all conditions of the general permit.~~

~~D.~~ ~~A proposed variance to a standard in a general permit shall be subject to the public notice requirements of R18-2-330.~~

R18-2-508. ~~General Permit Shield~~ Repealed

~~Each general permit issued under this Article 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, as of the date authority to operate for a source is granted, compliance with the conditions of the permit shall be deemed compliance with any applicable requirement in effect on the date of permit issuance. Any permit under this Article that does not expressly state that a permit shield exists shall be presumed not to provide such a shield. Notwithstanding the above provisions, the source shall be subject to enforcement action for operation without a permit if the source is later determined not to qualify for the conditions and terms of the general permit. A permit shield provided for a general permit shall meet all the requirements of R18-2-325.~~

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 ~~written~~ 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 subsection (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.

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 ~~will~~ assure compliance with all applicable requirements at all authorized locations.

C. Owners and operators that hold multiple coverages under the same general permit: ~~may interchange equipment between sources without obtaining new authorization to operate. At no time shall an owner or operator interchange equipment that would cause the combined facility to exceed emission limitations in the general permit. Equipment covered under different general permits shall not be interchanged except that a new authorization to operate is obtained in accordance with this Article.~~
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. Owners and operators that operate multiple portable sources under a general permit shall have an equivalent number of coverages under a general permit as the number of locations at which each portable source operates.~~

~~E~~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.

~~F~~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 (~~G~~F).

~~G~~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 ~~such equipment~~ 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 ~~to which the equipment is to be transferred, including the availability of all utilities, such as water and electricity, necessary for the proper operation of all control equipment~~;
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 ~~equipment~~ list of all equipment requiring authorization to operate that ~~will~~ 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.

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.

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:

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.

ARTICLE 12. EMISSIONS BANK

R18-2-1205. Credit Certification

A. A permitting authority may certify an emission credit if the permitting authority verifies the credit is based on:

1. A reduction in actual emissions that occurred after August 17, 1999;
2. A quantifiable reduction in actual emissions;
3. A permanent reduction in actual emissions;
4. An enforceable reduction in actual emissions; and

5. A surplus reduction in actual emissions occurring in addition to any other required emission reduction.

B. The source must notify the permitting authority when the reduction occurs.

C. In order for an emission reduction to be quantifiable under this Section:
1. The emission reduction must be quantifiable under R18-2-301~~(14)~~(17); and
2. The reducing source shall submit documentation of any testing or monitoring that demonstrates an emission reduction.

D. The permitting authority shall certify one emission reduction credit for each ton per year of particulate matter, sulfur dioxide, carbon monoxide, nitrogen dioxide, or volatile organic compound actually reduced.

~~**E.** At the time of deposit in the emissions bank, the Director shall discount by 10 percent the certified credit total. The 10 percent of certified credit total shall be permanently retired to the bank.~~

~~**F**~~**E.** A banked credit does not expire.

~~**G**~~**F.** The permitting authority shall notify the source and the Director that a credit is certified. Upon receipt of the notice, the Director shall issue a certificate for each certified credit to the applicant identified in R18-2-1204, and list the certified credit in the registry.

APPENDIX 1. ~~STANDARD PERMIT APPLICATION FORM AND FILING INSTRUCTIONS~~ REPEALED

~~FILING INSTRUCTIONS~~

~~No application shall be considered complete until the Director has determined that all information required by this application form and the applicable statutes and regulations has been submitted. The Director may waive certain application requirements for specific source types, pursuant to R18-2-304(B). For permit revisions, the applicant need only supply information which directly pertains to the revision. The Director shall develop special guidance documents and forms to assist certain sources requiring Class 2 permits in completing the application form and filing instructions. Guidance documents can be requested by contacting the Office of Air Quality at the address and phone number given on the "Standard Permit Application Form."~~

~~In addition to the information required on the application form, the applicant shall supply the following:~~

~~1. Description of the process to be carried out in each unit (include Source Classification Code, if known).~~
~~2. Description of product.~~
~~3. Description of alternate operating scenario, if desired by applicant (include Source Classification Code).~~
~~4. Description of alternate operating scenario product, if applicable.~~
~~5. A flow diagram for all processes.~~
~~6. A material balance for all processes (optional, only if emission calculations are based on a material balance).~~
~~7. Emissions Related Information:~~
~~a. The source shall submit the potential emissions of regulated air pollutants as defined in R18-2-101 for all emission sources. Emissions shall be expressed in pounds per hour, tons per year, and such other terms as may be requested. Emissions shall be submitted using the standard "Emission Sources" portion of the "Standard Permit Application Form." Emissions information shall include fugitive emissions in the same manner as stack emissions, 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.~~
~~b. The source shall identify and describe all points of emissions and to submit additional information related to the emissions of regulated air pollutants sufficient to verify which requirements are applicable to the source and sufficient to determine any fees under this Chapter.~~
~~8. Citation and description of all applicable requirements as defined in R18-2-101 including voluntarily accepted limits pursuant to R18-2-306.01.~~
~~9. An explanation of any proposed exemptions from otherwise applicable requirements.~~
~~10. The following information to the extent it is needed to determine or regulate emissions or to comply with the requirements of R18-2-306.01:~~
~~a. Maximum annual process rate for each piece of equipment which generates air emissions.~~
~~b. Maximum annual process rate for the whole plant.~~
~~c. Maximum rated hourly process rate for each piece of equipment which generates air emissions.~~
~~d. Maximum rated hourly process rate for the whole plant.~~
~~e. For all fuel burning equipment including generators, a description of fuel use, including the type used, the quantity used per year, the maximum and average quantity used per hour, the percent used for process heat, and higher heating value of the fuel. For solid fuels and fuel oils, state the potential sulfur and ash content.~~
~~f. A description of all raw materials used and the maximum annual and hourly, monthly, or quarterly quantities of each material used.~~
~~g. Anticipated Operating Schedules~~
~~i. Percent of annual production by season.~~
~~ii. Days of the week normally in operation.~~
~~iii. Shifts or hours of the day normally in operation.~~
~~iv. Number of days per year in operation.~~
~~h. Limitations on source operations and any work practice standards affecting emissions.~~
~~11. A description of all process and control equipment for which permits are required including:~~
~~a. Name.~~
~~b. Make (if available).~~
~~c. Model (if available).~~
~~d. Serial number (if available).~~
~~e. Date of manufacture (if available).~~
~~f. Size/production capacity.~~
~~g. Type.~~
~~12. Stack Information:~~
~~a. Identification.~~

b. Description.
c. Building Dimensions.
d. Exit Gas Temperature.
e. Exit Gas Velocity.
f. Height.
g. Inside Dimensions.

13. Site diagram which includes:
a. Property boundaries.
b. Adjacent streets or roads.
c. Directional arrow.
d. Elevation.
e. Closest distance between equipment and property boundary.
f. Equipment layout.
g. Relative location of emission sources or points.
h. Location of emission points and non-point emission areas.
i. Location of air pollution control equipment.

14. Air Pollution Control Information:
a. Description of or reference to any applicable test method for determining compliance with each applicable requirement.
b. Identification, description and location of air pollution control equipment, including spray nozzles and hoods, and compliance monitoring devices or activities.
c. The rated and operating efficiency of air pollution control equipment.
d. Data necessary to establish required efficiency for air pollution control equipment (e.g. air-to-cloth ratio for baghouses, pressure drop for scrubbers, and warranty information).
e. Evidence that operation of the new or modified pollution control equipment will not violate any ambient air quality standards, or maximum allowable increases under R18-2-218.

15. Equipment manufacturer's bulletins or shop drawings are acceptable for the purposes of supplying the information required by any item in numbers 11, 12, or 14 of this Appendix.

16. Compliance Plan:
a. A description of the compliance status of the source with respect to all applicable requirements including, but not limited to:
i. A demonstration that the source or modification will comply with the applicable requirements contained in Article 6.
ii. A demonstration that the source or modification will comply with the applicable requirements contained in Article 7.
iii. A demonstration that the source or modification will comply with the applicable requirements contained in Article 8.
iv. A demonstration that the source or modification will comply with the applicable requirements contained in Article 9.
v. A demonstration that the source or modification will comply with the applicable requirements contained in Article 11 and in rules promulgated pursuant to A.R.S. § 49-426.03.
vi. A demonstration that the source or modification will comply with the applicable requirements contained in Article 17.
vii. A demonstration that the source or modification will comply with any voluntarily accepted limitations pursuant to R18-2-306.01.
b. 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 noncompliance with, the applicable requirements on which it is based.
c. 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.
d. The compliance plan content requirements specified in this subsection (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 pursuant to R18-2-333 with regard to the schedule and method the source will use to achieve compliance with the acid rain emissions limitations.

17. Compliance Certification: A certification of compliance with all applicable requirements including voluntarily accepted limitations pursuant to R18-2-306.01 by a responsible official consistent with R18-2-309(A)(5). The certification shall include:
a. Identification of the applicable requirements which are the basis of the certification;
b. A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;
c. 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; and

d. A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements.
e. A certification of truth, accuracy, and completeness pursuant to R18-2-304(H).

18. Acid Rain Program Compliance Plan: Sources subject to the Federal acid rain regulations shall use nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act and incorporated pursuant to R18-2-333.
19. A new major source as defined in R18-2-401 or a major modification shall submit all information required in this Appendix and information necessary to show compliance with Article 4 including, but not limited to:
    a. For sources located in a Non-Attainment Area:
        i. In the case of a new major source as defined in R18-2-401 or a major modification subject to an emission limitation which is LAER (Lowest Achievable Emission Rate) for that source or facility, the application shall contain a determination of LAER that is consistent with the requirements of the definition of LAER contained in R18-2-401. The demonstration shall contain the data and information relied upon by the applicant in determining the emission limitation that is LAER for the source or facility for which a permit is sought.
        ii. In the case of a new major source as defined in R18-2-401 or a major modification subject to the demonstration requirement of R18-2-403(A)(2), the applicant shall submit such demonstration in a form that lists and describes all existing major sources owned or operated by the applicant and a statement of compliance with all conditions contained in the permits or conditional orders of each of the sources.
        iii. In the case of a new major source as defined in R18-2-401 or a major modification subject to the offset requirements described in R18-2-403(A)(3), the applicant shall demonstrate the manner in which the new major source or major modification meets the requirements of R18-2-404.
        iv. An applicant for a new major source as defined in R18-2-401 or a major modification for volatile organic compounds or carbon monoxide (or both) which will be located in a nonattainment area for photochemical oxidants or carbon monoxide (or both) shall submit the analysis described in R18-2-403(B).
    b. For sources located in an Attainment Area:
        i. A demonstration of the manner in which a new major source or major modification which will be located in an attainment area for a pollutant for which the source is classified as a major source as defined in R18-2-401 or the modification is classified as a major modification will meet the requirements of R18-2-406.
        ii. In the case of a new major source as defined in R18-2-401 or major modification subject to an emission limitation which is BACT (Best Available Control Technology) for that source or facility, the application shall contain a determination of BACT that is consistent with the requirements of the definition of BACT contained in R18-2-101. The demonstration shall contain the data and information relied upon by the applicant in determining the emission limitation that is BACT for the source or facility for which a permit is sought.
        iii. In the case of a new major source as defined in R18-2-401 or major modification required to perform and submit an air impact analysis in the form prescribed in R18-2-407, such an analysis shall meet the requirements of R18-2-406. Unless otherwise exempted in writing by the Director, the air impact analysis shall include all of the information and data specified in R18-2-407.
        iv. If an applicant seeks an exemption from any or all of the requirements of R18-2-406, the applicant shall provide sufficient information and data in the application to demonstrate compliance with the requirements of the subsection(s) under which an exemption is sought.
20. Calculations on which all information requested in this Appendix is based.

STANDARD PERMIT APPLICATION FORM

(As required by A.R.S. § 49-426, and A.A.C. Title 18, Chapter 2, Article 3)

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF AIR QUALITY
P.O. Box 600 · Phoenix, AZ 85001-0600 · Phone: (602) 207-2338

1. Permit to be issued to: (Business license name of organization that is to receive permit) _____

2. Mailing Address: _____

   City: _____ State: _____ ZIP: _____

3. Plant Name (if different item #1 above): _____

4. Name (or names) of Owner or Operator: _____ Phone: _____

5. Name of Owner's Agent: _____ Phone: _____

6. Plant/Site Manager or Contact Person: _____ Phone: _____

7. Proposed Equipment/Plant Location Address:

   City: _____ County: _____ ZIP: _____

   Indian Reservation (if applicable): _____

~~Section/Township/Range, Latitude/Longitude, Elevation:~~

~~8. General Nature of Business:~~

~~Standard Industrial Classification Code:~~

~~9. Type of Organization:~~

~~❑ Corporation ❑ Individual Owner~~

~~❑ Partnership ❑ Government Entity (Government Facility Code:)~~

~~❑ Other~~

~~10. Permit Application Basis: ❑ New Source ❑ Revision ❑ Renewal of Existing Permit~~

~~❑ Portable Source ❑ General Permit (Check all that apply.)~~

~~For renewal or modification, include existing permit number:~~

~~Date of Commencement of Construction or Modification:~~

~~Is any of the equipment to be leased to another individual or entity? ❑ Yes ❑ No~~

~~11. Signature of Responsible Official of Organization:~~

~~Official Title of Signer:~~

~~12. Typed or Printed Name of Signer:~~

~~Date: Telephone Number:~~

~~**PAGE 1 OF 2**~~

~~ADEQ/OAQ/100B~~

COMPANY NAME _____ EMISSION SOURCES

PAGE ____ OF ____
DATE _____

Estimated Potential to Emit as per R18-2-101(84).
Review of application for issuance of permits will be expedited by supplying all necessary information on this Table.

REGULATED AIR POLLUTANT DATA					EMISSION POINT DISCHARGE PARAMETERS											
EMISSION POINT (1)		CHEMICAL COMPOSITION OF TOTAL STREAM	FLAIR POLLUTANT EMISSION RATE		UTM COORDINATES OF EMISSION PT. (5)			STACK SOURCES (6)					NONPOINT SOURCES (7)	
NUMBER	NAME	REGULATED AIR POLLUTANT NAME (2)	#/ HR. (3)	TONS/ YEAR (4)	ZONE	EAST (Mtrs)	NORTH (Mtrs)	HEIGHT ABOVE GROUND /feet	HEIGHT ABOVE STRUC /feet	EXIT DATA DIA (ft.)	EXIT DATA VEL. (fps.)	EXIT DATA TEMP. (°F)	LENGTH (ft.)	WIDTH (ft.)

GROUND ELEVATION OF FACILITY ABOVE MEAN SEA LEVEL _____ feet
ADEQ STANDARD CONDITIONS ARE 293K AND 101.3 KILOPASCALS (A.A.C. R18-2-101)

General Instructions:

1. Identify each emission point with a unique number for this plant site, consistent with emission point identification used on plot plan, previous permits, and Emissions Inventory Questionnaire. Include fugitive emissions. Limit emission point number to eight (8) character spaces. For each emission point use as many lines as necessary to list regulated air pollutant data. Typical emission point names are: heater, vent, boiler, tank, reactor, separator, baghouse, fugitive, etc. Abbreviations are O.K.
2. Components to be listed include regulated air pollutants as defined in R18-2-101. Examples of typical components are: Carbon Monoxide (CO), Nitrogen Oxides (NO_x), Sulfur Dioxide (SO_2), Volatile Organic Compounds (VOC), particulate matter (PM), particulate less than 10 microns (PM_{10}), etc. Abbreviations are O.K.
3. Pounds per hour (#/HR) is maximum potential emission rate expected by applicant.
4. Tons per year is annual maximum potential emission expected by applicant, which takes into account process operating schedule.
5. As a minimum applicant shall furnish a facility plot plan as described in the filing instructions. UTM coordinates are required only if the source is a major source or is required to perform refined modeling for the purposes of demonstrating compliance with ambient air quality guidelines.
6. Supply additional information as follows if appropriate:
   (a) Stack exit configuration other than a round vertical stack. Show length and width for a rectangular stack. Indicate if horizontal discharge with a note.
   (b) Stack height above supporting or adjacent structure if structure is within 3 *stack height above the ground of stack.
7. Dimensions of nonpoint sources as defined in R18-2-101.

PAGE 2 OF 2

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Arizona Administrative REGISTER

Published by the Department of State ~ Office of the Secretary of State

Vol. 23, Issue 11 **~ Administrative Register Contents ~** **March 17, 2017**

From the Publisher

ABOUT THIS PUBLICATION

The paper copy of the *Administrative Register* (A.A.R.) is the official publication for rules and rulemaking activity in the state of Arizona.

Rulemaking is defined in Arizona Revised Statues known as the Arizona Administrative Procedure Act (APA), A.R.S. Title 41, Chapter 6, Articles 1 through 10.

The Office of the Secretary of State does not interpret or enforce rules published in the *Arizona Administrative Register* or *Code*. Questions should be directed to the state agency responsible for the promulgation of the rule as provided in its published filing.

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In addition, the *Register* contains the full text of the Governor's Executive Orders and Proclamations of general applicability, summaries of Attorney General opinions, notices of rules terminated by the agency, and the Governor's appointments of state officials and members of state boards and commissions.

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Rules can be: made (all new text); amended (rules on file, changing text); repealed (removing text); or renumbered (moving rules to a different Section number). Rules activity published in the *Register* includes: proposed, final, emergency, expedited, and exempt rules as defined in the APA.

Rulemakings initiated under the APA as effective on and after January 1, 1995, include the full text of the rule in the *Register.* New rules in this publication (whether proposed or made) are denoted with underlining; repealed text is stricken.

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Every document filed in the office is assigned a file number. This number, enclosed in brackets, is located at the top right of the published documents in the *Register*. The original filed document is available for 10 cents a copy.

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Publication dates are published in the back of the *Register.* These dates include file submittal dates with a three-week turnaround from filing to published document.

CONTACT US
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Phoenix, AZ 85007
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Participate in the Process

Look for the Agency Notice

Review (inspect) notices published in the *Arizona Administrative Register*. Many agencies maintain stakeholder lists and would be glad to inform you when they proposed changes to rules. Check an agency's website and its newsletters for news about notices and meetings.

Feel like a change should be made to a rule and an agency has not proposed changes? You can petition an agency to make, amend, or repeal a rule. The agency must respond to the petition. (See A.R.S. § 41-1033)

Attend a public hearing/meeting

Attend a public meeting that is being conducted by the agency on a Notice of Proposed Rulemaking. Public meetings may be listed in the Preamble of a Notice of Proposed Rulemaking or they may be published separately in the *Register*. Be prepared to speak, attend the meeting, and make an oral comment.

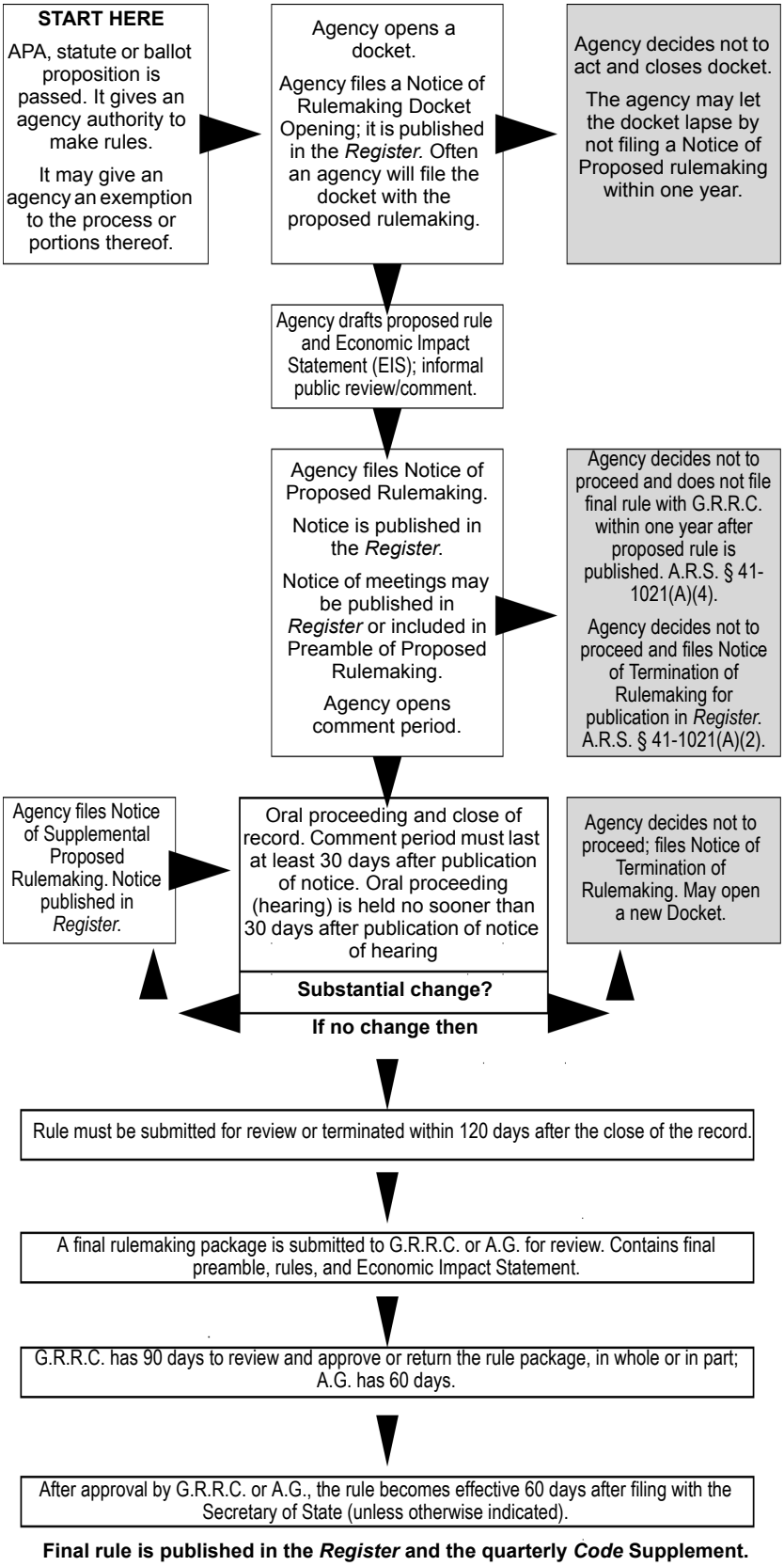
An agency may not have a public meeting scheduled on the Notice of Proposed Rulemaking. If not, you may request that the agency schedule a proceeding. This request must be put in writing within 30 days after the published Notice of Proposed Rulemaking.

Write the agency

Put your comments in writing to the agency. In order for the agency to consider your comments, the agency must receive them by the close of record. The comment must be received within the 30-day comment timeframe following the *Register* publication of the Notice of Proposed Rulemaking.

You can also submit to the Governor's Regulatory Review Council written comments that are relevant to the Council's power to review a given rule (A.R.S. § 41-1052). The Council reviews the rule at the end of the rulemaking process and before the rules are filed with the Secretary of State.

Arizona Regular Rulemaking Process



Definitions

***Arizona Administrative Code* (A.A.C.):** Official rules codified and published by the Secretary of State's Office. Available online at www.azsos.gov.

***Arizona Administrative Register* (A.A.R.):** The official publication that includes filed documents pertaining to Arizona rulemaking. Available online at www.azsos.gov.

Administrative Procedure Act (APA): A.R.S. Title 41, Chapter 6, Articles 1 through 10. Available online at www.azleg.gov.

Arizona Revised Statutes (A.R.S.): The statutes are made by the Arizona State Legislature during a legislative session. They are complied by Legislative Council, with the official publication codified by Thomson West. Citations to statutes include Titles which represent broad subject areas. The Title number is followed by the Section number. For example, A.R.S. § 41-1001 is the definitions Section of Title 41 of the Arizona Administrative Procedures Act. The "§" symbol simply means "section." Available online at www.azleg.gov.

Chapter: A division in the codification of the *Code* designating a state agency or, for a large agency, a major program.

Close of Record: The close of the public record for a proposed rulemaking is the date an agency chooses as the last date it will accept public comments, either written or oral.

Code of Federal Regulations (CFR): The *Code of Federal Regulations* is a codification of the general and permanent rules published in the *Federal Register* by the executive departments and agencies of the federal government.

Docket: A public file for each rulemaking containing materials related to the proceedings of that rulemaking. The docket file is established and maintained by an agency from the time it begins to consider making a rule until the rulemaking is finished. The agency provides public notice of the docket by filing a Notice of Rulemaking Docket Opening with the Office for publication in the *Register*.

Economic, Small Business, and Consumer Impact Statement (EIS): The EIS identifies the impact of the rule on private and public employment, on small businesses, and on consumers. It includes an analysis of the probable costs and benefits of the rule. An agency includes a brief summary of the EIS in its preamble. The EIS is not published in the *Register* but is available from the agency promulgating the rule. The EIS is also filed with the rulemaking package.

Governor's Regulatory Review (G.R.R.C.): Reviews and approves rules to ensure that they are necessary and to avoid unnecessary duplication and adverse impact on the public. G.R.R.C. also assesses whether the rules are clear, concise, understandable, legal, consistent with legislative intent, and whether the benefits of a rule outweigh the cost.

Incorporated by Reference: An agency may incorporate by reference standards or other publications. These standards are available from the state agency with references on where to order the standard or review it online.

Federal Register (FR): The *Federal Register* is a legal newspaper published every business day by the National Archives and Records Administration (NARA). It contains federal agency regulations; proposed rules and notices; and executive orders, proclamations, and other presidential documents.

Session Laws or "Laws": When an agency references a law that has not yet been codified into the Arizona Revised Statutes, use the word "Laws" is followed by the year the law was passed by the Legislature, followed by the Chapter number using the abbreviation "Ch.", and the specific Section number using the Section symbol (§). For example, Laws 1995, Ch. 6, § 2. Session laws are available at www.azleg.gov.

United States Code (U.S.C.): The Code is a consolidation and codification by subject matter of the general and permanent laws of the United States. The Code does not include regulations issued by executive branch agencies, decisions of the federal courts, treaties, or laws enacted by state or local governments.

Acronyms

A.A.C. – *Arizona Administrative Code*

A.A.R. – Arizona Administrative Register

APA – Administrative Procedure Act

A.R.S. – Arizona Revised Statutes

CFR – *Code of Federal Regulations*

EIS – Economic, Small Business, and Consumer Impact Statement

FR – *Federal Register*

G.R.R.C. – Governor's Regulatory Review Council

U.S.C. – *United States Code*

About Preambles

The Preamble is the part of a rulemaking package that contains information about the rulemaking and provides agency justification and regulatory intent.

It includes reference to the specific statutes authorizing the agency to make the rule, an explanation of the rule, reasons for proposing the rule, and the preliminary Economic Impact Statement.

The information in the Preamble differs between rulemaking notices used and the stage of the rulemaking.

NOTICES OF EXPIRATION OF RULES UNDER A.R.S. § 41-1056(J)

This section of the *Arizona Administrative Register* contains Notices of Expiration of Rules. Under A.R.S. § 41-1056(J), if an agency does not file a five-year rule review report with the Governor's Regulatory Review Council (including a revised report); or if an agency does not file an extension before the due date of the report; or if an agency files an extension but does not submit a report within the extension period; the rules scheduled for review expire.

The Council is required to notify the Secretary of State that the rules have expired and are no longer enforceable. The notice is published in the *Register*, and the rules are removed from the *Code*.

GOVERNOR'S REGULATORY REVIEW COUNCIL

NOTICE OF EXPIRATION OF RULES UNDER A.R.S. § 41-1056(J)

DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL

[R17-31]

1. Agency name: Department of Environmental Quality

2. Title and its heading: 18, Environmental Quality

3. Chapter and its heading: 2, Department of Environmental Quality - Air Pollution Control

4. Articles and their headings: 3, Permits and Permit Revisions

5. As required by A.R.S. § 41-1056(J), the Council provides notice that the following rule has expired as of February 14, 2017:

R18-2-326.01. Emissions-Based Fee Increase Related to Individual Permits for Fiscal Year 2011

6. Signature is of Nicole A. Ong

/s/
Nicole A. Ong
Chairwoman

Date of Signing
March 3, 2017

www.azsos.gov

Arizona Administrative REGISTER

Published by the Department of State ~ Office of the Secretary of State

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Administrative Rules Division
Scott Cancelosi

PUBLISHER
Secretary of State
KATIE HOBBS

RULES MANAGING EDITOR
Arizona Administrative Register
Rhonda Paschal

From the Publisher

ABOUT THIS PUBLICATION

The paper copy of the *Administrative Register* (A.A.R.) is the official publication for rules and rulemaking activity in the state of Arizona.

Rulemaking is defined in Arizona Revised Statutes known as the Arizona Administrative Procedure Act (APA), A.R.S. Title 41, Chapter 6, Articles 1 through 10.

The Office of the Secretary of State does not interpret or enforce rules published in the *Arizona Administrative Register* or *Code*. Questions should be directed to the state agency responsible for the promulgation of the rule as provided in its published filing.

The *Register* is cited by volume and page number. Volumes are published by calendar year with issues published weekly. Page numbering continues in each weekly issue.

In addition, the *Register* contains the full text of the Governor's Executive Orders and Proclamations of general applicability, summaries of Attorney General opinions, notices of rules terminated by the agency, and the Governor's appointments of state officials and members of state boards and commissions.

ABOUT RULES

Rules can be: made (all new text); amended (rules on file, changing text); repealed (removing text); or renumbered (moving rules to a different Section number). Rules activity published in the *Register* includes: proposed, final, emergency, expedited, and exempt rules as defined in the APA.

Rulemakings initiated under the APA as effective on and after January 1, 1995, include the full text of the rule in the *Register.* New rules in this publication (whether proposed or made) are denoted with underlining; repealed text is stricken.

WHERE IS A "CLEAN" COPY OF THE FINAL OR EXEMPT RULE PUBLISHED IN THE *REGISTER*?

The *Arizona Administrative Code* (A.A.C) contains the codified text of rules. The A.A.C. contains rules promulgated and filed by state agencies that have been approved by the Attorney General or the Governor's Regulatory Review Council. The *Code* also contains rules exempt from the rulemaking process.

The printed *Code* is the official publication of a rule in the A.A.C., and is prima facie evidence of the making, amendment, or repeal of that rule as provided by A.R.S. § 41-1012. Paper copies of rules are available by full Chapter or by subscription. The *Code* is posted online for free.

LEGAL CITATIONS AND FILING NUMBERS

On the cover: Each agency is assigned a Chapter in the *Arizona Administrative Code* under a specific Title. Titles represent broad subject areas. The Title number is listed first; with the acronym A.A.C., which stands for the *Arizona Administrative Code*; following the Chapter number and Agency name, then program name. For example, the Secretary of State has rules on rulemaking in Title 1, Chapter 1 of the *Arizona Administrative Code*. The citation for this chapter is 1 A.A.C. 1, Secretary of State, Rules and Rulemaking

Every document filed in the office is assigned a file number. This number, enclosed in brackets, is located at the top right of the published documents in the *Register*. The original filed document is available for 10 cents a page.

Arizona Administrative REGISTER

Vol. 25 Issue 15

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SECRETARY OF STATE
Katie Hobbs

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Scott Cancelosi

RULES MANAGING EDITOR
Rhonda Paschal

ADMINISTRATIVE REGISTER
This publication is available online for free at www.azsos.gov.

ADMINISTRATIVE CODE
A price list for the *Arizona Administrative Code* is available online. You may also request a paper price list by mail. To purchase a paper Chapter, contact us at (602) 364-3223.

PUBLICATION DEADLINES
Publication dates are published in the back of the *Register.* These dates include file submittal dates with a three-week turnaround from filing to published document.

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(602) 364-3223

The Office of the Secretary of State is an equal opportunity employer.

Participate in the Process

Look for the Agency Notice

Review (inspect) notices published in the *Arizona Administrative Register.* Many agencies maintain stakeholder lists and would be glad to inform you when they proposed changes to rules. Check an agency's website and its newsletters for news about notices and meetings.

Feel like a change should be made to a rule and an agency has not proposed changes? You can petition an agency to make, amend, or repeal a rule. The agency must respond to the petition. (See A.R.S. § 41-1033)

Attend a public hearing/meeting

Attend a public meeting that is being conducted by the agency on a Notice of Proposed Rulemaking. Public meetings may be listed in the Preamble of a Notice of Proposed Rulemaking or they may be published separately in the *Register*. Be prepared to speak, attend the meeting, and make an oral comment.

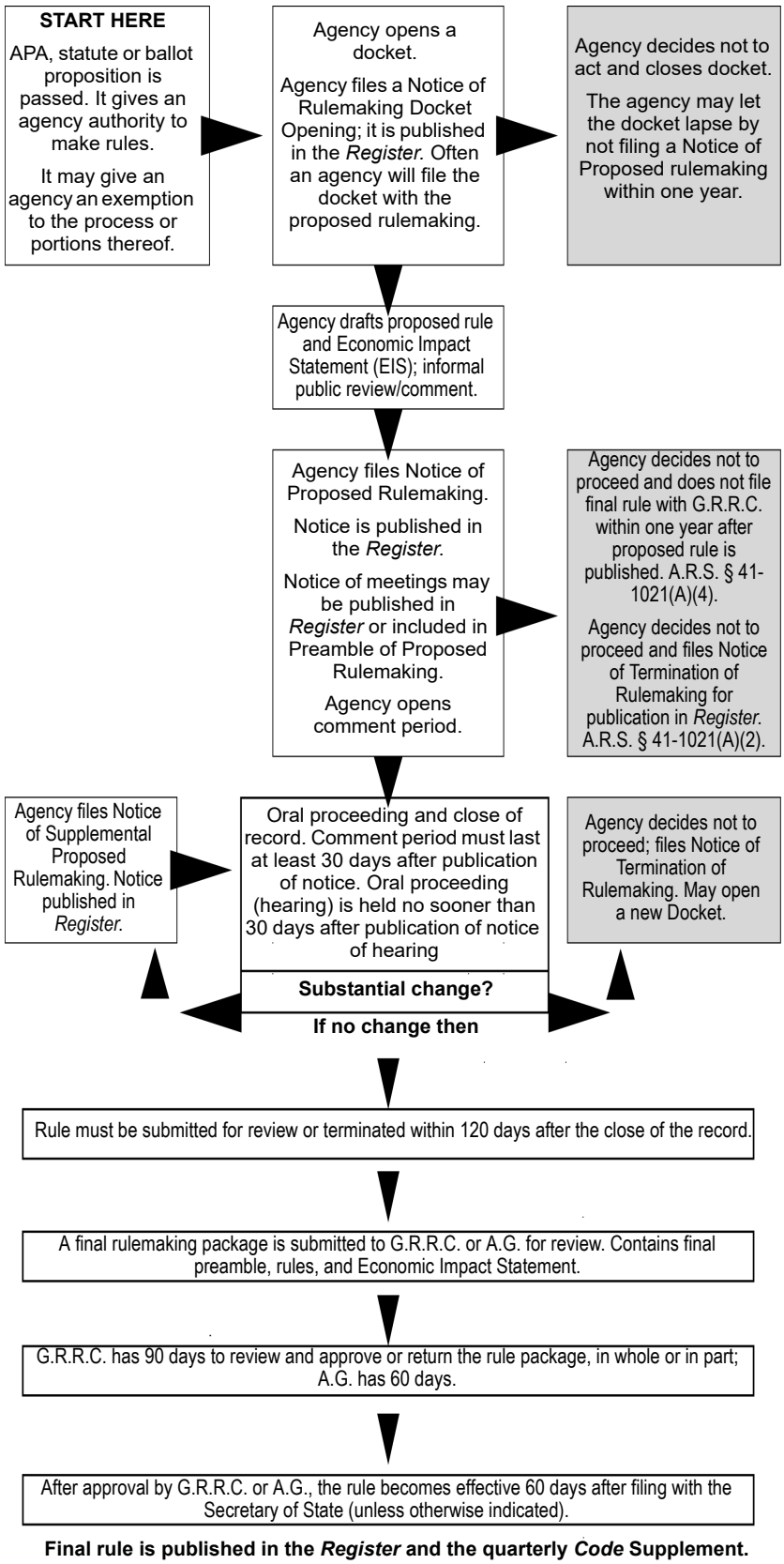
An agency may not have a public meeting scheduled on the Notice of Proposed Rulemaking. If not, you may request that the agency schedule a proceeding. This request must be put in writing within 30 days after the published Notice of Proposed Rulemaking.

Write the agency

Put your comments in writing to the agency. In order for the agency to consider your comments, the agency must receive them by the close of record. The comment must be received within the 30-day comment timeframe following the *Register* publication of the Notice of Proposed Rulemaking.

You can also submit to the Governor's Regulatory Review Council written comments that are relevant to the Council's power to review a given rule (A.R.S. § 41-1052). The Council reviews the rule at the end of the rulemaking process and before the rules are filed with the Secretary of State.

Arizona Regular Rulemaking Process



Definitions

***Arizona Administrative Code* (A.A.C.):** Official rules codified and published by the Secretary of State's Office. Available online at www.azsos.gov.

***Arizona Administrative Register* (A.A.R.):** The official publication that includes filed documents pertaining to Arizona rulemaking. Available online at www.azsos.gov.

Administrative Procedure Act (APA): A.R.S. Title 41, Chapter 6, Articles 1 through 10. Available online at www.azleg.gov.

Arizona Revised Statutes (A.R.S.): The statutes are made by the Arizona State Legislature during a legislative session. They are complied by Legislative Council, with the official publication codified by Thomson West. Citations to statutes include Titles which represent broad subject areas. The Title number is followed by the Section number. For example, A.R.S. § 41-1001 is the definitions Section of Title 41 of the Arizona Administrative Procedures Act. The "§" symbol simply means "section." Available online at www.azleg.gov.

Chapter: A division in the codification of the *Code* designating a state agency or, for a large agency, a major program.

Close of Record: The close of the public record for a proposed rulemaking is the date an agency chooses as the last date it will accept public comments, either written or oral.

Code of Federal Regulations (CFR): The *Code of Federal Regulations* is a codification of the general and permanent rules published in the *Federal Register* by the executive departments and agencies of the federal government.

Docket: A public file for each rulemaking containing materials related to the proceedings of that rulemaking. The docket file is established and maintained by an agency from the time it begins to consider making a rule until the rulemaking is finished. The agency provides public notice of the docket by filing a Notice of Rulemaking Docket Opening with the Office for publication in the *Register*.

Economic, Small Business, and Consumer Impact Statement (EIS): The EIS identifies the impact of the rule on private and public employment, on small businesses, and on consumers. It includes an analysis of the probable costs and benefits of the rule. An agency includes a brief summary of the EIS in its preamble. The EIS is not published in the *Register* but is available from the agency promulgating the rule. The EIS is also filed with the rulemaking package.

Governor's Regulatory Review (G.R.R.C.): Reviews and approves rules to ensure that they are necessary and to avoid unnecessary duplication and adverse impact on the public. G.R.R.C. also assesses whether the rules are clear, concise, understandable, legal, consistent with legislative intent, and whether the benefits of a rule outweigh the cost.

Incorporated by Reference: An agency may incorporate by reference standards or other publications. These standards are available from the state agency with references on where to order the standard or review it online.

Federal Register (FR): The *Federal Register* is a legal newspaper published every business day by the National Archives and Records Administration (NARA). It contains federal agency regulations; proposed rules and notices; and executive orders, proclamations, and other presidential documents.

Session Laws or "Laws": When an agency references a law that has not yet been codified into the Arizona Revised Statutes, use the word "Laws" is followed by the year the law was passed by the Legislature, followed by the Chapter number using the abbreviation "Ch.", and the specific Section number using the Section symbol (§). For example, Laws 1995, Ch. 6, § 2. Session laws are available at www.azleg.gov.

United States Code (U.S.C.): The Code is a consolidation and codification by subject matter of the general and permanent laws of the United States. The Code does not include regulations issued by executive branch agencies, decisions of the federal courts, treaties, or laws enacted by state or local governments.

Acronyms

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About Preambles

The Preamble is the part of a rulemaking package that contains information about the rulemaking and provides agency justification and regulatory intent.

It includes reference to the specific statutes authorizing the agency to make the rule, an explanation of the rule, reasons for proposing the rule, and the preliminary Economic Impact Statement.

The information in the Preamble differs between rulemaking notices used and the stage of the rulemaking.

NOTICES OF PROPOSED RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Proposed Rulemaking.

A proposed rulemaking is filed by an agency upon completion and submittal of a Notice of Rulemaking Docket Opening. Often these two documents are filed at the same time and published in the same *Register* issue.

When an agency files a Notice of Proposed Rulemaking under the *Administrative Procedure Act* (APA), the notice is published in the *Register* within three weeks of filing. See the publication schedule in the back of each issue of the *Register* for more information.

Under the APA, an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any oral proceedings for making, amending, or repealing any rule (A.R.S. §§ 41-1013 and 41-1022).

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the proposed rules should be addressed to the agency that promulgated the rules. Refer to item #4 below to contact the person charged with the rulemaking and item #10 for the close of record and information related to public hearings and oral comments.

NOTICE OF PROPOSED RULEMAKING
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 22. BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY

[R19-48]

PREAMBLE

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

R4-22-102	Amend
Table 1	Amend
R4-22-201	Amend
R4-22-202	Amend
R4-22-207	Amend

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. § 32-1803(C)(1)

Implementing statute: A.R.S. §§ 32-1822, 32-1834, and 32-3248.02

3. 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: 25 A.A.R. 723, March 22, 2019

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

Name:	Barbara Prah-Wix, Interim Executive Director
Address:	Board of Examiners in Osteopathic Medicine and Surgery 1740 W. Adams St., Suite 2410 Phoenix, AZ 85007
Telephone:	(602) 771-2526
Fax:	(480) 657-7715
E-mail:	Barbara.Prah@azdo.gov
Web site:	www.azdo.gov

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

The Board is amending its rules to address three recent statutory changes. Under Laws 2016, Chapter 137, the legislature adopted the Interstate Medical Licensure Compact (See A.R.S. §§ 32-3241 to 32-3246) and created a new, temporary license to allow an applicant for Arizona licensure to obtain a non-renewable, temporary license to practice osteopathic medicine in Arizona while the application for full licensure is processed. A.R.S. § 32-1834 authorizes the Board to establish a fee for the temporary license. This rulemaking establishes the fee and as required under A.R.S. § 41-1073, establishes the time frame within which the Board will act on an application for a temporary license.

Under Laws 2017, Chapter 265, the legislature required all applicants for licensure to submit to the Board a full set of fingerprints for the purpose of obtaining a state and federal criminal records check. This rulemaking places the fingerprint requirement into rule and adds the fee for processing the fingerprints.

Under Laws 2018, Chapter 1, the legislature added A.R.S. § 32-3248.02, which requires a health professional authorized to prescribe or dispense schedule II controlled substances to complete three hours of opioid-related, substance use disorder-related, or addiction-related continuing medical education during each license renewal cycle. This rulemaking establishes the new CME requirement.

Exemptions from Executive Order 2017-02 for the purpose of this rulemaking were provided by Mara Mellstrom, Policy Advisor in the Office of the Governor, in e-mails dated April 21, June 29, and October 19, 2017.

6. 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 Board does not intend to review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

7. 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

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

Under statute, no one is required to obtain a temporary license so no one is required to pay the fee established in this rulemaking. An osteopathic physician voluntarily obtains a temporary license and pays the fee because the osteopathic physician believes the cost is outweighed by the benefit of being able to practice medicine while the application for full licensure is processed.

An applicant will incur the expense of submitting to the Board a full set of fingerprints for the purpose of obtaining a state and federal criminal records check. This is a cost the legislature determined is offset by the concern for public health and safety.

The impact of the change to the CME requirement will be minimal. Licensees are not being required to obtain an additional hour of CME. Rather, they are being required simply to ensure three of the 40 statutorily required CME hours address opioid-related, substance use disorder-related, or addiction-related prescribing.

9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:

Name:	Barbara Prah-Wix, Interim Executive Director
Address:	Board of Examiners in Osteopathic Medicine and Surgery 1740 W. Adams St., Suite 2410 Phoenix, AZ 85007
Telephone:	(602) 771-2526
Fax:	(480) 657-7715
E-mail:	Barbara.Prah@azdo.gov
Web site:	www.azdo.gov

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

An oral proceeding regarding the proposed rules will be held as follows:

Date:	Saturday, May 18, 2019
Time:	1:00 p.m.
Location:	1740 W. Adams St., Conference Room A Phoenix, AZ 85007

11. 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:

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 licenses listed in Table 1 are general permits consistent with A.R.S. § 41-1037 because they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

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 rule in the rulemaking is more stringent than federal law. Federal law applies to the provision of health care but no federal law addresses 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.

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

None

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 22. BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY

ARTICLE 1. GENERAL PROVISIONS

Section
R4-22-102. Fees and Charges

Table 1. Time Frames (in days)

ARTICLE 2. LICENSING

Section
R4-22-201. Application Required
R4-22-202. Determining Qualification for Licensure
R4-22-207. Continuing Medical Education; Waiver; Extension of Time to Complete

ARTICLE 1. GENERAL PROVISIONS

R4-22-102. Fees and Charges

A. Under the specific authority provided by A.R.S. §§ 32-1826(A) and 32-1871(A)(5), the Board establishes and shall collect the following fees for the Board's licensing activities:
1. Application for license to practice osteopathic medicine, $400;
2. Application for a temporary license to practice osteopathic medicine, $250;
~~2.~~3. Issuance of initial license, $180 (prorated);
~~3.~~4. Biennial renewal of license, $636 plus the penalty and reimbursement fees specified in A.R.S. § 32-1826(B), if applicable;
~~4.~~5. Locum tenens registration, $300;
~~5.~~6. Annual registration of an approved internship, residency, or clinical fellowship program or short-term residency program, $50;
~~6.~~7. Teaching license, $318;
~~7.~~8. Five-day educational teaching permit, $106; and
~~8.~~9. Annual registration to dispense drugs and devices, $240 (initial registration fee is prorated).

B. Under the specific authority provided by A.R.S. § 32-1826(C), the Board establishes and shall collect the following charges for services provided by the Board:
1. ~~Verification of~~ Verifying a license to practice osteopathic medicine issued by the Board and copy of licensee's complaint history, $10;
2. ~~Issuance of~~ Issuing a duplicate license, $10;
3. Processing fingerprints for a state and federal criminal records check, $50;
~~3.~~4. ~~List~~ Providing a list of physicians licensed by the Board, $25.00 if for non-commercial use or $100 if for commercial use;
~~4.~~5. Copying records, documents, letters, minutes, applications, and files, 25¢ per page~~.~~;
~~5.~~6. ~~Copy of~~ Copying an audio tape, $35.00; and
~~6.~~7. ~~Digital~~ Providing information in a digital medium not requiring programming, $100.

C. Except as provided under A.R.S. § 41-1077, the fees listed in subsection (A) are not refundable.

Table 1. Time Frames (in days)

Type of License	Statutory Authority	Overall Time Frame	Administrative Completeness Time Frame	Substantive Review Time Frame
License	A.R.S. § 32-1822	120	30	90
License Renewal	A.R.S. § 32-1825	120	30	90
Temporary License	A.R.S. § 32-1834	30	20	10
90-day Locum Tenens Registration	A.R.S. § 32-1823	60	30	30
One-year Renewable Training Permit	A.R.S. § 32-1829(A)	60	30	30
Short-term Training Permit	A.R.S. § 32-1829(C)	60	30	30
One-year Training Permit at Approved School or Hospital	A.R.S. § 32-1830	60	30	30
Two-year Teaching License	A.R.S. § 32-1831	60	30	30
Registration to Dispense Drugs and Devices	A.R.S. § 32-1871	90	30	60
Renewal of Registration to Dispense Drugs and Devices	A.R.S. §§ 32-1826(A)(11) and 32-1871	60	30	30
Approval of Educational Program for Medical Assistants	A.R.S. § 32-1800(17)	60	30	30
Retired Status	A.R.S. § 32-1832	90	30	60

ARTICLE 2. LICENSING

R4-22-201. Application Required

An individual or entity that seeks a license or other approval from the Board shall complete and submit an application form prescribed by the Board. The Board has prescribed the following application forms, which are available from the Board office or web site:

1. License,
2. Temporary license,
~~2.~~3. License renewal,
~~3.~~4. Locum tenens registration,
~~4.~~5. Initial registration to dispense,
~~5.~~6. Registration to dispense renewal,
~~6.~~7. Renewable one-year post-graduate training permit,
~~7.~~8. Renewal of post-graduate training permit,
~~8.~~9. Short-term training permit,
~~9.~~10. Two-year teaching license, and
~~10.~~11. Approval of an educational program for medical assistants.

R4-22-202. Determining Qualification for Licensure

A. To obtain a license, an applicant shall submit:
1. No change
2. No change
3. No change
4. No change
5. A full set of fingerprints and the charge specified in R4-22-102(B);
~~5.~~6. No change
~~6.~~7. No change

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

C. No change

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

E. No change
1. No change
2. No change
   a. No change
   b. No change
   c. No change
   d. No change
   e. No change

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

R4-22-207. Continuing Medical Education; Waiver; Extension of Time to Complete

A. No change
1. At least 24 hours are obtained by completing CME classified by the AOA as Category 1A~~; and~~,
2. No more than 16 hours are obtained by completing CME classified as American Medical Association Category 1 approved by an ACCME-accredited CME provider~~.~~, and
3. At least the number of CME hours specified under A.R.S. § 32-3248.02 address opioid-related, substance use disorder-related, or addiction-related prescribing and are obtained under subsection (A)(1) or (2).

B. No change

C. No change
1. No change
   a. No change
   b. No change
      i. No change
      ii. No change

iii. No change
iv. No change
v. No change
vi. No change
2. No change
a. No change
b. No change
3. No change

D. No change
1. No change
2. No change
3. No change
a. No change
b. No change
c. No change
d. No change
i. No change
ii. No change

E. No change
1. No change
2. No change
3. No change
4. No change

F. No change
1. No change
2. No change
3. No change
4. No change

G. No change
1. No change
2. No change
3. No change
4. No change

NOTICE OF PROPOSED RULEMAKING
TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION

[R19-58]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) — **Rulemaking Action**
R12-4-303 — Amend

2. Citations to the agency's statutory authority to include the authorizing statute (general) and the implementing statute (specific):
Authorizing statute: A.R.S. § 17-231(A)(1)
Implementing statute: A.R.S. §§ 17-231(A)(3), 17-102, and 17-301

3. 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: 25 A.A.R. 894, April 12, 2019 (*in this issue*)

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

Name:	Celeste Cook, Rules and Policy Manager
Address:	Arizona Game and Fish Department 5000 W. Carefree Highway Phoenix, AZ 85086
Telephone:	(623) 236-7390
E-mail:	CCook@azgfd.gov

Please visit the AZGFD website to track the progress of this rule; view the regulatory agenda and all previous Five-year Review Reports; and learn about any other agency rulemaking matters at https://www.azgfd.com/agency/rulemaking/.

5. An agency's justification and reason why the rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:
The Arizona Game and Fish Commission proposes to adopt rules to regulate hunting activities consistent with the guiding principles governing the Commission's duty to preserve wildlife for the beneficial use of the public. The proposed rulemaking will designate a predator/fur-bearing hunt contest, as defined by the rule, an unlawful manner and method of take for predator/fur-bearing species. A rule that provides clear instruction about the legal hunting of predator/fur-bearing species provides for the conservation,

maintenance, and utilization of wildlife under the jurisdiction of the State for the benefit of all the citizens.

This proposed rulemaking contains rule language included in the Notice of Proposed Rulemaking, see 24 A.A.R. 529, March 16, 2018, which was approved by the Governor's Regulatory Review Council on February 5, 2019 and becomes effective on June 1, 2019.

An exemption from Executive Order 2019-01 was provided for this rulemaking by Hunter Moore, Natural Resource Policy Advisor, Governor's Office, in an email dated February 15, 2019.

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

The agency did not rely on any study in its evaluation of or justification for the rule.

7. 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

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

The Commission's intent in adopting the rule is to address social concerns associated with predator/fur-bearing contests, and to proscribe the manner and method of take for participants to a predators/fur-bearings contest. Wildlife predator/fur-bearing hunting contest that link economic gain to the greatest number or variety of animals killed are contrary to the important principle that the take of wildlife should not be allowed to go to waste or taken for economic gain. The Commission believes the rulemaking will benefit the State and persons regulated by the rule by reducing regulatory uncertainty, and strengthening consistency with the principles that guide the Commission's public trust responsibility to conserve wildlife for the benefit of the citizens of Arizona. Extensive public controversy exists about predator/fur-bearing contests that award prizes to participants who kill the largest number or variety of predator/fur-bearing animals or the contest is based on the combined weight of animals a participant kills. To the extent these contests reflect on the overall hunting community, public outrage with these events has the potential to threaten hunting as a legitimate wildlife management function. Regulated hunting fundamentally supports wildlife conservation efforts in North America. The loss of hunting would equate to a measurable loss in conservation efforts, and would represent a failure of the Commission in its duty to preserve wildlife for the beneficial use of present and future generations. The Commission anticipates the rulemaking will impose a burden on persons regulated by the rule by prohibiting wildlife predator/fur-bearing contests. The Commission anticipates the rulemaking will result in no impact to agencies or political subdivisions of this State, private and public employment in businesses, or State revenues. The Commission has determined the rulemaking will not require any new full-time employees. The Commission has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. The Department will incur costs related to the cost of rulemaking and implementing the rule. The Commission has determined that the benefits of the rulemaking outweigh any costs.

9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:

Name: Celeste Cook, Rules and Policy Manager
Address: Arizona Game and Fish Department
5000 W. Carefree Highway
Phoenix, AZ 85086
Telephone: (623) 236-7390
E-mail: CCook@azgfd.gov

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: June 21, 2019
Time: 9:00 a.m.
Location: 5000 W. Carefree Highway
Phoenix, AZ 85086
Close of record: To be determined

11. 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 reason why a general permit is not used:

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

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

Federal law is not directly applicable to the subject of the rules. The rules are based on state 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:

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

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

Not applicable

13. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 3. TAKING AND HANDLING OF WILDLIFE

Section
R12-4-303. Unlawful Devices, Methods, and Ammunition

ARTICLE 3. TAKING AND HANDLING OF WILDLIFE

R12-4-303. Unlawful Devices, Methods, and Ammunition

A. In addition to the prohibitions prescribed under A.R.S. §§ 17-301 and 17-309, the following devices, methods, and ammunition are unlawful for taking wildlife in this state:

1. A person shall not use any of the following to take wildlife:
   a. Fully automatic firearms, including firearms capable of selective automatic fire.
   b. Tracer or armor-piercing ammunition designed for military use.
   c. Any smart device as defined under R12-4-301.
   d. Any self-guided projectiles.
2. A person shall not take big game using full-jacketed or total-jacketed bullets that are not designed to expand upon impact,
3. A person shall not use or possess any of the following while taking wildlife:
   a. Poisoned projectiles or projectiles that contain explosives or a secondary propellant.
   b. Pitfalls of greater than 5-gallon size, explosives, poisons, or stupefying substances, except as permitted under A.R.S. § 17-239 or as allowed by a scientific collecting permit issued under A.R.S. § 17-238.
   c. Any lure, attractant, or cover scent containing any cervid urine.
   d. Electronic night vision equipment, electronically enhanced light-gathering devices, thermal imaging devices or laser sights projecting a visible light; except for devices such as laser range finders projecting a non-visible light, scopes with self-illuminating reticles, and fiber optic sights with self-illuminating sights or pins that do not project a visible light onto an animal.
4. A person shall not by any means:
   a. Hold wildlife at bay other than during daylight hours, unless authorized by Commission Order.
   b. Injure, confine, place, or use a tracking device in or on wildlife for the purpose of taking or aiding in the take of wildlife.
   c. Place any substance, device, or object in, on, or by any water source to prevent wildlife from using that water source.
   d. Place any substance in a manner intended to attract bears.
   e. Use a manual or powered jacking or prying device to take reptiles or amphibians.
   f. Use dogs to pursue, tree, corner or hold at bay any wildlife for a hunter, unless that hunter is present for the entire hunt.
   g. Take migratory game birds, except Eurasian collared-doves:
      i. Using a shotgun larger than 10 gauge, a shotgun of any description capable of holding more than three shells unless it is plugged with a one-piece filler that cannot be removed without disassembling the shotgun so that its total capacity does not exceed three shells.
      ii. Using electronically amplified bird calls or baits.
      iii. By means or aid of any motordriven land, water, or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying, or stirring up of any migratory bird.
      iv. Activities described under subsections (g)(i) through (g)(iii) are prohibited under 50 C.F.R. 20.21, revised October 1, 2015. The material incorporated by reference in this Section does not include any later amendments or editions. The incorporated material is available at any Department office, online from the Government Printing Office website www.gpoaccess.gov, or may be ordered from the Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000.
   h. Discharge any of the following devices while taking wildlife within one-fourth mile (440 yards) of an occupied farmhouse or other residence, cabin, lodge or building without permission of the owner or resident:
      i. Arrow or bolt,
      ii. Hybrid device, or
      iii. Pneumatic weapon .35 caliber or larger.
   i. Participate in, organize, promote, or solicit participation in a contest where a participant uses or intends to use any device or implement to capture or kill predatory animals or fur-bearing animals as defined under A.R.S. § 17-101. For the purposes of this subsection, "contest" means a competition among participants where participants must register or record entry and pay a fee and prizes or cash are awarded to winning or successful participants.
5. A person shall not use a live-action trail camera, or images from a live-action trail camera, for the purpose of:
   a. Taking or aiding in the take of wildlife, or
   b. Locating wildlife for the purpose of taking or aiding in the take of wildlife.
6. A person shall not use images of wildlife produced or transmitted from a satellite or other device that orbits the earth for the purpose of:
   a. Taking or aiding in the take of wildlife, or
   b. Locating wildlife for the purpose of taking or aiding in the take of wildlife.
   c. This subsection does not prohibit the use of mapping systems or programs.

7. A person shall not use edible or ingestible substances to aid in taking big game. The use of edible or ingestible substances to aid in taking big game is unlawful when:
   a. A person places edible or ingestible substances for the purpose of attracting or taking big game, or
   b. A person knowingly takes big game with the aid of edible or ingestible substances placed for the purpose of attracting wildlife to a specific location.
8. Subsection (A)(7) does not limit Department employees or Department agents in the performance of their official duties.
9. For the purposes of subsection (A)(7), edible or ingestible substances do not include any of the following:
   a. Water.
   b. Salt.
   c. Salt-based materials produced and manufactured for the livestock industry.
   d. Nutritional supplements produced and manufactured for the livestock industry and placed during the course of livestock or agricultural operations.

B. It is unlawful for a person who is a prohibited possessor to take wildlife with a deadly weapon or prohibited weapon.
C. Wildlife taken in violation of this Section is unlawfully taken.
D. This Section does not apply to any activity allowed under A.R.S. § 17-302, to a person acting within the scope of their official duties as an employee of the state or United States, or as authorized by the Department.

NOTICE OF PROPOSED RULEMAKING
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

[R19-59]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) — **Rulemaking Action**
R20-5-507 — Amend

2. Citations to agency's statutory rulemaking authority to include the authorizing statute and the implementing statute:
Authorizing statute: A.R.S. § 23-491.04(A)(2)
Implementing statute: A.R.S. § 23-491.06

Note: An exemption from Executive Order 2019-01 was provided for this rulemaking by Kaitlin Harrier, Policy Advisor in the Office of the Arizona Governor, by e-mail dated March 4, 2019.

3. 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: 25 A.A.R. 895, April 12, 2019 (*in this issue*)

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

Name:	Jessie Atencio, Director
Address:	Division of Occupational Safety and Health Industrial Commission of Arizona 800 W. Washington St., Suite 203 Phoenix, AZ 85007
Telephone:	(602) 542-5795
Fax:	(602) 542-1614
E-mail:	Jessie.atencio@azdosh.gov

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

Pursuant to A.R.S. §§ 23-491.04(A)(2) and 23-491.06, the Industrial Commission of Arizona (the "Commission") is required to promulgate standards and regulations necessary to carry out Title 23, Chapter 2, Article 12 (Safety Conditions for Elevators and Similar Conveyances), including adopting national consensus standards. The Commission is proposing to amend A.A.C. R20-5-507 (Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Material Lifts, and Dumbwaiters with Automatic Transfer Devices) to incorporate by reference national consensus standards contained in ASME A17.7-2007 (Performance-Based Safety Code for Elevators and Escalators).

Currently, R20-5-507 incorporates the national consensus standards contained in ASME A17.1-2007 (Safety Code for Elevators and Escalators), which apply to the construction and installation of elevators and other conveyances. ASME A17.7-2007 (Performance-Based Safety Code for Elevators and Escalators) contains national consensus performance standards for elevators and other conveyances and would permit the use of newer elevator/escalator technologies that may not fall under ASME A17.1-2007. Although ASME A17.1-2007 references ASME A17.7-2007, R20-5-507 does not expressly adopt ASME A17.7-2007. Thus, elevator/escalator technologies not permitted by ASME A17.1-2007 arguably cannot be installed in Arizona. The proposed rulemaking would expressly adopt ASME A17.7-2007, as referenced in ASME A17.1-2007, enabling the construction and installation of more modern equipment (such as pneumatic elevators) which use newer technologies based on the industry mechanical and engineering standards.

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

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

7. 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

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

The Industrial Commission anticipates that the proposed rulemaking will have no adverse economic, small business, or consumer impact. The proposed rulemaking is intended to reduce regulatory burden by enabling the construction and installation of new elevator/escalator technologies that are currently not permitted under A.A.C. R20-5-507.

9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Jessie Atencio, Director
Address: Division of Occupational Safety and Health
Industrial Commission of Arizona
800 W. Washington St., Suite 203
Phoenix, AZ 85007
Telephone: (602) 542-5795
Fax: (602) 542-1614
E-mail: Jessie.atencio@azdosh.gov

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Written comments can be submitted to the address listed in item 9 by the close of the comment period, which is at 5:00 p.m. on May 20, 2019. An oral proceeding on the proposed amended rule is scheduled for May 20, 2019, at 9:00 a.m., at the Industrial Commission of Arizona, 800 W. Washington, Room 339, Phoenix, AZ 85007.

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

Not applicable

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

The proposed amended rule does not require issuance of a regulatory permit or license.

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:

There is not a federal law applicable to the subject of the proposed 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.

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

The Industrial Commission of Arizona is proposing to amend R20-5-507 (Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Material Lifts, and Dumbwaiters with Automatic Transfer Devices) to incorporate by reference national consensus standards contained in ASME A17.7-2007 (Performance-Based Safety Code for Elevators and Escalators). A copy of ASME A17.7-2007 (Performance-Based Safety Code for Elevators and Escalators) is available for inspection or reproduction at the Arizona Division of Occupational Safety and Health, 800 West Washington Street, Room 203, Phoenix, AZ 85007, or may be obtained from the American Society of Mechanical Engineers (ASME) at Three Park Avenue, New York, New York 10016- 5990 or at http://www.asme.org.

13. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 5. ELEVATOR SAFETY

R20-5-507. Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Material Lifts, and Dumbwaiters with Automatic Transfer Devices

Every owner or operator of an elevator, escalator, dumbwaiter, moving walk, material lift, or dumbwaiter with automatic transfer device, installed on or after the effective date of this Section shall comply with the ASME A17.1-2007 (Safety Code for Elevators and Escalators) or ASME A17.7-2007 (Performance–Based Safety Code for Elevators and Escalators) as referenced in ASME A17.1-2007, which ~~is~~are incorporated by reference. This incorporation by reference does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 West Washington Street, Phoenix,

Arizona 85007, and may be obtained from ASME at Three Park Avenue, New York, New York 10016- 5990 or at http://www.asme.org. Every owner or operator of an elevator, escalator, dumbwaiter, moving walk, material lift, or dumbwaiter with an automatic transfer device, installed between May 5, 2009, and the effective date of this Section shall comply with ASME A17.1- 2007 or, as an alternative, may comply with ASME A17.7- 2007. Every owner or operator of an elevator, escalator, dumbwaiter, moving walk, material lift, or dumbwaiter with an automatic transfer device, installed before ~~the effective date of this Section~~ May 5, 2009, shall comply with the ASME A17.1 Safety Code for Elevators and Escalators in effect at the time of installation or, as an alternative, may comply with ASME A17.1-2007 or ASME 17.7-2007.

NOTICE OF PROPOSED RULEMAKING
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 6. DEPARTMENT OF INSURANCE

[R19-49]

PREAMBLE

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

Article 11	Amend
R20-6-1101	Amend

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. § 20-143
Implementing statute: A.R.S. § 20-1133

3. 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: 25 A.A.R. 896, April 12, 2019 (*in this issue*)

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

Name:	Mary E. Kosinski
Address:	Arizona Department of Insurance 100 N. 15th Ave., Suite 102 Phoenix, AZ 85007-2624
Telephone:	(602) 364-3100
E-mail:	mkosinski@azinsurance.gov

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

This rule incorporates by reference National Association of Insurance Commissioners (NAIC) Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act (Model Regulation). Under A.R.S. § 20-1133, the Director is required to adopt rules as necessary to comply with the requirements of the social security disability amendments of 1980 (P.L. 96-265, 42 U.S.C. § 1395ss) and federal laws or regulations pertaining to that section, so that Arizona may retain its full authority to regulate minimum standards for Medicare supplement insurance.

Because A.R.S. § 41-1028 requires a statement that incorporated matter does not include any later amendments or editions of the incorporated matter, the Department seeks to amend R20-6-1101 to accomplish the mandate of A.R.S. § 20-1133 to reflect changes made by the NAIC to the Model Regulation.

In addition, both the Department and the NAIC have addresses that are no longer correct in the current rule. The Department needs to update these addresses to remain complaint with A.R.S. § 41-1028(D) which requires: The rules shall state where copies of the incorporated matter are available from the agency issuing the rule and from the agency of the United States or this state or the organization or association originally issuing the matter.

6. 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:

None

7. 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

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

Not applicable

9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Not applicable

10. The time, place, and nature of the proceedings to make, amend, repeal or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

No proceeding is scheduled. Persons may request an oral proceeding on the proposed rule by contacting:

Name: Mary E. Kosinski

Address: Arizona Department of Insurance
100 N. 15th Ave., Suite 102
Phoenix, AZ 85007-2624
Telephone: (602) 364-3100
E-mail: mkosinski@azinsurance.gov

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

Not applicable

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

The rule does not require a permit.

A.R.S. § 20-216 authorizes the Department to issue a certificate of authority to insurers doing business in Arizona if they meet statutorily specified criteria. No general permit is used.

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:

Under A.R.S. § 20-1133, the Director is required to adopt rules as necessary to comply with the requirements of the social security disability amendments of 1980 (P.L. 96-265, 42 U.S.C. § 1395ss) and federal laws or regulations pertaining to that section, so that Arizona may retain its full authority to regulate minimum standards for Medicare supplement insurance.

The rule is not more stringent than the 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

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

R20-6-1101(A) references the National Association of Insurance Commissioner's (NAIC) Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act, August 2016.

13. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

ARTICLE 11. MEDICARE SUPPLEMENT INSURANCE

Section
R20-6-1101. Incorporation by Reference and Modifications

ARTICLE 11. MEDICARE SUPPLEMENT INSURANCE

R20-6-1101. Incorporation by Reference and Modifications

A. The Department incorporates by reference the Model Regulation to Implement the National Association of Insurance Commissioners (NAIC) Medicare Supplement Insurance Minimum Standards Model Act, ~~October 2008~~ August 2016 (Model Regulation), and no future editions or amendments, which is on file with the Department of Insurance, ~~2910 N. 44th St., Phoenix, AZ 85018~~ 100 N. 15th Ave., Suite 102, Phoenix, AZ 85007-2624 and available from the National Association of Insurance Commissioners, Publications Department, ~~2301 McGee St., Suite 800, Kansas City, MO 64108~~ 1100 Walnut Street, Suite 1500, Kansas City, MO 64106-2197.

B. The Model Regulation is modified as follows:

1. In addition to the terms defined in the Model Regulation, the following definitions apply:
   a. "Agent" means an insurance producer as defined in A.R.S. § 20-281(5).
   b. "Commissioner" means the Director of the Arizona Department of Insurance.
   c. "HMO" and "health maintenance organization" mean a health care services organization as defined in A.R.S. § 20-1051(7).
   d. "Regulation" means Article.
2. Section 3(A)(2) reads:
   (2) All certificates issued under group Medicare supplement policies, which certificates have been delivered or issued for delivery in this state including association plans.
3. Section ~~8A(7)(c)~~ 8(A)(7)(c) reads:
   c. Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862(b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstituted (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within 90 days after the date of the loss of the group health plan and pays the premium attributable to the supplemental policy period, effective as of the date of termination of enrollment in the group health plan.

~~3.~~4. Section 8.1 is revised to insert the citation to A.R.S. § 20-1133 as follows:

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards. No issuer may offer any [1990 Standardized Medicare supplement benefit plan] for sale on or after June 1, 2010. Benefit standards applicable to Medicare supplement policies and certificates issued before June 1, 2010 remain subject to the requirements of A.R.S. § 20-1133.

~~4.~~5. Section 8.1(A)(7)(c) is revised to read as follows:

Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan (as defined in Section 186<u>2</u>(b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstituted (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within 90 days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan.

~~5.~~6. Section 9.1 is revised to insert the citation to A.R.S. § 20-1133 as follows:

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit plan standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued before June 1, 2010 remain subject to the requirements of A.R.S. § 20-1133.

~~6.~~7. Section 9.2 is revised to insert the citation to A.R.S. § 20-1133 as follows:

The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) requires the following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state to individuals newly eligible for Medicare on or after January 1, 2020. No policy or certificate that provides coverage of the Medicare Part B deductible may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate to individuals newly eligible for Medicare on or after January 1, 2020. All policies must comply with the following benefit standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued to individuals eligible for Medicare before January 1, 2020, remain subject to the requirements of A.R.S. § 20-1133.

8. ~~Subsection G of Section 15~~ Section 15(G) is revised as follows:

~~G.~~ An insurer shall not file or request approval of a rate structure for its Medicare supplement policies or certificates based upon attained-age rating as a structure or methodology.

~~7. Tables for PLAN F or HIGH DEDUCTIBLE PLAN F are revised as follows:~~

~~a. For the table entitled "PARTS A & B" a column heading is revised from "AFTER YOU PAY $[2000] DEDUCTIBLE,** PLAN PAYS" to "[AFTER YOU PAY $[2000] DEDUCTIBLE,**] PLAN PAYS."~~

~~b. For the table entitled "PARTS A & B" a column heading is revised from "IN ADDITION TO $[2000] DEDUCTIBLE,** YOU PAY" to ["IN ADDITION TO $[2000] DEDUCTIBLE,**] YOU PAY."~~

~~c. For the table entitled "OTHER BENEFITS – NOT COVERED BY MEDICARE" a column heading is revised from "AFTER YOU PAY $[2000] DEDUCTIBLE,** PLAN PAYS" to "[AFTER YOU PAY $[2000] DEDUCTIBLE,**] PLAN PAYS."~~

~~d. For the table entitled "OTHER BENEFITS – NOT COVERED BY MEDICARE" a column heading is revised from "IN ADDITION TO $[2000]] DEDUCTIBLE,** YOU PAY" to ["IN ADDITION TO $[2000] DEDUCTIBLE,**] YOU PAY."~~

~~8.~~9. Section 23 is revised as follows:

A. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy or certificate to the extent such time was spent under the original policy.

B. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods and probationary periods.

NOTICES OF FINAL RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Final Rulemaking. Final rules have been through the regular rulemaking process as defined in the Administrative Procedures Act. These rules were either approved by the Governor's Regulatory Review Council or the Attorney General's Office. Certificates of Approval are on file with the Office.

The final published notice includes a preamble and text of the rules as filed by the agency. Economic Impact Statements are not published.

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the final rules should be addressed to the agency that promulgated them. Refer to Item #5 to contact the person charged with the rulemaking. The codified version of these rules will be published in the Arizona Administrative Code.

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 9. GOVERNING COMMITTEE FOR TAX DEFERRED ANNUITY AND DEFERRED COMPENSATION PLANS

[R19-64]

PREAMBLE

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

R2-9-101 Repeal

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. § 38-871(C)(3)

Implementing statutes: A.R.S. §§ 38-871 et seq.

3. The effective date for the rules:

June 2, 2019

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: 25 A.A.R. 107, January 11, 2019

Notice of Proposed Rulemaking: 25 A.A.R. 91, January 11, 2019

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

Name: Jessica A.R. Thomas, Rules Writer

Address: Arizona State Retirement System
3300 N. Central Ave., Suite 1400
Phoenix, AZ 85012-0250

Telephone: (602) 240-2039

E-mail: JessicaT@azasrs.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 Committee needs to repeal R2-9-101 in order to reduce regulatory burden. R2-9-101 identifies obligations for a vendor who is contracted to administer the deferred compensation programs governed by the Committee. However, the Committee has the statutory authority to contract for such specific administrative services and may include prudent requirements in the contract, rather than promulgating separate rules. Thus, the rule is unnecessary and repealing the rule will reduce the regulatory burden on the contracted vendor while still achieving the same regulatory objective.

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 minimal cost to the Committee to prepare the rule package. The rule will have minimal economic impact, if any, because it reduces regulatory burden while still achieving the same regulatory objective. Thus, the economic impact is minimized.

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

None

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

The ASRS received no written comments regarding the rulemaking. No one attended the oral proceeding on February 12, 2019.

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 rules do not require a permit.

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

Federal law applies to retirement programs, but no federal law specifically applies to 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:

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 9. GOVERNING COMMITTEE FOR TAX DEFERRED ANNUITY AND DEFERRED COMPENSATION PLANS

ARTICLE 1. GENERAL PROVISIONS

Section

R2-9-101. ~~Employee Solicitation for Tax-Deferred Annuities and Deferred Compensation Plans~~ Repealed

ARTICLE 1. GENERAL PROVISIONS

R2-9-101. ~~Employee Solicitation for Tax-Deferred Annuities and Deferred Compensation Plans~~ Repealed

~~**A.** The administrator under contract with the Governing Committee shall draft and present an annual business plan that describes its approach to educating and marketing to employees regarding the tax-deferred annuity and deferred compensation plans. The administrator's business plan is subject to the approval of the Governing Committee. The business plan shall include:~~

~~1. Enrollment and participation goals for employees;~~
~~2. Performance measures for the administrator;~~
~~3. Plans for achieving the goals and performance measures;~~
~~4. An explanation of the effect of participation on take-home pay and future retirement income; and~~
~~5. Information regarding retirement planning and investment options.~~

~~**B.** The administrator shall establish and follow written procedures that provide for the impartial representation of the available investment options and investment products offered under the tax-deferred annuity and deferred compensation plans. The written procedures are subject to the advance written approval of the Governing Committee. The procedures shall:~~

~~1. Include directives to the administrator's personnel that information provided to the employees shall be presented in a fair and equal manner, allowing employees to make individual choices based upon their specific investment needs or desires;~~
~~2. Be adequate to ensure that the administrator's personnel will not engage in preferential solicitation of any investment option or investment product; and~~
~~3. Include a means of monitoring at reasonable intervals the adequacy of the procedures and reporting the results of the monitoring to the Governing Committee.~~

~~**C.** The failure of the administrator to present the plan required in subsection (A), or the failure of the administrator to establish and follow the procedures required in subsection (B), is a breach of its contract with the Governing Committee.~~

NOTICE OF FINAL RULEMAKING

TITLE 6. ECONOMIC SECURITY

CHAPTER 5. DEPARTMENT OF ECONOMIC SECURITY SOCIAL SERVICES

[R19-50]

PREAMBLE

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

Article 33	New Article
R6-5-3301	New Section
R6-5-3302	New Section
R6-5-3303	New Section
R6-5-3304	New Section
R6-5-3305	New Section
R6-5-3306	New Section
R6-5-3307	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. §§ 46-202 and 41-1954(A)(3)

Implementing statute: A.R.S. § 46-902(1)

3. The effective date of the rules:

May 20, 2019

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 proposed rulemaking:

Notice of Rulemaking Docket Opening: 24 A.A.R. 2362, August 24, 2018

Notice of Proposed Rulemaking: 24 A.A.R. 2357, August 24, 2018

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

Name: Christian J. Eide

Address: Department of Economic Security
P.O. Box 6123, Mail Drop 1292
Phoenix, AZ 85005

or

Department of Economic Security
1789 W. Jefferson St., Mail Drop 1292
Phoenix, AZ 85007

Telephone: (602) 542-9199

Fax: (602) 542-6000

E-mail: ceide@azdes.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 federal Achieving a Better Life Experience Act of 2014 (ABLE Act) was enacted on December 19, 2014 as part of the Tax Increase Prevention Act of 2014 (Public Law 113-295). The ABLE Act amends the Internal Revenue Code to exempt a qualified ABLE program from taxation. A qualified ABLE program is defined as "a program established by a state, or agency or instrumentality thereof under which a person may make contributions for a taxable year, for the benefit of an individual…to an ABLE account which is established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account." Public Law 113-295. H.B. 2388, signed into law on May 12, 2016, established the state Achieving a Better Life Experience (ABLE) Program, through which contributions may be made to an account of an eligible disabled person to meet qualifying disability expenses. H.B. 2388 requires the Department to adopt rules for the ABLE Program. The proposed rulemaking will provide clarification for the implementation and administration of the program.

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 relevant to the rules.

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 economic impact of operating the program is expected to be minimal (less than $1,000) on small businesses and consumers. Operating the program does not have any negative financial impact upon private persons and consumers, except for the fees established by the Plan (ABLE Program or a State Treasurer's 529A ABLE program), the Plan Manager (service provider), Mutual Funds, and the prepaid card provider. The public benefits from the program because it gives certain individuals with disabilities, as well as their families and friends, the opportunity to contribute to a tax-exempt savings account at a lower cost that can be used for maintaining health, independence, and quality of life.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:
The Department added language to R6-5-3301 Definitions for "Cash" as well as to R6-5-3305(2) Contributions for clarity.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:
The Department received no comments on this 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:
No other matters are prescribed.

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 do not require a 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:
Achieving a Better Life Experience Act of 2014 (Public Law 113-295).
The Department has determined that the rule is not more stringent than the applicable 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 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 rules:
None

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

15. The full text of the rules follows:

TITLE 6. ECONOMIC SECURITY

CHAPTER 5. DEPARTMENT OF ECONOMIC SECURITY SOCIAL SERVICES

ARTICLE 33. ~~RESERVED~~ ACHIEVING A BETTER LIFE EXPERIENCE

Section
R6-5-3301. Definitions
R6-5-3302. Program Manager
R6-5-3303. Fees
R6-5-3304. Opening an Account
R6-5-3305. Contributions
R6-5-3306. Statements
R6-5-3307. Program to Program Transfers and Rollovers

ARTICLE 33. ~~RESERVED~~ ACHIEVING A BETTER LIFE EXPERIENCE

R6-5-3301. Definitions
The following definitions apply to this Article:

1. "ABLE" means the Achieving a Better Life Experience Act.
2. "Account" means an individual account in the fund established as prescribed for a single designated beneficiary.
3. "Aggregate Account Balance" means the total amount in an account on a particular date.
4. "Applicant" means any individual who applies to open an Account in the Program.

5. "Cash" means personal check, cashier's check, money order, debit card, Automated Clearing House (ACH) payments, or a similar cash equivalent.
6. "Code" means the federal Internal Revenue Code of 1986, as amended (26 U.S.C. 529A).
7. "Committee" means the same as in A.R.S. § 46-901(3).
8. "Department" means the Arizona Department of Economic Security.
9. "Designated Beneficiary" means the same as in A.R.S. § 46-901(5).
10. "Designated Representative" means a person who is authorized to act on behalf of a Designated Beneficiary.
11. "Disability Certification" means the certification described in Section 529A of the Code.
12. "Eligible Individual" means the same as in A.R.S. § 46-901(6).
13. "IRS" means the federal Internal Revenue Service.
14. "Program" means the same as in A.R.S. § 46-901(9).
15. "Program Manager" means the entity selected by the Department for the Program in accordance with A.R.S. § 46-903(C)(1)-(8).
16. "Qualified Disability Expenses" means the same as in A.R.S. § 46-901(10).
17. "Qualified Withdrawal" or "Qualified Distribution" means a withdrawal from an Account to pay Qualified Disability Expenses of the Designated Beneficiary.
18. "Secretary" means the United States Secretary of the Treasury or his/her delegate.
19. "SSA" means the Social Security Administration.

R6-5-3302. Program Manager

Responsibilities of the Program Manager:

1. The Program Manager shall implement the Program, including the administration and management of the Program.
2. The Program Manager shall ensure adequate safeguards to prevent aggregate contributions on behalf of a Designated Beneficiary in excess of the limit established by the Department under section 529(b)(6) of the Code. For purposes of this Section, aggregate contributions include contributions under any prior qualified ABLE program of any state or agency or instrumentality of either.
3. The Program Manager shall compile or cause to be compiled the necessary information to complete any reports.
4. The Program Manager may contract with third parties to assist the Department and Program Manager in the educational and promotional activities for the Program.
5. The Program Manager may use forms provided or promulgated by the SSA, the IRS, or other federal agencies for the purposes of the ABLE Program. The Program Manager may also promulgate its own forms reasonably necessary to implement the ABLE Program.

R6-5-3303. Fees

1. The Program Manager may impose administrative, maintenance, investment management and investment fees on Designated Beneficiaries.
2. The Program Manager may impose a nonrefundable application fee to review and process paper applications.

R6-5-3304. Opening an Account

1. To open an Account in the Program, an individual shall submit a completed application form, pay the application fee, if any, and pay an initial minimum contribution to the Account, if any, to the Program Manager at https://az-able.com/.
2. The Program Manager may require a minimum initial contribution to open an Account.
3. The content of the application form shall be prescribed by the Program Manager, but shall include at a minimum, the following information:
   a. The name, address, social security number and birth date of the Designated Beneficiary;
   b. The name, address and social security number of the Designated Representative, if the Designated Beneficiary is not the applicant;
   c. Evidence that the Designated Beneficiary is an Eligible Individual;
   d. Any additional information required by the Program Manager.
4. Completed applications shall be submitted as specified on the application form.
5. Applications that are incomplete or fail to meet the requirements established by the Department and the Program Manager shall be rejected. Reapplication is permissible.

R6-5-3305. Contributions

1. Any person may make contributions to an Account, subject to the limitations imposed by federal law.
2. Except in the case of program-to-program transfers, contributions may be made in cash or a similar cash equivalent.
3. Annual contributions to an Account from all sources, except contributions received in program-to-program transfers, are limited to the per-beneficiary amount excluded from the federal gift tax under federal law.
4. Excess contributions and excess aggregate contribution shall be returned to contributors.

R6-5-3306. Statements

1. Account statements shall be provided to Designated Beneficiaries and Designated Representatives in accordance with the Act.
2. Account statements may be provided to other individuals authorized to receive that information under the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 96 *et seq*.) and the Truth in Lending Act (15 U.S.C. 1601 *et seq*.).

3. The Account statements may be provided using U.S. Mail or provided electronically via website access or e-mail, as selected by the Designated Beneficiary or Designated Representative.

R6-5-3307. Program-to-Program Transfers and Rollovers

1. Subject to federal law, the Program shall permit a program-to-program transfer through which a Designated Beneficiary transfers the entire amount of an Account from the AZ ABLE Program to or from a different state's ABLE program, or for the transfer of an Account from a Designated Beneficiary to another Eligible Individual who is a member of the family of the former Designated Beneficiary, without any intervening distribution.
2. Subject to federal law, the Program shall permit rollovers through which a contribution to an Account of a Designated Beneficiary (or an Eligible Individual who is a member of the family of the Designated Beneficiary) of all or a portion of the amount withdrawn from the Designated Beneficiary's Account, provided the contribution is made within 60 days of the date of the withdrawal, and, in the case of a rollover to the Designated Beneficiary's Account, no rollover has been made to another account established under an ABLE program within the prior 12 months.

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY AIR POLLUTION CONTROL

[R19-51]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) — **Rulemaking Action**
R18-2-220 — 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. §§ 49-104(A)(10) and 49-404(A)
Implementing statute: A.R.S. §§ 49-425(A)

3. The effective date of the rule:
May 18, 2019

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: 24 A.A.R. 2637, September 21, 2018
Notice of Proposed Rulemaking: 24 A.A.R. 2615, September 21, 2018

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

Name:	Lisa Tomczak
Address:	Department of Environmental Quality 1110 W. Washington St. Phoenix, AZ 85007
Telephone: number.)	(602) 771-4450; (This number may be reached in-state by dialing 1-800-234-5677 and entering the seven digit
E-mail:	tomczak.lisa@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 Arizona Department of Environmental Quality (ADEQ) is amending Arizona Administrative Code (A.A.C.) R18-2-220, Air Pollution Emergency Episodes. This rule provides a sequence of emission reduction priorities and criteria used to determine air pollution emergency episodes. The rule utilizes a tiered approach for emissions control and advisory procedures for three episode stages: *alert*, *warning*, and *emergency.*

During a Stage I air pollution *alert*, a news release is issued indicating that an air pollution alert has been declared and requests that the general public restrict vehicle use as much as possible. For alerts regarding industrial pollutants, ADEQ will request that applicable sources under state jurisdiction reduce emissions. Delegated authorities will make a similar request for sources under their jurisdiction.

An air pollution Stage II *warning* will be declared in the event that air pollution warning levels occur and are expected to continue or recur within 24 hours. ADEQ will also declare a warning stage if air pollution alert levels persist for 48 hours with no improvement in air quality. For automotive related pollutants, ADEQ will request that schools, industry, businesses, and government facilities restrict motor vehicle traffic as much as possible. For other pollutants, ADEQ will request that applicable sources further reduce emissions of the pollutant that is subject to the warning. Delegated authorities will make a similar request for sources under their jurisdiction.

For Stage III, if exceedances at the emergency air pollution level occur and are expected to continue or recur within 24 hours, or if warning levels persist for 48 hours and conditions are not expected to improve, an air pollution *emergency* will be declared. At the emergency air pollution level, ADEQ will notify the Governor's Office. The Governor may request that all industrial, construction, commercial, governmental, and institutional facilities be closed. The use of motor vehicles may be prohibited except for emergency situations that have been approved by law enforcement.

This rule incorporates by reference the August 2018 Final Procedures Manual titled "Procedures for Prevention of Emergency Episodes", which is on file at ADEQ. The procedures manual is being revised as part of this rulemaking; however, the manual is not included in the rule language. The procedures manual contains the processes that ADEQ must follow in the event of an air pollution emergency episode. These processes outline the preparations and response techniques for public notification and informing emission sources of relevant information regarding the pollutant of a given air pollution emergency episode. These preplanned strategies are designed to minimize the cost and effort required of regulated entities, while simultaneously curtailing emissions. Successful implementation of the strategies according to the episode stages outlined in the rule expedite emission curtailment and prevent pollution concentrations from reaching levels that may cause significant harm to public health.

Background.

Fine particulate matter ($PM_{2.5}$) is able to travel deep into the respiratory tract, reaching the lungs. Exposure to $PM_{2.5}$ can cause short-term health effects such as eye, nose, throat and lung irritation, coughing, sneezing, runny nose and shortness of breath. Exposure can also affect lung function and worsen medical conditions such as asthma and heart disease. Scientific studies have linked increases in daily $PM_{2.5}$ exposure with increased respiratory and cardiovascular hospital admissions, emergency department visits and deaths. Studies suggest that long-term exposure to fine particulate matter may be associated with increased rates of chronic bronchitis, reduced lung function and increased mortality from lung cancer and heart disease. People with breathing and heart problems, children and the elderly may be particularly sensitive to $PM_{2.5}$. To protect human health, EPA sets National Ambient Air Quality Standards (NAAQS) for six criteria pollutants, including PM.

In July 1997 EPA promulgated revisions to the PM NAAQS by adding a new standard for $PM_{2.5}$. Due to the potential health effects associated with long- and short-term exposure to $PM_{2.5}$, EPA set an annual and a 24-hour $PM_{2.5}$ standard. The 1997 primary annual $PM_{2.5}$ standard was set as the annual arithmetic mean, averaged over 3 years, at 15 micrograms per cubic meter ($\mu g/m^3$). The primary 24-hour standard was set at 65 $\mu g/m^3$, the annual 98^{th} percentile of daily (24-hour) values, averaged over three years (62 FR 38652, July 18, 1997).

In 2006 EPA revised the $PM_{2.5}$ NAAQS and lowered the 24-hour average standard from 65 to 35 $\mu g/m^3$ and retained the level of the annual primary standard (71 FR 61144, October 17, 2006).

On January 15, 2013 EPA again revised the NAAQS for $PM_{2.5}$, this time lowering the annual standard to 12.0 $\mu g/m^3$ in order to provide increased protection against health effects associated with long- and short-term exposures (78 FR 3086, January 15, 2013). EPA retained the 24-hour $PM_{2.5}$ standard at a level of 35 $\mu g/m^3$.

Within three years following the promulgation of new or revised NAAQS, Clean Air Act (CAA) Section 110(a)(1) requires states to submit State Implementation Plans (SIPs) that provide for implementation, maintenance, and enforcement of the standards. These SIPs, also called infrastructure SIPs (I-SIP), must address certain basic elements of its air quality management programs under CAA Section 110(a)(2). These elements, detailed in CAA Sections 110(a)(2)(A) through (M), include provisions for monitoring, emissions inventories, and modeling designed to ensure attainment and maintenance of the NAAQS.

On December 11, 2015 ADEQ submitted the 2012 $PM_{2.5}$ NAAQS I-SIP to EPA to satisfy requirements for CAA Sections 110(a)(1) and 110(a)(2). The SIP fulfills most of the requirements; however, EPA indicated that CAA Section 110(a)(2)(G) was not approvable. CAA Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs, which are contained in A.A.C. R18-2-220.

Currently, A.A.C. R18-2-220 does not contain the averaging time and emergency episode concentrations for $PM_{2.5}$. If ADEQ does not revise A.A.C R18-2-220 to include $PM_{2.5}$, EPA will take formal action to disapprove those portions of the I-SIP, which can lead to the promulgation of a federal implementation plan (FIP) by the EPA under CAA Section 110(c)(1). A FIP contains requirements that are dictated and enforced by EPA, which can include prohibition of highway funds and emission offset requirements for certain emission sources.

Section by Section Explanation of Proposed Rules:

This proposed rulemaking will amend A.A.C. R18-2-220, Air Pollution Emergency Episodes, to update the State rule to include the air pollution emergency episode levels for $PM_{2.5}$. This rulemaking will bring Arizona's standards into conformity with federal rules and is required under Section 110(a)(2) of the Clean Air Act (CAA).

R18-2-220(A) This section provides the requirement for procedures to be implemented by the ADEQ Director that will

prevent the occurrence of levels of pollution that would cause significant harm to the public. It provides the incorporation by reference to ADEQ's "Procedures for Prevention of Emergency Episodes." The change revises the date of the Procedures Manual to incorporate by reference the revised manual.

R18-2-220(B)(4) This subsection provides the summary of the emergency episode and significant harm levels (in tabular format) for the pollutants subject to this rule. The changes add $PM_{2.5}$ to the table, which includes the averaging time as well as the concentrations for the alert, warning, emergency, and significant harm levels.

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 (ESBCIS) under A.R.S. § 41-1055.

An identification of the rulemaking.

The rulemaking addressed by this ESBCIS amends A.A.C. R18-2-220, Air Pollution Emergency Episodes. This rulemaking will adopt language identifying the pollutant, averaging time, as well as the emergency episode and significant harm levels for fine particulate matter, as revised and adopted by EPA.

An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the rulemaking.

The persons who will be directly affected by and bear the costs of this rulemaking are the governmental agencies responsible for the declaration and public and industry notification of air pollution episodes. Companies and/or activities that emit pollutants subject to A.A.C. R18-2-220 would also be affected by this rulemaking. These include (but may not be limited to): burn permits, power plants, smelters, manufacturing facilities, building construction, and highway construction.

The persons who will benefit from this rulemaking are the residents of Arizona as a result of the notifications that would occur in the event of an air quality emergency episode and receive critical information regarding actions to take in order to limit their exposure to air pollution.

A cost benefit analysis of the following:

(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the rulemaking.

ADEQ estimates that the current number of full-time employees assigned in the Air Quality Division at ADEQ are adequate to implement and enforce the notifications, air quality monitoring, and forecasting for air pollution emergency episodes. The cost of the rule to the implementing agency will therefore be minimal.

ADEQ has jurisdiction for air quality planning, permitting, monitoring and forecasting in most areas of Arizona. Maricopa County will be revising its emergency episodes rule and will conduct rulemakings to incorporate the new standards for $PM_{2.5}$. The costs and benefits will be similar for Maricopa County as for ADEQ.

Pima and Pinal Counties are delegated air quality planning authorities for areas within their jurisdictions. The West Central Pinal Moderate $PM_{2.5}$ Nonattainment Area was designated under the 2006 $PM_{2.5}$ NAAQS but was designated as unclassifiable/attainment for the 2012 $PM_{2.5}$ NAAQS along with the rest of the state.

Air quality monitoring in Pima and Pinal Counties shows that there have been no exceedances of the 2012 $PM_{2.5}$ NAAQS. At this time, EPA is not requiring Pima and Pinal Counties to revise their emergency episodes rules to comply with infrastructure requirements for the 2012 $PM_{2.5}$ NAAQS. However, EPA has recommended that the counties revise their emergency episodes rules to align with the 2012 $PM_{2.5}$ NAAQS.

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

In the event of an air pollution emergency episode, ADEQ expects overall costs to vary by the air pollution episode stage due to the level of preparation for each of the stage and the specific political subdivisions affected, which includes counties with air pollution control programs (as noted in previous section). Political subdivisions that may be affected include (but are not limited to) metropolitan planning organizations, irrigation districts, and school districts. Any costs borne by these entities would likely result from implementation of emission reduction strategies. It is unlikely that any of these entities are primary sources of any of the gaseous (i.e. sulfur dioxide, VOCs) precursors to $PM_{2.5}$ pollution. As a result they may implement minor yet effective strategies, such as reducing vehicular traffic from their operations or through alternative modes of travel for employees. As a result, the costs borne by these entities would be minimal.

This rulemaking will provide public health protection from temporary high levels of $PM_{2.5}$ pollution. Additionally, this rulemaking prevents the State from being susceptible to a FIP enforced by EPA under the CAA.

(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.

The rules being amended are necessary to comply with federal requirements under Section 110(a)(2) of the CAA. These revisions are necessary to avoid disapproval of the Infrastructure State Implementation Plan (I-SIP) for the 2012 $PM_{2.5}$ NAAQS. Disapproval of the I-SIP will result in the issuance of a FIP by the EPA under Section 110(c)(1) of the CAA, which can include prohibition of highway funds and emission offset requirements for certain emission sources.

Pollutants currently regulated by A.A.C. R18-2-220 include carbon monoxide (CO), nitrogen dioxide (NO_2), ozone (O_3), coarse particulate matter (PM_{10}), and sulfur dioxide (SO_2). Businesses that emit these pollutants that are already subject to this rule may include (but are not limited to) coal- and oil-fired electric and steam power generating facilities, primary and secondary metals, petroleum refining, chemical processing, mineral processing, and glass processing. This rulemaking incorporates $PM_{2.5}$ to the air pollution emergency episodes rule; subsequently, businesses that emit $PM_{2.5}$ will be subject to the rule.

Potential costs will vary according to the level of the pollution episode and the pollutant. Any costs incurred by a business (such as reducing or prohibiting vehicular traffic, reducing production, or closing facilities) would be temporary and extend only through the duration of the episode.

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

ADEQ anticipates that employment impacts will be minor. Because the low potential for an air pollution emergency to occur, ADEQ does not expect short- or long-term employment, production, or industrial growth in Arizona to be negatively impacted by this rulemaking. No sources are expected to close from the implementation of this rulemaking. Any reductions in production would occur only during the term of the air pollution emergency episode.

A statement of the probable impact of the rulemaking on small businesses.

(a) An identification of the small businesses subject to the rulemaking.

Under A.R.S. § 41-1001(21): "Small business" means a concern, including its affiliates, which is [1] independently owned and operated, which is [2] not dominant in its field and which [3] employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year.

Only businesses emitting pollutants subject to this rule would be directly affected by the declaration of an air pollution emergency episode. It is unlikely that small businesses would emit enough pollutants to contribute to a $PM_{2.5}$ emergency episode and therefore will likely not be requested to limit or cease production.

(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.

(i) Establishing less costly compliance requirements in the rulemaking for small businesses.

Not applicable.

(ii) Establishing less costly schedules or less stringent deadlines for compliance in the rulemaking.

Not applicable.

(iii) Exempting small businesses from any or all requirements of the rulemaking.

Not applicable.

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

Any costs that would be borne by private persons and consumers (i.e. the general public) would be potentially the result of an employer limiting production to reduce emissions or shutting down during the term of the air pollution emergency episode. Because of the extreme unlikelihood of the declaration of an air pollution episode, it is unlikely that the general public will be affected.

The general public will benefit from this rulemaking through the avoidance of or reductions in air pollution resulting from a declared air pollution emergency episode. Air quality regulations that lower concentrations of pollutants have the potential to reduce adverse health effects ranging from missed school and work days to premature mortality. Persons with compromised health (physiological, morphological, and biochemical) are more susceptible to the harmful effects of air pollutants. In the event that an air pollution episode is declared, the public will be notified and will be informed of the episode level and information will be provided actions to take that will minimize exposure to the pollutant that is subject to the episode.

A statement of the probable effect on state revenues.

Due to the low probability for an air pollution emergency episode to be declared, ADEQ does not expect any effects on state revenues.

A description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking.

ADEQ was not able to identify any less intrusive or costly alternative methods for achieving the purpose of the rulemaking, which is compliance with the federal requirements for Sections 110(a)(1) and (2) of the CAA and federal Guidance for SIP Elements under the aforementioned CAA Sections. As a result, the amendments to A.A.C. R18-2-220 are required as a part of Arizona's $PM_{2.5}$ Infrastructure State Implementation Plan.

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:

No changes were made to the rules 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:

No oral or written comments were received.

12. All shall list other matters prescribed by statute applicable to the specific agency or to any specific agencies 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 matters prescribed by Arizona statute applicable specifically to ADEQ or this specific rulemaking.

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 rule does not inherently require a permit. Any facility subject to a permit is already covered under Title V of the Clean Air Act and ADEQ's permitting program.

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:

This rule allows Arizona to comply with CAA Sections 110(a)(1) and (2). The rule incorporates federal regulations but is not more stringent than federal law. The revisions are necessary in order for Arizona to avoid disapproval of the 2012 PM2.5 I-SIP and imposition of a FIP.

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

No person submitted an analysis to ADEQ.

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 2. AMBIENT AIR QUALITY STANDARDS; AREA DESIGNATIONS; CLASSIFICATIONS

Section

R18-2-220. Air ~~pollution~~ Pollution ~~emergency~~ Emergency ~~episodes~~ Episodes

ARTICLE 2. AMBIENT AIR QUALITY STANDARDS; AREA DESIGNATIONS; CLASSIFICATIONS

R18-2-220. Air ~~pollution~~ Pollution ~~emergency~~ Emergency ~~episodes~~ 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 ~~October 18, 1988~~ August 2018 (and no future edition), which is incorporated herein by reference and on file with the ~~Office of the Secretary of State~~ Department.

B. No change

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

NOTICES OF RULEMAKING DOCKET OPENING

This section of the *Arizona Administrative Register* contains Notices of Rulemaking Docket Opening.

A docket opening is the first part of the administrative rulemaking process. It is an "announcement" that the agency intends to work on its rules.

When an agency opens a rulemaking docket to consider rulemaking, the Administrative Procedure Act (APA) requires the publication of the Notice of Rulemaking Docket Opening.

Under the APA effective January 1, 1995, agencies must submit a Notice of Rulemaking Docket Opening before beginning the formal rulemaking process. Many times an agency may file the Notice of Rulemaking Docket Opening with the Notice of Proposed Rulemaking.

The Office of the Secretary of State is the filing office and publisher of these notices. Questions about the interpretation of this information should be directed to the agency contact person listed in item #4 of this notice.

NOTICE OF RULEMAKING DOCKET OPENING
GAME AND FISH COMMISSION

[R19-57]

1. Title and its heading: 12, Natural Resources

Chapter and its heading: 4, Game and Fish Commission

Article and its heading: 3, Taking and Handling of Wildlife

Section numbers: R12-4-303 (*As part of this rulemaking, the Department may add, delete, or modify additional Sections as necessary*)

2. The subject matter of the proposed rule:

The Arizona Game and Fish Commission proposes to adopt rules to regulate hunting activities consistent with the guiding principles governing the Commission's duty to preserve wildlife for the beneficial use of the public. The proposed rulemaking will designate a predator/fur-bearing hunt contest, as defined by the rule, an unlawful method of take for predator/fur-bearing species. A rule that provides clear instruction about the legal hunting of predator/fur-bearing species provides for the conservation, maintenance, and utilization of wildlife under the jurisdiction of the state for the benefit of all the citizens of the state.

3. A citation to all published notices relating to the proceeding:

Notice of Proposed Rulemaking: 25 A.A.R. 875, April 12, 2019 (*in this issue*)

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

Name: Celeste Cook, Rules and Policy Manager

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

Telephone: (623) 236-7390

E-mail: CCook@azgfd.gov

Please visit the AZGFD website to track the progress of this rule; view the regulatory agenda and all previous Five-year Review Reports; and learn about any other agency rulemaking matters at https://www.azgfd.com/agency/rulemaking/.

5. The time during which the agency will accept written comments and the time and place where oral comments may be made:

The Commission will accept comments Monday through Friday from 8:00 a.m. until 5:00 p.m., at the address listed under item #4 for 30 days from the date the Notice of Proposed Rulemaking is published in the *Arizona Administrative Register*. Information regarding an oral proceeding is included in the Notice of Proposed Rulemaking.

6. A timetable for agency decisions or other action on the proceeding, if known:

To be determined

NOTICE OF RULEMAKING DOCKET OPENING
DEPARTMENT OF PUBLIC SAFETY
SCHOOL BUSES

[R19-54]

1. Title and its heading: 13, Public Safety

Chapter and its heading: 13, Department of Public Safety – School Buses

Article and its heading: 1, School Bus Minimum Standards
2, Minimum Standards for School Buses Operated On Alternative Fuel

Section numbers: R13-13-101 through R13-13-112; R13-13-201 and R13-13-202
(The Department may add,delete or modify sections as necessary)

2. The subject matter of the proposed rule:

The Department, working in consultation with the Arizona School Bus Advisory Council pursuant to A.R.S. §§ 28-900 and 28-3228, intends to amend Articles 1 and 2 to meet modern and future-use minimum safety standards. Substantial amendments to the

rules are intended to modernize and streamline driver certification processes allowing for improved competency of drivers and certification processes, improving the ability for school districts to hire and retain drivers. Additionally, the rule amendments are intended to modernize the minimum standards for school bus design, systems, and fuels. Engineering deficiencies/improvements and enforcement standards will be addressed as well as alternative fuel systems for natural gas, propane (CNG/LPG), all electric and hybrid (electric/gas) will be addressed to allow school districts to purchase newer, safer, modern and more fuel-efficient school buses.

The Department was granted an exception to the rulemaking moratorium contained in Executive Order 2019-01 in an e-mail from Ms. Jennifer Thomsen, Policy Advisor, Public Safety and Military Affairs, Office of the Governor, dated March 11, 2019.

3. A citation to all published notices relating to the proceeding:

None

4. Name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Anthony Gerard, Captain
Address: Arizona Department of Public Safety
POB 6638 Mail Drop 1240
Phoenix, AZ 85005-6638
Telephone: (928) 773-3691
E-mail: agerard@azdps.gov
Web site: www.azdps.gov

5. The time during which the agency will accept written comments and the time and place where oral comments may be made:

The Department will accept comments during business hours at the address listed in Item 4 until the close of record. Information regarding an oral proceeding will be included in the Notice of Proposed Rulemaking.

6. A timetable for agency decisions or other action on the proceeding, if known:

To be determined.

NOTICE OF RULEMAKING DOCKET OPENING
INDUSTRIAL COMMISSION OF ARIZONA

[R19-68]

1. Title and its heading: 20, Commerce, Financial Institutions, and Insurance
Chapter and its heading: 5, Industrial Commission of Arizona
Article and its heading: 5, Elevator Safety
Section numbers: R20-5-507

2. The subject matter of the proposed rule:

Pursuant to A.R.S. §§ 23-491.04(A)(2) and 23-491.06, the Industrial Commission of Arizona (the "Commission") is required to promulgate standards and regulations necessary to carry out Title 23, Chapter 2, Article 12 (Safety Conditions for Elevators and Similar Conveyances), including adopting national consensus standards. The Commission is proposing to amend R20-5-507 (Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Material Lifts, and Dumbwaiters with Automatic Transfer Devices) to incorporate by reference national consensus standards contained in ASME A17.7-2007 (Performance-Based Safety Code for Elevators and Escalators).

3. A citation to all published notices relating to the proceeding:

Notice of Proposed Rulemaking: 25 A.A.R. 878, April 12, 2019 (*in this issue*)

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

Name: Jessie Atencio, Director
Address: Division of Occupational Safety and Health
Industrial Commission of Arizona
800 W. Washington St., Suite 203
Phoenix, AZ 85007
Telephone: (602) 542-5795
Fax: (602) 542-1614
E-mail: Jessie.atencio@azdosh.gov

5. The time during which the agency will accept written comments and the time and place where oral comments may be made:

The Industrial Commission will accept comments during a public comment period that is included in the Notice of Proposed Rulemaking in this issue (see page 878). Information regarding an oral proceeding is also included in the Notice of Proposed Rulemaking in this issue.

6. A timetable for agency decisions or other action on the proceeding, if known:

To be determined.

NOTICE OF RULEMAKING DOCKET OPENING
DEPARTMENT OF INSURANCE

[R19-55]

1. Title and its heading: 20, Commerce, Financial Institutions, and Insurance
Chapter and its heading: 6, Department of Insurance
Article and its heading: 4, Types of Insurance Companies
Section numbers: R20-6-401

2. The subject matter of the proposed rule:
On June 15, 2018, the Department relocated. Section R20-6-401 still contains the Department's prior address and the Department wishes to update the rule to include its current address.

The rule also incorporates a National Association of Insurance Commissioners' (NAIC) model regulation by reference. A.R.S. § 41-1028, which authorizes an agency to incorporate matter in its rules by reference, requires a statement of where copies of the incorporated matter is available from the agency and from the organization originally issuing the incorporated matter. A.R.S. § 41-1028(D). The Department and NAIC addresses are both outdated.

3. A citation to all published notices relating to the proceeding:
None

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

Name:	Mary E. Kosinski
Address:	Department of Insurance 100 N. 15th Ave., Suite 102 Phoenix, AZ 85007-2624
Telephone:	(602) 364-3100
E-mail:	mkosinski@azinsurance.gov

5. The time during which the agency will accept written comments and the time and place where oral comments may be made:
Due to the limited nature of the amendments being proposed, the Department has no plans to hold a hearing on the proposed rulemaking at this time. However, the Department will schedule an oral proceeding on the proposed rule if, within 30 days after the published notice, a written request for an oral proceeding is submitted to the contact person listed in paragraph 4 of this notice.

The Department will accept written comments for 30 days after the published notice at: public_comments@azinsurance.gov.

6. A timetable for agency decisions or other action on the proceeding, if known:
Not applicable

NOTICE OF RULEMAKING DOCKET OPENING
DEPARTMENT OF INSURANCE

[R19-56]

1. Title and its heading: 20, Commerce, Financial Institutions, and Insurance
Chapter and its heading: 6, Department of Insurance
Article and its heading: 11, Medicare Supplement Insurance
Section numbers: R20-6-1101

2. The subject matter of the proposed rule:
R20-6-1101 governs Medicare Supplement Insurance (sometimes referred to as "Medigap coverage"), which is insurance a person may buy to supplement Medicare coverage. Section R20-6-1101 incorporates by reference the National Association of Insurance Commissioners (NAIC) Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act (Model Regulation). The Model Regulation provides uniformity for multi-state insurers who market Medicare Supplement products in multiple states and also to consumers who relocate to a different state and own or seek to purchase this insurance product.

3. A citation to all published notices relating to the proceeding:
None

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

Name:	Mary E. Kosinski
Address:	Department of Insurance 100 N. 15th Ave., Suite 102 Phoenix, AZ 85007-2624
Telephone:	(602) 364-3100
E-mail:	mkosinski@azinsurance.gov

5. The time during which the agency will accept written comments and the time and place where oral comments may be made:
Due to the limited nature of the amendments being proposed, the Department has no plans to hold a hearing on the proposed rulemaking at this time. However, the Department will schedule an oral proceeding on the proposed rule if, within 30 days after the

published notice, a written request for an oral proceeding is submitted to the contact person listed in paragraph 4 of this Notice. The Department will accept written comments for 30 days after the published notice at: public_comments@azinsurance.gov.

6. A timetable for agency decisions or other action on the proceeding, if known:

The Medicare Access and CHIP Reauthorization Act of 2015 ("MACRA") requires states to adopt the changes necessary to implement MACRA to be effective January 1, 2020, to avoid losing regulatory authority over the provisions of the MACRA amendments.

NOTICES OF PUBLIC INFORMATION

Notices of Public Information contain corrections that agencies wish to make to their notices of rulemaking; miscellaneous rulemaking information that does not fit into any other category of notice; and other types of information required by statute to be published in the Register.

Because of the variety of Notices of Public Information, the Office of the Secretary of State has not established a specific publishing format for these notices. We do however require agencies to use a numbered list of questions and answers and follow our filing requirements by presenting receipts with electronic and paper copies.

NOTICE OF PUBLIC INFORMATION
DEPARTMENT OF ENVIRONMENTAL QUALITY
SAFE DRINKING WATER

[M19-35]

1. Name of the Agency: Department of Environmental Quality
Title and its heading: 18, Environmental Quality
Chapter and its heading: 4, Department of Environmental Quality – Safe Drinking Water
Article and its heading: 8, Technical Assistance
Section and its heading: R18-4-803, Master Priority List

2. The public information relating to the listed statute:

Pursuant to A.R.S. § 49-358, the Arizona Department of Environmental Quality (Department) has developed a water system compliance assistance program to assist public water systems in complying with state and federal laws, rules and regulations regarding safe drinking water. As of March 25, 2019, there are 1,516 public water systems (PWS) in operation in Arizona. Of this universe of water systems, 1,449 (96%) are classified as "small water systems" serving 10,000 or fewer persons. Historically, these small-and medium-sized public water systems have accrued the vast majority of Arizona's reported drinking water violations (e.g., contaminant exceedance violations, no certified operator, missed monitoring). The capacity development program works to ensure that public water systems possess the technical, managerial and financial capacity to operate in accordance with all the drinking water rules and regulation. Capacity development also reaches out to small public water systems needing technical assistance which is provided by the Department or through third party contractors.

3. Draft Master Priority List:

Public water systems are identified for technical assistance on the basis of the Master Priority List (MPL) which is updated annually in April. The criteria used to determine the need for assistance include the measures used in determining the technical, managerial and financial (TMF) capacity of existing PWSs. Additional criteria include the public water system's score on the U.S. Environmental Protection Agency's (EPA) Enforcement Targeting Tool, system classification type, population served, and violation history. Technical assistance contracts are typically awarded to prepare one of several deliverables: a TMF capacity assessment of the water system, an evaluation of compliance options for water systems with maximum contaminant level (MCL) violations or treatment system design to address an ongoing MCL violation. As funding is available, the Department will award technical assistance to those PWSs with the highest MPL rankings and who are willing to work with the Department and its technical assistance providers. The Water Infrastructure Financing Authority (WIFA) also uses the MPL to identify possible candidates for additional technical assistance and/or financial assistance (e.g., low interest loans, design grants).

Pursuant to A.A.C. R18-4-803(D), the Department is publishing this Notice of Public Information in the *Arizona Administrative Register (A.A.R.)* and will hold a public meeting to provide the public with an opportunity to comment on the Master Priority List. The Draft Master Priority List can be viewed from the ADEQ Calendar beginning on April 19, 2019 at http://azdeq.gov/notices

Beginning April 19, 2019, the 30-day public review and the written and oral comment period begins. After completion of the 30-day review, the public meeting and the comment period, the Department will formulate a response to submitted comments and consider modifications to the MPL in response to those comments. If no comments are received, the MPL becomes final on May 20, 2019. If comments are received and changes are made, the revised MPL will be re-published in the *A.A.R.*, along with a summary of comments received and the Department's response to those comments.

4. The name and address of agency personnel with whom persons may communicate:

Name: Linda Taunt, Capacity Development & Technical Assistance Coordinator
Address: Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007
Email: taunt.linda@azdeq.gov
Telephone: (602) 771-4416 (in Arizona: 1-800-234-5677; 771-4416)

5. The time during which the agency will accept written comments and the time and place where oral comments may be made:

An oral proceeding will be held on:

Date: Monday, May 20, 2019

Time: 9:30 a.m.

Place: Room 5100B
1110 W. Washington St.
Phoenix, AZ 85007

The Department will accept written comments on the Draft FY20 MPL until close of business on May 20, 2019.

NOTICES OF SUBSTANTIVE POLICY STATEMENT

The *Administrative Procedure Act* (APA) requires the publication of Notices of Substantive Policy Statement issued by agencies (A.R.S. § 41-1013(B)(9)).

Substantive policy statements are written expressions which inform the general public of an agency's current approach to rule or regulation practice.

Substantive policy statements are advisory only. A substantive policy statement does not include internal procedural documents that only affect an agency's internal procedures and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the APA.

If you believe that a substantive policy statement does impose additional requirements or penalties on regulated parties, you may petition the agency under A.R.S. § 41-1033 for a review of the statement.

NOTICE OF SUBSTANTIVE POLICY STATEMENT
DEPARTMENT OF HEALTH SERVICES

[M19-36]

1. Subject of the substantive policy statement and the substantive policy statement number by which the policy statement is referenced:

SP-040-DLS-CCL: Clarification of the child care facility rules in 9 A.A.C. 5.

2. Date the substantive policy statement was issued and the effective date of the policy statement if different from the issuance date:

Issuance and effective date: March 28, 2019

3. Summary of the contents of the substantive policy statement:

The purpose of this substantive policy statement is to provide the general public "guidelines for compliance" with the child care facility rules in Arizona Administrative Code Title 9, Chapter 5. The guidelines for compliance allow the general public consistent interpretation and application of each rule clarified in this substantive policy statement.

4. A statement as to whether the substantive policy statement is a new statement or a revision:

This is a new substantive policy statement.

5. The name and address of the person to whom questions and comments about the substantive policy statement may be directed:

Name:	Thomas Salow, Branch Chief
Address:	Arizona Department of Health Services Bureau of Child Care Licensing 150 N. 18th Ave., Suite 400 Phoenix, AZ 85007
Telephone:	(602) 364-1935
Fax:	(602) 364-4768
E-mail:	Thomas.Salow@azdhs.gov
or	
Name:	Robert Lane, 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:	Robert.Lane@azdhs.gov

6. Information about where a person may obtain a copy of the substantive policy statement and the costs for obtaining the policy statement:

A copy of the substantive policy statement is available, free of charge, from the Arizona Department of Health Services, Office of Administrative Counsel and Rules at the following web address: https://www.azdhs.gov/director/administrative-counsel-rules/rules/index.php#sps-licensing. A copy of the substantive policy statement may also be obtained from the Arizona Department of Health Services, Bureau of Child Care Licensing, 150 N. 18th Ave., Suite 400, Phoenix, AZ 85007 for 25¢ per page. Payment is accepted in cash or money order made payable to the Arizona Department of Health Services.

GOVERNOR EXECUTIVE ORDER

Executive Order 2019-01 is being reproduced in each issue of the *Administrative Register* as a notice to the public regarding state agencies' rulemaking activities.

This order has been reproduced in its entirety as submitted.

EXECUTIVE ORDER 2019-01

Moratorium on Rulemaking to Promote Job Creation and Customer-Service-Oriented Agencies; Protecting Consumers Against Fraudulent Activities

[M19-04]

WHEREAS, government regulations should be as limited as possible; and

WHEREAS, burdensome regulations inhibit job growth and economic development; and

WHEREAS, protecting the public health, peace and safety of the residents of Arizona is a top priority of state government; and

WHEREAS, in 2015 the State of Arizona implemented a moratorium on all new regulatory rulemaking by State agencies through executive order and renewed the moratorium in 2016, 2017 and 2018; and

WHEREAS, the State of Arizona eliminated or repealed 422 needless regulations in 2018 and 676 in 2017 for a total of 1,098 needless regulations eliminated or repealed over two years; and

WHEREAS, estimates show these eliminations saved job creators more than $31 million in operating costs in 2018 and $48 million in 2017 for a total of over $79 million in savings over two years; and

WHEREAS, approximately 283,300 private sector jobs have been added to Arizona since January 2015; and

WHEREAS, all government agencies of the State of Arizona should continue to promote customer-service-oriented principles for the people that it serves; and

WHEREAS, each State agency shall continue to conduct a critical and comprehensive review of its administrative rules and take action to reduce the regulatory burden, administrative delay and legal uncertainty associated with government regulation while protecting the health, peace and safety of residents; and

WHEREAS, each State agency should continue to evaluate its administrative rules using any available and reliable data and performance metrics; and

WHEREAS, Article 5, Section 4 of the Arizona Constitution and Title 41, Chapter 1, Article 1 of the Arizona Revised Statutes vests the executive power of the State of Arizona in the Governor.

NOW, THEREFORE, I, Douglas A. Ducey, by virtue of the authority vested in me by the Constitution and laws of the State of Arizona hereby declare the following:

1. A State agency subject to this Order shall not conduct any rulemaking, whether informal or formal, without the prior written approval of the Office of the Governor. In seeking approval, a State agency shall address one or more of the following as justifications for the rulemaking:
   a. To fulfill an objective related to job creation, economic development or economic expansion in this State.
   b. To reduce or ameliorate a regulatory burden while achieving the same regulatory objective.
   c. To prevent a significant threat to the public health, peace, or safety.
   d. To avoid violating a court order or federal law that would result in sanctions by a federal court for failure to conduct the rulemaking action.
   e. To comply with a federal statutory or regulatory requirement if such compliance is related to a condition for the receipt of federal funds or participation in any federal program.
   f. To comply with a state statutory requirement.
   g. To fulfill an obligation related to fees or any other action necessary to implement the State budget that is certified by the Governor's Office of Strategic Planning and Budgeting.
   h. To promulgate a rule or other item that is exempt from Title 41, Chapter 6, Arizona Revised Statutes, pursuant to section 41-1005, Arizona Revised Statutes.
   i. To address matters pertaining to the control, mitigation, or eradication of waste, fraud or abuse within an agency or wasteful, fraudulent, or abusive activities perpetrated against an agency.
   j. To eliminate rules which are antiquated, redundant or otherwise no longer necessary for the operation of state government.
2. A State agency subject to this Order shall not publicize any directives, policy statements, documents or forms on its website unless such are explicitly authorized by Arizona Revised Statutes or Arizona Administrative Code.
3. A State agency subject to this Order and which issues occupational or professional licenses shall review the agency's rules and practices related to receiving and acting on substantive complaints about unlicensed individuals who are allegedly holding them-

selves out as licensed professionals for financial gain and are knowingly or recklessly providing or attempting to provide regulated services which the State agency director believes could cause immediate and/or significant harm to either the financial or physical health of unknowing consumers within the state. Agencies shall identify and execute on opportunities to improve its complaint intake process, documentation, tracking, enforcement actions and coordination with proper law enforcement channels to ensure those allegedly trying to defraud unsuspecting consumers and putting them at risk for immediate and/or significant harm to their financial or physical health are stopped and effectively diverted by the State agency to the proper law-enforcement agency for review. A written plan on the agency's process shall be submitted to the Governor's Office no later than May 31, 2019.

4. For the purposes of this Order, the term "State agencies" includes, without limitation, all executive departments, agencies, offices, and all state boards and commissions, except for: (a) any State agency that is headed by a single elected State official; (b) the Corporation Commission; and (c) any board or commission established by ballot measure during or after the November 1998 general election. Those state agencies, boards and commissions excluded from this Order are strongly encouraged to voluntarily comply with this Order in the context of their own rulemaking processes.
5. This Order does not confer any legal rights upon any persons and shall not be used as a basis for legal challenges to rules, approvals, permits, licenses or other actions or to any inaction of a State agency. For the purposes of this Order, "person," "rule," and "rulemaking" have the same meanings prescribed in section 41-1001, Arizona Revised Statutes.

IN WITNESS THEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.

Douglas A. Ducey
GOVERNOR

DONE at the Capitol in Phoenix on this ninth day of January in the Year Two Thousand and Nineteen and of the Independence of the United States of America the Two Hundred and Forty-Third.

ATTEST:
Katie Hobbs
SECRETARY OF STATE

REGISTER INDEXES

The *Register* is published by volume in a calendar year (See "General Information" in the front of each issue for more information).

Abbreviations for rulemaking activity in this Index include:

PROPOSED RULEMAKING
PN = Proposed new Section
PM = Proposed amended Section
PR = Proposed repealed Section
P# = Proposed renumbered Section

SUPPLEMENTAL PROPOSED RULEMAKING
SPN = Supplemental proposed new Section
SPM = Supplemental proposed amended Section
SPR = Supplemental proposed repealed Section
SP# = Supplemental proposed renumbered Section

FINAL RULEMAKING
FN = Final new Section
FM = Final amended Section
FR = Final repealed Section
F# = Final renumbered Section

SUMMARY RULEMAKING
PROPOSED SUMMARY
PSMN = Proposed Summary new Section
PSMM = Proposed Summary amended Section
PSMR = Proposed Summary repealed Section
PSM# = Proposed Summary renumbered Section
FINAL SUMMARY
FSMN = Final Summary new Section
FSMM = Final Summary amended Section
FSMR = Final Summary repealed Section
FSM# = Final Summary renumbered Section

EXPEDITED RULEMAKING
PROPOSED EXPEDITED
PEN = Proposed Expedited new Section
PEM = Proposed Expedited amended Section
PER = Proposed Expedited repealed Section
PE# = Proposed Expedited renumbered Section
SUPPLEMENTAL EXPEDITED
SPEN = Supplemental Proposed Expedited new Section
SPEM = Supplemental Proposed Expedited amended Section
SPER = Supplemental Proposed Expedited repealed Section
SPE# = Supplemental Proposed Expedited renumbered Section
FINAL EXPEDITED
FEN = Final Expedited new Section
FEM = Final Expedited amended Section
FER = Final Expedited repealed Section
FE# = Final Expedited renumbered Section

EXEMPT RULEMAKING
EXEMPT
XN = Exempt new Section
XM = Exempt amended Section
XR = Exempt repealed Section
X# = Exempt renumbered Section
EXEMPT PROPOSED
PXN = Proposed Exempt new Section
PXM = Proposed Exempt amended Section
PXR = Proposed Exempt repealed Section
PX# = Proposed Exempt renumbered Section
EXEMPT SUPPLEMENTAL PROPOSED
SPXN = Supplemental Proposed Exempt new Section
SPXR = Supplemental Proposed Exempt repealed Section
SPXM = Supplemental Proposed Exempt amended Section
SPX# = Supplemental Proposed Exempt renumbered Section
FINAL EXEMPT RULEMAKING
FXN = Final Exempt new Section
FXM = Final Exempt amended Section
FXR = Final Exempt repealed Section
FX# = Final Exempt renumbered Section

EMERGENCY RULEMAKING
EN = Emergency new Section
EM = Emergency amended Section
ER = Emergency repealed Section
E# = Emergency renumbered Section
EEXP = Emergency expired

RECODIFICATION OF RULES
RC = Recodified

REJECTION OF RULES
RJ = Rejected by the Attorney General

TERMINATION OF RULES
TN = Terminated proposed new Sections
TM = Terminated proposed amended Section
TR = Terminated proposed repealed Section
T# = Terminated proposed renumbered Section

RULE EXPIRATIONS
EXP = Rules have expired
See also "emergency expired" under emergency rulemaking

CORRECTIONS
C = Corrections to Published Rules

2019 *Arizona Administrative Register*
Volume 25 Page Guide

RULEMAKING ACTIVITY INDEX

Rulemakings are listed in the Index by Chapter, Section number, rulemaking activity abbreviation and by volume page number. Use the page guide above to determine the *Register* issue number to review the rule. Headings for the Subchapters, Articles, Parts, and Sections are not indexed.

THIS INDEX INCLUDES RULEMAKING ACTIVITY THROUGH ISSUE 14 OF VOLUME 25.

Health Services, Department of - Health Programs Services

Health Services, Department of - Sober Living Homes

Information Technology Agency, Government

Insurance, Department of

Medical Board, Arizona

Mine Inspector, State - Aggregate Mined Land Reclamation

Optometry, Board of

Pharmacy, Board of

OTHER NOTICES AND PUBLIC RECORDS INDEX

Other notices related to rulemakings are listed in the Index by notice type, agency/county and by volume page number. Agency policy statements and proposed delegation agreements are included in this section of the Index by volume page number.
Public records, such as Governor Office executive orders, proclamations, declarations and terminations of emergencies, summaries of Attorney General Opinions, and county notices are also listed in this section of the Index and published by volume page number.

THIS INDEX INCLUDES OTHER NOTICE ACTIVITY THROUGH ISSUE 14 OF VOLUME 25.

RULES EFFECTIVE DATES CALENDAR

A.R.S. § 41-1032(A), as amended by Laws 2002, Ch. 334, § 8 (effective August 22, 2002), states that a rule generally becomes effective 60 days after the day it is filed with the Secretary of State's Office. The following table lists filing dates and effective dates for rules that follow this provision. Please also check the rulemaking Preamble for effective dates.

January		February		March		April		May		June	
Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date
1/1	3/2	2/1	4/2	3/1	4/30	4/1	5/31	5/1	6/30	6/1	7/31
1/2	3/3	2/2	4/3	3/2	5/1	4/2	6/1	5/2	7/1	6/2	8/1
1/3	3/4	2/3	4/4	3/3	5/2	4/3	6/2	5/3	7/2	6/3	8/2
1/4	3/5	2/4	4/5	3/4	5/3	4/4	6/3	5/4	7/3	6/4	8/3
1/5	3/6	2/5	4/6	3/5	5/4	4/5	6/4	5/5	7/4	6/5	8/4
1/6	3/7	2/6	4/7	3/6	5/5	4/6	6/5	5/6	7/5	6/6	8/5
1/7	3/8	2/7	4/8	3/7	5/6	4/7	6/6	5/7	7/6	6/7	8/6
1/8	3/9	2/8	4/9	3/8	5/7	4/8	6/7	5/8	7/7	6/8	8/7
1/9	3/10	2/9	4/10	3/9	5/8	4/9	6/8	5/9	7/8	6/9	8/8
1/10	3/11	2/10	4/11	3/10	5/9	4/10	6/9	5/10	7/9	6/10	8/9
1/11	3/12	2/11	4/12	3/11	5/10	4/11	6/10	5/11	7/10	6/11	8/10
1/12	3/13	2/12	4/13	3/12	5/11	4/12	6/11	5/12	7/11	6/12	8/11
1/13	3/14	2/13	4/14	3/13	5/12	4/13	6/12	5/13	7/12	6/13	8/12
1/14	3/15	2/14	4/15	3/14	5/13	4/14	6/13	5/14	7/13	6/14	8/13
1/15	3/16	2/15	4/16	3/15	5/14	4/15	6/14	5/15	7/14	6/15	8/14
1/16	3/17	2/16	4/17	3/16	5/15	4/16	6/15	5/16	7/15	6/16	8/15
1/17	3/18	2/17	4/18	3/17	5/16	4/17	6/16	5/17	7/16	6/17	8/16
1/18	3/19	2/18	4/19	3/18	5/17	4/18	6/17	5/18	7/17	6/18	8/17
1/19	3/20	2/19	4/20	3/19	5/18	4/19	6/18	5/19	7/18	6/19	8/18
1/20	3/21	2/20	4/21	3/20	5/19	4/20	6/19	5/20	7/19	6/20	8/19
1/21	3/22	2/21	4/22	3/21	5/20	4/21	6/20	5/21	7/20	6/21	8/20
1/22	3/23	2/22	4/23	3/22	5/21	4/22	6/21	5/22	7/21	6/22	8/21
1/23	3/24	2/23	4/24	3/23	5/22	4/23	6/22	5/23	7/22	6/23	8/22
1/24	3/25	2/24	4/25	3/24	5/23	4/24	6/23	5/24	7/23	6/24	8/23
1/25	3/26	2/25	4/26	3/25	5/24	4/25	6/24	5/25	7/24	6/25	8/24
1/26	3/27	2/26	4/27	3/26	5/25	4/26	6/25	5/26	7/25	6/26	8/25
1/27	3/28	2/27	4/28	3/27	5/26	4/27	6/26	5/27	7/26	6/27	8/26
1/28	3/29	2/28	4/29	3/28	5/27	4/28	6/27	5/28	7/27	6/28	8/27
1/29	3/30			3/29	5/28	4/29	6/28	5/29	7/28	6/29	8/28
1/30	3/31			3/30	5/29	4/30	6/29	5/30	7/29	6/30	8/29
1/31	4/1			3/31	5/30			5/31	7/30		

July		August		September		October		November		December	
Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date
7/1	8/30	8/1	9/30	9/1	10/31	10/1	11/30	11/1	12/31	12/1	1/30
7/2	8/31	8/2	10/1	9/2	11/1	10/2	12/1	11/2	1/1	12/2	1/31
7/3	9/1	8/3	10/2	9/3	11/2	10/3	12/2	11/3	1/2	12/3	2/1
7/4	9/2	8/4	10/3	9/4	11/3	10/4	12/3	11/4	1/3	12/4	2/2
7/5	9/3	8/5	10/4	9/5	11/4	10/5	12/4	11/5	1/4	12/5	2/3
7/6	9/4	8/6	10/5	9/6	11/5	10/6	12/5	11/6	1/5	12/6	2/4
7/7	9/5	8/7	10/6	9/7	11/6	10/7	12/6	11/7	1/6	12/7	2/5
7/8	9/6	8/8	10/7	9/8	11/7	10/8	12/7	11/8	1/7	12/8	2/6
7/9	9/7	8/9	10/8	9/9	11/8	10/9	12/8	11/9	1/8	12/9	2/7
7/10	9/8	8/10	10/9	9/10	11/9	10/10	12/9	11/10	1/9	12/10	2/8
7/11	9/9	8/11	10/10	9/11	11/10	10/11	12/10	11/11	1/10	12/11	2/9
7/12	9/10	8/12	10/11	9/12	11/11	10/12	12/11	11/12	1/11	12/12	2/10
7/13	9/11	8/13	10/12	9/13	11/12	10/13	12/12	11/13	1/12	12/13	2/11
7/14	9/12	8/14	10/13	9/14	11/13	10/14	12/13	11/14	1/13	12/14	2/12
7/15	9/13	8/15	10/14	9/15	11/14	10/15	12/14	11/15	1/14	12/15	2/13
7/16	9/14	8/16	10/15	9/16	11/15	10/16	12/15	11/16	1/15	12/16	2/14
7/17	9/15	8/17	10/16	9/17	11/16	10/17	12/16	11/17	1/16	12/17	2/15
7/18	9/16	8/18	10/17	9/18	11/17	10/18	12/17	11/18	1/17	12/18	2/16
7/19	9/17	8/19	10/18	9/19	11/18	10/19	12/18	11/19	1/18	12/19	2/17
7/20	9/18	8/20	10/19	9/20	11/19	10/20	12/19	11/20	1/19	12/20	2/18
7/21	9/19	8/21	10/20	9/21	11/20	10/21	12/20	11/21	1/20	12/21	2/19
7/22	9/20	8/22	10/21	9/22	11/21	10/22	12/21	11/22	1/21	12/22	2/20
7/23	9/21	8/23	10/22	9/23	11/22	10/23	12/22	11/23	1/22	12/23	2/21
7/24	9/22	8/24	10/23	9/24	11/23	10/24	12/23	11/24	1/23	12/24	2/22
7/25	9/23	8/25	10/24	9/25	11/24	10/25	12/24	11/25	1/24	12/25	2/23
7/26	9/24	8/26	10/25	9/26	11/25	10/26	12/25	11/26	1/25	12/26	2/24
7/27	9/25	8/27	10/26	9/27	11/26	10/27	12/26	11/27	1/26	12/27	2/25
7/28	9/26	8/28	10/27	9/28	11/27	10/28	12/27	11/28	1/27	12/28	2/26
7/29	9/27	8/29	10/28	9/29	11/28	10/29	12/28	11/29	1/28	12/29	2/27
7/30	9/28	8/30	10/29	9/30	11/29	10/30	12/29	11/30	1/29	12/30	2/28
7/31	9/29	8/31	10/30			10/31	12/30			12/31	3/1

REGISTER PUBLISHING DEADLINES

The Secretary of State's Office publishes the Register weekly. There is a three-week turnaround period between a deadline date and the publication date of the Register. The weekly deadline dates and issue dates are shown below. Council meetings and Register deadlines do not correlate. Also listed are the earliest dates on which an oral proceeding can be held on proposed rulemakings or proposed delegation agreements following publication of the notice in the Register.

Deadline Date (paper only) Friday, 5:00 p.m.	***Register* Publication Date**	**Oral Proceeding may be scheduled on or after**
November 9, 2018	November 30, 2018	December 31, 2018
November 16, 2018	December 7, 2018	January 7, 2019
November 23, 2018	December 14, 2018	January 14, 2019
November 30, 2018	December 21, 2018	January 22, 2019
December 7, 2018	December 28, 2018	January 28, 2019
December 14, 2018	January 4, 2019	February 4, 2019
December 21, 2018	January 11, 2019	February 11, 2019
December 28, 2018	January 18, 2019	February 19, 2019
January 4, 2019	January 25, 2019	February 25, 2019
January 11, 2019	February 1, 2019	March 4, 2019
January 18, 2019	February 8, 2019	March 11, 2019
January 25, 2019	February 15, 2019	March 18, 2019
February 1, 2019	February 22, 2019	March 25, 2019
February 8, 2019	March 1, 2019	April 1, 2019
February 15, 2019	March 8, 2019	April 8, 2019
February 22, 2019	March 15, 2019	April 15, 2019
March 1, 2019	March 22, 2019	April 22, 2019
March 8, 2019	March 29, 2019	April 29, 2019
March 15, 2019	April 5, 2019	May 6, 2019
March 22, 2019	April 12, 2019	May 13, 2019
March 29, 2019	April 19, 2019	May 20, 2019
April 5, 2019	April 26, 2019	May 28, 2019
April 12, 2019	May 3, 2019	June 3, 2019
April 19, 2019	May 10, 2019	June 10, 2019
April 26, 2019	May 17, 2019	June 17, 2019
May 3, 2019	May 24, 2019	June 24, 2019
May 10, 2019	May 31, 2019	July 1, 2019
May 17, 2019	June 7, 2019	July 8, 2019
May 24, 2019	June 14, 2019	July 15, 2019
May 31, 2019	June 21, 2019	July 22, 2019

GOVERNOR'S REGULATORY REVIEW COUNCIL DEADLINES

The following deadlines apply to all Five-Year-Review Reports and any adopted rule submitted to the Governor's Regulatory Review Council. Council meetings and *Register* deadlines do not correlate. We publish these deadlines as a courtesy.

All rules and Five-Year Review Reports are due in the Council office by 5 p.m. of the deadline date. The Council's office is located at 100 N. 15th Ave., Suite 402, Phoenix, AZ 85007. For more information, call (602) 542-2058 or visit http://grrc.az.gov.

GOVERNOR'S REGULATORY REVIEW COUNCIL DEADLINES FOR 2019

[M19-05]

DEADLINE FOR PLACEMENT ON AGENDA*	FINAL MATERIALS SUBMITTED TO COUNCIL	DATE OF COUNCIL STUDY SESSION	DATE OF COUNCIL MEETING
Tuesday January 22, 2019	*Tuesday* February 19, 2019	*Tuesday* February 26, 2019	*Tuesday* March 5, 2019
Tuesday February 19, 2019	*Tuesday* March 19, 2019	*Tuesday* March 26, 2019	*Tuesday* April 2, 2019
Tuesday March 19, 2019	*Tuesday* April 23, 2019	*Tuesday* April 30, 2019	*Tuesday* May 7, 2019
Tuesday April 23, 2019	*Tuesday* May 21, 2019	***Wednesday*** May 29, 2019	*Tuesday* June 4, 2019
Tuesday May 21, 2019	*Tuesday* June 18, 2019	*Tuesday* June 25, 2019	*Tuesday* July 2, 2019
Tuesday June 18, 2019	*Tuesday* July 23, 2019	*Tuesday* July 30, 2019	*Tuesday* August 6, 2019
Tuesday July 23, 2019	*Tuesday* August 20, 2019	*Tuesday* August 27, 2019	***Wednesday*** September 4, 2019
Tuesday August 20, 2019	*Tuesday* September 17, 2019	*Tuesday* September 24, 2019	*Tuesday* October 1, 2019
Tuesday September 17, 2019	*Tuesday* October 22, 2019	*Tuesday* October 29, 2019	*Tuesday* November 5, 2019
Tuesday October 22, 2019	*Tuesday* November 19, 2019	*Tuesday* November 26, 2019	*Tuesday* December 3, 2019
Tuesday November 19, 2019	*Tuesday* December 24, 2019	*Tuesday* January 7, 2020	*Tuesday* January 14, 2020
Tuesday December 24, 2019	*Tuesday* January 21, 2020	*Tuesday* January 28, 2020	*Tuesday* February 4, 2020

* Materials must be submitted by **5 PM** on dates listed as a deadline for placement on a particular agenda. Placement on a particular agenda is not guaranteed.

3. The Account statements may be provided using U.S. Mail or provided electronically via website access or e-mail, as selected by the Designated Beneficiary or Designated Representative.

R6-5-3307. Program-to-Program Transfers and Rollovers

1. Subject to federal law, the Program shall permit a program-to-program transfer through which a Designated Beneficiary transfers the entire amount of an Account from the AZ ABLE Program to or from a different state's ABLE program, or for the transfer of an Account from a Designated Beneficiary to another Eligible Individual who is a member of the family of the former Designated Beneficiary, without any intervening distribution.
2. Subject to federal law, the Program shall permit rollovers through which a contribution to an Account of a Designated Beneficiary (or an Eligible Individual who is a member of the family of the Designated Beneficiary) of all or a portion of the amount withdrawn from the Designated Beneficiary's Account, provided the contribution is made within 60 days of the date of the withdrawal, and, in the case of a rollover to the Designated Beneficiary's Account, no rollover has been made to another account established under an ABLE program within the prior 12 months.

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY AIR POLLUTION CONTROL

[R19-51]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) — **Rulemaking Action**
R18-2-220 — 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. §§ 49-104(A)(10) and 49-404(A)
Implementing statute: A.R.S. §§ 49-425(A)

3. The effective date of the rule:
May 18, 2019

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: 24 A.A.R. 2637, September 21, 2018
Notice of Proposed Rulemaking: 24 A.A.R. 2615, September 21, 2018

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

Name:	Lisa Tomczak
Address:	Department of Environmental Quality 1110 W. Washington St. Phoenix, AZ 85007
Telephone: number.)	(602) 771-4450; (This number may be reached in-state by dialing 1-800-234-5677 and entering the seven digit
E-mail:	tomczak.lisa@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 Arizona Department of Environmental Quality (ADEQ) is amending Arizona Administrative Code (A.A.C.) R18-2-220, Air Pollution Emergency Episodes. This rule provides a sequence of emission reduction priorities and criteria used to determine air pollution emergency episodes. The rule utilizes a tiered approach for emissions control and advisory procedures for three episode stages: *alert*, *warning*, and *emergency.*

During a Stage I air pollution *alert*, a news release is issued indicating that an air pollution alert has been declared and requests that the general public restrict vehicle use as much as possible. For alerts regarding industrial pollutants, ADEQ will request that applicable sources under state jurisdiction reduce emissions. Delegated authorities will make a similar request for sources under their jurisdiction.

An air pollution Stage II *warning* will be declared in the event that air pollution warning levels occur and are expected to continue or recur within 24 hours. ADEQ will also declare a warning stage if air pollution alert levels persist for 48 hours with no improvement in air quality. For automotive related pollutants, ADEQ will request that schools, industry, businesses, and government facilities restrict motor vehicle traffic as much as possible. For other pollutants, ADEQ will request that applicable sources further reduce emissions of the pollutant that is subject to the warning. Delegated authorities will make a similar request for sources under their jurisdiction.

For Stage III, if exceedances at the emergency air pollution level occur and are expected to continue or recur within 24 hours, or if warning levels persist for 48 hours and conditions are not expected to improve, an air pollution *emergency* will be declared. At the emergency air pollution level, ADEQ will notify the Governor's Office. The Governor may request that all industrial, construction, commercial, governmental, and institutional facilities be closed. The use of motor vehicles may be prohibited except for emergency situations that have been approved by law enforcement.

This rule incorporates by reference the August 2018 Final Procedures Manual titled "Procedures for Prevention of Emergency Episodes", which is on file at ADEQ. The procedures manual is being revised as part of this rulemaking; however, the manual is not included in the rule language. The procedures manual contains the processes that ADEQ must follow in the event of an air pollution emergency episode. These processes outline the preparations and response techniques for public notification and informing emission sources of relevant information regarding the pollutant of a given air pollution emergency episode. These preplanned strategies are designed to minimize the cost and effort required of regulated entities, while simultaneously curtailing emissions. Successful implementation of the strategies according to the episode stages outlined in the rule expedite emission curtailment and prevent pollution concentrations from reaching levels that may cause significant harm to public health.

Background.

Fine particulate matter ($PM_{2.5}$) is able to travel deep into the respiratory tract, reaching the lungs. Exposure to $PM_{2.5}$ can cause short-term health effects such as eye, nose, throat and lung irritation, coughing, sneezing, runny nose and shortness of breath. Exposure can also affect lung function and worsen medical conditions such as asthma and heart disease. Scientific studies have linked increases in daily $PM_{2.5}$ exposure with increased respiratory and cardiovascular hospital admissions, emergency department visits and deaths. Studies suggest that long-term exposure to fine particulate matter may be associated with increased rates of chronic bronchitis, reduced lung function and increased mortality from lung cancer and heart disease. People with breathing and heart problems, children and the elderly may be particularly sensitive to $PM_{2.5}$. To protect human health, EPA sets National Ambient Air Quality Standards (NAAQS) for six criteria pollutants, including PM.

In July 1997 EPA promulgated revisions to the PM NAAQS by adding a new standard for $PM_{2.5}$. Due to the potential health effects associated with long- and short-term exposure to $PM_{2.5}$, EPA set an annual and a 24-hour $PM_{2.5}$ standard. The 1997 primary annual $PM_{2.5}$ standard was set as the annual arithmetic mean, averaged over 3 years, at 15 micrograms per cubic meter ($\mu g/m^3$). The primary 24-hour standard was set at 65 $\mu g/m^3$, the annual 98^{th} percentile of daily (24-hour) values, averaged over three years (62 FR 38652, July 18, 1997).

In 2006 EPA revised the $PM_{2.5}$ NAAQS and lowered the 24-hour average standard from 65 to 35 $\mu g/m^3$ and retained the level of the annual primary standard (71 FR 61144, October 17, 2006).

On January 15, 2013 EPA again revised the NAAQS for $PM_{2.5}$, this time lowering the annual standard to 12.0 $\mu g/m^3$ in order to provide increased protection against health effects associated with long- and short-term exposures (78 FR 3086, January 15, 2013). EPA retained the 24-hour $PM_{2.5}$ standard at a level of 35 $\mu g/m^3$.

Within three years following the promulgation of new or revised NAAQS, Clean Air Act (CAA) Section 110(a)(1) requires states to submit State Implementation Plans (SIPs) that provide for implementation, maintenance, and enforcement of the standards. These SIPs, also called infrastructure SIPs (I-SIP), must address certain basic elements of its air quality management programs under CAA Section 110(a)(2). These elements, detailed in CAA Sections 110(a)(2)(A) through (M), include provisions for monitoring, emissions inventories, and modeling designed to ensure attainment and maintenance of the NAAQS.

On December 11, 2015 ADEQ submitted the 2012 $PM_{2.5}$ NAAQS I-SIP to EPA to satisfy requirements for CAA Sections 110(a)(1) and 110(a)(2). The SIP fulfills most of the requirements; however, EPA indicated that CAA Section 110(a)(2)(G) was not approvable. CAA Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs, which are contained in A.A.C. R18-2-220.

Currently, A.A.C. R18-2-220 does not contain the averaging time and emergency episode concentrations for $PM_{2.5}$. If ADEQ does not revise A.A.C R18-2-220 to include $PM_{2.5}$, EPA will take formal action to disapprove those portions of the I-SIP, which can lead to the promulgation of a federal implementation plan (FIP) by the EPA under CAA Section 110(c)(1). A FIP contains requirements that are dictated and enforced by EPA, which can include prohibition of highway funds and emission offset requirements for certain emission sources.

Section by Section Explanation of Proposed Rules:

This proposed rulemaking will amend A.A.C. R18-2-220, Air Pollution Emergency Episodes, to update the State rule to include the air pollution emergency episode levels for $PM_{2.5}$. This rulemaking will bring Arizona's standards into conformity with federal rules and is required under Section 110(a)(2) of the Clean Air Act (CAA).

R18-2-220(A) This section provides the requirement for procedures to be implemented by the ADEQ Director that will

prevent the occurrence of levels of pollution that would cause significant harm to the public. It provides the incorporation by reference to ADEQ's "Procedures for Prevention of Emergency Episodes." The change revises the date of the Procedures Manual to incorporate by reference the revised manual.

R18-2-220(B)(4) This subsection provides the summary of the emergency episode and significant harm levels (in tabular format) for the pollutants subject to this rule. The changes add $PM_{2.5}$ to the table, which includes the averaging time as well as the concentrations for the alert, warning, emergency, and significant harm levels.

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 (ESBCIS) under A.R.S. § 41-1055.

An identification of the rulemaking.

The rulemaking addressed by this ESBCIS amends A.A.C. R18-2-220, Air Pollution Emergency Episodes. This rulemaking will adopt language identifying the pollutant, averaging time, as well as the emergency episode and significant harm levels for fine particulate matter, as revised and adopted by EPA.

An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the rulemaking.

The persons who will be directly affected by and bear the costs of this rulemaking are the governmental agencies responsible for the declaration and public and industry notification of air pollution episodes. Companies and/or activities that emit pollutants subject to A.A.C. R18-2-220 would also be affected by this rulemaking. These include (but may not be limited to): burn permits, power plants, smelters, manufacturing facilities, building construction, and highway construction.

The persons who will benefit from this rulemaking are the residents of Arizona as a result of the notifications that would occur in the event of an air quality emergency episode and receive critical information regarding actions to take in order to limit their exposure to air pollution.

A cost benefit analysis of the following:

(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the rulemaking.

ADEQ estimates that the current number of full-time employees assigned in the Air Quality Division at ADEQ are adequate to implement and enforce the notifications, air quality monitoring, and forecasting for air pollution emergency episodes. The cost of the rule to the implementing agency will therefore be minimal.

ADEQ has jurisdiction for air quality planning, permitting, monitoring and forecasting in most areas of Arizona. Maricopa County will be revising its emergency episodes rule and will conduct rulemakings to incorporate the new standards for $PM_{2.5}$. The costs and benefits will be similar for Maricopa County as for ADEQ.

Pima and Pinal Counties are delegated air quality planning authorities for areas within their jurisdictions. The West Central Pinal Moderate $PM_{2.5}$ Nonattainment Area was designated under the 2006 $PM_{2.5}$ NAAQS but was designated as unclassifiable/attainment for the 2012 $PM_{2.5}$ NAAQS along with the rest of the state.

Air quality monitoring in Pima and Pinal Counties shows that there have been no exceedances of the 2012 $PM_{2.5}$ NAAQS. At this time, EPA is not requiring Pima and Pinal Counties to revise their emergency episodes rules to comply with infrastructure requirements for the 2012 $PM_{2.5}$ NAAQS. However, EPA has recommended that the counties revise their emergency episodes rules to align with the 2012 $PM_{2.5}$ NAAQS.

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

In the event of an air pollution emergency episode, ADEQ expects overall costs to vary by the air pollution episode stage due to the level of preparation for each of the stage and the specific political subdivisions affected, which includes counties with air pollution control programs (as noted in previous section). Political subdivisions that may be affected include (but are not limited to) metropolitan planning organizations, irrigation districts, and school districts. Any costs borne by these entities would likely result from implementation of emission reduction strategies. It is unlikely that any of these entities are primary sources of any of the gaseous (i.e. sulfur dioxide, VOCs) precursors to $PM_{2.5}$ pollution. As a result they may implement minor yet effective strategies, such as reducing vehicular traffic from their operations or through alternative modes of travel for employees. As a result, the costs borne by these entities would be minimal.

This rulemaking will provide public health protection from temporary high levels of $PM_{2.5}$ pollution. Additionally, this rulemaking prevents the State from being susceptible to a FIP enforced by EPA under the CAA.

(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.

The rules being amended are necessary to comply with federal requirements under Section 110(a)(2) of the CAA. These revisions are necessary to avoid disapproval of the Infrastructure State Implementation Plan (I-SIP) for the 2012 $PM_{2.5}$ NAAQS. Disapproval of the I-SIP will result in the issuance of a FIP by the EPA under Section 110(c)(1) of the CAA, which can include prohibition of highway funds and emission offset requirements for certain emission sources.

Pollutants currently regulated by A.A.C. R18-2-220 include carbon monoxide (CO), nitrogen dioxide (NO_2), ozone (O_3), coarse particulate matter (PM_{10}), and sulfur dioxide (SO_2). Businesses that emit these pollutants that are already subject to this rule may include (but are not limited to) coal- and oil-fired electric and steam power generating facilities, primary and secondary metals, petroleum refining, chemical processing, mineral processing, and glass processing. This rulemaking incorporates $PM_{2.5}$ to the air pollution emergency episodes rule; subsequently, businesses that emit $PM_{2.5}$ will be subject to the rule.

Potential costs will vary according to the level of the pollution episode and the pollutant. Any costs incurred by a business (such as reducing or prohibiting vehicular traffic, reducing production, or closing facilities) would be temporary and extend only through the duration of the episode.

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

ADEQ anticipates that employment impacts will be minor. Because the low potential for an air pollution emergency to occur, ADEQ does not expect short- or long-term employment, production, or industrial growth in Arizona to be negatively impacted by this rulemaking. No sources are expected to close from the implementation of this rulemaking. Any reductions in production would occur only during the term of the air pollution emergency episode.

A statement of the probable impact of the rulemaking on small businesses.

(a) An identification of the small businesses subject to the rulemaking.

Under A.R.S. § 41-1001(21): "Small business" means a concern, including its affiliates, which is [1] independently owned and operated, which is [2] not dominant in its field and which [3] employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year.

Only businesses emitting pollutants subject to this rule would be directly affected by the declaration of an air pollution emergency episode. It is unlikely that small businesses would emit enough pollutants to contribute to a $PM_{2.5}$ emergency episode and therefore will likely not be requested to limit or cease production.

(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.

(i) Establishing less costly compliance requirements in the rulemaking for small businesses.

Not applicable.

(ii) Establishing less costly schedules or less stringent deadlines for compliance in the rulemaking.

Not applicable.

(iii) Exempting small businesses from any or all requirements of the rulemaking.

Not applicable.

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

Any costs that would be borne by private persons and consumers (i.e. the general public) would be potentially the result of an employer limiting production to reduce emissions or shutting down during the term of the air pollution emergency episode. Because of the extreme unlikelihood of the declaration of an air pollution episode, it is unlikely that the general public will be affected.

The general public will benefit from this rulemaking through the avoidance of or reductions in air pollution resulting from a declared air pollution emergency episode. Air quality regulations that lower concentrations of pollutants have the potential to reduce adverse health effects ranging from missed school and work days to premature mortality. Persons with compromised health (physiological, morphological, and biochemical) are more susceptible to the harmful effects of air pollutants. In the event that an air pollution episode is declared, the public will be notified and will be informed of the episode level and information will be provided actions to take that will minimize exposure to the pollutant that is subject to the episode.

A statement of the probable effect on state revenues.

Due to the low probability for an air pollution emergency episode to be declared, ADEQ does not expect any effects on state revenues.

A description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking.

ADEQ was not able to identify any less intrusive or costly alternative methods for achieving the purpose of the rulemaking, which is compliance with the federal requirements for Sections 110(a)(1) and (2) of the CAA and federal Guidance for SIP Elements under the aforementioned CAA Sections. As a result, the amendments to A.A.C. R18-2-220 are required as a part of Arizona's $PM_{2.5}$ Infrastructure State Implementation Plan.

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:

No changes were made to the rules 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:

No oral or written comments were received.

12. All shall list other matters prescribed by statute applicable to the specific agency or to any specific agencies 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 matters prescribed by Arizona statute applicable specifically to ADEQ or this specific rulemaking.

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 rule does not inherently require a permit. Any facility subject to a permit is already covered under Title V of the Clean Air Act and ADEQ's permitting program.

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:

This rule allows Arizona to comply with CAA Sections 110(a)(1) and (2). The rule incorporates federal regulations but is not more stringent than federal law. The revisions are necessary in order for Arizona to avoid disapproval of the 2012 PM2.5 I-SIP and imposition of a FIP.

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

No person submitted an analysis to ADEQ.

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 2. AMBIENT AIR QUALITY STANDARDS; AREA DESIGNATIONS; CLASSIFICATIONS

Section

R18-2-220. Air ~~pollution~~ Pollution ~~emergency~~ Emergency ~~episodes~~ Episodes

ARTICLE 2. AMBIENT AIR QUALITY STANDARDS; AREA DESIGNATIONS; CLASSIFICATIONS

R18-2-220. Air ~~pollution~~ Pollution ~~emergency~~ Emergency ~~episodes~~ 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 ~~October 18, 1988~~ August 2018 (and no future edition), which is incorporated herein by reference and on file with the ~~Office of the Secretary of State~~ Department.

B. No change

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

NOTICES OF FINAL RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Final Rulemaking. Final rules have been through the regular rulemaking process as defined in the Administrative Procedures Act. These rules were either approved by the Governor's Regulatory Review Council or the Attorney General's Office. Certificates of Approval are on file with the Office.

The final published notice includes a preamble and text of the rules as filed by the agency. Economic Impact Statements are not published.

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the final rules should be addressed to the agency that promulgated them. Refer to Item #5 to contact the person charged with the rulemaking. The codified version of these rules will be published in the Arizona Administrative Code.

NOTICE OF FINAL RULEMAKING
TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL

[R17-10]

PREAMBLE

1. Article, Part, or Section Affected (as applicable)	Rulemaking Action
R18-2-101	Amend
R18-2-102	Amend
R18-2-201	Amend
R18-2-203	Amend
R18-2-217	Amend
R18-2-218	Amend
R18-2-301	Amend
R18-2-302	Amend
R18-2-302.01	Amend
R18-2-303	Amend
R18-2-304	Amend
R18-2-306	Amend
R18-2-306.01	Amend
R18-2-307	Amend
R18-2-311	Amend
R18-2-312	Amend
R18-2-319	Amend
R18-2-320	Amend
R18-2-324	Amend
R18-2-326	Amend
R18-2-327	Amend
R18-2-330	Amend
R18-2-332	Amend
R18-2-334	Amend
R18-2-401	Amend
R18-2-402	Amend
R18-2-403	Amend
R18-2-404	Amend
R18-2-405	Amend
R18-2-406	Amend
R18-2-407	Amend
R18-2-408	Amend
R18-2-410	Amend
R18-2-411	New Section
R18-2-412	Amend
R18-2-502	Amend
R18-2-503	Amend
R18-2-504	Amend
R18-2-507	Repeal
R18-2-508	Repeal
R18-2-512	Amend
R18-2-513	Amend
R18-2-514	New Section
R18-2-515	New Section

R18-2-1205	Amend
Appendix 1	Repeal

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. §§ 49-104(A)(1) and (A)(10); 49-425(A)

Implementing statutes: A.R.S. § 49-426

3. The effective date of the rules:

March 21, 2017

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 rule:

Notice of Rulemaking Docket Opening: 21 A.A.R. 3173, December 11, 2015

Notice of Proposed Rulemaking: 22 A.A.R. 2431, September 9, 2016

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

Name: Steve Burr
Address: Arizona Department of Environmental Quality
1110 W. Washington Ave.
Phoenix, AZ 85007
Telephone: (602) 771-4251 (This number may be reached in-state by dialing 1-800-234-5677 and entering the seven digit number.)
Fax: (602) 771-2366
E-mail: burr.steve@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 remedy deficiencies identified by the Environmental Protection Agency (EPA) in Arizona's new source review (NSR) rules. This rulemaking action is required to secure approval of Arizona's NSR rules into the state implementation plan (SIP) and avoid sanctions and imposition of a federal implementation plan (FIP) under the federal Clean Air Act (CAA).

On November 2, 2015 the EPA Region 9 Administrator published a notice of final rulemaking issuing limited approval/limited disapproval (LA/LD) of the October 29, 2012 Arizona SIP revision designed to update the rules included in the SIP and to bring the state's NSR program into full compliance with federal requirements. The final LA/LD triggered a statutory deadline under the CAA to submit and obtain full approval of the state's NSR program. The Arizona Department of Environmental Quality (ADEQ) has eighteen months to remedy the deficiencies relating to NSR for nonattainment areas to obtain full approval or face sanctions. If ADEQ fails to remedy all of the deficiencies within 24 months, EPA will be obligated to impose a FIP addressing any remaining deficiencies.

ADEQ is revising Arizona's NSR rules to address the deficiencies and create a program that complies with federal requirements and protect the national ambient air quality standards (NAAQS).

Background.

Clean Air Act New Source Review Requirements

Under section 110(a)(1) of the Clean Air Act (Act or CAA) each state is obligated to submit a "plan which provides for implementation, maintenance and enforcement of" the NAAQS. The Act goes on to require SIPs to:

> Include a program to provide for the . . . regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of [Title I of the CAA].

State and federal regulations adopted under this section are commonly referred to as "new source review" programs because they apply to newly constructed and modified, as opposed to existing, sources. The CAA divides NSR requirements into those that apply to attainment areas (Part C requirements) and those that apply to nonattainment areas (Part D requirements).

Part C of Title I of the CAA establishes the NSR requirements for major sources that are constructed or modified in areas that have attained the NAAQS for one or more criteria pollutants (ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, PM_{10}, $PM_{2.5}$, and lead). Sources that belong to the list of categories set forth in section 169(1) of the CAA (referred to as "categorical sources" in the ADEQ rules) are major if they emit or have the potential to emit 100 tons per year (tpy) or more of a regulated air pollutant. All other sources are major if they have the potential to emit 250 tpy or more of a regulated air pollutant.

The NSR program under Part C is known as "Prevention of Significant Deterioration" (PSD), because its purpose is to prevent air quality in attainment areas from deteriorating to the levels of the NAAQS. See CAA § 160. PSD establishes, or requires EPA to establish, maximum allowable increases, known as "increments," over existing concentrations of criteria pollutants and requires permit applicants subject to PSD to demonstrate that a new source or modification's emissions will not result in a violation of the increments or the NAAQS. In addition, PSD requires the installation of the best available control technology (BACT) when constructing or modifying a source.

Part D of Title I establishes NSR requirements for major sources and modifications in nonattainment areas and is known as "Nonattainment New Source Review" (NNSR). Under Subpart 1 of Part D, a major source is defined as any source that emits, or has the potential to emit, 100 tpy or more of a pollutant for which the area has been designated nonattainment. Subpart 2 of Part D estab-

lishes lower major source thresholds for certain ozone, carbon monoxide, PM_{10}, and $PM_{2.5}$ nonattainment areas.

Permit applicants subject to NNSR requirements under Part D must demonstrate that a major source or modification will comply with the lowest achievable emission rate (LAER) and that reductions in emissions from the same source or other sources will offset any emissions increases from the new or modified source.

In addition to requiring compliance with the specific major NSR requirement of Parts C and D, section 110(a)(2)(C) requires "regulation of the modification and construction of *any* stationary source within the areas covered by the plan *as necessary to assure that national ambient air quality standards are achieved*." (Emphasis added.) EPA refers to 110(a)(2)(C) programs that apply to non-major sources and to minor modifications as "minor NSR." 76 FR 38748, 38752 (July 1, 2011).

EPA NSR Regulations

EPA has promulgated regulations establishing the elements a state program must contain to satisfy section 110(a)(2)(C) at 40 CFR 51, Subpart I, Sections 51.160-51.166. NNSR requirements are found in section 51.165 and PSD requirements are found in section 51.166. These rules are highly detailed and prescriptive. States seeking approval of major NSR programs (both NNSR and PSD) must either strictly conform to the requirements in the federal rules or demonstrate that any deviations are at least as stringent.

Both sections 51.165 and 51.166 limit the applicability of major NSR to the construction of new major source or a "major modification" of a major source. A major modification is defined as physical or operational change that will result in both a significant increase and a significant *net* increase in the emissions of a regulated NSR pollutant.

For criteria pollutants and their precursors, "significant" is defined as:

Carbon monoxide	100 tpy
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Ozone	40 tpy of volatile organic compounds or nitrogen oxides
Lead	0.6 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 oxides emissions; 40 tpy of volatile organic compound emissions in ozone nonattainment areas.

The Act and the implementing regulations at 40 CFR 51.160 through 51.164 provide states broad discretion to develop minor NSR programs designed to assure the NAAQS are achieved. EPA has noted that the "Federal regulations for minor source programs are considerably less detailed than the requirements for major sources." 71 FR 48696, 48700 (August 21, 2006). Under the minor NSR regulations, a state program must contain "legally enforceable procedures" to prevent the construction or modification of a minor source if it will "result in a violation of applicable portions of the control strategy" for compliance with the NAAQS or "interfere with the attainment or maintenance of a [NAAQS]." 40 CFR 51.160.

A minor NSR program need not apply to all new and modified sources, but it must "identify types and sizes of facilities, buildings, structures, or installations which will be subject to" minor NSR and "discuss the basis for determining which facilities will be subject to review." 40 CFR 51.161(e). As EPA has noted:

> Applicability thresholds are proper in [a minor NSR program] provided that the sources and modifications with emissions below the thresholds are inconsequential to attainment and maintenance of the NAAQS.

71 FR at 48701.

A minor NSR program must allow a minimum 30-day period to comment on the applicant's application and the agency's proposed decision. 40 CFR 51.161.

Arizona's Previous NSR Rulemaking and SIP Revision

On July 6, 2012, ADEQ adopted comprehensive amendments (the "2012 NSR Amendments") to its preconstruction review and permitting programs for stationary sources. On October 29, 2012, ADEQ submitted these amendments, existing rules not yet approved into the SIP and supporting materials as a SIP revision to EPA. The revision was intended to bring Arizona's SIP into full compliance with PSD major NSR, major NNSR and minor NSR requirements.

On June 29, 2015, the Regional Administrator for EPA Region 9 signed a limited approval/limited disapproval (LA/LD) of the 2012 SIP Revision. EPA determined that the revisions generally strengthened the state's NSR program by clarifying and enhancing requirements for major and minor stationary sources. However, EPA ultimately determined that the submittal did not satisfy all applicable CAA and NSR regulatory requirements. Shortly after signature of the LA/LD, ADEQ began working with EPA and stakeholders on amendments to the NSR rules that would remedy the identified deficiencies and create an approvable program.

The LA/LD was published in the Federal Register on November 2, 2015 with an effective date of December 2, 2015. Supporting materials for the LA/LD, including EPA's March 2015 Technical Support Document (LA/LD TSD) providing a detailed analysis of Arizona's submittal, can be found in the docket for the rulemaking at regulations.gov under docket number EPA-R09-OAR-2015-0187.

CAA Sanctions

Under the CAA and federal regulations, if EPA disapproves any element of a plan submitted under Title I, Part D of the CAA relating to nonattainment areas, and the plan deficiencies are not corrected within 18 months after the effective date of the disapproval,

major sources subject to NNSR will have to offset emissions increases at a ratio of 2 to 1. 42 USC §7509(a)(b)(2); 40 CFR § 52.31(d)(1). If the deficiencies remain uncorrected for an additional six months, the state loses federal highway funds. 42 USC § 7509(a), (b)(1); 40 CFR § 52.31(d)(1). If imposed, the sanctions will apply to nonattainment areas under ADEQ's jurisdiction and the pollutants covered by the plan and will remain in effect until EPA finds that a revised plan corrects the deficiencies. 40 CFR § 52.31(b)(3,(d)(2), (5).

NNSR is a required element of a Part D plan. The LA/LD identified some deficiencies in ADEQ's NNSR program. Thus, ADEQ must submit a revised plan and secure an EPA finding that the submission corrects the NNSR deficiencies by June 2, 2017 (18 months after December 2, 2015) in order to avoid sanctions.

In addition, EPA is required to adopt a federal implementation plan (FIP) within twenty-four months following the disapproval of *any* SIP if the deficiencies are not corrected and approved by the EPA. 42 U.S.C. § 7410(c). ADEQ therefore must correct *all* deficiencies identified in the LA/LD in order to avoid a FIP.

Changes to Address NSR Deficiencies

The primary purpose of this rulemaking is to cure the deficiencies identified in the LA/LD and otherwise ensure Arizona's NSR program conforms to federal requirements and qualifies for full approval by EPA. The following is a description of the most significant changes designed to accomplish those purposes:

New NAAQS and NAAQS Implementation Requirements

This rulemaking makes a number of changes related to the NAAQS and NAAQS implementation to conform to recent federal updates and existing federal requirements.

First, on January 15, 2013, EPA revised the $PM_{2.5}$ NAAQS to reduce the annual primary standard from 15 $\mu g/m^3$ to 12 $\mu g/m^3$. Because this revision occurred after adoption of the 2012 NSR Amendments, it was not included in ADEQ's rules, and EPA identified the failure to incorporate the latest version of the NAAQS as a deficiency. ADEQ is therefore amending R18-2-201(B) to reflect the latest standard.

Second, on October 1, 2015, EPA reduced the 8-hour ozone standard from 75 to 70 parts per billion. Because this change occurred after the LA/LD was signed, the LA/LD did not identify the failure to incorporate the new standard as a deficiency. Nevertheless, in order to avoid the identification of a new deficiency in ADEQ's next NSR submittal, ADEQ is amending R18-2-203 to incorporate the new ozone standard.

Third, at the time of adoption of the 2012 NSR Amendments, EPA's rules did not require regulation of volatile organic compounds (VOCs) or ammonia as precursors of $PM_{2.5}$ in NNSR programs for $PM_{2.5}$ nonattainment areas. Consistent with EPA's regulations, Arizona's current NSR rules do not include VOCs or ammonia in the definition of $PM_{2.5}$ precursors. *See* R18-2-101(121)(b). In 2013, however, the United States Court of Appeals for the D.C. Circuit held that Title I, Part D, Subpart 4, which imposes specific requirements for PM_{10} nonattainment areas, applies to $PM_{2.5}$ as well as PM_{10} nonattainment areas. NRDC v. EPA, 706 F.3d 428 (D.C. Cir. 2013). In particular, the court noted that under section 189(e) of Part D, Subpart 4, control requirements must apply to major sources of *all* identified precursors of $PM_{2.5}$ (sulfur dioxide, nitrogen oxides, volatile organic compounds and ammonia), *unless* EPA has determined that the sources of a precursor do not contribute to levels exceeding the NAAQS in a particular nonattainment area.

In the LA/LD TSD, EPA noted that Arizona's NSR SIP did not include VOCs or ammonia as precursors but failed to demonstrate that those pollutants do not contribute to levels exceeding the NAAQS in $PM_{2.5}$ nonattainment areas, as required by section 189(e). At that time, EPA declined to identify the omission of $PM_{2.5}$ precursors as a deficiency. On June 22, 2016, however, EPA published a final "limited disapproval of the ADEQ NSR SIP submittal for the Nogales and West Central Pinal $PM_{2.5}$ nonattainment areas under section 189(e) of the Act related to $PM_{2.5}$ precursors." 81 FR 40525, 40526. ADEQ is therefore adding VOCs and ammonia to the list of precursors of $PM_{2.5}$ in $PM_{2.5}$ nonattainment areas.

Fourth, as noted in the LA/LD, Arizona's existing minor NSR and PSD programs do not clearly require review for protection of the NAAQS in neighboring areas outside of the state's jurisdiction. ADEQ is adding this requirement to R18-2-302.01, R18-2-334 and R18-2-406.

Amendments Clarifying NSR Definitions and Applicability

EPA's NNSR and PSD rules are in separate sections of the CFR, 40 CFR 51.165 and 51.166, each of which has its own definitions. In some cases, these sections have different definitions for the same term. A particularly important example is the definition of "regulated NSR pollutant," which establishes the list of pollutants potentially subject to major NSR. In the NNSR rule, the term encompasses only criteria pollutants and their precursors, 40 CFR 51.165(a)(1)(xxxvii), while in the PSD rule, the term includes criteria pollutants, precursors, plus any other pollutants, other than hazardous air pollutants, subject to regulation under the CAA. 40 CFR 51.166(b)(49).

Arizona's major NSR requirements, on the other hand, are set forth in a single Article—Article 4 of Title 18, Chapter 2. A single set of definitions in R18-2-101 and R18-2-401 applies to both programs. As a result, the current version of the state NSR rules employs identical definitions in both programs. In the case of "regulated NSR pollutant," for example, the Arizona rules use the PSD definition for both PSD and NNSR.

The LA/LD identified as deficiencies instances where the use of the wrong definition made Arizona's program less stringent than the federal rules. ADEQ has identified a number of other instances where the discrepancies between the federal and state rules made the state rules more stringent. Because state rules can be no more stringent than their federal counterparts, *see* A.R.S. § 49-104(A)(17), ADEQ must eliminate both types of discrepancies.

ADEQ could attempt to do so by following the federal model and dividing the PSD and NNSR rules into separate parts or subparts

with separate definition sections. This approach, however, would involve a substantial reorganization of both Article 4 and the chapter-wide definitions in R18-2-101. Instead, ADEQ where necessary has modified each definition to reflect the differences between the PSD and NNSR programs. Specifically, ADEQ is adopting amendments to the definitions in (after renumbering) R18-2-101(74), (88), (124), and (131) and R18-2-401(13) with corresponding amendments to the substantive provisions where these definitions are employed.

The LA/LD also identified a number instances where ADEQ's NSR rules did not use consistent terminology when referring to key requirements of the NSR program, such as the NAAQS, increments, new source performance standards and national emission standards for hazardous air pollutants. ADEQ is adopting amendments to assure that the rules employ consistent, defined terminology for these requirements.

Finally, the LA/LD identified a few ADEQ definitions that did not match the corresponding federal definitions in 40 CFR 51.165(a)(1) and 51.166(b). ADEQ is amending those definitions to conform. See, for example, R18-2-101(2), (13) and (36).

Missing Federal Exemptions

The LA/LD pointed out that state rules did not include a number of exemptions from the federal PSD program. Although EPA did not identify these omissions as deficiencies, ADEQ is adding the missing exemptions to the state PSD requirements in R18-2-406 in order to comply with A.R.S. § 49-104(A)(17).

Public Participation

Under the existing rules, a source subject to minor NSR is eligible to apply for a minor permit revision, and thus avoid public notice and comment, if one of two conditions are met: (1) all emissions units subject to reasonably available control technology (RACT) qualify for the RACT safe harbor provision in R18-2-334(D)(2) or (2) expected ambient concentrations resulting from the source's emissions as predicted by a screening model are less than 75 percent of the NAAQS. The LA/LD concluded that this exception to the public participation requirements is inconsistent with 40 CFR 51.161(a). ADEQ is therefore removing the exception.

The LA/LD identified a number of other technical deficiencies with the Arizona NSR rules' public participation requirements, and ADEQ is adopting amendments to address these as well.

Registration Contents

EPA expressed concern that the state's source registration program isn't adequate to ensure that construction of a source would not result in a violation of applicable portions of the control strategy. This rulemaking addresses the issue in R18-2-302.01 by specifically requiring enforceable emission limitations and standards that ensure compliance with all applicable SIP requirements at the time of a registration's issuance.

Technical Changes

In addition to the issues identified above, the LA/LD identified a number of technical issues that ADEQ had to address in order to secure full approval of the NSR program. These issues are discussed in detail in EPA's "Technical Support Document for Revisions to Air Plan; Arizona; Stationary Sources; New Source Review" and "Evaluation of Arizona NSR Rules and 40 CFR 51.160-166 – Excel Spreadsheet," both of which are available in the electronic docket for the LA/LD at http://www.regulations.gov/#!documentDetail;D=EPA-R09-OAR-2015-0187-0004.

Emissions Bank Offset Deduction

In a change related to NSR but not raised in the LA/LD, ADEQ is amending R18-2-1205 of the emission banking regulation to remove the requirement that credits deposited in the bank be reduced by 10 percent and permanently retired.

The primary purpose of the emissions bank is to provide a method for making offsets readily available in nonattainment areas in order to allow compliance with NNSR. The 10 percent reduction requirement is inconsistent with this purpose. Depositing credits for emissions reductions in the bank is not required in order to establish valid offsets under state or federal NNSR rules. *See, generally,* R18-2-404. Thus, the reduction requirement creates a significant disincentive to use the bank for its intended purpose. In addition, the reduction requirement is not authorized by the emissions bank statute, R18-2-410, nor is it required by federal NNSR rules.

Revisions to General Permit Rules

Under A.R.S. § 49-426(H), ADEQ is authorized to issue a general permit for "a defined class of facilities if the class contains a large number of facilities that are substantially similar in nature and that have substantially similar emissions." The issuance of a general permit is subject to the same public participation requirements as permits for individual sources. Once a general permit is issued, any source that is a member of the class of facilities covered by the permit may apply for and receive authority to operate without going through a separate public notice and comment process.

ADEQ is adopting two types of NSR-related amendments to Article 5.

First, ADEQ is amending Article 5 to clarify how minor NSR applies to the issuance of general permits. Since before the adoption of R18-2-334, ADEQ's practice has been to establish general permit conditions and application procedures which assure that a covered source's emissions will not endanger the NAAQS. Thus, general permits previously issued by ADEQ assure that the purpose of minor NSR, preventing the construction of sources or modification that could interfere with attainment of the NAAQS. Section R18-2-515 codifies this practice and also allows for the imposition of RACT in general permits.

Second, ADEQ has established web portal known as "MyDEQ," which, among other things, allows certain facilities covered by general permits to conduct all general-permit related transactions, including applying for and obtaining coverage, online. The MyDEQ procedures are consistent with existing Article 5 requirements, but ADEQ is adopting amendments to reflect the availability of the portal. Among other things, the portal allows online processing of applications for facilities subject to, or potentially subject to, minor NSR. As noted above, existing general permits assure compliance with minor NSR requirements, and new R18-

2-515 assures that future general permits will continue to do so.

Revisions to Streamline Permitting

This rulemaking includes three revisions that improve and streamline the permitting process for both new and modified sources subject to NSR and existing sources.

The first streamlining action repeals Appendix 1, which contains the standard permit application form and filing instructions that were developed nearly two decades ago. The form was unnecessarily complex, redundant, and failed to reflect the scope of information ADEQ currently uses in the permitting process. This rulemaking amends R18-2-304(B) (Permit Application Processing Procedures) to require applicants to complete forms provided by the Director when applying for a permit. The rule identifies certain minimum elements that each application form developed by the Director must include to ensure the appropriate information is included and all permits conform to federal requirements. Repealing Appendix 1 and amending the rule is necessary to allow ADEQ to periodically update and revise the permit forms when appropriate without the burden of rulemaking.

The second permit streamlining amendment tailors deviation reporting obligations for permittees to avoid duplicative and unnecessary reporting. Sources subject to those requirements previously encountered issues when interpreting the language of R18-2-306(A)(5)(b) because the key term "prompt" was undefined but dictated when reporting should occur. This action revises the rule to more clearly define the timeframe for satisfying deviation reporting requirements.

The third permit streamlining revision extends the deadline for performance testing when events occur that are beyond a source's control. EPA's new source performance standards and national emissions standards for hazardous air pollutants program both allow sources to request an extension of a performance test under such circumstances. ADEQ has added a similar provision to R18-2-312 to afford similar relief in certain circumstances.

Section by Section Explanation of Amended Rules:

R18-2-101	Add and amend definitions used in major and minor NSR programs, as well as definitions used in related permit rules. Add definitions identifying federal terms and programs referenced in the rules.
R18-2-102	Add information on the publication and location of the Code of Federal Regulations.
R18-2-201	Amend to reflect 2012 $PM_{2.5}$ NAAQS.
R18-2-203	Amend to reflect 2015 Ozone NAAQS.
R18-2-217	Amend the language to conform to federal requirements for designating and classifying attainment areas.
R18-2-218	Amend language to include baseline date and area information to conform to federal requirements. Add $PM_{2.5}$ consideration when determining concentrations of particulate matter for purposes of maximum allowable increases.
R18-2-301	Add and amend definitions to provide greater clarify for terms used in registration and permit rules.
R18-2-302	Amend by removing reference to unenforceable state hazardous air pollutant program, correct cross references, and update language.
R18-2-302.01	Add new notice requirements for minor NSR registration, as well as general update to language and cross references. Amend elective limits to address EPA's concern with enforceability.
R18-2-303	Update applicability to include only new sources or modifications that occur after the effective date of EPA's 2015 limited approval limited disapproval.
R18-2-304	Amend to streamline the permit application process by requiring applicants to complete a standard application form and detailing the minimum information ADEQ must include in those forms. Amend to address EPA objection to the exclusion of insignificant activities from determinations of NSR applicability.
R18-2-306	Amend to streamline permit contents by providing a more definitive timeframe for deviation reporting.
R18-2-306.01	Update cross reference.
R18-2-306.02	Amend language to conform to defined terms and remove unnecessary cross reference.
R18-2-307	Amend to update cross references.
R18-2-311	Amend to allow use of approved alternative methods to determine opacity.
R18-2-312	Amended to allow extension of deadline to conduct performance tests on occurrence of force majeure events.
R18-2-319	Amend to require public notice for all minor NSR modifications by removing the exception that those subject to R18-2-334(G) could comply under the minor permit revision procedures.
R18-2-320	Amend to remove public notice exemption for any significant permit revision as required by the EPA and replace ambiguous language with defined terms.
R18-2-324	Repeal requirement for lessors of portable equipment to obtain a permit.
R18-2-326	Update cross reference and replace cross reference with explanatory language.
R18-2-327	Update cross reference.
R18-2-330	Amend public notice rules to comply with federal requirements and update cross reference.
R18-2-332	Reorganize for better rule formatting and update cross references.
R18-2-334	Update language to comply with federal requirements and removed portion disapproved by the EPA.

R18-2-401	Amend and add definitions to comply with federal requirements
R18-2-402	Amend permit issuing procedures to reflect federal requirements and address EPA objections. Update cross references.
R18-2-403	Amend to comply with federal requirements providing for EPA oversight in permitting activities.
R18-2-404	Amend to comply with federal requirements and allow for the emissions of NOx and VOC to offset Ozone.
R18-2-405	Amend to comply with the federal requirements.
R18-2-406	Amend to comply with federal requirements. Reorganize to better distinguish the differences in NSR requirements for attainment and nonattainment areas.
R18-2-407	Amend to comply with federal requirements.
R18-2-408	Amend to comply with federal requirements and update references.
R18-2-410	Amend to comply with federal requirements. Reorganize where and relocate all visibility requirements previously in other locations to this section.
R18-2-411	Add new section with federal requirements addressing sources located in an attainment area's impact on NAAQS violations in another area.
R18-2-412	Amend to comply with federal requirements.
R18-2-502	Amend to eliminate outdated minor NSR provision.
R18-2-503	Amend to reflect MyDEQ procedures.
R18-2-504	Amend to add minor NSR public participation requirements.
R18-2-507	Repeal to reflect unenforceability of referenced Article 17.
R18-2-508	Repeal outdated permit shield provision.
R18-2-512	Amend to reflect MyDEQ procedures.
R18-2-513	Amend to reflect MyDEQ procedures.
R18-2-514	Added to reflect MyDEQ procedures.
R18-2-515	Added to clarify minor NSR procedures for general permits.
R18-2-1205	Amend to remove deduction of ten percent of emissions reductions deposited in emissions bank.

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:

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 (ESBCIS) under A.R.S. § 41-1055.

An identification of the rule making.

The rulemaking addressed by this ESBCIS is the adoption of amendments designed to bring ADEQ's new source review (NSR) rules into conformance with federal requirements. This rulemaking will remedy the deficiencies identified by EPA in the LA/LD and generally bring Arizona's NSR program into conformity with federal requirements. The changes are described in greater detail in section 5 of the preamble.

There are two updates to the national ambient air quality standards that EPA has adopted since ADEQ last amended Article 2 that are included in this rulemaking and may need to be addressed in NSR applications and permitting decisions. The first is the $PM_{2.5}$ primary ambient air quality standard, which was amended by EPA in 2012 and appears at R18-2-201. The second is the ozone eight-hour average primary and secondary ambient air quality standard and the removal of the ozone one-hour standard, which was amended by EPA in 2015 and appears at R18-2-203. These changes may result in increased compliance cost for sources and increased administrative costs for ADEQ.

The remainder of the changes are procedural or technical in nature and should have at most a trivial economic impact on the agency, businesses or consumers.

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

The persons that will be directly affected by and bear the costs of the rulemaking will be businesses that construct or modify stationary sources that are subject to major or minor NSR.

The types of Arizona business operations subject to major NSR typically include Portland cement plants, iron and steel mills, primary copper smelters, hard-rock mining operations, petroleum refineries, lime plants, fiberglass production facilities, wood furniture manufacturers, paper mills and fossil-fuel power plants. Major sources tend to be large facilities operated by publicly owned corporations and employing hundreds or thousands of employees.

Major sources may also be subject to minor NSR. Minor NSR may apply to smaller business operations or operations that, although substantial in scale, tend to have emissions below the major source thresholds. These include rock quarrying and crushing operations, concrete batch plants, asphalt plants, semiconductor manufacturers, aircraft engine and parts manufacturers, landfills and petroleum bulk stations and terminals.

The above list is not exhaustive. Any business that engages in pollutant emitting activities is potentially subject to NSR. Typically pollutant-emitting activities include fuel combustion to produce energy or as part of a process, the use of solvents, the application of surface coatings (such as paints and varnishes), the storage of fuels and other organic liquids and the handling of materials likely to give rise to airborne dust. Tailpipe emissions from mobile sources are not considered in determining NSR applicability.

A cost benefit analysis of the following:

(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the rule making.

ADEQ's cost of implementing the amended NSR requirements will likely be minimal. One component of the major NSR amendments that could potentially impact ADEQ's cost of administering the air quality permit program is the inclusion of the new national ambient air quality standards: the 2012 $PM_{2.5}$ standard and the 2015 eight-hour primary and secondary ozone standard. However, the standards constitute an increase in the stringency of existing standards and likely will not result in any modeling or review time beyond that which is already required.

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

The costs to political subdivisions subject to permitting under ADEQ's rules from these proposed amendments should be minimal. In general, the types of sources operated by political subdivisions are very unlikely to be subject to major NSR. The costs of the procedural and technical changes to minor NSR and the registration program proposed in this rulemaking are likely to be minimal.

ADEQ considers any impacts to sources in counties with their own pollution control programs to be indirect.

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

As discussed in section 5 of the Preamble, the amendments to ADEQ's major NSR rules are necessary to comply with federal requirements for the program. If ADEQ failed to adopt these amendments, they would ultimately apply to sources in Arizona either through the adoption of a federal implementation plan (FIP) or the application of 40 CFR Part 51, Appendix S (in the case of nonattainment NSR). In addition, Title I, Part D of the Clean Air Act imposes a limited time from for ADEQ to adopt the major NSR amendments. Failure to meet the statutory timeframe will result in sanctions by the federal government, as described above.

Thus, failure to adopt these amendments would not in the long run result in the avoidance of any costs of compliance, but would result in a substantial negative impact on the state's economy.

In any case, the only substantial cost to businesses that could result from this rulemaking would be the cost to new or modified major sources of complying with the updated ozone and $PM_{2.5}$ NAAQS. As noted in the 2012 rulemaking, these costs are impossible to quantify but unlikely to be incurred:

> [W]hen modeling demonstrates an ambient impact resulting in non-compliance with an ambient standard (NAAQS or increments), mitigation beyond the level of control technology already required by major NSR is necessary. The cost of mitigation can be substantial but is highly dependent on the nature of the particular project and cannot be reliably estimated for purposes of the ESBCIS. Moreover, because major NSR automatically requires a very stringent level of control (BACT or LAER), mitigation is rarely necessary. Mitigation necessary to address non-compliance with any of the new standards imposed in the major NSR amendments will be an even rarer occurrence. Thus, the major NSR amendments are unlikely to result in additional mitigation costs.

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

ADEQ does not believe that the additional costs to businesses subject to the amended NSR requirements, as described above, will be substantial enough to deter the construction of expansion of business operations. Accordingly, there should be no impact on private employment or on the employment of any political subdivision subject to NSR.

A statement of the probable impact of the rule making on small businesses.

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

Under A.R.S. § 41-1001(21):

"Small business" means a concern, including its affiliates, which is [1] *independently owned and operated*, which is [2] *not dominant in its field* and which [3] *employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year.* (Emphasis added.)

Most registration sources will likely qualify as small businesses, as will many sources subject to minor NSR. It is unlikely that any major sources would qualify.

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

ADEQ anticipates that small businesses will incur little to no additional costs as a result of the procedural and technical changes to minor NSR and the registration program proposed in these amendments.

(c) A description of the methods that the agency may use to reduce the impact on small businesses.

(i) Establishing less costly compliance requirements in the rule making for small businesses.

Not applicable.

(ii) Establishing less costly schedules or less stringent deadlines for compliance in the rule making.

Not applicable.

(iii) Exempting small businesses from any or all requirements of the rule making.

Not applicable.

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

Some businesses may pass some of the additional costs estimated on to consumers. ADEQ anticipates the impact will be negligible because the amendments will not substantially increase existing air quality compliance costs.

A statement of the probable effect on state revenues.

Since the costs of the amendments will be recoverable through air quality permit fees, there will be no net effect on state revenues.

A description of any less intrusive or less costly alternative methods of achieving the purpose of the rule making.

As discussed above in section 5, ADEQ is adopting amendments that the Department believes to be the minimum necessary to comply with federal NSR requirements. No less intrusive or costly alternatives are available.

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

ADEQ is making only minor clarifying changes to the proposal, as described in detail in the responses to comments 1-4, 8, 10, 12 and 17.

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

Comment 1: R18-2-101.131: For purposes of clarification, the reference to "under R18-2-302(B)(2)" (applicability provisions for Class II permits based on "significant" emission rates) might be better placed after "in reference to a significant increase" rather than after "a stationary source's maximum to emit with elective limits." (Arizona Mining Association [AMA])

Response: ADEQ appreciates the suggestion, but "under R18-2-302(B)(2)" does not modify "significant emissions increase." The definition in R18-2-101(131) is intended to specify the four different contexts to which the significance thresholds in the definition apply: (1) determining whether an emissions increase is significant for purposes major NSR, (2) determining whether a net emissions increase is significant for purposes of major NSR, (3) determining whether a stationary source's potential to emit a particular pollutant is significant for purposes of determining major NSR applicability to the pollutant, and (4) determining whether a stationary source's maximum capacity to emit with elective limits is significant for purposes of determining Class II permit applicability. The phrase "under R18-2-302(B)(2)" can only apply to the last item. In an attempt to make this definition clearer, however, ADEQ is substituting "as defined in R18-2-301(13)" for "under R18-2-302(B)(2)."

Comment 2: R18-2-301.13: Because "maximum capacity to emit with elective limits" as it is used in revised applicability provisions could be construed as applicable only to the situation where elective limits were included in a source's registration under R18-2-302.01(F), there could be confusion in evaluating applicability (e.g., a source subject to a Class II permit that never had a registration or a source that previously had a registration, but it did not contained elective limits). Although clarification can be found in the term's definition, perhaps some of the potential confusion could be avoided by replacing "maximum capacity to emit with elective limits" with "maximum capacity to emit with any elective limits." This change would help clarify that applicability is based on maximum capacity to emit, including elective limits if they were established. Of course, such references would then need to be revised throughout the revised rules. (AMA)

Response: ADEQ agrees with this comment and has made this change in the final rule.

Comment 3: R18-2-302.01(A)(6): This provision requires identification of the method used to determine "maximum capacity to emit" specified under R18-2-302(B)(3)(a) or (d) or subsection (G)(1)(a) of this Section, but Subsection (G)(1)(a) refers to "maximum capacity to emit with elective limits." The AMA recommends inserting "maximum capacity to emit with elective limits specified under" before "subsection (G)(1)(a) of this Section." (AMA)

Response: ADEQ agrees with this comment and has made this change together with some additional revisions to improve the clarity of this provision.

Comment 4: R18-2-302.01(B)(4): Because this is a registration provision, it appears that "permit or permit revision" should be replaced with "registration or registration revision." (AMA)

Response: ADEQ agrees with this comment and has made this change in the final rule.

Comment 5: R18-2-302.01(C)(4): As explained in more detail below, the "performance of the screening model pursuant to subsection (C)(3)" should not be the sole basis for the Director's determination resulting in denial of an application. The federal requirements for minor NSR programs at 40 C.F.R. § 51.160 do not expressly require modeling or mandate that it be the sole criteria for determining whether a source would "interfere with attainment or maintenance" of a NAAQS. Furthermore, a conservative screening model does not necessarily demonstrate that a source's emissions will interfere with attainment or maintenance of a NAAQS. The AMA therefore requests removal of "based on performance of the screening model pursuant to subsection (C)(3)." (AMA)

Response: Under R18-2-302.01(C)(4), the screening model run is not used to "demonstrate" that a source will interfere with attainment or maintenance of a NAAQS. Rather, it is used to determine whether a source will be required to obtain a Class II permit rather than a registration. ADEQ believes this is appropriate. If screening model results indicate that a source's emissions will interfere, the source will have two alternatives: First, the source can implement additional control measures to reduce its projected impact, in which case enforceable emission limits reflecting those controls will need to be imposed. See R18-2-334(C)(2)(c). Second, the source can perform a more refined modeling analysis to demonstrate that the interference projected by the screening

model will not in fact occur. See R18-2-334(C)(2)(b).In either case, the process for approving the source's construction will have reached a level of complexity inappropriate for the registration program. See also response to Comment 14.

Comment 6: R18-2-302.01(E): The AMA understands that the proposed revisions to R18-2-302.01(E) are intended to address an EPA comment taking the position that the prior language was not adequate to ensure that construction of a source will not result in violation of applicable portions of a control strategy. Given that the federal minor NSR program provisions at 40 C.F.R. § 51.160 require that ADEQ's program have enforceable procedures that enable ADEQ to determine whether the construction or modification of a source would violate applicable portions of the control strategy (including a means by which ADEQ will prevent such construction or modification), the basis for EPA's comment and ADEQ's proposed response is unclear. That is, requiring a registration to include enforceable emission limitations and restrictions (as ADEQ's proposed revisions would require) does not appear related to the minor NSR program requirement for enforceable procedures that enable ADEQ to identify and prevent the construction or modification of a source that would violate applicable portions of the control strategy.

In any event, the AMA is concerned that the proposed revisions are contrary to intent of the streamlined registration portion of ADEQ's minor NSR program to reduce regulatory burdens on small sources. By requiring registrations to include "[e]nforceable emission limitations and standards, including operational requirements and emission 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," a registration would be nearly indistinguishable from a Class II permit. The AMA does not believe that EPA's comment must be addressed in this manner. Under 40 C.F.R. § 51.160(d), minor NSR program "procedures must provide that approval of any construction or modification must not affect the responsibility of the owner or operator to comply with applicable portions of the control strategy." A source's responsibility to comply with any applicable portions of a control strategy is set forth in ADEQ's rules that make up that control strategy. Including those already applicable requirements in a registration (or permit) is not necessary to make those requirements enforceable. The AMA therefore requests that ADEQ replace the proposed revisions with a registration content requirement for identification of applicable requirements (as R18-2-302.01(E)(1) previously provided) and a statement that approval of the source's construction or modification via the registration does not affect the responsibility of the owner or operator to comply with applicable portions of the control strategy. (AMA)

Response: A number of former Class II permitted sources have taken advantage of the rule provisions allowing them to transition to the registration program. The conditions sections of the registrations for these sources have been at least 50 percent shorter than the conditions sections of their former permits and often much shorter than that. For the reasons given below, ADEQ anticipates that this will continue to be the case after the amendment to R18-2-302.01(E) takes effect.

EPA's basis for concluding that R18-2-302.01 is not adequate to assure that sources subject to minor NSR will comply with applicable provisions of the control strategy is provided in the Technical Support Document (TSD) for EPA's proposed LA/LD (available at https://www.regulations.gov/document?D=EPA-R09-OAR-2015-0187-0004) at page 20:

> For sources subject to ADEQ's registration program at R18-2-302.01, ADEQ has not demonstrated that its NSR program meets the requirement to ensure that sources subject to NSR review comply with the applicable portions of the control strategy as required by 40 CFR 51.160(b)(1). This requirement is nearly met by R18-2-302.01(E), except that the provision lacks sufficient language to "ensure compliance" with applicable requirements, *similar to language in R18-2-306(A)(2)*.To obtain full approval ADEQ must ensure that sources subject to R18-2-302.01 will comply with the applicable portions of the control strategy.

(Emphasis added.) Thus, EPA specifically identified language similar to R18-2-306(A)(2), which is applicable to Class I and II permits, as being sufficient to cure this deficiency. Section R18-2-306(A)(2) establishes the requirement that Class I and II permits contain emission limitations reflecting *all applicable requirements* and that those limitations be enforceable. ADEQ has not proposed to adopt identical language for R18-2-306.01 but instead adapted that language in two ways to minimize the imposition on registered sources.

First, the enforceable emission limitation requirement applies solely to "applicable SIP requirements," rather than "all applicable requirements. Since the "control strategy" consists of SIP requirements, the inclusion of the SIP requirements applicable to a particular source is sufficient to insure it will not violate the control strategy. For the most part, applicable SIP requirements consist of existing source performance standard in Article 7 of Title 18, Chapter 2. Enforceable emission limitations reflecting these requirements in Class I and II permits tend to be short and straightforward and impose minimal monitoring and reporting obligations. The more complicated conditions in Class I and II permits tend to be those reflecting NSPS and NESHAPS, which are not "applicable SIP requirements," and therefore will not need to be included in registrations.

Second, R18-2-302.01 is only being amended to include the basic enforceability requirement. The additional requirements in R18-2-306(A)(2)(a)-(d) are not included. Nor are any of the other rules designed to enhance the enforceability of Class I and II permits, such as R18-2-306(A)(3)-(5) and (8) and R18-2-309.

Comment 7: R18-2-302.01(F)(2)(b): Maintaining a log or business records of production rate "through the preceding operating day" and updates "once per operating day" may not be feasible for certain small businesses where production rate may not be reasonably ascertainable on a daily basis (e.g., production based on inventory). The information necessary to demonstrate compliance with the annual production limit contemplated here is the total production for each rolling 12-month period. To determine total production for each rolling 12-month period, a source would need to ascertain and record production levels for each month. Ascertaining and maintaining records of monthly production does not inherently require that values be measured and recorded daily. However, as R18-2-302.01(F)(2) is currently drafted, a registration source may be precluded from obtaining an elective limit unless the source can implement a daily production monitoring and recordkeeping approach. Such an approach may be costly, burdensome, or otherwise infeasible for small businesses and appears unnecessary to provide a reasonable assurance of compliance with a 12-month rolling limit. Accordingly, because ADEQ's registration program was intended to streamline and reduce the regulatory burdens of small sources, the AMA requests that ADEQ remove these prescriptive provisions and allow recordkeeping determinations to be made on a case-by-case basis, considering the circumstances and what provides a reasonable assurance of

compliance with the requested limit.

Response: On the basis of EPA guidance, the LA/LD specified that at least daily recordkeeping was required for enforceable limits designed, as the elective limits are, to allow a source to avoid minor NSR. TSD at 29. Although this guidance is not binding, it represents EPA's interpretation of its own rules and thus would be afforded considerable deference in any court challenge. ADEQ therefore believes the proposed changes are necessary to address this deficiency and secure full approval of the minor NSR program.

Moreover, a number of registrations issued so far have included elective limits on production that included daily recordkeeping requirements, and this has not proved to be a problem for registrants.

It is possible that some small businesses will not be able to adopt elective limits as result of this requirement. Fortunately, because of the role that elective limits play in the registration and permitting programs, the impact on any such sources will be minimal.

There are two categories of sources that would have a reason to adopt elective limits.

First, sources can adopt elective limits in order to keep their "maximum capacity to emit with any elective limits" below the significance threshold in order to avoid Class II permitting requirements. These are sources that would have required a Class II permit before the registration program went into effect. It is unlikely that these sources would have difficulty complying with a daily recordkeeping requirement. Even if they do, and therefore cannot assume elective limits, the only consequence is that they remain subject to the requirement to obtain a Class II permit.

Second, sources can adopt elective limits in order to keep their "maximum capacity to emit with any elective limits" below the permitting exemption thresholds. If they are unable to do so, the only consequences are that registration issuance will require public notice, R18-2-302.01(B)(3), and that they will be subject to mandatory, rather than discretionary, screening for possible interference with the NAAQS, R18-2-302.01(C), (D).

Comment 8: R18-2-302.01(F)(4)(a): The "pounds per month" requirement may be overly stringent for some registration sources and is ambiguous in how compliance is demonstrated. The AMA requests that the limit be expressed as a 12-month rolling period similar to R18-2-302.01(F)(1) and (2). (AMA)

Response: ADEQ agrees and is making this change to the proposed rule language.

Comment 9: R18-2-302.01(F)(4)(b): Similar to the comments above, updating material usage spreadsheet or database "at least once per operating day" may not be feasible for certain small businesses where material usage may not be reasonably ascertainable on a daily basis (e.g., material usage based on inventory). During prior stakeholder meetings, representatives from the Maricopa County Air Quality Department (MCAQD) articulated similar concerns based on their experience. The AMA requests that ADEQ remove this prescriptive provision and allow recordkeeping requirement determinations to be made on a case-by-case basis, considering the circumstances and what provides a reasonable assurance of compliance with the requested limit. (AMA)

Response: See response to Comment 7.

Comment 10: R18-2-304: The AMA supports the revisions to R18-2-304 to help streamline applications. However, the reference to "RIS-2-306.02" in R18-2-304(B)(7) should be "R18-2-306.02."

Response: ADEQ appreciates the expression of support and is adopting these proposed amendments in the final rule. ADEQ has corrected the typographical error identified in the comment.

Comment 11: R18-2-306(A)(5): The AMA supports the revisions to R18-2-306.A.5 to help streamline reporting requirements. (AMA)

Response: ADEQ appreciates the expression of support and is adopting these proposed amendments in the final rule.

Comment 12: R18-2-312: The AMA supports the revisions to R18-2-312 to allow the extension of performance testing deadlines due to events beyond a source's control (consistent with federal rules). However, the reference to "subsection (I)" in the first sentence of R18-2-312(A) should be "subsection (J)." (AMA)

Response: ADEQ appreciates the expression of support and is adopting these proposed amendments in the final rule. ADEQ has corrected the erroneous cross-reference identified in the comment.

Comment 13: R18-2-334(C)(2)(b): The AMA supports the replacement of the "cause or exacerbate" language (that previously was undefined and inconsistent with the federal requirements for a minor NSR program under 40 C.F.R. § 51.160) with the "interfere with attainment or maintenance" language. (AMA)

Response: ADEQ appreciates the expression of support and is adopting these proposed amendments in the final rule.

Comment 14: R18-2-334(C)(2): As drafted, the air quality assessment to determine that a new source or minor NSR modification will not interfere with attainment or maintenance of a NAAQS could be interpreted as allowing only source-specific modeling to make this determination. While source-specific modeling is arguably the preferred and most common approach, the federal requirements for minor NSR programs at 40 C.F.R. § 51.160 do not expressly mandate source-specific modeling. The AMA requests that the provision be revised to clarify that an acceptable alternative could also be used to make this determination (possibly regional scale modeling, risk-based monitoring, etc.). The AMA agrees that source-specific modeling demonstrating either of the items in R18-2-334(C)(2)(b) should be allowed to provide a "bright-line" basis for determining that a new source or minor NSR modification will not interfere with attainment or maintenance of the NAAQS. However, a source-specific modeling analysis that is unable to make either of the R18-2-334(C)(2)(b) demonstrations (e.g., due to high background concentrations and ambient impacts above significance levels), does not necessarily mean that the new source or minor NSR modification will interfere with attainment or maintenance of the NAAQS. This distinction is important because R18-2-334(F) (as currently drafted) requires that the Director deny an application if an assessment conducted pursuant to subsection (C)(2) demonstrates that the source or modification will interfere with the NAAQS. Accordingly, clarification that source-specific modeling is not the only means to determine whether a source or minor NSR modification will not interfere with attainment or maintenance of the NAAQS is necessary to

avoid the untenable situation where applications must be denied solely because source-specific modeling is unable to make either of the R18-2-334(C)(2)(b) demonstrations. (AMA)

Response: In the final LA/LD, EPA made it clear that authority to deny a minor NSR application for modeled interference with the NAAQS is a mandatory component of a minor NSR program. Removing this authority from R18-2-334 would result in full disapproval of the state's minor NSR program.

Comment 15: R18-2-334(F): See comments above regarding the denial of applications based solely on the inability of a source-specific modeling analysis to make either of the R18-2-334(C)(2)(b) demonstrations. While the R18-2-334(C)(2)(b) demonstrations should support the determination that a source or minor NSR modification will not interfere with attainment or maintenance of the NAAQS, the inability to make the R18-2-334(C)(2)(b) demonstrations does not conclusively require a determination that a source or minor NSR modification will interfere with attainment or maintenance of the NAAQS. (AMA)

Response: See response to Comment 14.

Comment 16: R18-2-503(E), R18-2-513(C)(3), R18-2-514(B): While the AMA supports ADEQ's development of web tools such as MyDEQ, the revisions inappropriately mandate the filing of applications and conducting all transactions through a web portal when available and upon notice by the Director. ADEQ should recommend using the web portal as it helps educate the regulated community, but still allow sources (especially small sources typically subject to general permits) to obtain permits and conduct transactions as is traditionally done. (AMA)

Response: In developing MyDEQ, ADEQ has evaluated whether use of the portal will pose a problem for the sources potentially subject to it and has concluded that for all of these sources use of the portal will be substantially easier and faster than the traditional method of processing general permit transactions.

Comment 17: For simplicity, I propose the following as the clarification to the text in R18-2-311 page 106.

> Except as otherwise provided in this subsection (the) opacity of visible emissions shall be determined by EPA Alternative Method 082 or EPA Reference Method 9 of the Arizona Testing Manual. A permit may specify an alternate method, for determining the opacity of emissions from a particular emissions unit, if the method has been approved by the Administrator.

This language would make it clearer that EPA Alternative Method 082 is used in AZ. Further, the county rules reference the AAC, so the request from them is to make the AAC directly reference EPA ALT 082, so they do not have to change their rules. For instance, the Kinder Morgan permit in Pima county says visible emissions are to be measured using the methods specified in AAC 18-2-311 and the AZ Testing Manual. The AZ Testing manual only allows Method 9 or 40CFR60 Appendix A methods. So the decision was facilities in Pima county cannot use EPA Alternative Method 082. As worded in this modification package, one could argue that only via a specifically requested and approved permit change could EPA ALT 082 be used. This permit change is what the counties do not want, e.g. a lot of work they are not staffed to perform. The proposed clarification would make EPA ALT 082 part of AAC 18-2-311, thus all exiting permits in Pima county would not need to be changed as they currently reference AAC 18-2-311 as the governing document. When I commented on Maricopa county permits to include EPA ALT 082 I was told by that group to get AzDEQ to change AAC 18-2-311 to directly include EPA ALT 082 like it does Method 9, because too much work to include specific methods in each permit, too easy to make a mistake and leave it out.

Please accept this as a request for clarification in the final promulgation, objective is to clarifying the use of the EPA Alternative Method 082 is allowed. Do not want to mandate its use, or mandate a change to exiting process, or including a method that is more stringent. EPA ALT 082 is the same as Method 9, stated can be used "in Lieu of Method 9" in the CFR.

I attached the EPA's documents on this topic and you can see why its not as clear on that end as we would like it ether. But I am told by Jason and all of his bosses that the only way 40CFR60 Appendix A is going to be updated is if the courts require the EPA to update it. The methodology is letter approval, (site specific), to CFR publication (broadly applicable), to incorporation into rules (Ferro Alloy NESHAP), is the way OAQPS plans to bring all new technology/methods into use. Jason Dewees, OAQPS, (919) 541-9724.

Response: ADEQ agrees and has made this change.

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 statute applicable specifically to ADEQ or this specific rulemaking.

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 rule requires permits as described in section 5 above. A general permit may be used to satisfy minor NSR requirements established by this rule. Federal law does not allow the enforcement of major NSR requirements through the issuance of general permits, because major NSR requires a case-by-case, facility-specific determination.

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 federal Clean Air Act and implementing regulations adopted by EPA apply to the subject of this rule, as described in section 5 above. This rulemaking is no more stringent than 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:

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 rules:

There are no incorporations by reference added to the rules in this action.

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

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY AIR POLLUTION CONTROL

ARTICLE 1. GENERAL

Section

R18-2-101. Definitions

R18-2-102. Incorporated Materials

ARTICLE 2. AMBIENT AIR QUALITY STANDARDS; AREA DESIGNATIONS; CLASSIFICATIONS

Section

R18-2-201. Particulate Matter: PM_{10} and $PM_{2.5}$

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ARTICLE 3. PERMITS AND PERMIT REVISIONS

Section

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R18-2-302. Applicability; Registration; Classes of Permits

R18-2-302.01. Source Registration Requirements

R18-2-303. Transition from Installation and Operating Permit Program to Unitary Permit Program; Registration Transition; Minor NSR Transition

R18-2-304. Permit Application Processing Procedures

R18-2-306. Permit Contents

R18-2-306.01. Permits Containing Voluntarily Accepted Emission Limitations and Standards

R18-2-307. Permit Review by the EPA and Affected States

R18-2-311. Test Methods and Procedures

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R18-2-320. Significant Permit Revisions

R18-2-324. Portable Sources

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R18-2-327. Annual Emissions Inventory Questionnaire

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R18-2-334. Minor New Source Review

ARTICLE 4. PERMIT REQUIREMENTS FOR NEW MAJOR SOURCES AND MAJOR MODIFICATIONS TO EXISTING MAJOR SOURCES

Section

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R18-2-403. Permits for Sources Located in Nonattainment Areas

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R18-2-407. Air Quality Impact Analysis and Monitoring Requirements

R18-2-408. Innovative Control Technology

R18-2-410. Visibility and Air Quality Related Value Protection

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.

R18-2-412. PALs

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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
July 1, 2023 through September 30, 2023

Questions about these rules? Contact:

Department: Department of Environmental Quality
Address: 1110 W. Washington St.
Air Quality Division, AQIP Section
Phoenix, AZ 85007
Website: http://www.azdeq.gov/notices
Name: Bruce Friedl
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Email: friedl.bruce@azdeq.gov
or
Name: Alex Ponikvar
Telephone: (602) 771-4601
Email: ponikvar.alex@azdeq.gov

The release of this Chapter in Supp. 23-3 replaces Supp. 23-2, 1-234 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. § 41-5505.

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.

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Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.

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TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

Authority: A.R.S. § 49-104 et seq.

Supp. 23-3

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Article 2, consisting of Sections R18-2-201 through R18-2-290, adopted effective August 8, 1991 (Supp. 91-3).

Article 2, consisting of Sections R18-2-201 through R18-2-220, repealed effective August 8, 1991 (Supp. 91-3).

Article 2 consisting of Sections R9-3-201, R9-3-202, R9-3-204 through R9-3-207, and R9-3-215 through R9-3-219 renumbered as Article 2, Sections R18-2-201, R18-2-202, R18-2-204 through R18-2-207, and R18-2-215 through R18-2-219 (Supp. 87-3).

ARTICLE 3. PERMITS AND PERMIT REVISIONS

Article 3, consisting of Sections R9-3-301 through R9-3-332, adopted effective November 15, 1993 (Supp. 93-4).

Article 3, consisting of Sections R9-3-301 through R9-3-319, and R9-3-321 through R9-3-323 repealed effective November 15, 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).

ARTICLE 4. PERMIT REQUIREMENTS FOR NEW MAJOR SOURCES AND MAJOR MODIFICATIONS TO EXISTING MAJOR SOURCES

Article 4, consisting of Sections R18-2-401 through R18-2-411, adopted effective November 15, 1993 (Supp. 93-4).

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).

Article 4 consisting of Sections R9-3-401 through R9-3-410 renumbered as Article 4, Sections R18-2-401 through R18-2-410 (Supp. 87-3).

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Article 5, consisting of Sections R18-2-501 through R18-2-510, adopted effective November 15, 1993 (Supp. 93-4).

Article 5, consisting of Sections R18-2-501 through R18-2-530, renumbered as Article 7, Sections R18-2-701 through R18-2-730 (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 through R18-2-905, renumbered to Article 11, Sections R18-2-1101 through R18-2-1105 (Supp. 93-4).

Article 9 consisting of Sections R18-2-901 and R18-2-902 adopted effective February 26, 1988.

Former Article 9 consisting of Sections R9-3-901, R9-3-903 through R9-3-906, R9-3-910, R9-3-913, and R9-3-922 repealed effective February 26, 1988.

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Section

ARTICLE 11. FEDERAL HAZARDOUS AIR POLLUTANTS

Article 11, consisting of Sections R18-2-1101 and R18-2-1102 adopted effective November 15, 1993 (Supp. 93-4).

Article 11 consisting of Sections R18-2-1101 and R18-2-1102 repealed effective September 26, 1990 (Supp. 90-3).

Article 11 consisting of Sections R9-3-1101, R9-3-1102, and Appendices 1 through 11 renumbered as Article 11, Sections R18-2-1101, R18-2-1102, and Appendices 1 through 11 (Supp. 87-3).

Section

ARTICLE 12. VOLUNTARY EMISSIONS BANK

Article 12, consisting of Sections R18-2-1201 through R18-2-1208, made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1).

Section

ARTICLE 13. STATE IMPLEMENTATION PLAN RULES FOR SPECIFIC LOCATIONS

Article 13, consisting of Part B, Sections R18-2-B1301, R18-2-B1301.01, and R18-2-B1302; and consisting of Part C, Section R18-2-C1302; and Appendix 14 and 15 made by final rulemaking. See historical notes for effective dates (Supp. 17-1).

Article 13, consisting of Sections R18-2-1301 through R18-2-1307, rules expired under A.R.S. § 41-1056(J), effective April 30, 2013 (Supp. 13-3).

Article 13, consisting of Sections R18-2-1301 through R18-2-1307, made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2).

PART A. RESERVED

PART B. HAYDEN, ARIZONA, PLANNING AREA

PART C. MIAMI, ARIZONA, PLANNING AREA

PART C. MIAMI, ARIZONA, PLANNING AREA

PART D. ARIZONA REGIONAL HAZE CLASS I AREAS

Article 13, consisting of Part D, Sections R18-2-D1301 through R18-2-D1303 made by final rulemaking at 29 A.A.R. 1658 (July 28, 2023), effective September 10, 2023 (Sup. 23-3).

ARTICLE 14. CONFORMITY DETERMINATIONS

ARTICLE 15. FOREST AND RANGE MANAGEMENT BURNS

Article 15, consisting of R18-2-1501 through R18-2-1515, adopted effective October 8, 1996 (Supp. 96-4).

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).

ARTICLE 17. EXPIRED

Article 17, consisting of Sections R18-2-1701 through R18-2-1709, 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 17, consisting of Sections R18-2-1701 through R18-2-1709, made by final rulemaking at 12 A.A.R.1953, effective January 1, 2007 (Supp. 06-2).

ARTICLE 18. REPEALED

Article 18, consisting of Sections R18-2-1801 through R18-2-1812 and Appendix 13, repealed by final rulemaking at 18 A.A.R. 250, effective January 10, 2012 (Supp. 12-1).

Article 18, consisting of Sections R18-2-1801 through R18-2-1812 and Appendix 13, made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2).

CHAPTER APPENDICES

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, windborne 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 promul-

gated 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.
    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.
    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 demonstrated 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 juris-

diction 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.
        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 nonmetallic 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 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 - 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.
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. A physical or operational change does not include routine maintenance, repair or replacement.
    b. 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.
    c. 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:
    a. The amount by which the sum of subsections (88)(a)(i) and (ii) exceeds zero:
        i. 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
        ii. 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.
        iii. 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.
    b. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:
        i. 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
        ii. The date that the increase from the particular change occurs.
    c. 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.
    d. An increase or decrease in actual emissions of sulfur dioxide, nitrogen oxides, PM_{10}, 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.
    e. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

f. A decrease in actual emissions is creditable only to the extent that it satisfies all of the following conditions:
   i. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions.
   ii. It is enforceable as a practical matter at and after the time that actual construction on the particular change begins.
   iii. It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.
   iv. The emissions unit was actually operated and emitted the specific pollutant.
   v. 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.

g. 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.

h. Subsection (2)(a) shall not apply for determining creditable increases and decreases.

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. "PM_{10}" 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. "PM_{10} 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:
    a. Has not been in operation for the two-year period before enactment of the Clean Air Act Amendments 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-NOx 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 PM_{10} 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 PM_{10} 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 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_2S)	10 tpy
Total reduced sulfur (including H_2S)	10 tpy
Reduced sulfur compounds (including H_2S)	10 tpy

Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5×10^{-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 $\mu g/m^3$ (24-hour average).

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:
    a. Begun, or caused to begin, a continuous program of physical onsite construction of the stack;
    b. 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:
    a. Low-Emitting Combustion

i. Combustion emissions from propulsion of mobile sources;
ii. Emergency or backup electrical generators at residential locations;
iii. 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;

b. Low- Or Non-Emitting Industrial Activities
i. Blacksmith forges;
ii. 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;
iii. 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;
iv. Drop hammers or hydraulic presses for forging or metalworking;
v. Air compressors and pneumatically operated equipment, including hand tools;
vi. Batteries and battery charging stations, except at battery manufacturing plants;
vii. Drop hammers or hydraulic presses for forging or metalworking;
viii. 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;
ix. Hand-held applicator equipment for hot melt adhesives with no VOC in the adhesive formulation;
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;
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 ($C_4F_9OCH_3$);
oo. 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$);
pp. 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$);
qq. 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OC_2H_5$;
rr. Methyl acetate; and
ss. 1,1,1,2,2,3,3-heptafluoro-3-methoxypropane (n-C_3F7OCH_3, 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 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 depositary libraries in the state (see http://catalog.gpo.gov/fdlpdir/FDLPdir.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: PM_{10} and $PM_{2.5}$

A. PM_{10} Standards

1. The level of the primary and secondary ambient air quality standards for PM_{10} is 150 micrograms per cubic meter of PM_{10} – 24-hour average concentration.
2. To determine attainment of the primary and secondary standards, a person shall measure PM_{10} 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 PM_{10} 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.
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 $\mu g/m^3$) -- annual arithmetic mean.
2. 0.14 parts per million (ppm) (365 $\mu g/m^3$) – 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 $\mu g/m^3$) -- 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

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). 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 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: PM_{10}	
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

CLASS II

Particulate matter: $PM_{2.5}$	
Annual arithmetic mean	4
24-hr maximum	9
Particulate matter: PM_{10}	
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

CLASS III

Particulate matter: $PM_{2.5}$	
Annual arithmetic mean	8
24-hr maximum	18
Particulate matter: PM_{10}	
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

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 PM_{10}.
   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 PM_{10} 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.
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 PM_{10}; 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 PM–10 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 PM_{10} 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 PM_{10} 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 PM_{10} 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 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 ($\mu g/m^3$)	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/m3)	24-hr	140.5	210.5	280.5	350.5
PM_{10} ($\mu g/m^3$)	24-hr	350	420	500	600
Sulfur dioxide ($\mu g/m^3$)	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.
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 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 prohibitions 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. A person to begin actual construction of or modify a stationary source that otherwise would be subject to registration but that the Director has determined requires a permit under R18-2-302.01(C)(4) or (D).
3. Unless a Class I or II permit is required, registration 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 any regulated minor NSR pollutant in an amount greater than or equal to a permitting exemption threshold.
   b. A person to begin actual construction of or operate any stationary source subject to a standard under section 111 of the Act, except that a stationary source is not required to register solely because it is subject to any of the following standards:
      i. 40 CFR 60, Subpart AAA (Residential Wood Heaters).
      ii. 40 CFR 60, Subpart IIII (Stationary Compression Ignition Internal Combustion Engines).
      iii. 40 CFR 60, Subpart JJJJ (Stationary Spark Ignition Internal Combustion Engines).
      iv. 40 CFR 60, Subpart QQQQ (Residential Hydronic Heaters and Forced-Air Furnaces).
   c. A person to begin actual construction of or operate any stationary source, including an area source, subject to a standard under section 112 of the Act, except that a stationary source is not required to register solely because it is subject to any of the following standards:
      i. 40 CFR 61.145.
      ii. 40 CFR 63, Subpart ZZZZ (Reciprocating Internal Combustion Engines).
      iii. 40 CFR 63, Subpart WWWWW (Ethylene Oxide Sterilizers).
      iv. 40 CFR 63, Subpart CCCCCC (Gasoline Distribution).
      v. 40 CFR 63, Subpart HHHHHH (Paint Stripping and Miscellaneous Surface Coating Operations).
      vi. 40 CFR 63, Subpart JJJJJJ (Industrial, Commercial, and Institutional Boilers Area Sources), published at 76 FR 15554 (March 21, 2011).
      vii. A regulation or requirement under section 112(r) of the Act.
   d. A physical or operational change to a source that would cause the source to emit or have the maximum capacity to emit any regulated minor NSR pollutant in an amount greater than or equal to the permitting exemption threshold.

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 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:
   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 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, SO_2, PM_{10}, $PM_{2.5}$, 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 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 noncompliance 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.
   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 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 require-

ments 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 R9-3-304 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 subsec-

tion (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 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 classified 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 emergency. 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.

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 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, and any preventive or corrective measures adopted.

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;
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;
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 meteorological 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 Sec-

tion. 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:

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 frequent 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 ±1.5% in the term:

$$\left[\frac{20.9}{29.9(1 - B(wa)) - \%O(2ws)}\right]$$

iii. When measurements are on a dry basis, the following conversation procedure shall be used:

$$E(Q) = CF\left[\frac{20.9}{20.9 - \%O(2ws)}\right]$$

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 x 10^{-5} M g/dscm per ppm (2.64 x 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 x 10^{-5} M lb/wscm per ppm) (2.59 x 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 caloric 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 ± 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 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;
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 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.

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 report-

ing 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).

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 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;
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;
      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 PM_{10};
      iii. Emissions from insignificant activities listed in the permit application for the source under R18-2-304(F)(8);
      iv. Fugitive emissions of PM_{10} 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:
1. 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.

2. 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.
3. 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:

1. 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:
   a. 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.
   b. 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.
2. 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.
3. 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 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 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 calendar 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 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(l) 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 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

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).

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:
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, Hg = 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, Hg = 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, 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 portions 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.
   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 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.

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.
12. "Major emissions unit" means:
    a. 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
    b. 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:
    a. 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
PM2.5 precursors identified in R18-2-101(124)(a)	$PM_{2.5}$ Serious	70
NO_x	Ozone, Serious	50
NO_x	Ozone, Severe	25

b. 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;

c. 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.

d. A major source that is major for VOC or nitrogen oxides shall be considered major for ozone.

e. 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:
    a. 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.
    b. In determining the projected actual emissions before beginning actual construction, the owner or operator of the major source:
        i. 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
        ii. Shall include fugitive emissions to the extent quantifiable;
        iii. Shall include emissions associated with start-ups, shutdowns, and malfunctions; and
        iv. Shall exclude, only for calculating any increase in emissions that results from the particular 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.
    a. 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.
    b. The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

c. The replacement does not alter the basic design parameters of the process unit.

d. 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

A. 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.

B. 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.

C. 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.

D. The requirements of this Article apply to projects at major sources in accordance with the following principles.

1. 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.

2. 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.

3. 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 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 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. 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 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.

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.

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:

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 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 PM_{10} 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 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 $\mu g/m^3$, eight-hour average;
   b. Nitrogen dioxide - 14 $\mu g/m^3$, annual average;
   c. $PM_{2.5}$ – 0 $\mu g/m^3$, 24-hour average;
   d. PM_{10} - 10 $\mu g/m^3$, 24-hour average;
   e. Sulfur dioxide - 13 $\mu g/m^3$, 24-hour average;
   f. Lead - 0.1 $\mu g/m^3$, 3-month average;
   g. Fluorides - 0.25 $\mu g/m^3$, 24-hour average;
   h. Total reduced sulfur - 10 $\mu g/m^3$, one-hour average;
   i. Hydrogen sulfide - 0.04 $\mu g/m^3$, one-hour average;
   j. Reduced sulfur compounds - 10 $\mu g/m^3$, 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.
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 unclassifiable.
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;
   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 federal 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, $PM_{2.5}$, PM_{10}, 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 emissions 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]		
	Terrain areas	
Period of exposure	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 nonattainment 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.
1. The Director may approve the use of a PAL for any existing major source if the PAL meets the requirements of this Section.
2. 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:
   a. Is not a major modification for the PAL pollutant,
   b. Does not have to be approved under R18-2-403 or R18-2-406, and
   c. Is not subject to the provisions in R18-2-403(C) or R18-2-406(M).
3. 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:
1. 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.
2. 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.
3. 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.
1. The Director is allowed to establish a PAL at a major source, provided that at a minimum, the following requirements are met:

a. 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.
b. The PAL shall be established in a PAL permit that meets the requirements in subsection (D).
c. The PAL permit shall contain all the requirements of subsection (F).
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.

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.
4. PAL adjustment. In determining whether and how to adjust the PAL, the Director shall consider the options outlined in subsections (I)(4)(a) and (b). However, in no case may any such adjustment fail to comply with subsection (I)(4)(c).
   a. If the emissions level calculated in accordance with subsection (E) is equal to or greater than 80% of the PAL level, the Director may renew the PAL at the same level without considering the factors set forth in subsection (I)(4)(b); or
   b. The Director may set the PAL at a level that the Director determines to be more representative of the source's baseline actual emissions, or that the Director determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Director in the Director's written rationale.
   c. Notwithstanding subsections (I)(4)(a) and (b):
      i. If the potential to emit of the major source is less than the PAL, the Director shall adjust the PAL to a level no greater than the potential to emit of the source; and
      ii. The Director shall not approve a renewed PAL level higher than the current PAL, unless the PAL has been increased in accordance with subsection (J).

5. If the compliance date for an applicable requirement that applies to the PAL source occurs during the PAL effective period, and if the Director has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or renewal of the source's Class I permit, whichever occurs first.

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 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.

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 permit 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.

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

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 Section 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:
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 September 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 (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.
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

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).

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.
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/ft&sup2, the surface is STABLE. If the average silt loading is greater than or equal to 0.33 oz/ft&sup2, 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 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 ± 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, reverts 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 ± 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 ± 1%.

A8.1.3. Fuel Sulfur Content

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 ± 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 Convertor Slags

A8.2.1.1. The owner or operator shall determine the weight of each slag using a scale with an accuracy within ± 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 ± 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 ± 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 ±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 ± 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 ± 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 ± 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 ±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 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 ± 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 ± 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 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 SO_2, 7 for NO_x and 3 for O_2 and CO_2, 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 O_2 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 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

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.

49-401.01. Definitions

In this chapter, unless the context otherwise requires:

1. "Administrator" means the administrator of the United States environmental protection agency.

2. "Adverse effects to human health" means those effects that result in or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, including adverse effects that are known to be or may reasonably be anticipated to be caused by substances that are acutely toxic, chronically toxic, carcinogenic, mutagenic, teratogenic, neurotoxic or causative of reproductive dysfunction.

3. "Adverse environmental effect" means any significant and widespread adverse effect that may reasonably be anticipated on wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

4. "Arizona Grand Canyon visibility transport commission class I areas" means the following four mandatory federal class I areas in this state that were the subject of recommendations made by the Grand Canyon visibility transport commission pursuant to the clean air act:

(a) Grand Canyon national park.

(b) Petrified Forest national park.

(c) Sycamore Canyon Wilderness.

(d) Mount Baldy Wilderness.

5. "Arizona mandatory federal class I areas" means the following eight national parks and wilderness areas that are designated as mandatory federal class I areas in this state pursuant to the clean air act and does not include the Arizona Grand Canyon visibility transport commission class I areas:

(a) Pine Mountain Wilderness.

(b) Mazatzal Wilderness.

(c) Sierra Ancha Wilderness.

(d) Superstition Wilderness.

(e) Saguaro Wilderness.

(f) Galiuro Wilderness.

(g) Chiricahua Wilderness.

(h) Chiricahua National Monument Wilderness.

6. "Attainment area" means any area in this state that has been identified in regulations promulgated by the administrator as being in compliance with national ambient air quality standards.

7. "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 on-site activities, other than preparatory activity, 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 section 49-427, subsection D:

(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 on-site storage of materials and equipment.

(b) For purposes other than for those applicants prescribed in subdivision (a) of this paragraph, these activities do not include the following, subject to section 49-427, subsection D:

(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) Ordering and on-site storage of materials and equipment.

(iv) Installation of underground pipework, including water, sewer, electric and telecommunications utilities.

(v) Installation of ancillary structures, including fences, warehouses, storerooms and office buildings, provided none of these structures impact the design of any emissions unit or associated air pollution control equipment.

(vi) Installation of building and equipment supports, including concrete forms, footers, pilings, foundations, pads and platforms, provided none of these supports impact the design of any emissions unit or associated air pollution control equipment.

8. "Building", "structure", "facility" or "installation" means all of the pollutant-emitting activities that 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 except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group that has the same two digit code, as described in the standard industrial classification manual, 1972, as amended by the 1977 supplement.

9. "Clean air act" means the clean air act of 1963 (P.L. 88-206; 42 United States Code sections 7401 through 7671) as amended by the clean air act amendments of 1990 (P.L. 101-549).

10. "Commence" means, as applied to construction of a source:

(a) For purposes other than title IV of the clean air act, that the owner or operator has obtained all necessary preconstruction approval or permits required by federal law and this chapter and has done either of the following:

(i) Begun or caused to begin a continuous program of physical on-site construction of the source to be completed within a reasonable time.

(ii) 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 construction of the source to be completed within a reasonable time.

(b) For purposes of title IV of the clean air act, that the owner or operator has undertaken a continuous program of construction or that an owner or operator has entered into a contractual obligation to undertake and complete within a reasonable time a continuous program of construction.

11. "Construction" means any physical change in a source or change in the method of operation of a source including fabrication, erection, installation or demolition of a source that would result in a change in actual emissions.

12. "Conventional air pollutant" means any pollutant for which the administrator has promulgated a primary or secondary national ambient air quality standard.

13. "Federally listed hazardous air pollutant" means any air pollutant adopted pursuant to section 49-426.03, subsection A and not deleted pursuant to that subsection.

14. "Grand Canyon visibility transport commission" means the visibility transport commission established pursuant to section 169B of the clean air act for the region affecting the visibility of the Grand Canyon national park.

15. "Grand Canyon visibility transport commission class I areas" means the following sixteen mandatory federal class I areas in the region of Grand Canyon national park that were the subject of recommendations by the Grand Canyon visibility transport commission pursuant to the clean air act:

(a) Grand Canyon national park in Arizona.

(b) Sycamore Canyon Wilderness in Arizona.

(c) Petrified Forest national park in Arizona.

(d) Mount Baldy Wilderness in Arizona.

(e) San Pedro Parks Wilderness in New Mexico.

(f) Mesa Verde national park in Colorado.

(g) Weminuche Wilderness in Colorado.

(h) Black Canyon of the Gunnison Wilderness in Colorado.

(i) West Elk Wilderness in Colorado.

(j) Maroon Bells-Snowmass Wilderness in Colorado.

(k) Flat Tops Wilderness in Colorado.

(l) Arches national park in Utah.

(m) Canyonlands national park in Utah.

(n) Capitol Reef national park in Utah.

(o) Bryce Canyon national park in Utah.

(p) Zion national park in Utah.

16. "Hazardous air pollutant" means any federally listed hazardous air pollutant and any air pollutant that the director has designated as a hazardous air pollutant pursuant to section 49-426.04, subsection A and has not

deleted pursuant to section 49-426.04, subsection B.

17. "Hazardous air pollutant reasonably available control technology" means an emissions standard for hazardous air pollutants that the director, acting pursuant to section 49-426.06, subsection C, or the control officer, acting pursuant to section 49-480.04, subsection C, determines is reasonably available for a source. In making the foregoing determination the director or control officer shall take into consideration the estimated actual air quality impact of the standard, the cost of complying with the standard, the demonstrated reliability and widespread use of the technology required to meet the standard and any non-air quality health and environmental impacts and energy requirements. For the purposes of this definition, an emissions standard may be expressed as a numeric emissions limitation or as a design, equipment, work practice or operational standard.

18. "Maintenance area" means any nonattainment area that has been redesignated by the administrator to attainment status.

19. "Major source" means a stationary source or a group of stationary sources that is located within a contiguous area, that is under common control and that is defined as a major source in section 501(2) of the clean air act or that is a major emitting facility as defined in title I, part C of the clean air act or that is defined in department rules as a major source consistent with the clean air act.

20. "Mandatory federal class I areas" means those national parks, monuments and wilderness areas that are included in 40 Code of Federal Regulations sections 81.400 through 81.436 pursuant to the clean air act.

21. "Maximum achievable control technology" means an emission standard that requires the maximum degree of reduction in emissions of the hazardous air pollutants subject to this chapter, including a prohibition on such emissions where achievable, and that the director, after considering the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines to be achievable by an affected source to which such standard applies, through application of measures, processes, methods, systems or techniques including measures that:

(a) Reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications.

(b) Enclose systems or processes to eliminate emissions.

(c) Collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point.

(d) Are design, equipment, work practice, or operational standards, including requirements for operator training or certification.

(e) Are a combination of the above.

22. "Minor source" means any stationary or portable source that is not a major source.

23. "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.

24. "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) A physical or operational change does not include routine maintenance, repair or replacement.

(b) 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 federally enforceable permit condition or other permit condition that is enforceable as a practical matter.

(c) A change in ownership at a source is not considered a modification.

25. "National ambient air quality standard" means the ambient air pollutant concentration limits established by the administrator pursuant to 42 United States Code section 7409.

26. "Nonattainment area" means any area in this state that is designated as prescribed by section 49-405 and where violations of national ambient air quality standards have been measured.

27. "Nonattainment area plan" means an air pollution control plan developed in accordance with 42 United States Code sections 7501 through 7515.

28. "Permitting authority" means the department or a county department or agency that is charged with enforcing a permit program adopted pursuant to section 49-480, subsection A.

29. "Planning agency" means an organization designated by the governor pursuant to 42 United States Code section 7504.

30. "Portable source" means any stationary source that is capable of being transported and operated in more than one county of this state.

31. "Potential to emit" 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 enforceable as a practical matter.

32. "Primary standard attainment date" means the date defined within a nonattainment area plan in accordance with 42 United States Code sections 7401 through 7515 or applicable regulations adopted by the United States environmental protection agency by January 1, 1999 and after which date primary national ambient air quality standards may not be violated.

33. "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.

34. "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.

35. "State implementation plan" means the accumulated record of enforceable air pollution control measures, programs and plans adopted by the director and submitted to the administrator pursuant to 42 United States Code section 7410.

36. "Stationary source" means any facility, building, equipment, device or machine that operates at a fixed location and that emits or generates air contaminants.

37. "Unclassifiable area" means all areas of this state for which inadequate ambient air quality data exist to determine compliance with the national ambient air quality standards.

49-402. State and county control

A. The department shall have original jurisdiction over such sources, permits and violations that pertain to:

1. Major sources in any county that has not received approval from the administrator for new source review under the clean air act and prevention of significant deterioration under the clean air act.

2. Smelting of metal ore.

3. Petroleum refineries.

4. Coal fired electrical generating stations.

5. Portland cement plants.

6. Air pollution by portable sources.

7. Air pollution by mobile sources for the purpose of regulating those sources as prescribed by article 5 of this chapter and consistent with the clean air act.

8. Sources that are subject to title V of the clean air act and that are located in a county for which the administrator has disapproved that county's title V permit program if the department has a title V program that has been approved by the administrator. On approval of that county's title V permit program by the administrator, the county shall resume jurisdiction over those sources.

B. Except as specified in subsection A of this section, the review, issuance, administration and enforcement of permits issued pursuant to this chapter shall be by the county or multi-county air quality control region pursuant to the provisions of article 3 of this chapter. After the director has provided prior written notice to the control officer describing the reason for asserting jurisdiction and has provided an opportunity to confer, the county or multi-county air quality control region shall relinquish jurisdiction, control and enforcement over such permits as the director designates and at such times as the director asserts jurisdiction at the state level. The order of the director which asserts state jurisdiction shall specify the matters, geographical area, or sources over which the department shall exercise jurisdiction and control. Such state authority shall then be the sole and exclusive jurisdiction and control to the extent asserted, and the provisions of this chapter shall govern, except as provided in this chapter, until jurisdiction is surrendered by the department to such county or region.

C. Portable sources under jurisdiction of the department under subsection A, paragraph 6 of this section may be required to file notice with the director and the control officer who has jurisdiction over the geographic area that includes the new location before beginning operations at that new location.

D. Notwithstanding any other law, a permit issued to a state regulated source shall include the emission standard or standard of performance adopted pursuant to section 49-479, if such standards are more stringent than those adopted by the director and if such standards are specifically identified as applicable to the permitted source or a component of the permitted source. Such standards shall be applied to sources identified in subsection A, paragraph 2, 3, 4 or 5 of this section only if the standard is formally proposed for adoption as part of the state implementation plan.

E. The regional planning agency for each county which contains a vehicle emissions control area shall develop plan revisions containing transportation related air quality control measures designed to attain and maintain primary and secondary ambient air quality standards as prescribed by and within the time frames specified in the clean air act. In developing the plan revisions, the regional planning agency shall consider all of the following:

1. Mandatory employee parking fees.

2. Park and ride programs.

3. Removal of on-street parking.

4. Ride share programs.

5. Mass transit alternatives.

6. Expansion of public transportation systems.

7. Optimizing freeway ramp metering.

8. Coordinating traffic signal systems.

9. Reduction of traffic congestion at major intersections.

10. Site specific transportation control measures.

11. Reversible lanes.

12. Fixed lanes for buses and carpools.

13. Encouragement of pedestrian travel.

14. Encouragement of bicycle travel.

15. Development of bicycle travel facilities.

16. Employer incentives regarding ride share programs.

17. Modification of work schedules.

18. Strategies for controlling the generation of air pollution by nonresidents of nonattainment or maintenance areas.

19. Use of alternative fuels.

20. Use of emission control devices on public diesel powered vehicles.

21. Paving of roads.

22. Restricting off-road vehicle travel.

23. Construction site air pollution control.

24. Other air quality control measures.

F. Each regional planning agency shall consult with the department of transportation to coordinate the plans developed pursuant to subsection E of this section with transportation plans developed by the department of transportation pursuant to any other law.

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.

49-405. Attainment area designations

A. The governor may designate the status and classification of areas of this state with respect to attainment of national ambient air quality standards.

B. The director shall adopt rules that describe the geographic extent of attainment, nonattainment or unclassifiable areas of this state for all pollutants for which a national ambient air quality standard exists.

C. On promulgation by the administrator of new or revised national ambient air quality standards for pollutants, the department shall develop proposed recommendations regarding designations for geographic areas of this state as being in attainment or nonattainment or unclassifiable with respect to that standard. The proposed recommendations shall be provided to the governor to assist the governor in submitting recommendations to the administrator pursuant to 42 United States Code section 7407(d)(1)(A). The department shall develop the proposed recommendations as follows:

1. Not earlier than five months before the date by which the governor must make the recommendations and not later than four months before that date, the department shall complete a draft of the proposed recommendations and a technical support document that explains the scientific and other bases for the draft proposal.

2. Not earlier than five months before the date by which the governor must make the recommendations and not later than four months before that date, the department shall post the draft proposed recommendations and technical support document on the department's website. The department shall provide actual notice of the posting to counties and municipalities that would be included in a nonattainment area under the proposed recommendations and to any person who had previously requested actual notice of the draft documents. Actual notice of the posting may be provided by electronic or other means.

3. The website posting and actual notices prescribed in paragraph 2 of this subsection shall include notice that until the close of the comment period, any person may submit written comments to the department regarding the draft proposed recommendations and technical support document. The notice shall also include the date, time and location of a public hearing for the department to receive verbal comments and answer questions concerning the draft proposal. The written comment period shall close and the hearing shall be held not later than forty-six days before the date by which the governor must make the recommendations.

4. After the close of the comment period and after the public hearing and not later than one month before the date by which the governor must make the recommendations, the department shall finalize the proposed recommendations and technical support document and submit them to the governor. The department's final proposed recommendations and technical support document shall:

(a) Consider the comments received by the department pursuant to paragraph 3 of this subsection. For any area that is proposed to be designated a nonattainment area in the final proposed recommendations, the department shall with the submittal to the governor include a responsiveness summary that explains with reasonable particularity the department's consideration of and responses to comments received pursuant to paragraph 3 of this subsection.

(b) Be posted on the department's website within five days after the department's submittal to the governor. The posting shall include any responsiveness summary, and the department shall provide actual notice of the posting to counties and municipalities that would be included in a nonattainment area under the final proposed recommendations and to any person who had previously requested actual notice of the documents. Actual notice of the posting may be provided by electronic or other means.

D. The department shall post on its website a copy of the governor's recommendations within five days after the recommendations are submitted to the administrator.

E. If the administrator requires the governor's recommendations to be submitted six months after promulgation of the new or revised national ambient air quality standards or earlier, the time frames prescribed in subsections

C and D shall be reduced by one-half.

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.

49-425. 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.

49-426. Permits; duties of director; exceptions; applications; objections; fees

A. A permit shall:

1. Be issued by the director in compliance with the terms of this section.

2. Be required for any person seeking a compliance extension pursuant to section 49-426.03, subsection B, paragraph 3 and section 112(a)(5) of the clean air act and for any person beginning actual construction of or operating any source, except as prescribed in subsection B of this section or section 49-426.01.

B. The provisions of this section shall not apply to motor vehicles, to agricultural vehicles or agricultural equipment used in normal farm operations, or to fuel burning equipment which, at a location or property other than a one or two family residence, is rated at less than one million British thermal units per hour. The director may establish by rule additional sources or classifications of sources for which a permit is not required and pollutant-emitting activities and emissions units at permitted sources that are not required to be included in the permit. The director shall not adopt such rules unless the director makes a written finding with supporting facts that the exempted source, class of sources, pollutant-emitting activities or emissions units will have an insignificant adverse impact on air quality. In adopting these rules, the director may consider any rule that is adopted by the administrator pursuant to section 502 of the clean air act and that exempts one or more source categories from the requirement to obtain a permit under title V of the clean air act.

C. Every application for a permit shall be filed in the manner and form prescribed by the director, and shall contain all the information necessary to enable the director to make the determination to grant or deny such application. The director shall establish by rule requirements for permit applications, including the standard application form for title V sources. The director shall establish by rule requirements for applications for general permits. An application for a permit issued pursuant to title V of the clean air act shall include a compliance plan that describes how the applicant will comply with all of the applicable requirements of this chapter and the clean air act, including a schedule of compliance and a schedule under which progress reports will be submitted to the director at least every six months. The director may require that such application include all sources that are used or to be used by the applicant in a certain process or a single facility or location. Before acting on an application for a permit, the director may require the applicant to furnish further information or further plans or specifications. The director shall act, within a reasonable time, on such application and shall notify the applicant in writing of the proposed approval or denial of such application, except that the director may have a reasonable period of time in which to gather information, inspect premises, and issue such permits. The director shall adopt rules that establish procedures for determining when applications are complete, for processing applications and for reviewing permit actions. The director shall also establish by rule criteria for determining reasonable times for processing permit applications. Rules adopted pursuant to this subsection for permits issued pursuant to title V of the clean air act shall conform to the requirements of section 505(a) of the clean air act.

D. The director shall give notice of a proposed permit for a source required to obtain a permit pursuant to title V of the clean air act once each week for two consecutive weeks in two newspapers of general circulation in the county in which the source is or will be located. The notice shall describe the proposed permit and air contaminants to be emitted and shall state that any person may submit comments on the proposed permit and may request a public hearing. The director shall require the applicant at the time of the first notice to post the site where the source is or may be located. If permitted by federal, state and local law, the posting shall be prominently placed at a site that is under the applicant's legal control and that is adjacent to the nearest public roadway. The posting shall be visible to the public using the public roadway and shall contain the information in the notice that is published by the director. If a public hearing is requested, the director shall require the applicant to place an additional posting that provides notice of the public hearing. A posting shall be maintained until the public comment period on the proposed permit is closed. The director shall make available to the public notices of proposed permits. Each public notice that is issued under this chapter shall be mailed to the permit applicant, to the affected federal, state and local agencies and to those persons who have requested in writing copies of proposed permit action notices. During the public comment period, any person may submit a request to the department to conduct a public hearing for the purpose of receiving oral or written comments on the proposed

permit. A written comment shall state the name and mailing address of the person, shall be signed by the person, his agent or his attorney and shall clearly set forth reasons why the permit should or should not be issued. Grounds for comment are limited to whether the proposed permit meets the criteria for issuance prescribed in this section or in section 49-427. The department shall consider and prepare written responses to all comments received during the public comment period including comments made at a public hearing conducted by the department. At the time a final permit decision is made, copies of the department's responses shall be made available to the applicant and any person who commented on the proposed permit.

E. Permits or revisions issued pursuant to this section or section 49-426.01 may be issued subject to such terms and conditions as are consistent with the requirements of this article, article 1 of this chapter and the clean air act and are found by the director to be necessary, following public notice and an opportunity for a public hearing as provided in subsection D or H of this section or in section 49-426.01, and subject to payment of a reasonable fee to be determined as follows:

1. For a source that is required to obtain a permit pursuant to title V of the clean air act, the director shall establish by rule a system of fees that is consistent with and equivalent to that prescribed by section 502 of the clean air act. These rules shall prescribe procedures for increasing the fee each year by the percentage if any by which the consumer price index for the immediately preceding calendar year exceeds the consumer price index for calendar year 1989.

2. For a facility that is required to obtain a permit pursuant to this chapter but that is not required to obtain a permit pursuant to title V of the clean air act, the director shall determine a fee based on the total actual cost of processing the permit application, but not exceeding twenty-five thousand dollars.

The director shall establish an annual inspection fee, not to exceed the average cost of inspection. The director shall adopt, by rule, criteria for determining fees and for public hearings.

F. Permits issued pursuant to this section shall be issued for a period of five years.

G. Except as provided in subsection H of this section, any person burning used oil, used oil fuel, hazardous waste or hazardous waste fuel in any machine, incinerator or device shall first obtain a permit from the director. Any permit issued by the director under this subsection shall contain, at a minimum, conditions governing:

1. Limitations on the types, amounts and feed rates of used oil, used oil fuel, hazardous waste or hazardous waste fuel which may be burned.

2. The frequency and types of fuel testing to be conducted by the person.

3. The frequency and type of emissions testing or monitoring to be conducted by the person.

4. Requirements for record keeping and reporting.

5. Numeric emission limitations expressed in pounds per hour and tons per year for air contaminants to be emitted from the facility burning off-specification used oil fuel, hazardous waste or hazardous waste fuel.

H. The director may issue a general permit for a defined class of facilities if the class contains a large number of facilities that are substantially similar in nature and that have substantially similar emissions and if the following conditions are met:

1. A general permit shall comply with all of the requirements for permits prescribed by this section except for the requirements of subsection D of this section and shall be consistent with the clean air act.

2. The director shall give notice of the proposed general permit once each week for two consecutive weeks in a newspaper of general circulation in each county. The notice shall describe the proposed general permit, the general class of sources that would be subject to the proposed permit and the air contaminants to be emitted. The notice shall also state that any person may submit comments on the proposed general permit and may request a

public hearing. A written comment shall state 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. Grounds for comment are limited to whether the proposed general permit meets the criteria for issuance prescribed in this section or section 49-427.

3. On issuance of a general permit any person seeking to permit a source under this subsection shall submit an application pursuant to subsection C of this section.

4. If the director approves an application to be permitted under a general permit, the director shall provide notice of the approval in a newspaper of general circulation in the county in which the source is or will be located.

5. If a person violates a general permit, the director may require the source to obtain a permit pursuant to subsection A of this section.

6. A general permit may be revoked or revised at any time by the director if necessary to comply with this chapter. If the director revokes or revises a general permit, the director shall notify all persons whose sources are affected by the revocation or revision and shall include notice of procedures to obtain a permit pursuant to subsection A of this section or notice of procedures for compliance with the revisions.

7. The director by rule shall adopt procedures for the issuance of general permits.

8. The director may adopt conditions in a general permit applicable to sources located in a specified geographic area either independently of or upon petition by a county air pollution control officer.

I. Permits issued pursuant to this section for a source required to obtain a permit under title V of the clean air act shall contain all of the following:

1. Conditions reflecting all applicable requirements of this article and rules adopted pursuant to this article.

2. Enforceable emission limitations and standards.

3. A schedule for compliance, if applicable.

4. The requirement to submit at least every six months the results of any required monitoring.

5. Any other conditions that are necessary to assure compliance with this article and the clean air act, including the applicable implementation plan.

J. The director may refuse to issue any permit to any source subject to the requirements of title V of the clean air act if the administrator objects to its issuance in a timely manner as prescribed under title V of the act.

K. If an applicant has submitted a timely and complete application for a permit required under this section, but final action has not been taken on that application, failure to obtain a permit shall not be a violation of this chapter unless the delay in final action is due to the failure of the applicant to submit information required or requested to process the application. This subsection does not apply to any person required to obtain a permit before commencing construction of a source as required under this section or any person seeking a permit revision as provided under section 49-426.01.

L. The director may issue a single permit authorizing emissions from similar operations at multiple temporary locations, if the permit includes conditions that will assure compliance with all applicable requirements of this chapter and the clean air act at all locations. Any permit issued pursuant to this subsection shall require the applicant to notify the director in advance of each change in location. In issuing a single permit, the director may require a separate permit fee for operations at each location.

M. In the case of a permit with a term of three or more years issued pursuant to the requirements of title V of the clean air act to a major source, the director shall require revisions to the permit to incorporate applicable

standards and regulations adopted by the administrator pursuant to the clean air act after the issuance of the permit. The director shall require any revisions as expeditiously as practicable, but not later than eighteen months after the promulgation of such standards and regulations. No permit revision shall be required if the effective date of standards and regulations is after the expiration of the permit. Any permit revision required pursuant to this subsection shall be treated as a permit renewal.

N. Any permit issued pursuant to the requirements of this article and title V of the clean air act to a unit subject to the provisions of title IV of the clean air act shall include conditions prohibiting all of the following:

1. Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide held by the owners or operators of the unit or by the designated representative of the owners or operators.

2. Amounts in excess of applicable emission rates.

3. The use of any allowance prior to the year for which it was allocated.

4. Contravention of any other provision of the permit.

O. The director shall adopt a rule specifying the notice, public participation requirements and other permit issuance procedures for permits that are not issued pursuant to title V of the clean air act.

P. In determining whether a permitting threshold established pursuant to this section applies to an existing source, the director shall exclude particulate matter that is not subject to a national ambient air quality standard under the clean air act.

49-426.01. Permits; changes within a source; revisions

A. The director shall establish by rule provisions to allow changes within a source required to obtain a permit under title V of the clean air act without requiring a permit revision if all of the following conditions are met:

1. The changes do not constitute modifications under title I of the clean air act.

2. The changes do not result in an emission that is greater than the emissions allowed under the permit.

3. The source provides the director with a written notice of the proposed changes at least seven days in advance of the beginning of those changes.

4. The source satisfies other conditions that may be established in the rules adopted pursuant to this section for title V sources. Rules adopted pursuant to this section at a minimum shall conform to those adopted by the administrator pursuant to title V of the clean air act and may prescribe a different time limit for notifications associated with emergency conditions.

B. A permit issued pursuant to section 49-426 may be revised, revoked and reissued, or terminated for cause. The filing of a request for a permit revision, revocation and reissuance, or termination or a notification filed pursuant to subsection A of this section does not stay an effective permit condition. The director may require that the applicant provide in writing within a reasonable time any information that the director identifies as necessary for the director to determine if cause exists for revising, revoking and reissuing, or terminating the permit or for determining compliance with permit conditions.

C. The director shall establish by rule procedures related to public and departmental review of changes to a permitted source. For title V sources, these rules at a minimum shall conform to those adopted by the administrator pursuant to title V of the clean air act. For changes to sources that are not required to obtain a permit under title V of the clean air act, the necessity for and level of public and departmental review of a change shall be determined as prescribed by this chapter and the environmental significance of the change.

49-426.02. Permit shield

The director shall establish by rule conditions under which compliance with a permit or permit revision issued pursuant to this chapter constitutes compliance with the applicable requirements of this chapter and the clean air act.

49-426.03. Enforcement of federal hazardous air pollutant program; definitions

A. The list of hazardous air pollutants in section 112(b)(1) of the clean air act is adopted as the list of federally listed hazardous air pollutants that will be subject to the program adopted pursuant to subsection B of this section. Within one year after the administrator adds or deletes a pollutant pursuant to section 112(b)(2) or (3) of the clean air act the director shall adopt those revisions for the list adopted pursuant to this subsection unless the director finds that there is no scientific evidence to support the revision.

B. The director shall adopt by rule a program for administration and enforcement of the federal hazardous air pollutant program established by section 112 of the clean air act. The program shall be consistent with and meet the requirements of section 112 of the clean air act and shall contain the following provisions:

1. After the date specified by the administrator in rules adopted pursuant to section 112 (g)(1)(B) of the clean air act, no person may obtain a permit or permit revision to modify a major source of federally listed hazardous air pollutants or to construct a new major source of federally listed hazardous air pollutants, unless the director determines that the person will install the maximum achievable control technology for the modification or new major source. For purposes of this paragraph, the terms "major source" and "modification" have the meanings set forth in section 112(a) of the clean air act and implementing regulations adopted by the administrator. A new or modified major source of federally listed hazardous air pollutants means a major source that commences construction or a modification after rules adopted by the director pursuant to this subsection become effective pursuant to section 41-1032. A physical change to a source or change in the method of operation of a source is not a modification subject to this paragraph or paragraph 2 of this subsection if the change complies with section 112(g)(1) of the clean air act.

2. After the date specified by the administrator in rules adopted pursuant to section 112 (g)(1)(B) of the clean air act and until the administrator adopts emissions standards establishing the maximum achievable control technology for a source category or subcategory that includes a source subject to paragraph 1 of this subsection, the director shall determine the maximum achievable control technology for the modification of new major source on a case-by-case basis. If the director determines that it is not feasible to prescribe or enforce an emission standard, a maximum achievable control technology standard imposed pursuant to this paragraph may consist of a design, equipment, work practice or operational standard, or a combination thereof.

3. If an existing source submits an application pursuant to section 49-426 which demonstrates that the source has achieved a reduction of ninety per cent or more of federally listed hazardous air pollutants or ninety-five per cent in the case of federally listed hazardous air pollutants that are particulates, the director shall issue a permit or permit revision allowing the source to meet an alternative emission limitation reflecting such reduction in lieu of an emission limitation promulgated by the administrator under section 112(d) of the clean air act. The application shall comply with section 112(i)(5) of the clean air act and implementing regulations adopted by the administrator. The alternative emission limitation shall apply for a period of six years from the compliance date otherwise applicable to the source under section 112(d) of the clean air act.

4. If the administrator fails to adopt a standard for a source category or subcategory within eighteen months after the deadline established for that category or subcategory pursuant to section 112(e)(1) and (3) of the clean air act, the owner or operator of an existing major source in the category or subcategory shall be required to submit a permit application for such source pursuant to section 49-426, and the director, acting in accordance with the procedures adopted pursuant to section 49-426, shall be required to issue a permit establishing maximum achievable control technology for the affected source on a case-by-case basis or, in the alternative, an alternative emission limitation pursuant to paragraph 3 of this subsection. If the director determines that it is not feasible to prescribe or enforce an emission standard, a maximum achievable control technology standard imposed pursuant to this paragraph may consist of a design, equipment, work practice or operational standard, or a combination thereof.

5. When the administrator adopts and makes effective standards pursuant to section 112(d) or 112(f) of the clean air act the director shall adopt those standards in the same manner as prescribed by the administrator.

6. When a reliable method of measuring emissions of a hazardous air pollutant subject to this section is not available, the director shall not require compliance with a numeric emission limit for that pollutant but shall instead require compliance with a design, equipment, work practice or operational standard, or a combination of those standards. The provision adopted pursuant to this paragraph shall not apply to sources or modifications that commence construction after the permit program established pursuant to section 49-426 becomes effective under section 502(h) of the clean air act.

C. Where the clean air act has established provisions, including specific schedules, for the regulation of source categories pursuant to section 112(e)(5) and 112(n) of the clean air act, those provisions and schedules shall be adopted by the director and shall apply to the regulation of those source categories under subsection B of this section.

D. For any category or subcategory of facilities licensed by the nuclear regulatory commission, the director shall not adopt or enforce any standard or limitation respecting emissions of radionuclides which is more stringent than the standard or limitation adopted by the administrator pursuant to section 112 of the clean air act.

E. When the administrator makes one of the following findings pursuant to section 112(n)(1)(A) of the clean air act the finding is effective for purposes of the state's administration and enforcement of the federal hazardous air pollutant program in the same manner as prescribed by the administrator:

1. A finding that regulation is not appropriate or necessary.

2. A finding that alternative control strategies should be applied.

49-428. Appeals of permit actions

A. Within thirty days after notice is given by the director of approval, denial or revocation of a permit, permit revision or conditional order, the applicant and any person who filed a comment on the permit or permit revision pursuant to section 49-426, subsection D, or on the conditional order pursuant to section 49-438, subsection C, may appeal the decision as an appealable agency action pursuant to title 41, chapter 6, article 10.

B. Any person having an interest that is or may be adversely affected may commence a civil action in superior court against the director alleging that the director has failed to act in a timely manner as provided in section 49-426, subsection C. No action may be commenced before sixty days after the plaintiff has given notice to the director. The court has jurisdiction to require the director to act without additional delay.

49-429. Permit transfers; notice; appeal

A. A permit shall not be transferable, whether by operation of law or otherwise, either from one location to another or from one source to another.

B. Subsection A shall not apply to mobile or portable source which is transferred from one location to another after notification to the department of the transfer.

C. A permit may be transferred from one person to another whether by operation of law or otherwise if the person who holds the permit notifies the director in writing before the transfer. The notice shall be in writing and shall include the name, address, telephone number and statutory agent of the person to whom the permit will be transferred, the effective date of the proposed transfer and other information the director may determine to be necessary by rule. The director shall prescribe procedures for this notice.

D. If the director determines that the transferee is not capable of operating the source in compliance with the requirements of this article, rules adopted under this article and the conditions established in the permit, the transfer shall be denied. In order for the denial to be effective, notice of the director's denial, including the reasons for the denial, shall be issued within ten working days of the director's receipt of the notice of proposed transfer.

E. Denial of a permit transfer may be appealed as an appealable agency action pursuant to title 41, chapter 6, article 10.

49-430. Posting of permit

A person who has been granted an operating permit, shall firmly affix such permit, an approved facsimile of such permit, or other approved identification bearing the permit number upon such machine, equipment, incinerator, device or other article for which the operating permit is issued in such a manner as to be clearly visible and accessible. In the event that such machine equipment, incinerator, device or other article is so constructed or operated that such permit cannot be so placed, the permit shall be mounted so as to be clearly visible in an accessible place within a reasonable distance of such machine, equipment, incinerator, device or other article, or maintained readily available at all times on the operating premises.

49-431. Notice by building permit agencies

All agencies that issue building permits shall examine the plans and specifications submitted by an applicant for a building permit to determine if an installation permit will possibly be required under the provisions of section 49-426. If it appears possible that such installation permit will be required, the agency shall give written notice to such applicant to contact the department and shall furnish a copy of such notice to the county air pollution control officer and the department.

49-432. Classification and reporting; confidentiality of records

A. The director, by rule, shall classify air contaminant sources according to levels and types of emissions and other characteristics which relate to air pollution, and shall require reporting for any such class or classes. Reports may be required as to physical outlets, processes and fuels used, the nature and duration of emissions and such other information as is relevant to air pollution and deemed necessary by the director.

B. The owner, lessee or operator of a source under the jurisdiction of the department shall provide, install, maintain, and operate such air contaminant monitoring devices as are reasonable, necessary, and required to determine compliance in a manner acceptable to the director, and shall supply monitoring information as directed in writing by the director. Such devices shall be available for inspection by the director, or his deputies, during all reasonable times.

C. The department shall make available to the public any records, reports or information obtained from any person pursuant to this chapter, including records, reports or information obtained or prepared by the director or a department employee, except that the information or any particular part of the information shall be considered confidential on either of the following:

1. Notice from the person accompanying the information or a particular part of the information that the information, if made public, would divulge the person's trade secrets as defined in section 49-201 or other information that is likely to cause substantial harm to the person's competitive position.

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

D. If the director on his own or following a request for disclosure disagrees with the confidentiality notice, he may request the attorney general to seek a court order authorizing disclosure. If a court order is sought, the person shall be served with a copy of the court filing and has twenty business days from the date of service to request a hearing on whether a court order should be issued. The hearing shall be conducted in camera, and any order resulting from the hearing is appealable as provided by law. The director may not disclose the confidential information until a court order authorizing disclosure has been obtained and becomes final. The court may award costs of litigation including reasonable attorney and expert witness fees to the prevailing party.

E. Notwithstanding subsection C, the department shall make available to the public the following information obtained from any person pursuant to this chapter:

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

2. The chemical constituents, concentrations and amounts of any emission of any air contaminant.

3. The existence or level of a concentration of an air pollutant in the environment.

F. Notwithstanding subsection C, the director may disclose, with an accompanying confidentiality notice, any records, reports or information obtained by the director or department employees to:

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

2. Employees of the United States environmental protection agency if the information is necessary or required to administer and implement or comply with federal statutes or regulations.

49-441. Suspension and revocation of conditional order

If the terms and conditions of the conditional order are being violated, the director may seek to revoke or suspend the conditional order granted. In such event, the director shall serve notice of such violation on the holder of the conditional order in the manner provided in section 49-444. The notice shall specify the nature of such violation and the date on which a hearing will be held to determine if such a violation has occurred and whether the conditional order should be suspended or revoked. The date of the hearing shall be within thirty days from the date the notice is served upon the holder of the conditional order.

49-443. Court appeals; procedures

A. Except as provided in section 41-1092.08, subsection H, all final administrative decisions relating to permit actions, permit transfers or orders of abatement are subject to judicial review pursuant to title 12, chapter 7, article 6.

B. When an appeal is taken from a final administrative decision pursuant to title 41, chapter 6, article 10, the order or decision shall remain in effect pending final determination of the matter, unless stayed by the court, on a hearing after notice to the director and upon a finding by the court that there is probable cause for appeal and that great or irreparable damage may result to the petitioner warranting the stay.

C. An appeal may be taken to the court of appeals from the order of the superior court as in other civil cases. Proceedings under this section shall be given precedence and brought to trial ahead of other litigation concerning private interests and other matters that do not affect public health and welfare.

49-447. Motor vehicle and combustion engine emission; standards

The director shall adopt rules setting forth standards controlling the release into the atmosphere of air contaminants from motor vehicles and combustion engines. Any rules adopted pursuant to this section shall be consistent with provisions of federal law, if any, relating to control of emissions from motor vehicles or combustion engines. This authority shall apply to implement the provisions of sections 28-955 and 49-542.

49-455. Permit administration fund; exemption

A. The permit administration fund is established consisting of fees and interest collected pursuant to this article and section 27-515. The director shall administer the fund subject to annual legislative appropriation. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided in section 35-313, and monies earned from investment shall be credited to the fund. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

B. Monies in the fund collected pursuant to sections 49-426 and 49-426.01 shall be used to pay for the following:

1. In the case of fees collected pursuant to section 49-426, subsection E, paragraph 1, all reasonable direct and indirect costs required to develop and administer the permit program requirements of title V of the clean air act.

2. In the case of other fees, administering permits or revisions issued pursuant to section 49-426 or 49-426.01 or conducting inspections.

3. All reasonable and necessary costs to provide staff support pursuant to section 27-514.

C. Monies in the fund collected pursuant to section 27-515, subsection B, paragraph 5 shall be used to prepare, reproduce and distribute publications pursuant to that paragraph.

D. Not more than five percent of the monies in the fund may be used for the collection of monies, unless otherwise provided under title V of the clean air act.

E. Not more than five percent of the monies in the fund may be used for general administration of the fund unless otherwise provided under title V of the clean air act.

49-464. Violation; classification; penalties; definition

A. A person who knowingly releases into the ambient air any extremely hazardous substance listed pursuant to 42 United States Code section 11002(a)(2) or any hazardous air pollutant and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a class 2 felony. For any air pollutant for which the administrator or director has established a standard by regulation or in a permit, a release of such pollutant in accordance with that standard shall not constitute a violation of this subsection. For purposes of determining whether a defendant who is an individual knew that the violation placed another in imminent danger of serious bodily injury both of the following shall apply:

1. The defendant is responsible only for actual awareness or actual belief possessed.

2. Knowledge possessed by another person but not by the defendant may not be attributed to the defendant.

Notwithstanding paragraphs 1 and 2 of this subsection, circumstantial evidence, including evidence that the defendant took affirmative steps to be shielded from relevant information, may be used to prove knowledge.

B. A person who operates a source that is required to have a permit both under this article and under title V of the clean air act and who knowingly operates such source without a permit issued by the director and without having filed a complete application for renewal of an existing permit in accordance with title V of the clean air act and this article is guilty of a class 5 felony.

C. A person who operates a source that is subject to an emission standard that is required to be imposed in the source's permit both under this article and under title V of the clean air act, and who knowingly violates such emission standard is guilty of a class 5 felony.

D. A person who is subject to an effective order of abatement issued under this article and who knowingly violates such order is guilty of a class 5 felony.

E. A person who is required by the director pursuant to this article to conduct performance tests, and who knowingly alters or modifies any such performance test in order to render the results inaccurate is guilty of a class 5 felony.

F. A person who is required by the director to maintain any monitoring device pursuant to this article, and who knowingly alters, modifies or destroys such monitoring device in order to render the device inaccurate is guilty of a class 5 felony.

G. A person who operates a source that is required to have a permit issued pursuant to this article and that is subject to a material permit condition other than an emission standard identified in subsection C of this section, and who knowingly violates such permit condition is guilty of a class 6 felony. For purposes of this subsection a material permit condition means a permit condition determined by the director by rule to be material after considering the following criteria:

1. The effect of the permit condition on public health and the environment.

2. The effect of the permit condition on the department's ability to enforce the permit program.

3. The effect of noncompliance with the permit condition on emissions.

4. The effect of the permit condition on the director's ability to determine a source's compliance status.

The director shall adopt the rules required by this subsection and section 49-514, subsection G by November 1, 1993.

H. A person who is required to obtain a permit before commencing construction of a source both under this article and under title V of the clean air act, and who knowingly commences construction of such source without a permit issued by the director is guilty of a class 6 felony.

I. A person who operates a source that is not identified in subsection B of this section and that requires a permit under this article, and who knowingly operates such source without a permit issued by the director and without having filed a complete application for renewal of an existing permit in accordance with this article is guilty of a class 6 felony.

J. A person who is required by the director pursuant to this article to operate a monitoring device, and who knowingly fails to maintain, operate or repair such monitoring device in order to render the device inaccurate is guilty of a class 6 felony.

K. A person who is required to obtain a permit to commence construction of a source under this article but not under title V of the clean air act, and who acting with criminal negligence commences construction of such source without a permit issued by the director is guilty of a class 1 misdemeanor.

L. A person who acting with criminal negligence does any of the following is guilty of a class 1 misdemeanor:

1. Violates a permit condition not described in subsection C or G of this section.

2. Violates an opacity standard, unless the opacity standard is required by section 111 or title I, part C or D, of the clean air act.

3. Violates a fee or filing requirement established both under this article and under title V of the clean air act.

4. Violates any other provision of this article for which a penalty is not otherwise prescribed.

M. Under this section, a knowing violation that continues for more than one day, but that results from a single act or series of related acts, constitutes the commission of a single offense.

N. The attorney general may enforce the provisions of this section.

O. In determining the amount of a fine under this section, the court shall consider all of the following:

1. The seriousness of the violation.

2. As an aggravating factor only, the economic benefit, if any, resulting from the violation.

3. Any history of that violation.

4. Any good faith efforts to comply with the applicable requirements.

5. The economic impact of the penalty of the violator.

6. The duration of the violation as established by any credible evidence including evidence other than the applicable test method.

7. Payment by the violator of penalties previously assessed for the same violation.

8. Other aggravating and mitigating factors as the court deems relevant.

P. It shall be an affirmative defense to any prosecution under subsection A of this section that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of either of the following:

1. An occupation, business or profession.

2. Medical treatment or medical or scientific experimentation conducted by professionally approved methods provided that the person endangered was made aware of the risk involved in the treatment or experimentation prior to giving consent.

Q. It shall be an affirmative defense to any prosecution for violation of an emission standard or opacity standard under subsection C or G or subsection L, paragraph 1, 2 or 4 of this section that both of the following conditions were satisfied:

1. The violation was reported by verbal or facsimile notification to the director within twenty-four hours after the source first learned of the violation.

2. The owner or operator of the source provided written notification to the director containing all of the following information within seventy-two hours following the verbal or facsimile notification:

(a) Confirmation of the violation for which verbal or facsimile notification was provided.

(b) Identification of the practicable corrective measures that have been undertaken or will be undertaken to control and minimize emissions until compliance with the applicable standard is achieved.

In the case of continuous or recurring violations, the notification requirement shall be satisfied if the source provides the required notification after violations are first detected and includes in such notification an estimate of the time the violations will continue. Violations occurring after the estimated time period shall require additional notification pursuant to the first sentence of this paragraph.

R. It shall be an affirmative defense to any prosecution under subsection B, H, I or K of this section for operating a source or commencing construction without a permit that, after accurately disclosing in writing all relevant information that is necessary to assess the requirement to obtain a permit and that is requested by a permitting authority, the defendant obtained and relied upon the written advice of a permitting authority that no permit was necessary. Failure of a permitting authority to respond in writing to a request for a determination under this subsection within fourteen days after receiving the information described in this subsection shall be deemed to be advice that no permit was necessary for purposes of this subsection.

S. The defendant may establish an affirmative defense provided by this section by a preponderance of the evidence.

T. Under this section, to prove a knowing violation the state must prove actual knowledge of circumstances constituting each element of the offense which, as defined, requires proof of a culpable mental state. Actual knowledge may be proved by either direct or circumstantial evidence, including evidence that the person deliberately avoided acquiring such knowledge. A person's knowledge may not be inferred merely by his or her position within an enterprise.

U. All civil or criminal penalties or fines assessed pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

V. For purposes of this section, "emission standard" means a numeric limitation on the volume or concentration of air pollutants in emissions from a source or a specific design, equipment or work practice standard, the purpose of which is to eliminate or reduce the volume or concentration of pollutants emitted by a source. Emission standard does not include opacity standards. Violations of emission standards shall be determined in the manner prescribed by the applicable regulations issued by the administrator or the director.

49-479. Rules; hearing

A. The board of supervisors shall adopt such rules as it determines are necessary and feasible to control the release into the atmosphere of air contaminants originating within the territorial limits of the county or multi-county air quality control region in order to control air pollution, which rules, except as provided in subsection C shall contain standards at least equal to or more restrictive than those adopted by the director. In fixing such standards, the board or region shall give consideration but shall not be limited to:

1. The latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on health and welfare which may be expected from the presence of an air pollution agent, or combination of agents in the ambient air, in varying quantities.

2. Atmosphere conditions and the types of air pollution agent or agents which, when present in the atmosphere, may interact with another agent or agents to produce an adverse effect on public health and welfare.

3. Securing, to the greatest degree practicable, the enjoyment of the natural attractions of the state and the comfort and convenience of the inhabitants.

B. No rule may be enacted or amended except after the board of supervisors 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. A county may adopt or amend a rule, emission standard, or standard of performance that is as stringent or more stringent than a rule, emission standard or standard of performance for similar sources adopted by the director only if the county complies with the applicable provisions of section 49-112.

D. All rules enacted pursuant to this section shall be made available to the public at a reasonable charge upon request.

49-514. Violation; classification; definition

From and after October 31, 1994:

A. A person who knowingly releases into the ambient air any extremely hazardous substance listed pursuant to 42 U.S.C. section 11002(a)(2) or any hazardous air pollutant and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a class 2 felony. For any air pollutant for which the administrator, director or control officer has established a standard by regulation or in a permit, a release of such pollutant in accordance with that standard shall not constitute a violation of this subsection. For purposes of determining whether a defendant who is an individual knew that the violation placed another in imminent danger of serious bodily injury both of the following shall apply:

1. The defendant is responsible only for actual awareness or actual belief possessed.

2. Knowledge possessed by another person but not by the defendant may not be attributed to the defendant.

Notwithstanding paragraphs 1 and 2 of this subsection, circumstantial evidence, including evidence that the defendant took affirmative steps to be shielded from relevant information, may be used to prove knowledge.

B. A person who operates a source that is required to have a permit both under this article and under title V of the clean air act and who knowingly operates such source without a permit issued by the control officer and without having filed a complete application for renewal of an existing permit in accordance with title V of the clean air act and this article is guilty of a class 5 felony.

C. A person who operates a source that is subject to an emission standard that is required to be imposed in the source's permit both under this article and under title V of the clean air act, and who knowingly violates such emission standard is guilty of a class 5 felony.

D. A person who is subject to an effective order of abatement issued under this article and who knowingly violates such order is guilty of a class 5 felony.

E. A person who is required by the control officer pursuant to this article to conduct performance tests, and who knowingly alters or modifies any such performance test in order to render the results inaccurate is guilty of a class 5 felony.

F. A person who is required by the control officer to maintain any monitoring device pursuant to this article, and who knowingly alters, modifies or destroys such monitoring device in order to render the device inaccurate is guilty of a class 5 felony.

G. A person who operates a source that is required to have a permit issued pursuant to this article and that is subject to a material permit condition other than an emission standard identified in subsection C of this section, and who knowingly violates such permit condition is guilty of a class 6 felony. For purposes of this subsection a material permit condition means a permit condition determined by the director by rule to be material pursuant to section 49-464, subsection G.

H. A person who is required to obtain a permit before commencing construction of a source both under this article and under title V of the clean air act, and who knowingly commences construction of such source without a permit issued by the control officer is guilty of a class 6 felony.

I. A person who operates a source that is not identified in subsection B of this section and that requires a permit under this article, and who knowingly operates such source without a permit issued by the control officer and without having filed a complete application for renewal of an existing permit in accordance with this article is guilty of a class 6 felony.

J. A person who is required by the control officer pursuant to this article to operate a monitoring device, and who knowingly fails to maintain, operate or repair such monitoring device in order to render the device inaccurate is guilty of a class 6 felony.

K. A person who is required to obtain a permit to commence construction of a source under this article but not under title V of the clean air act, and who acting with criminal negligence commences construction of such source without a permit issued by the director is guilty of a class 1 misdemeanor.

L. A person who acting with criminal negligence does any of the following is guilty of a class 1 misdemeanor:

1. Violates a permit condition not described in subsection C or G of this section.

2. Violates an opacity standard, unless the opacity standard is required by section 111 or title I, part C or D, of the clean air act.

3. Violates a fee or filing requirement established both under this article and under title V of the clean air act.

4. Violates any other provision of this article for which a penalty is not otherwise prescribed.

M. Under this section, a knowing violation that continues for more than one day, but that results from a single act or series of related acts, constitutes the commission of a single offense.

N. In determining the amount of a fine under this section, the court shall consider all of the following:

1. The seriousness of the violation.

2. As an aggravating factor only, the economic benefit, if any, resulting from the violation.

3. Any history of that violation.

4. Any good faith efforts to comply with the applicable requirements.

5. The economic impact of the penalty of the violator.

6. The duration of the violation as established by any credible evidence including evidence other than the applicable test method.

7. Payment by the violator of penalties previously assessed for the same violation.

8. Other aggravating and mitigating factor as the court deems relevant.

O. It shall be an affirmative defense to any prosecution under subsection A of this section that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of either of the following:

1. An occupation, business or profession.

2. Medical treatment or medical or scientific experimentation conducted by professionally approved methods provided that the person endangered was made aware of the risk involved in the treatment or experimentation prior to giving consent.

P. It shall be an affirmative defense to any prosecution for violation of an emission standard or opacity standard under subsection C or G or subsection L, paragraph 1, 2 or 4 of this section that both of the following conditions were satisfied:

1. The violation was reported by verbal or facsimile notification to the control officer within twenty-four hours after the source first learned of the violation.

2. The owner or operator of the source provided written notification to the control officer containing all of the following information within seventy-two hours following the verbal or facsimile notification:

(a) Confirmation of the violation for which verbal or facsimile notification was provided.

(b) Identification of the practicable corrective measures that have been undertaken or will be undertaken to control and minimize emissions until compliance with the applicable standard is achieved.

In the case of continuous or recurring violations, the notification requirement shall be satisfied if the source provides the required notification after violations are first detected and includes in such notification an estimate of the time the violations will continue. Violations occurring after the estimated time period shall require additional notification pursuant to the first sentence of this paragraph.

Q. It shall be an affirmative defense to any prosecution under subsection B, H, I or K of this section for operating a source or commencing construction without a permit that, after accurately disclosing in writing all relevant information that is necessary to assess the requirement to obtain a permit and that is requested by a permitting authority, the defendant obtained and relied upon the written advice of a permitting authority that no permit was necessary. Failure of a permitting authority to respond in writing to a request for a determination under this subsection within fourteen days after receiving the information described above shall be deemed to be advice that no permit was necessary for purposes of this subsection.

R. The defendant may establish an affirmative defense provided by this section by a preponderance of the evidence.

S. Under this section, to prove a knowing violation the state must prove actual knowledge of circumstances constituting each element of the offense which, as defined, requires proof of a culpable mental state. Actual knowledge may be proved by either direct or circumstantial evidence, including evidence that the person deliberately avoided acquiring such knowledge. A person's knowledge may not be inferred merely by his or her position within an enterprise.

T. For purposes of this section, the term "emission standard" means a numeric limitation on the volume or concentration of air pollutants in emissions from a source or a specific design, equipment or work practice standard, the purpose of which is to eliminate or reduce the volume or concentration of pollutants emitted by a source. The term emission standard does not include opacity standards. Violations of emission standards shall be determined in the manner prescribed by the applicable regulations issued by the administrator or the director or control officer.

49-541. Definitions

In this article, unless the context otherwise requires:

1. "Area A" means the area delineated as follows:

(a) In Maricopa county:

Township 8 north, range 2 east and range 3 east

Township 7 north, range 2 west through range 5 east

Township 6 north, range 5 west through range 6 east

Township 5 north, range 5 west through range 7 east

Township 4 north, range 5 west through range 8 east

Township 3 north, range 5 west through range 8 east

Township 2 north, range 5 west through range 8 east

Township 1 north, range 5 west through range 7 east

Township 1 south, range 5 west through range 7 east

Township 2 south, range 5 west through range 7 east

Township 3 south, range 5 west through range 1 east

Township 4 south, range 5 west through range 1 east

(b) In Pinal county:

Township 1 north, range 8 east and range 9 east

Township 1 south, range 8 east and range 9 east

Township 2 south, range 8 east and range 9 east

Township 3 south, range 7 east through range 9 east

(c) In Yavapai county:

Township 7 north, range 1 east and range 1 west through range 2 west

Township 6 north, range 1 east and range 1 west

2. "Area B" means the area delineated in Pima county as township 11 and 12 south, range 12 through 14 east; township 13 through 15 south, range 11 through 16 east; township 16 south, range 12 through 16 east, excluding any portion of the Coronado national forest and the Saguaro national park.

3. "Certificate of inspection" means a serially numbered device or symbol, as may be prescribed by the director, indicating that a vehicle has been inspected pursuant to the provisions of section 49-546 and has passed inspection.

4. "Certificate of waiver" means a uniquely numbered device or symbol, as may be prescribed by the director, indicating that the requirement of passing reinspection has been waived for a vehicle pursuant to the provisions of this article.

5. "Conditioning mode" means either a fast idle test or a loaded test.

6. "Curb idle test" means an exhaust emissions test conducted with the engine of a vehicle running at the manufacturer's specified idle speed plus or minus one hundred revolutions per minute but without pressure exerted on the accelerator.

7. "Emissions inspection station permit" means a certificate issued by the director authorizing the holder to perform vehicular inspections pursuant to this article.

8. "Fast idle test" means an exhaust emissions test conducted with the engine of the vehicle running under an accelerated condition to an extent prescribed by the director.

9. "Fleet emissions inspection station" means any inspection facility operated under a permit issued to a qualified fleet owner or lessee as determined by the director.

10. "Golf cart" means a motor vehicle which has not less than three wheels in contact with the ground, has an unladen weight of less than thirteen hundred pounds, is designed to be and is operated at not more than fifteen miles an hour and is designed to carry golf equipment and persons.

11. "Gross weight" has the same meaning prescribed in section 28-5431.

12. "Independent contractor" means any person, business, firm, partnership or corporation with which the director may enter into an agreement providing for the construction, equipment, maintenance, personnel, management and operation of official emissions inspection stations pursuant to section 49-545.

13. "Loaded test" means an exhaust emissions test conducted at cruise or transient conditions as prescribed by the director.

14. "Official emissions inspection station" means an inspection facility, other than a fleet emissions inspection station, whether placed in a permanent structure or in a mobile unit for conveyance among various locations within this state, for the purpose of conducting emissions inspections of all vehicles required to be inspected pursuant to this article.

15. "Tampering" means removing, defeating or altering an emissions control device which was installed at the time a vehicle was manufactured.

16. "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 the purpose of transporting persons or property, except implements of husbandry, road rollers or road machinery temporarily operated upon the highway.

17. "Vehicle emissions control area" means area A or area B.

E.

CONSIDERATION AND DISCUSSION OF AMENDMENTS TO 2024 COUNCIL CALENDAR

GOVERNOR'S REGULATORY REVIEW COUNCIL DEADLINES FOR 2024 (MEETING DATES ARE SUBJECT TO CHANGE)

DEADLINE FOR PLACEMENT ON AGENDA*	FINAL MATERIALS SUBMITTED TO COUNCIL	DATE OF COUNCIL STUDY SESSION	DATE OF COUNCIL MEETING
Tuesday December 19, 2023	*Tuesday* January 23, 2024	*Tuesday* January 30, 2024	*Tuesday* February 6, 2024
Tuesday January 23, 2024	*Tuesday* February 20, 2024	*Tuesday* February 27, 2024	*Tuesday* March 5, 2024
Tuesday February 20, 2024	*Tuesday* March 19, 2024	*Tuesday* March 26, 2024	*Tuesday* April 2, 2024
Tuesday March 19, 2024	*Tuesday* April 23, 2024	*Tuesday* April 30, 2024	*Tuesday* May 7, 2024
Tuesday April 23, 2024	*Tuesday* May 21, 2024	***Wednesday*** May 29, 2024	*Tuesday* June 4, 2024
Tuesday May, 21 2024	*Tuesday* June 18, 2024	*Tuesday* June 25, 2024	*Tuesday* July 2, 2024
Tuesday June 18, 2024	*Tuesday* July 23 2024	*Tuesday* July 30, 2024	*Tuesday* August 6, 2024
Tuesday July 23, 2024	*Tuesday* August 20, 2024	*Tuesday* August 27, 2024	***Wednesday*** September 4, 2024
Tuesday August 20, 2024	*Tuesday* September 17, 2024	*Tuesday* September 24, 2024	*Tuesday* October 1, 2024
Tuesday September 17, 2024	*Tuesday* October 22, 2024	*Tuesday* October 29, 2024	*Tuesday* November 5, 2024

Tuesday October 22, 2024	*Tuesday* November 19, 2024	*Tuesday* November 26, 2024	*Tuesday* December 3, 2024
~~*Tuesday*~~ ~~November 19, 2024~~	~~*Tuesday*~~ ~~December 24, 2024~~	~~*Tuesday*~~ ~~December 31, 2024~~	~~*Tuesday*~~ ~~January 7, 2025~~
Tuesday December 24, 2024	*Tuesday* January 21, 2025	*Tuesday* January 28, 2025	*Tuesday* February 4, 2025

***** Materials must be submitted by **5 PM** on dates listed as a deadline for placement on a particular agenda. Placement on a particular agenda is not guaranteed.

F.

CONSIDERATION AND DISCUSSION OF 2025 COUNCIL CALENDAR

GOVERNOR'S REGULATORY REVIEW COUNCIL DEADLINES FOR 2024 (MEETING DATES ARE SUBJECT TO CHANGE)

DEADLINE FOR PLACEMENT ON AGENDA*	FINAL MATERIALS SUBMITTED TO COUNCIL	DATE OF COUNCIL STUDY SESSION	DATE OF COUNCIL MEETING
Tuesday December 24, 2024	***Wednesday*** January 22, 2025	*Tuesday* January 28, 2025	*Tuesday* February 4, 2025
Tuesday January 21, 2025	***Wednesday*** February 19, 2025	*Tuesday* February 25, 2025	*Tuesday* March 4, 2025
Tuesday February 18, 2025	*Tuesday* March 18, 2025	*Tuesday* March 25, 2025	*Tuesday* April 1, 2025
Tuesday March 18, 2025	*Tuesday* April 22, 2025	*Tuesday* April 29, 2025	*Tuesday* May 6, 2025
Tuesday April 22, 2025	*Tuesday* May 20, 2025	***Wednesday*** May 28, 2025	*Tuesday* June 3, 2025
Tuesday May 20, 2025	*Tuesday* June 17, 2025	*Tuesday* June 24, 2025	*Tuesday* July 1, 2025
Tuesday June 17, 2025	*Tuesday* July 22, 2025	*Tuesday* July 29, 2025	*Tuesday* August 5, 2025
Tuesday July 22, 2025	*Tuesday* August 19, 2025	*Tuesday* August 26, 2025	***Wednesday*** September 3, 2025
Tuesday August 19, 2025	*Tuesday* September 23, 2025	*Tuesday* September 30, 2025	*Tuesday* October 7, 2025
Tuesday September 23, 2025	*Tuesday* October 21, 2025	*Tuesday* October 28, 2025	*Tuesday* November 4, 2028

Tuesday October 21, 2025	*Tuesday* November 18, 2025	*Tuesday* November 25, 2025	*Tuesday* December 2, 2025
~~*Tuesday*~~ ~~November 18, 2025~~	~~*Tuesday*~~ ~~December 23, 2025~~	~~*Tuesday*~~ ~~December 30, 2025~~	~~*Tuesday*~~ ~~January 6, 2026~~
Tuesday December 23, 2025	***Wednesday*** January 21, 2026	*Tuesday* January 27, 2026	*Tuesday* February 3, 2024

***** Materials must be submitted by **5 PM** on dates listed as a deadline for placement on a particular agenda. Placement on a particular agenda is not guaranteed.